

## CHAPTER 106

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**CRIMINAL LAW AND PROCEDURE**


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**HOUSE BILL 16-1066**

BY REPRESENTATIVE(S) Roupe, Carver, Lundeen, Court, Esgar, Fields, Ginal, Hamner, Kagan, Landgraf, Lee, Lontine, McCann, Mitsch Bush, Pabon, Pettersen, Rosenthal, Sias, Van Winkle, Winter, Young;  
also SENATOR(S) Newell, Aguilar, Donovan, Garcia, Guzman, Heath, Johnston, Kefalas, Martinez Humenik, Merrifield, Roberts, Tate, Todd, Woods.

**AN ACT****CONCERNING AN HABITUAL DOMESTIC VIOLENCE OFFENDER.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 18-6-801, **amend** (7) as follows:

**18-6-801. Domestic violence - sentencing.** (7) (a) ~~In the event a person is convicted in this state on or after July 1, 2000, of any offense which would otherwise be a misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence as defined in section 18-6-800.3 (1), and that person has been three times previously convicted, upon charges separately brought and tried and arising out of separate and distinct criminal episodes, of a felony or misdemeanor or municipal ordinance violation, the underlying factual basis of which was found by the court on the record to include an act of domestic violence, the prosecuting attorney may petition the court to adjudge the person an habitual domestic violence offender, and such person shall be convicted of a class 5 felony. If the person is adjudged an habitual domestic violence offender, the court shall sentence the person pursuant to the presumptive range set forth in section 18-1.3-401 for a class 5 felony. The former convictions and judgments shall be set forth in apt words in the indictment or information~~ ANY MISDEMEANOR OFFENSE THAT INCLUDES AN ACT OF DOMESTIC VIOLENCE IS A CLASS 5 FELONY IF THE DEFENDANT AT THE TIME OF SENTENCING HAS BEEN PREVIOUSLY CONVICTED OF THREE OR MORE PRIOR OFFENSES THAT INCLUDED AN ACT OF DOMESTIC VIOLENCE AND THAT WERE SEPARATELY BROUGHT AND TRIED AND ARISING OUT OF SEPARATE CRIMINAL EPISODES.

(b) THE PRIOR CONVICTIONS MUST BE SET FORTH IN APT WORDS IN THE

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

INDICTMENT OR INFORMATION. FOR THE PURPOSES OF THIS SECTION, "CONVICTION" INCLUDES ANY FEDERAL, STATE, OR MUNICIPAL CONVICTION FOR A FELONY, MISDEMEANOR, OR MUNICIPAL ORDINANCE VIOLATION.

(c) TRIALS IN CASES ALLEGING THAT THE DEFENDANT IS AN HABITUAL DOMESTIC VIOLENCE OFFENDER PURSUANT TO THIS SUBSECTION (7) MUST BE CONDUCTED IN ACCORDANCE WITH THE RULES OF CRIMINAL PROCEDURE FOR FELONIES. THE TRIER OF FACT SHALL DETERMINE WHETHER AN OFFENSE CHARGED INCLUDES AN ACT OF DOMESTIC VIOLENCE.

(d) FOLLOWING A CONVICTION FOR AN OFFENSE WHICH UNDERLYING FACTUAL BASIS INCLUDES AN ACT OF DOMESTIC VIOLENCE:

(I) IF ANY PRIOR CONVICTION INCLUDED A DETERMINATION BY A JURY OR WAS ADMITTED BY THE DEFENDANT THAT THE OFFENSE INCLUDED AN ACT OF DOMESTIC VIOLENCE, THE COURT SHALL PROCEED TO SENTENCING WITHOUT FURTHER FINDINGS AS TO THAT PRIOR CONVICTION BY THE JURY OR BY THE COURT, IF NO JURY TRIAL IS HAD;

(II) FOR ANY PRIOR CONVICTION IN WHICH THE FACTUAL BASIS WAS FOUND BY THE COURT TO INCLUDE AN ACT OF DOMESTIC VIOLENCE, BUT DID NOT INCLUDE A FINDING OF DOMESTIC VIOLENCE BY A JURY OR THAT WAS NOT ADMITTED BY THE DEFENDANT, THE TRIAL COURT SHALL PROCEED TO A SENTENCING STAGE OF THE PROCEEDINGS. THE PROSECUTION SHALL PRESENT EVIDENCE TO THE TRIER OF FACT THAT THE PRIOR CONVICTION INCLUDED AN ACT OF DOMESTIC VIOLENCE. THE PROSECUTION HAS THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT.

(III) AT THE SENTENCING STAGE, THE FOLLOWING APPLIES:

(A) A FINDING OF DOMESTIC VIOLENCE MADE BY A COURT AT THE TIME OF THE PRIOR CONVICTION CONSTITUTES PRIMA FACIE EVIDENCE THAT THE CRIME INVOLVED DOMESTIC VIOLENCE;

(B) EVIDENCE OF THE PRIOR CONVICTION IS ADMISSIBLE THROUGH THE USE OF CERTIFIED DOCUMENTS UNDER SEAL, OR THE COURT MAY TAKE JUDICIAL NOTICE OF A PRIOR CONVICTION;

(C) EVIDENCE ADMITTED IN THE GUILT STAGE OF THE TRIAL, INCLUDING TESTIMONY OF THE DEFENDANT AND OTHER ACTS ADMITTED PURSUANT TO SECTION 18-6-801.5, MAY BE CONSIDERED BY THE FINDER OF FACT.

**SECTION 2. Effective date - applicability.** This act takes effect July 1, 2016, and applies to offenses committed on or after said date.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 15, 2016