

**First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 25-0484.01 Conrad Imel x2313

SENATE BILL 25-189

SENATE SPONSORSHIP

Liston and Snyder,

HOUSE SPONSORSHIP

Soper and Espenoza,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIRING A JURY TO DETERMINE WHETHER A**
102 **DEFENDANT HAS PRIOR QUALIFYING CONVICTIONS.**

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://leg.colorado.gov>.)

Under existing law, a person convicted of certain prior offenses may be adjudged a habitual criminal and subject to enhanced sentencing. A jury determines whether the defendant committed the substantive offense charged, and the trial judge determines whether the defendant has been previously convicted as alleged. The bill requires a jury to determine whether the defendant has been previously convicted as alleged for the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

purpose of determining whether the defendant is a habitual criminal.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.3-803, **amend**
3 (1), (4) introductory portion, (4)(b), (5)(b), and (6) as follows:

4 **18-1.3-803. Verdict of jury.** (1) If the allegation of previous
5 convictions of other felony offenses is included in an indictment or
6 information and if a verdict of guilty of the substantive offense with
7 which the defendant is charged is returned, the court shall conduct a
8 separate sentencing hearing FOR A JURY to determine whether or not the
9 defendant has suffered ~~such~~ THE ALLEGED previous felony convictions.
10 ~~As soon as practicable, the hearing shall be conducted by the judge who~~
11 ~~presided at trial or before whom the guilty plea was entered or a~~
12 ~~replacement for said judge in the event he or she dies, resigns, is~~
13 ~~incapacitated, or is otherwise disqualified as provided in section~~
14 ~~16-6-201, C.R.S.~~ THE COURT SHALL HOLD THE HEARING AS SOON AS
15 PRACTICABLE. IF PRACTICABLE, THE HEARING MUST BE CONDUCTED
16 BEFORE THE SAME JURY IMPANELED TO TRY THE SUBSTANTIVE OFFENSE.
17 IF THAT JURY HAS BEEN DISCHARGED, THE COURT SHALL IMPANEL A NEW
18 JURY FOR THE PURPOSE OF DECIDING ANY OUTSTANDING ISSUES
19 REGARDING WHETHER THE DEFENDANT HAS BEEN PREVIOUSLY CONVICTED
20 AS ALLEGED.

21 (4) If the defendant denies that ~~he or she has~~ THEY HAVE been
22 previously convicted as alleged in any count of an information or
23 indictment, ~~the trial judge, or a replacement judge as provided in~~
24 ~~subsection (1) of this section,~~ A JURY shall determine by separate hearing
25 and verdict whether the defendant has been convicted as alleged. The

1 procedure in any case in which the defendant does not become a witness
2 in his or her own behalf upon the trial of the substantive offense shall be
3 IS as follows:

4 (b) If the verdict is that the defendant is guilty of the substantive
5 offense charged, ~~the trial judge, or a replacement judge as provided in~~
6 ~~subsection (1) of this section, shall proceed to try~~ A JURY SHALL TRY the
7 issues of whether the defendant has been previously convicted as alleged.
8 The prosecuting attorney has the burden of proving beyond a reasonable
9 doubt that the defendant has been previously convicted as alleged.

10 (5) (b) If, upon the trial of the issues upon the substantive offense
11 charged, ~~the defendant testifies in his or her own defense and, after~~
12 ~~having denied the previous conviction under subsection (3) of this~~
13 ~~section,~~ THE PROSECUTING ATTORNEY PRESENTS REBUTTAL EVIDENCE
14 PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION OR THE DEFENDANT
15 admits that ~~he or she~~ THE DEFENDANT has been previously convicted as
16 alleged, ~~the trial judge, or a replacement judge as provided in subsection~~
17 ~~(1) of this section, shall, in any sentencing hearing, consider any~~
18 ~~admissions of prior convictions elicited from the defendant in connection~~
19 ~~with his or her testimony on the substantive offense only as they affect the~~
20 ~~defendant's credibility. In any sentencing hearing, the prosecution shall~~
21 ~~be required to meet its burden of proving beyond a reasonable doubt the~~
22 ~~defendant's prior convictions by evidence independent of the defendant's~~
23 ~~testimony~~ THE PRESENTATION OR ADMISSION DOES NOT RELIEVE THE
24 PROSECUTING ATTORNEY OF THE BURDEN TO PROVE BEYOND A
25 REASONABLE DOUBT THAT THE DEFENDANT HAS BEEN PREVIOUSLY
26 CONVICTED AS ALLEGED AT A SUBSEQUENT SENTENCING HEARING. IF THE
27 SAME JURY THAT HEARD THE DEFENDANT'S ADMISSION TO BEING

1 PREVIOUSLY CONVICTED AS ALLEGED DURING THE TRIAL ON THE
2 SUBSTANTIVE OFFENSE IS DETERMINING WHETHER THE DEFENDANT WAS
3 PREVIOUSLY CONVICTED, THE COURT SHALL INSTRUCT THE JURY THAT IT
4 MAY CONSIDER THE ADMISSION ONLY AS IT AFFECTS THE DEFENDANT'S
5 CREDIBILITY AND THAT THE PROSECUTING ATTORNEY MUST PROVE
6 BEYOND A REASONABLE DOUBT THE DEFENDANT'S PRIOR CONVICTIONS BY
7 EVIDENCE INDEPENDENT OF THE ADMISSION.

8 (6) If the prosecuting attorney does not have any information
9 indicating that the defendant has been previously convicted of a felony
10 prior to the time a verdict of guilty is rendered on a felony charge and if
11 ~~thereafter~~ the prosecuting attorney learns of the felony conviction prior
12 to the time that sentence is pronounced by the court, ~~he or she~~ THE
13 PROSECUTING ATTORNEY may file a new information ~~in which it shall be~~
14 ~~alleged~~ THAT ALLEGES in separate counts that the defendant has been
15 convicted of the particular offense upon which judgment has not been
16 entered and that prior thereto at a specified date and place the defendant
17 has been convicted of a felony warranting application of increased
18 penalties authorized in this section and sections 18-1.3-801 and
19 18-1.3-802. THE COURT SHALL ARRAIGN the defendant ~~shall be arraigned~~
20 upon the new information, and, if the defendant denies the previous
21 conviction, the trial judge ~~or a replacement judge as provided in~~
22 ~~subsection (1) of this section,~~ shall IMPANEL A JURY TO try the issue prior
23 to imposition of sentence.

24 **SECTION 2. Applicability.** This act applies to sentencing
25 hearings on or after the effective date of this act.

26 **SECTION 3. Safety clause.** The general assembly finds,
27 determines, and declares that this act is necessary for the immediate

1 preservation of the public peace, health, or safety or for appropriations for
2 the support and maintenance of the departments of the state and state
3 institutions.