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SENATE BILL 25-189

BY SENATOR(S) Liston and Snyder;
also REPRESENTATIVE(S) Soper and Espenoza, Carter, Duran, Froelich,
Woodrow.

CONCERNING REQUIRING A JURY TO DETERMINE WHETHER A DEFENDANT
HAS PRIOR QUALIFYING CONVICTIONS, AND, IN CONNECTION
THEREWITH, MAKING AN APPROPRIATION.

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

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

18-1.3-803. Verdict of jury. (1) If the allegation of previous convictions of other felony offenses is included in an indictment or information and if a verdict of guilty of the substantive offense with which the defendant is charged is returned, the court shall conduct a separate ~~sentencing hearing~~ HABITUAL PROCEEDING FOR A JURY to determine whether or not the defendant has suffered ~~such~~ THE ALLEGED previous felony convictions, ~~As soon as practicable, the hearing shall be conducted by the judge who presided at trial or before whom the guilty plea was entered or a replacement for said judge in the event he or she dies, resigns, is~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~incapacitated, or is otherwise disqualified as provided in section 16-6-201, C.R.S.~~ WHETHER THE CONVICTIONS WERE SEPARATELY BROUGHT AND TRIED, AND WHETHER THE CONVICTIONS AROSE OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES. THE HABITUAL PROCEEDING MUST BE CONDUCTED BEFORE THE SAME JURY IMPANELED TO TRY THE SUBSTANTIVE OFFENSE; EXCEPT THAT, WHEN NECESSARY AND AS CONSTITUTIONALLY PERMISSIBLE, A NEW JURY MAY BE IMPANELED. IF A NEW JURY IS IMPANELED THE COURT SHALL HOLD THE HABITUAL PROCEEDING AS SOON AS PRACTICABLE. THE COLORADO RULES OF EVIDENCE AND COLORADO RULES OF CRIMINAL PROCEDURE, INCLUDING THE DISCOVERY PROVISIONS OF COLORADO RULE OF CRIMINAL PROCEDURE 16, FULLY APPLY TO HABITUAL PROCEEDINGS CONDUCTED PURSUANT TO THIS SECTION.

(4) If the defendant denies that ~~he or she has~~ THEY HAVE been previously convicted as alleged in any count of an information or indictment, ~~the trial judge, or a replacement judge as provided in subsection (1) of this section,~~ A JURY shall determine by separate ~~hearing~~ HABITUAL PROCEEDING and verdict whether the defendant has been convicted as alleged, WHETHER THE CONVICTIONS WERE SEPARATELY BROUGHT AND TRIED, AND WHETHER THE CONVICTIONS AROSE OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES. The procedure ~~in any case in which the defendant does not become a witness in his or her own behalf upon the trial of the substantive offense shall be~~ IS as follows:

(b) If the verdict is that the defendant is guilty of the substantive offense charged, ~~the trial judge, or a replacement judge as provided in subsection (1) of this section,~~ shall proceed to try A JURY SHALL TRY the issues of whether the defendant has been previously convicted as alleged. The prosecuting attorney has the burden of proving beyond a reasonable doubt that the defendant has been previously convicted as alleged, THE CONVICTIONS WERE SEPARATELY BROUGHT AND TRIED, AND THE CONVICTIONS AROSE OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES.

(5) (b) If, upon the trial of the issues upon the substantive offense charged, ~~the defendant testifies in his or her own defense and, after having denied the previous conviction under subsection (3) of this section,~~ THE PROSECUTING ATTORNEY PRESENTS REBUTTAL EVIDENCE PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION OR THE DEFENDANT admits that ~~he or she~~ THE DEFENDANT has been previously convicted as alleged, ~~the trial judge, or a replacement judge as provided in subsection (1) of this section,~~

~~shall, in any sentencing hearing, consider any admissions of prior convictions elicited from the defendant in connection with his or her testimony on the substantive offense only as they affect the defendant's credibility. In any sentencing hearing, the prosecution shall be required to meet its burden of proving beyond a reasonable doubt the defendant's prior convictions by evidence independent of the defendant's testimony~~ THE PRESENTATION OR ADMISSION DOES NOT RELIEVE THE PROSECUTING ATTORNEY OF THE BURDEN TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAS BEEN PREVIOUSLY CONVICTED AS ALLEGED, THE CONVICTIONS WERE SEPARATELY BROUGHT AND TRIED, AND THE CONVICTIONS AROSE OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES. IF, DURING THE TRIAL ON THE SUBSTANTIVE OFFENSE, THE JURY HAS HEARD THE DEFENDANT ADMIT A PREVIOUS CONVICTION, THE COURT SHALL INSTRUCT THE JURY THAT IT MAY CONSIDER THE ADMISSION ONLY AS IT AFFECTS THE DEFENDANT'S CREDIBILITY AND THAT THE PROSECUTING ATTORNEY MUST PROVE BEYOND A REASONABLE DOUBT THE DEFENDANT'S PRIOR CONVICTIONS BY EVIDENCE INDEPENDENT OF THE ADMISSION.

~~(6) If the prosecuting attorney does not have any information indicating that the defendant has been previously convicted of a felony prior to the time a verdict of guilty is rendered on a felony charge and if thereafter the prosecuting attorney learns of the felony conviction prior to the time that sentence is pronounced by the court, he or she may file a new information in which it shall be alleged in separate counts that the defendant has been convicted of the particular offense upon which judgment has not been entered and that prior thereto at a specified date and place the defendant has been convicted of a felony warranting application of increased penalties authorized in this section and sections 18-1.3-801 and 18-1.3-802. The defendant shall be arraigned upon the new information, and, if the defendant denies the previous conviction, the trial judge, or a replacement judge as provided in subsection (1) of this section, shall try the issue prior to imposition of sentence.~~

SECTION 2. Appropriation. For the 2025-26 state fiscal year, \$17,500 is appropriated to the judicial department for use by trial courts. This appropriation is from the general fund. To implement this act, the courts may use this appropriation for court costs, jury costs, court-appointed counsel, and reimbursements for vacated convictions.

SECTION 3. Applicability. This act applies to habitual

proceedings on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO