

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0075.02 Michael Dohr x4347

HOUSE BILL 16-1066

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HOUSE SPONSORSHIP

Roupe, Carver, Lundeen

SENATE SPONSORSHIP

Newell,

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING AN HABITUAL DOMESTIC VIOLENCE OFFENDER.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

Under current law, a person who is convicted of a misdemeanor involving an underlying factual basis of domestic violence and who has 3 prior convictions that include an act of domestic violence can be convicted of a class 5 felony as an habitual domestic violence offender. The bill maintains this sentencing provision and describes the procedures that a court would use to determine whether the defendant has been convicted of 3 previous offenses that include an act of domestic violence.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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

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

4           **18-6-801. Domestic violence - sentencing.** (7) (a) ~~In the event~~  
5 ~~a person is convicted in this state on or after July 1, 2000, of any offense~~  
6 ~~which would otherwise be a misdemeanor, the underlying factual basis of~~  
7 ~~which has been found by the court on the record to include an act of~~  
8 ~~domestic violence as defined in section 18-6-800.3 (1), and that person~~  
9 ~~has been three times previously convicted, upon charges separately~~  
10 ~~brought and tried and arising out of separate and distinct criminal~~  
11 ~~episodes, of a felony or misdemeanor or municipal ordinance violation,~~  
12 ~~the underlying factual basis of which was found by the court on the record~~  
13 ~~to include an act of domestic violence, the prosecuting attorney may~~  
14 ~~petition the court to adjudge the person an habitual domestic violence~~  
15 ~~offender, and such person shall be convicted of a class 5 felony. If the~~  
16 ~~person is adjudged an habitual domestic violence offender, the court shall~~  
17 ~~sentence the person pursuant to the presumptive range set forth in section~~  
18 ~~18-1.3-401 for a class 5 felony. The former convictions and judgments~~  
19 ~~shall be set forth in apt words in the indictment or information~~ ANY  
20 MISDEMEANOR OFFENSE THAT INCLUDES AN ACT OF DOMESTIC VIOLENCE  
21 IS A CLASS 5 FELONY IF THE DEFENDANT AT THE TIME OF SENTENCING HAS  
22 BEEN PREVIOUSLY CONVICTED OF THREE OR MORE PRIOR OFFENSES THAT  
23 INCLUDED AN ACT OF DOMESTIC VIOLENCE AND THAT WERE SEPARATELY  
24 BROUGHT AND TRIED AND ARISING OUT OF SEPARATE CRIMINAL EPISODES.

25           (b) THE PRIOR CONVICTIONS MUST BE SET FORTH IN APT WORDS IN  
26 THE INDICTMENT OR INFORMATION. FOR THE PURPOSES OF THIS SECTION,

1 "CONVICTION" INCLUDES ANY FEDERAL, STATE, OR MUNICIPAL  
2 CONVICTION OR DEFERRED JUDGMENT AND SENTENCE FOR A FELONY,  
3 MISDEMEANOR, OR MUNICIPAL ORDINANCE VIOLATION.

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

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

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

16 (II) FOR ANY PRIOR CONVICTION THAT DID NOT INCLUDE A FINDING  
17 OF DOMESTIC VIOLENCE BY A JURY OR WAS NOT ADMITTED BY THE  
18 DEFENDANT, THE TRIAL COURT SHALL PROCEED TO A SENTENCING STAGE  
19 OF THE PROCEEDINGS. THE PROSECUTION SHALL PRESENT EVIDENCE TO  
20 THE TRIER OF FACT THAT THE PRIOR CONVICTION INCLUDED AN ACT OF  
21 DOMESTIC VIOLENCE.

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

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

26 (B) EVIDENCE OF THE PRIOR CONVICTION IS ADMISSIBLE THROUGH  
27 THE USE OF CERTIFIED DOCUMENTS UNDER SEAL, OR THE COURT MAY TAKE

1 JUDICIAL NOTICE OF A PRIOR CONVICTION;

2 (C) THE RULES OF EVIDENCE PERTAINING TO HEARSAY SHALL NOT  
3 APPLY TO STATEMENTS COMPLIANT WITH THE STATE AND FEDERAL  
4 CONSTITUTIONS;

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

9 (e) UPON A DETERMINATION THAT THREE OR MORE PRIOR  
10 OFFENSES INCLUDED AN ACT OF DOMESTIC VIOLENCE, THE SENTENCING  
11 COURT SHALL SENTENCE THE DEFENDANT PURSUANT TO SECTION  
12 18-1.3-401 FOR AN EXTRAORDINARY RISK OFFENSE.

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

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