

SENATE JOURNAL
Sixty-third General Assembly
STATE OF COLORADO
Third Extraordinary Session

Third Legislative Day Wednesday, July 10, 2002

Call to Order By the President at 9:00 a.m.

Roll Call Present--Total, 33.
Absent/Excused--Entz, Nichol--Total, 2.
Present later--Entz, Nichol.

Quorum The President announced a quorum present.

Reading of Journal On motion of Senator Lamborn, reading of the Journal of Tuesday, July 9 was dispensed with and the Journal was approved as corrected by the Secretary.

SENATE SERVICES REPORT

Senate Services Correctly printed: SB02S-010, 011, 012, 013, 014, 015, 016, 017, 018; SR02S-001.
Correctly engrossed: SB02S-001, 007, 010, 012, 013, 015, 016, 017, 018.

THIRD READING--FINAL PASSAGE OF BILLS

On Third Reading, the titles of the following bills were publicly read, the reading at length having been dispensed with by unanimous consent:

SB02S-007 by Senator(s) Isgar, Entz, Fitz-Gerald; also Representative(s) Larson--Concerning the availability of insurance for properties that are within federally designated disaster areas.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	28	NO	6	EXCUSED	1	ABSENT	0
Anderson	Y	Fitz-Gerald	Y	May	N	Takis	Y
Andrews	N	Gordon	Y	McElhany	Y	Tate	Y
Arnold	N	Hagedorn	Y	Musgrave	Y	Taylor	Y
Cairns	N	Hanna	Y	Nichol	Y	Teck	Y
Chlouber	Y	Hernandez	Y	Owen	Y	Thiebaut	Y
Dyer	Y	Hillman	N	Pascoe	Y	Tupa	Y
Entz	E	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	Y	Lamborn	N	Phillips	Y	Mr. President	Y
Evans	Y	Linkhart	Y	Reeves	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Hanna, Pascoe, Phillips, Takis, Tate, Teck, Thiebaut, Tupa, Windels.

SB02S-010 by Senator(s) Fitz-Gerald; also Representative(s) Jahn--Concerning job security for Colorado employees who enlist through the national interagency fire center to assist in fighting wildland fires in times of extreme need.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	22	NO	12	EXCUSED	1	ABSENT	0
Anderson	N	Fitz-Gerald	Y	May	N	Takis	Y
Andrews	Y	Gordon	Y	McElhany	N	Tate	Y
Arnold	N	Hagedorn	Y	Musgrave	Y	Taylor	Y
Cairns	N	Hanna	Y	Nichol	Y	Teck	N
Chlouber	Y	Hernandez	Y	Owen	N	Thiebaut	Y
Dyer	N	Hillman	N	Pascoe	Y	Tupa	Y
Entz	E	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	N	Lamborn	N	Phillips	Y	Mr. President	Y
Evans	N	Linkhart	Y	Reeves	Y		

SB02S-010

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Gordon, Hanna, Hernandez, Isgar, Nichol, Perlmutter, Phillips, Takis, Tate, Thiebaut, Tupa, Windels.

SB02S-012

by Senator(s) Gordon; also Representative(s) Hefley--Concerning increased penalties for expelling burning materials from a motor vehicle.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	34	NO	0	EXCUSED	1	ABSENT	0
Anderson	Y	Fitz-Gerald	Y	May	Y	Takis	Y
Andrews	Y	Gordon	Y	McElhany	Y	Tate	Y
Arnold	Y	Hagedorn	Y	Musgrave	Y	Taylor	Y
Cairns	Y	Hanna	Y	Nichol	Y	Teck	Y
Chlouber	Y	Hernandez	Y	Owen	Y	Thiebaut	Y
Dyer	Y	Hillman	Y	Pascoe	Y	Tupa	Y
Entz	E	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	Y	Lamborn	Y	Phillips	Y	Mr. President	Y
Evans	Y	Linkhart	Y	Reeves	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Chlouber, Hanna, Hernandez, Isgar, Linkhart, McElhany, Phillips, Teck, Windels.

SB02S-017

by Senator(s) Perlmutter; also Representative(s) Plant--Concerning land use regulation of areas with a recognized risk of wildfires.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	19	NO	15	EXCUSED	1	ABSENT	0
Anderson	N	Fitz-Gerald	Y	May	N	Takis	Y
Andrews	N	Gordon	Y	McElhany	N	Tate	Y
Arnold	N	Hagedorn	Y	Musgrave	N	Taylor	N
Cairns	N	Hanna	Y	Nichol	Y	Teck	N
Chlouber	N	Hernandez	Y	Owen	N	Thiebaut	Y
Dyer	Y	Hillman	N	Pascoe	Y	Tupa	Y
Entz	E	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	N	Lamborn	N	Phillips	Y	Mr. President	Y
Evans	N	Linkhart	Y	Reeves	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Fitz-Gerald, Gordon, Hanna, Nichol, Pascoe, Phillips, Takis, Tate, Tupa, Windels.

SB02S-018

by Senator(s) Linkhart; also Representative(s) Romanoff--Concerning creation of an urban water use efficiency task force.

Laid over till the end of the Third Reading--Final Passage of Bills.

SB02S-001

by Senator(s) Owen; also Representative(s) Hoppe--Concerning drought response, and, in connection therewith, creating agricultural emergency drought response authority in the state engineer and the director of the Colorado water conservation board.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	1	EXCUSED	1	ABSENT	0
Anderson	Y	Fitz-Gerald	Y	May	Y	Takis	Y
Andrews	Y	Gordon	Y	McElhany	Y	Tate	N
Arnold	Y	Hagedorn	Y	Musgrave	Y	Taylor	Y
Cairns	Y	Hanna	Y	Nichol	Y	Teck	Y
Chlouber	Y	Hernandez	Y	Owen	Y	Thiebaut	Y
Dyer	Y	Hillman	Y	Pascoe	Y	Tupa	Y
Entz	E	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	Y	Lamborn	Y	Phillips	Y	Mr. President	Y
Evans	Y	Linkhart	Y	Reeves	Y		

SB02S-001

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Arnold, Chlouber, Epps, Evans, Fitz-Gerald, Hagedorn, Hernandez, Isgar, Matsunaka, May, Nichol, Phillips, Taylor, Teck.

SB02S-013

by Senator(s) Fitz-Gerald, Tupa; also Representative(s) Tapia--Concerning a requirement that Colorado state individual income tax return forms contain a line whereby an individual taxpayer may make a voluntary contribution to the fire mitigation fund, and making an appropriation in connection therewith.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	23	NO	12	EXCUSED	0	ABSENT	0
Anderson	N	Fitz-Gerald	Y	May	N	Takis	Y
Andrews	N	Gordon	Y	McElhany	Y	Tate	Y
Arnold	N	Hagedorn	Y	Musgrave	Y	Taylor	N
Cairns	N	Hanna	Y	Nichol	Y	Teck	N
Chlouber	Y	Hernandez	Y	Owen	Y	Thiebaut	Y
Dyer	N	Hillman	N	Pascoe	Y	Tupa	Y
Entz	N	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	N	Lamborn	Y	Phillips	Y	Mr. President	Y
Evans	N	Linkhart	Y	Reeves	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Hanna, Phillips, Takis, Tate, Thiebaut, Windels.

SB02S-015

by Senator(s) Thiebaut; also Representative Tapia--Concerning the inclusion of employees of specified employers who may have been adversely impacted by a natural disaster in certain aspects of state group benefit plans in order to assist those employers in providing affordable health insurance options to their employees, and, in connection therewith, providing relief to small businesses, family agricultural operations, and local governments that have been negatively affected by the drought or wildfires by allowing such entities to access more affordable health insurance for their employees.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	22	NO	13	EXCUSED	0	ABSENT	0
Anderson	N	Fitz-Gerald	Y	May	N	Takis	Y
Andrews	N	Gordon	Y	McElhany	N	Tate	Y
Arnold	N	Hagedorn	Y	Musgrave	Y	Taylor	N
Cairns	N	Hanna	Y	Nichol	Y	Teck	N
Chlouber	Y	Hernandez	Y	Owen	N	Thiebaut	Y
Dyer	N	Hillman	Y	Pascoe	Y	Tupa	Y
Entz	Y	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	N	Lamborn	N	Phillips	Y	Mr. President	Y
Evans	N	Linkhart	Y	Reeves	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Hanna, Hernandez, Nichol, Pascoe, Phillips, Takis, Tate, Tupa, Windels.

SB02S-016

by Senator(s) Matsunaka; also Representative(s) Hodge--Concerning the creation of the farmers and ranchers emergency natural disaster assistance fund, and making an appropriation therefor.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	26	NO	9	EXCUSED	0	ABSENT	0
Anderson	N	Fitz-Gerald	Y	May	N	Takis	Y
Andrews	N	Gordon	Y	McElhany	N	Tate	Y
Arnold	N	Hagedorn	Y	Musgrave	Y	Taylor	Y
Cairns	N	Hanna	Y	Nichol	Y	Teck	Y
Chlouber	Y	Hernandez	Y	Owen	Y	Thiebaut	Y
Dyer	Y	Hillman	Y	Pascoe	Y	Tupa	Y
Entz	Y	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	N	Lamborn	N	Phillips	Y	Mr. President	Y
Evans	N	Linkhart	Y	Reeves	Y		

SB02S-016 A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Fitz-Gerald, Gordon, Hagedorn, Hanna, Hernandez, Isgar, Nichol, Phillips, Takis, Tate, Thiebaut, Tupa.

SB02S-018 by Senator(s) Linkhart; also Representative(s) Romanoff--Concerning creation of an urban water use efficiency task force.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	25	NO	10	EXCUSED	0	ABSENT	0
Anderson	N	Fitz-Gerald	Y	May	N	Takis	Y
Andrews	Y	Gordon	Y	McElhany	N	Tate	Y
Arnold	N	Hagedorn	Y	Musgrave	Y	Taylor	N
Cairns	N	Hanna	Y	Nichol	Y	Teck	N
Chlouber	Y	Hernandez	Y	Owen	Y	Thiebaut	Y
Dyer	Y	Hillman	Y	Pascoe	Y	Tupa	Y
Entz	Y	Isgar	Y	Perlmutter	Y	Windels	Y
Epps	N	Lamborn	N	Phillips	Y	Mr. President	Y
Evans	N	Linkhart	Y	Reeves	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Fitz-Gerald, Hagedorn, Hernandez, Pascoe, Phillips, Takis, Tate, Thiebaut, Tupa, Windels.

Senate in Recess--Senate Reconvened

MESSAGE FROM THE HOUSE

July 10, 2002

Mr. President:

The House has passed on Third Reading and transmitted to the Revisor of Statutes HB02S-1022.

The House has passed on Third Reading and transmitted to the Revisor of Statutes HB02S-1010, amended as printed in House Journal, July 9, pages 55-56.
 HB02S-1018, amended as printed in House Journal, July 9, page 56.
 HB02S-1024, amended as printed in House Journal, July 9, page 57.
 HB02S-1025, amended as printed in House Journal, July 9, page 65.
 HB02S-1023, amended as printed in House Journal, July 9, page 65.

MESSAGE FROM THE REVISOR

We herewith transmit:

Without comment, HB02S-1022.
 Without comment, as amended, HB02S-1010, 1018, 1025, and 1023.

INTRODUCTION OF BILLS--FIRST READING

The following bills were read by title and referred to the committees indicated:

HB02S-1010 by Representative(s) Young, Miller, Snook; also Senator(s) Taylor--Concerning the deferral of the payment of taxes on the sale of livestock resulting from weather-related conditions.
 Agriculture and Natural Resources

HB02S-1018 by Representative(s) Daniel, Coleman, Jahn, Vigil, Ragsdale, Weddig; also Senator(s) Arnold--Concerning an expansion of the powers of local governments to mitigate the effects of wildfires by controlling the sale of fireworks in counties.
 Government, Veterans and Military Relations, and Transportation

- HB02S-1022**

by Representative(s) Hoppe, Stafford, Crane, Fairbank, Fritz, Harvey, Hefley, Johnson, Kester, King, Lawrence, Lee, Mitchell, Rhodes, Sinclair, Snook, Spence, Spradley, Stengel, Webster, Williams T., Young; also Senator(s) Dyer--Concerning the financing of water infrastructure projects by the state, and, in connection therewith, authorizing the issuance of voter-approved revenue bonds for the purpose of financing such projects and excluding revenues derived from bond proceeds and projects financed by bonds from state fiscal year spending.
 Public Policy and Planning
 Appropriations

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- HB02S-1023**

by Representative(s) Rhodes, Fritz, Hefley, Mitchell, Paschall; also Senator(s) Hagedorn--Concerning mandatory sentencing for crimes involving property that has been evacuated, and making an appropriation in connection therewith.
 Judiciary

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- HB02S-1025**

by Representative(s) Plant; also Senator(s) Owen--Concerning the creation of a wildfire emergency response fund, and making an appropriation in connection therewith.
 Agriculture and Natural Resources
 Appropriations

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MESSAGE FROM THE REVISOR

We herewith transmit:
 With comment, as amended, HB02S-1024.

INTRODUCTION OF BILLS--FIRST READING

The following bill was read by title and referred to the committees indicated:

- HB02S-1024**

by Representative(s) Spence; also Senator(s) Teck--Concerning the determination of sentence in a class 1 felony case by a ten-person majority of a twelve-person jury.
 Judiciary
 Appropriations

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INTRODUCTION OF RESOLUTIONS

The following resolution was read by title:

- SR02S-002**

by Senator(s) Tate, Thiebaut, Fitz-Gerald, Gordon, Hagedorn, Hanna, Hernandez, Isgar, Linkhart, Matsunaka, Nichol, Pascoe, Perlmutter, Phillips, Reeves, Takis, Tupa, Windels; --Concerning a request to the supreme court of the state of Colorado to render its opinion upon questions relating to recent gubernatorial action affecting state budgetary matters.

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Laid over until later in the day, Wednesday, July 10.

Senate in Recess--Senate Reconvened

COMMITTEE OF REFERENCE REPORTS

- Government,
 Veterans and
 Military
 Relations and
 Transportation

After consideration on the merits, the committee recommends that **HB02S-1018** be referred favorably to the Committee of the Whole.

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- Judiciary

After consideration on the merits, the committee recommends that **HB02S-1005** be amended as follows and, as so amended be referred to the Committee of the Whole with favorable recommendation.

 Amend reengrossed bill, page 2, line 2, strike "(7) (b)," and substitute "(7),".

 Page 7, line 10, strike "EXAMINATION" and substitute "EXAMINATIONS";

 line 11, strike "EXPERTS" and substitute "EXPERT";

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HB02S-1005

line 14, strike "THIRTY" and substitute "FORTY-FIVE";

strike lines 24 through 27 and substitute the following:

~~"(IV) Any reports, recorded statements, and notes of any expert whom the prosecuting attorney may call as a witness during the sentencing hearing, including results of physical or mental examination and scientific test, experiments, or comparisons;" .~~

Page 8, line 14, strike "FORTY-FIVE" and substitute "THIRTY";

line 18, strike "EXCEPT THAT" and substitute "HOWEVER,";

line 20, strike "EXAMINATION" and substitute "EXAMINATIONS";

line 21, strike "EXPERTS" and substitute "EXPERT".

Page 9, strike lines 4 through 7 and substitute the following:

~~"(III) Any reports, recorded statements, and notes of any expert whom the defendant may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons; and" .~~

Page 11, strike lines 14 through 17 and substitute the following:

~~"(7) (a) If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section, which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable. IF ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, BUT SEVERANCE OF SUCH PROVISIONS WOULD, THROUGH OPERATION OF THE REMAINING PROVISIONS OF THIS SECTION, MAINTAIN THIS SECTION AS A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THOSE REMAINING PROVISIONS ARE SEVERABLE AND ARE TO HAVE FULL FORCE AND EFFECT.";~~

line 18, strike "(7)".

Page 12, line 10, strike "SHALL" and substitute "MAY".

Page 13, line 2, strike "(7) (b)," and substitute "(7),".

Page 17, line 10, after "OF", insert "THE";

line 24, after "UPON", insert "THE".

Page 18, line 11, strike "EXPERTS" and substitute "EXPERT";

line 14, strike "THIRTY" and substitute "FORTY-FIVE";

strike lines 24 through 27 and substitute the following:

~~"(IV) Any reports, recorded statements, and notes of any expert whom the prosecuting attorney may call as a witness during the sentencing hearing, including results of physical or mental examination and scientific test, experiments, or comparisons;" .~~

Page 19, line 14, strike "FORTY-FIVE" and substitute "THIRTY";

line 18, strike "EXCEPT THAT" and substitute "HOWEVER,";

line 21, strike "EXPERTS" and substitute "EXPERT".

Page 20, strike lines 4 through 7 and substitute the following:

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HB02S-1005

~~"(III) Any reports, recorded statements, and notes of any expert whom the defendant may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons; and".~~

Page 22, strike lines 14 through 17 and substitute the following:

~~"(7) (a) If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section, which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable. IF ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, BUT SEVERANCE OF SUCH PROVISIONS WOULD, THROUGH OPERATION OF THE REMAINING PROVISIONS OF THIS SECTION, MAINTAIN THIS SECTION AS A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THOSE REMAINING PROVISIONS ARE SEVERABLE AND ARE TO HAVE FULL FORCE AND EFFECT.";~~

line 18, strike "(7)".

Page 23, line 10, strike "SHALL" and substitute "MAY".

Page 27, line 25, strike "a" and substitute "a", and strike "THE".

Page 28, line 12, strike "a" and substitute "a", and strike "THE".

Page 42, line 23, strike "SAID" and substitute "THIS".

Page 44, line 20, strike "EXAMINATION" and substitute "EXAMINATIONS";

line 21, strike "EXPERTS" and substitute "EXPERT";

line 24, strike "THIRTY" and substitute "FORTY-FIVE".

Page 45, strike lines 8 through 12.

Re-number succeeding subparagraphs accordingly.

Page 46, line 1, strike "FORTY-FIVE" and substitute "THIRTY";

line 3, strike "EXCEPT THAT" and substitute "HOWEVER,";

line 5, strike "EXAMINATION" and substitute "EXAMINATIONS";

line 6, strike "EXPERTS" and substitute "EXPERT";

line 16, after "HEARING;"; insert "AND";

strike lines 17 through 21.

Re-number succeeding subparagraph accordingly.

Page 49, strike lines 9 through 12;

line 17, strike "SHALL:" and substitute "MAY:".

Page 50, line 12, strike "SHALL" and substitute "MAY".

Judiciary

After consideration on the merits, the committee recommends that **HB02S-1006** be referred favorably to the Committee on Appropriations.

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- Judiciary After consideration on the merits, the committee recommends that **SB02S-002** be postponed indefinitely. 1
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- Judiciary After consideration on the merits, the committee recommends that **SB02S-003** be postponed indefinitely. 6
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- Judiciary After consideration on the merits, the committee recommends that **SB02S-005** be postponed indefinitely. 10
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- Judiciary After consideration on the merits, the committee recommends that **HB02S-1024** be postponed indefinitely. 16
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- Agriculture and Natural Resources After consideration on the merits, the committee recommends that **HB02S-1010** be amended as follows and, as so amended be referred to the Committee on Appropriations with favorable recommendation. 21
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Amend reengrossed bill, page 2, line 10, strike "THREE-QUARTERS" and substitute "SIXTY-THREE ONE HUNDREDTHS". 25
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- Agriculture and Natural Resources After consideration on the merits, the committee recommends that **HB02S-1025** be referred favorably to the Committee on Appropriations. 29
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MESSAGE FROM THE HOUSE

July 10, 2002 33
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Mr. President: 38
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The House has adopted and transmits herewith HJR02S-1002, as printed in House Journal, July 9, pages 46-48, and amended as printed in House Journal, July 10. 41
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INTRODUCTION OF RESOLUTIONS

The following resolution was read by title: 45
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HJR02S-1002 by Representative(s) Rippy, Smith; also Senator(s) Taylor--Concerning the recognition of volunteer water donations to benefit western slope water users. 49
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Laid over until later in the day, Wednesday, July 10. 52
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Senate in Recess--Senate Reconvened

COMMITTEE OF REFERENCE REPORTS

- Appropriations After consideration on the merits, the committee recommends that **HB02S-1025** be referred favorably to the Committee of the Whole. 55
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- Appropriations After consideration on the merits, the committee recommends that **HB02S-1010** be referred favorably to the Committee of the Whole. 65
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- Appropriations After consideration on the merits, the committee recommends that **HB02S-1001** be referred favorably to the Committee of the Whole. 70
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MESSAGE FROM THE HOUSE

July 10, 2002

Mr. President:

The House has postponed indefinitely SB02S-010, 013, 015, 016, 017. The bills are returned herewith.

July 10, 2002

Mr. President:

The House has adopted and transmits herewith HJR02S-1005, as printed in House Journal, July 10, pages 73-74.

The House has adopted and transmits herewith HJR02S-1006, as printed in House Journal, July 10, pages 78-79.

The House has adopted and transmits herewith HJR02S-1007, as printed in House Journal, July 10, pages 80-81.

INTRODUCTION OF RESOLUTIONS

The following resolutions were read by title:

SJR02S-001 by Senator(s) Reeves; also Representative(s) Hoppe--Concerning the mitigation of wildfire risks to communities in the wildland-urban interface.

Laid over one day under Senate rule 30(b).

HJR02S-1005 by Representative(s) Coleman, Miller; also Senator(s) Entz, Hillman, Isgar--Concerning federal assistance for crop and livestock producers due to drought devastation.

Laid over one day under Senate rule 30(e).

HJR02S-1006 by Representative(s) Spradley; also Senator(s) Hillman--Concerning the recognition of the ability of the state inmate population to provide disaster relief.

Laid over one day under Senate rule 30(e).

HJR02S-1007 by Representative(s) Hefley, Alexander, Johnson, Madden, Snook, Witwer; also Senator(s) Fitz-Gerald, Isgar, Tupa--Concerning implementation of the National Fire Plan on federal lands.

Laid over one day under Senate rule 30(e).

COMMITTEE OF REFERENCE REPORTS

Public Policy and Planing After consideration on the merits, the committee recommends that **HB02S-1022** be referred favorably to the Committee on Appropriations.

Senate in Recess--Senate Reconvened

COMMITTEE OF REFERENCE REPORTS

Appropriations After consideration on the merits, the committee recommends that **HB02S-1002** be postponed indefinitely.

Appropriations After consideration on the merits, the committee recommends that **HB02S-1006** be amended as follows and, as so amended be referred to the Committee of the Whole with favorable recommendation.

Amend reengrossed bill, page 4, after line 25, insert the following:

HB02S-1006

"SECTION 3. Article 13 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-13-109.5. Intentionally setting wildfire. (1) A PERSON COMMITS THE CRIME OF INTENTIONALLY SETTING A WILDFIRE IF HE OR SHE:

(a) (I) INTENTIONALLY AND WITHOUT LAWFUL AUTHORITY SETS ON FIRE, OR CAUSES TO BE SET ON FIRE, ANY WOODS, PRAIRIE, OR GROUNDS OF ANY DESCRIPTION, OTHER THAN HIS OR HER OWN; OR

(II) INTENTIONALLY PERMITS A FIRE, SET OR CAUSED TO BE SET BY SUCH PERSON, TO PASS FROM HIS OR HER OWN GROUNDS TO THE GROUNDS OF ANOTHER; AND

(b) BY SO DOING, PLACES ANOTHER IN DANGER OF DEATH OR SERIOUS BODILY INJURY OR PLACES ANY BUILDING OR OCCUPIED STRUCTURE OF ANOTHER IN DANGER OF DAMAGE.

(2) INTENTIONALLY SETTING A WILDFIRE IS A CLASS 3 FELONY.

(3) FOR PURPOSES OF THIS SECTION, "BUILDING" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 18-4-101 (1) AND "OCCUPIED STRUCTURE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 18-4-101 (2)."

Renumber succeeding sections accordingly.

Page 7, line 24, after "IMPLEMENT", insert "SECTIONS 1, 2, 4, 5, 6, 7, AND 8 OF".

Page 9, line 10, after "TO", insert "SECTIONS 1, 2, 4, 5, 6, 7, AND 8 OF;"

after line 12, insert the following:

"SECTION 11. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-144. Appropriation to comply with section 2-2-703. (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT SECTION 3 OF H.B. 02S-1006, ENACTED AT THE THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2004, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF FOUR THOUSAND TWELVE DOLLARS (\$4,012).

(b) FOR THE FISCAL YEAR BEGINNING JULY 1, 2005, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF ONE THOUSAND FIVE HUNDRED SEVENTY-FOUR DOLLARS (\$1,574).

(c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF TWENTY-TWO THOUSAND NINE HUNDRED TWENTY-FOUR DOLLARS (\$22,924).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TEN THOUSAND FIVE HUNDRED SIXTY-SEVEN DOLLARS (\$10,567).

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SECTION 12. The introductory portion to 24-75-302 (2) and 24-75-302 (2) (q), Colorado Revised Statutes, are amended, and the said 24-75-302 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-75-302. Capital construction fund - capital assessment fees - calculation. (2) As of July 1, 1988, and July 1 of each year thereafter through July 1, ~~2005~~, 2006, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(q) On July 1, 2004, one hundred million dollars, plus two hundred thirty-three thousand eight hundred seventy-two dollars pursuant to H.B. 00-1201, enacted at the second regular session of the sixty-second general assembly; plus seventy-nine thousand eight hundred eighty-seven dollars pursuant to H.B. 01-1242, enacted at the first regular session of the sixty-third general assembly; plus four hundred eighty-six thousand two hundred sixty-nine dollars pursuant to S.B. 02-050, enacted at the second regular session of the sixty-third general assembly; plus nine hundred seventy-two thousand five hundred thirty-eight dollars pursuant to H.B. 02-1038, enacted at the second regular session of the sixty-third general assembly; PLUS FOUR THOUSAND TWELVE DOLLARS PURSUANT TO SECTION 3 OF H.B. 02S-1006 ENACTED AT THE THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY;

(s) ON JULY 1, 2006, TWENTY-TWO THOUSAND NINE HUNDRED TWENTY-FOUR DOLLARS PURSUANT TO SECTION 3 OF H.B. 02S-1006, ENACTED AT THE THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY.

SECTION 13. Appropriation - adjustment in 2002 long bill. For the implementation of this act, appropriations made in the annual appropriations act for the fiscal year beginning July 1, 2002, shall be adjusted as follows:

(a) The general fund appropriation for the department of corrections, management, executive director's office subprogram, performance-based pay awards is decreased by fifty-six thousand seven hundred thirty-one dollars (\$56,731)."

Renumber succeeding sections accordingly.

Appropriations

After consideration on the merits, the committee recommends that **HB02S-1022** be postponed indefinitely.

Judiciary

After consideration on the merits, the committee recommends that **HB02S-1023** be postponed indefinitely.

MESSAGE FROM THE HOUSE

July 10, 2002

Mr. President:

The House failed to pass SB02-018 as amended on Second Reading. The bill is returned herewith.

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On motion of Senator Theibaut, and with a two-thirds majority of those elected to the Senate having voted in the affirmative, **HB02S-1018**, **HB02S-1025**, **HB02S-1010**, **HB02S-1001** were made Special Orders at 7:05 p.m.

Committee of the Whole The hour of 7:05 p.m. having arrived, Senator Takis moved that the Senate resolve itself into the Committee of the Whole for consideration of Special Orders--Second Reading of Bills and Senator Takis was called to the Chair to act as Chairman.

SPECIAL ORDERS--SECOND READING OF BILLS

The Committee of the Whole having risen, the Chairman reported that the following bills, reading at length having been dispensed with by unanimous consent, had been considered and action taken thereon as follows:

HB02S-1025 by Representative(s) Plant; also Senator(s) Owen--Concerning the creation of a wildfire emergency response fund, and making an appropriation in connection therewith.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

HB02S-1010 by Representative(s) Young, Miller, Snook; also Senator(s) Taylor--Concerning the deferral of the payment of taxes on the sale of livestock resulting from weather-related conditions.

Amendment No. 1, Agriculture and Natural Resources Committee Amendment.
(Printed in Senate Journal, July 10, page 22 and placed in members' bill file.)

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

HB02S-1001 by Representative(s) Rippy; also Senator(s) Taylor--Concerning recommendations of the water availability task force relating to measures to address drought conditions.

Amendment No. 1, Agriculture and Natural Resources Committee Amendment.
(Printed in Senate Journal, July 9, page 9 and placed in members' bill file.)

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

HB02S-1018 by Representative(s) Daniel, Coleman, Jahn, Vigil, Ragsdale, Weddig; also Senator(s) Arnold--Concerning an expansion of the powers of local governments to mitigate the effects of wildfires by controlling the sale of fireworks in counties.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE

On motion of Senator Takis, the Report of the Committee of the Whole was adopted and, a majority of all members elected to the Senate having voted in the affirmative, the following action was taken:

Passed on Second Reading: **HB02S-1025**, **HB02S-1010** as amended, **HB02S-1001** as amended, **HB02S-1018**.

On motion of Senator Thiebaut, and with a two-thirds majority of those elected to the Senate having voted in the affirmative, **HB02S-1006**, **HB02-1005** were made Special Orders at 7:35 p.m.

Committee of the Whole The hour of 7:35 p.m. having arrived, Senator Takis moved that the Senate resolve itself into the Committee of the Whole for consideration of Special Orders--Second Reading of Bills and Senator Takis was called to the Chair to act as Chairman.

SPECIAL ORDERS--SECOND READING OF BILLS

The Committee of the Whole having risen, the Chairman reported that the following bills, reading at length having been dispensed with by unanimous consent, had been considered and action taken thereon as follows:

HB02S-1006 by Representative(s) Alexander; also Senator(s) Anderson--Concerning wildfires, and, in connection therewith, increasing the penalties for starting fires, and providing local authorities with the power to control and limit fires, and making an appropriation in connection therewith.

Amendment No. 1, Appropriations Committee Amendment.
(Printed in Senate Journal, July 10, pages 23-25 and placed in members' bill file.)

Amendment No. 2(L.009), by Senator Anderson.

Amend reengrossed bill, page 4, line 8, after "VIOLATES", insert "PARAGRAPH (a) OF";

line 9, strike "WHILE KNOWINGLY VIOLATING" and substitute "AND WHO KNOWS OR REASONABLY SHOULD KNOW THAT HE OR SHE VIOLATES";

line 24, strike "STATE" and substitute "STATE, TRIBAL,".

Page 5, line 9, strike "STATE" and substitute "STATE, TRIBAL,".

Page 6, line 21, after "SECTION", insert "AND WHO KNOWS OR REASONABLY SHOULD KNOW THAT HE OR SHE VIOLATES ANY ORDER DESCRIBED IN SUCH PARAGRAPH THAT PROHIBITS, BANS, OR REGULATES FIRES".

Amendment No. 3(L.013), by Senators Reeves and Tate.

Amend the Appropriations Committee report, dated July 10, 2002, page 4, strike lines 13 through 16 and substitute the following:

"(a) The general fund appropriation for the department of corrections, institutions, housing and security subprogram, personal services is decreased by fifty-six thousand seven hundred thirty-one dollars (\$56,731)."

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

HB02S-1005 by Representative(s) Hefley; also Senator(s) Gordon--Concerning determination of the death penalty by a jury.

Amendment No. 1, Judiciary Committee Amendment.
(Printed in Senate Journal, July 10, pages 19-21 and placed in members' bill file.)

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

(For further action, see Amendments to the Committee of the Whole Report.)

AMENDMENTS TO THE COMMITTEE OF THE WHOLE REPORT

HB02S-1005 by Representative(s) Hefley; also Senator(s) Gordon--Concerning determination of the death penalty by a jury.

Senator Chlouber moved to amend the Report of the Committee of the Whole to show that the following Chlouber floor amendment, (L.023) to HB02-1005, did pass.

Amend reengrossed bill, strike everything below the enacting clause, and substitute the following:

"SECTION 1. 16-11-103 (1), (2), (3.5), and (7) (b), Colorado Revised Statutes, as they exist until October 1, 2002, are amended, and the said 16-11-103, as it exists until October 1, 2002, is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

16-11-103. Imposition of sentence in class 1 felonies - appellate review. (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, ~~a panel of three judges, as soon as practicable,~~ THE TRIAL COURT shall conduct a separate sentencing hearing to determine whether ~~the defendant should be sentenced to death or life imprisonment~~ THE EXISTENCE OF ANY AGGRAVATING FACTORS, AS ENUMERATED IN

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SUBSECTION (5) OF THIS SECTION, AND WHETHER SUFFICIENT MITIGATING FACTORS, AS ENUMERATED IN SUBSECTION (4) OF THIS SECTION, EXIST WHICH OUTWEIGH ANY AGGRAVATING FACTOR OR FACTORS FOUND TO EXIST, unless the defendant was under the age of eighteen years at the time of the commission of the offense or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 4 of article 9 of this title, in either of which cases, the defendant shall be sentenced to life imprisonment. THE HEARING ON AGGRAVATING AND MITIGATING FACTORS SHALL BE CONDUCTED BY THE TRIAL JUDGE BEFORE THE TRIAL JURY AS SOON AS PRACTICABLE. ALTERNATE JURORS SHALL NOT BE EXCUSED FROM THE CASE PRIOR TO SUBMISSION OF THE ISSUE OF GUILT TO THE TRIAL JURY AND SHALL REMAIN SEPARATELY SEQUESTERED UNTIL A VERDICT IS ENTERED BY THE TRIAL JURY. IF THE VERDICT OF THE TRIAL JURY IS THAT THE DEFENDANT IS GUILTY OF A CLASS 1 FELONY, THE ALTERNATE JURORS SHALL SIT AS ALTERNATE JURORS FOR THE HEARING ON AGGRAVATING AND MITIGATING FACTORS. IF, FOR ANY REASON SATISFACTORY TO THE COURT, ANY MEMBER OR MEMBERS OF THE TRIAL JURY ARE EXCUSED FROM PARTICIPATION IN THE HEARING ON AGGRAVATING AND MITIGATING FACTORS, THE TRIAL JUDGE SHALL REPLACE EACH JUROR OR JURORS WITH AN ALTERNATE JUROR OR JURORS. IF A TRIAL JURY WAS WAIVED OR IF THE DEFENDANT PLED GUILTY, THE HEARING ON AGGRAVATING AND MITIGATING FACTORS SHALL BE CONDUCTED BEFORE THE TRIAL JUDGE. THE COURT SHALL INSTRUCT THE DEFENDANT WHEN WAIVING HIS OR HER RIGHT TO A JURY TRIAL OR WHEN PLEADING GUILTY, THAT HE OR SHE IS ALSO WAIVING HIS OR HER RIGHT TO A JURY DETERMINATION OF THE EXISTENCE AND WEIGHT OF AGGRAVATING AND MITIGATING FACTORS.

(a.5) ~~(I) The panel of judges that conducts the sentencing hearing shall consist of the judge who presided at the trial or before whom the guilty plea was entered, or a replacement for said judge in the event he or she dies, resigns, is incapacitated, or is otherwise disqualified, and two additional district court judges designated by the chief justice of the Colorado supreme court. The chief justice may select the two additional district court judges, and any necessary replacement for the trial judge, from any judicial district in the state but is encouraged to select from the judicial district in which the case was filed or from adjoining judicial districts. In selecting the district court judges for the panel, the chief justice shall select only those district court judges who are regularly sitting judges; except that the chief justice, pursuant to section 5 (3) of article VI of the state constitution, may select a retired justice of the supreme court or a retired judge as one of the additional judges for the panel.~~

~~(II) The judge who presided at the trial and any district court judge who is appointed to serve on the panel may be subject to disqualification as provided in section 16-6-201.~~

~~(III) The trial judge shall be the presiding judge for purposes of the sentencing hearing. If a replacement judge has been appointed for the trial judge, the district court judges appointed to the panel shall choose a presiding judge from among themselves.~~

(a.7) ~~At the sentencing hearing, in addition to the evidence presented by the parties, the three-judge panel shall consider the certified transcripts of the trial. The sentencing hearing shall be held as soon as practicable following the trial, but not later than sixty days after the trial verdict is returned, unless for good cause shown.~~

(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the panel of judges COURT deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section, and any matters relating to the personal characteristics of the victim and the impact of the crimes on the victim's family may be presented. Any such evidence, including but not limited to the testimony of members of the victim's immediate family, as defined in section 24-4.1-302 (6), C.R.S., which the panel of judges COURT deems to have probative value may be received, as long as each party is given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death ON THE EXISTENCE AND WEIGHT OF ANY AGGRAVATING AND MITIGATING FACTORS. THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

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~~(c) Both the prosecuting attorney and the defense shall notify each other of the names and addresses of any witnesses to be called in the sentencing hearing and the subject matter of such testimony. Such discovery shall be provided within a reasonable amount of time as determined by order of the panel of judges and shall be provided not less than twenty-four hours prior to the commencement of the sentencing hearing. Unless good cause is shown, noncompliance with this paragraph (c) shall result in the exclusion of such evidence without further sanction.~~

(d) The burden of proof as to the aggravating factors enumerated in subsection (5) of this section shall be beyond a reasonable doubt. There shall be no burden of proof as to proving or disproving mitigating factors.

(2) (a) After hearing all the evidence and arguments of the prosecuting attorney and the defendant, the ~~panel of judges~~ JURY shall ~~unanimously determine whether to impose a sentence of death~~ DELIBERATE AND RENDER A VERDICT based upon the following considerations:

(I) Whether at least one aggravating factor has been proved as enumerated in subsection (5) of this section; AND

(II) Whether sufficient mitigating factors exist which outweigh any aggravating factor or factors found to exist. ~~and~~

~~(III) Based on the considerations in subparagraphs (I) and (II) of this paragraph (a), whether the defendant should be sentenced to death or life imprisonment.~~

(b) (I) In the event that ~~no aggravating factors are found to exist~~ THERE ARE FEWER THAN TEN JURORS WHO AGREE THAT AT LEAST ONE AGGRAVATING FACTOR, as enumerated in subsection (5) of this section, EXISTS OR IN THE EVENT THAT THERE ARE TEN JURORS WHO FIND THAT MITIGATING FACTORS OUTWEIGH THE AGGRAVATING FACTOR OR FACTORS THAT WERE PROVED, the ~~panel of judges~~ THE COURT shall sentence the defendant to life imprisonment.

(II) The ~~panel of judges shall not impose a death sentence~~ JUDGE SHALL NOT RENDER A VERDICT OF DEATH unless, BY THE AGREEMENT OF AT LEAST TEN JURORS, ~~it unanimously~~ THE JURY finds and specifies in writing that:

(A) At least one aggravating factor has been proved; and

(B) There are insufficient mitigating factors to outweigh the aggravating factor or factors that were proved.

(c) (I) IF THE JURY MAKES THE FINDINGS SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION(2), THE TRIAL JUDGE SHALL DETERMINE WHETHER TO IMPOSE A SENTENCE OF DEATH OR LIFE IMPRISONMENT BASED UPON THE CONSIDERATIONS IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2).

(II) PRIOR TO THE TRIAL JUDGE'S RULING, THE PROSECUTING ATTORNEY AND THE DEFENDANT OR THE DEFENDANT'S COUNSEL MAY BE PERMITTED TO PRESENT ADDITIONAL EVIDENCE FOR OR AGAINST A SENTENCE OF DEATH AND SHALL BE PERMITTED TO PRESENT ARGUMENTS FOR OR AGAINST A SENTENCE OF DEATH.

(III) The sentence of the ~~panel of judges~~ JUDGE, whether to death or to life in prison, shall be supported by specific written findings of fact based upon the circumstances as set forth in subsections (4) and (5) of this section and upon the records of the trial, ON AGGRAVATING AND MITIGATING FACTORS, and the ~~sentencing hearing~~ EVIDENCE AND ARGUMENTS PRESENTED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (c).

~~(d) If the panel of judges cannot unanimously~~ IN THE EVENT THERE ARE FEWER THAN TEN JURORS WHO agree on a sentence, ~~it shall make a record of each judge's position and shall then~~ THE EXISTENCE OF AN AGGRAVATING FACTOR OR THAT ANY MITIGATING FACTORS OUTWEIGH ANY AGGRAVATING FACTOR OR FACTORS, THE JURY SHALL SO NOTIFY THE TRIAL JUDGE, THE JURY SHALL BE DISMISSED, AND THE COURT SHALL sentence the defendant to life imprisonment.

(3.2) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD BEFORE THE COURT ALONE, THE COURT SHALL DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT IN THE SAME MANNER IN WHICH A JURY DETERMINES ITS VERDICT UNDER PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. THE SENTENCE OF THE COURT SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES AS SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE TRIAL AND SENTENCING HEARING.

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(3.5) (a) The provisions of this subsection (3.5) shall apply only in a class 1 felony case in which the prosecuting attorney has filed a statement of intent to seek the death penalty pursuant to rule 32.1 (b) of the Colorado rules of criminal procedure.

(b) The prosecuting attorney shall provide the defendant with the following information and materials not later than ~~five~~ TWENTY days after ~~the verdict is returned finding the defendant guilty of a class 1 felony~~ THE PROSECUTION FILES ITS WRITTEN INTENTION TO SEEK THE DEATH PENALTY OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE DEFENSE AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A list of all aggravating factors that are known to the prosecuting attorney at that time and that the prosecuting attorney intends to prove at the sentencing hearing;

(II) A list of all witnesses whom the prosecuting attorney may call at the sentencing hearing, specifying for each the witness' name, address, and date of birth and the subject matter of the witness' testimony;

(III) The written and recorded statements, including any notes of those statements, for each witness whom the prosecuting attorney may call at the sentencing hearing;

(IV) Any reports, recorded statements, and notes of any expert whom the prosecuting attorney may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(V) A list of books, papers, documents, photographs, or tangible objects that the prosecuting attorney may introduce at the sentencing hearing; and

(VI) All material or information that tends to mitigate or negate the finding of any of the aggravating factors the prosecuting attorney intends to prove at the sentencing hearing.

(b.5) UPON RECEIPT OF THE INFORMATION REQUIRED TO BE DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3.5), THE PROSECUTING ATTORNEY SHALL NOTIFY THE DEFENDANT AS SOON AS PRACTICABLE OF ANY ADDITIONAL WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL IN RESPONSE TO THE DEFENDANT'S DISCLOSURES.

(c) The defendant shall provide the prosecuting attorney with the following information and materials no later than ~~twenty~~ FORTY-FIVE days after ~~the verdict is returned finding the defendant guilty of a class 1 felony~~ BEFORE THE FIRST TRIAL DATE SET FOR THE BEGINNING OF THE DEFENDANT'S TRIAL OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE DEFENSE INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE PROSECUTING ATTORNEY AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A list of all witnesses whom the defendant may call at the sentencing hearing, specifying for each the witness' name, address, and date of birth and the subject matter of the witness' testimony;

(II) The written and recorded statements, including any notes of those statements, of each witness whom the defendant may call at the sentencing hearing;

(III) Any reports, recorded statements, and notes of any expert whom the defendant may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons; and

(IV) A list of books, papers, documents, photographs, or tangible objects that the defendant may introduce at the sentencing hearing.

(c.5) (I) ANY MATERIAL SUBJECT TO THIS SUBSECTION (3.5) THAT THE DEFENDANT BELIEVES CONTAINS INFORMATION THAT IS PRIVILEGED TO THE EXTENT THAT THE PROSECUTION CANNOT BE AWARE OF IT IN CONNECTION WITH ITS PREPARATION FOR, OR CONDUCT OF, THE TRIAL TO DETERMINE GUILT ON THE SUBSTANTIVE CHARGES AGAINST THE

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DEFENDANT SHALL BE SUBMITTED BY THE DEFENDANT TO THE TRIAL JUDGE UNDER SEAL NO LATER THAN FORTY-FIVE DAYS BEFORE TRIAL.

(II) THE TRIAL JUDGE SHALL REVIEW ANY SUCH MATERIAL SUBMITTED UNDER SEAL PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c.5) TO DETERMINE WHETHER IT IS IN FACT PRIVILEGED. ANY MATERIAL THE TRIAL JUDGE FINDS NOT TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTING ATTORNEY. ANY MATERIAL SUBMITTED UNDER SEAL THAT THE TRIAL JUDGE FINDS TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTION IF THE DEFENDANT IS CONVICTED OF A CLASS 1 FELONY.

(d) (I) Except as otherwise provided in subparagraph (II) of this paragraph (d), if the witnesses disclosed by the defendant pursuant to paragraph (c) of this subsection (3.5) include witnesses who may provide evidence concerning the defendant's mental condition at the sentencing hearing conducted pursuant to this section, the trial court, at the request of the prosecuting attorney, shall order that the defendant be examined and a report of said examination be prepared pursuant to section 16-8-106.

(II) The court shall not order an examination pursuant to subparagraph (I) of this paragraph (d) if:

(A) Such an examination was previously performed and a report was prepared in the same case; and

(B) The report included an opinion concerning how any mental disease or defect of the defendant or condition of mind caused by mental disease or defect of the defendant affects the mitigating factors that the defendant may raise at the sentencing hearing held pursuant to this section.

(e) If the witnesses disclosed by the defendant pursuant to paragraph (c) of this subsection (3.5) include witnesses who may provide evidence concerning the defendant's mental condition at a sentencing hearing conducted pursuant to this section, the provisions of section 16-8-109 concerning testimony of lay witnesses shall apply to said sentencing hearing.

(f) There is a continuing duty on the part of the prosecuting attorney and the defendant to disclose the information and materials specified in this subsection (3.5). If, after complying with the duty to disclose the information and materials described in this subsection (3.5), either party discovers or obtains any additional information and materials that are subject to disclosure under this subsection (3.5), the party shall promptly notify the other party and provide the other party with complete access to the information and materials.

(g) The trial court, upon a showing of extraordinary circumstances that could not have been foreseen and prevented, may grant an extension of time to comply with the requirements of this subsection (3.5).

(h) If it is brought to the attention of the court that either the prosecuting attorney or the defendant has failed to comply with the provisions of this subsection (3.5) or with an order issued pursuant to this subsection (3.5), the court may enter any order against such party that the court deems just under the circumstances, including but not limited to an order to permit the discovery or inspection of information and materials not previously disclosed, to grant a continuance, to prohibit the offending party from introducing the information and materials not disclosed, or to impose sanctions against the offending party.

(i) UNLESS GOOD CAUSE IS SHOWN, A PARTY'S FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (3.5) SHALL RESULT IN THE EXCLUSION OF THE EVIDENCE THAT IS THE SUBJECT OF SUCH NONCOMPLIANCE WITHOUT FURTHER SANCTION.

(7) (b) If any death sentence is imposed upon a defendant pursuant to the provisions of this section and, ON APPELLATE REVIEW INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (8) OF THIS SECTION, the imposition of such death sentence upon such defendant is held invalid for reasons other than unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, the case shall be remanded to the trial court to set a new sentencing hearing BEFORE A NEWLY IMPANELED JURY OR, IF THE DEFENDANT PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL JUDGE; except that, if the prosecutor informs the panel of judges TRIAL COURT that, in the opinion of the prosecutor, capital punishment would no longer be in the interest of justice, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment. If a death sentence imposed

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pursuant to this section is held invalid based on unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment.

(8) IF, ON APPEAL, THE SUPREME COURT FINDS ONE OR MORE OF THE AGGRAVATING FACTORS THAT WERE FOUND TO SUPPORT A SENTENCE TO DEATH TO BE INVALID FOR ANY REASON, THE SUPREME COURT SHALL DETERMINE WHETHER THE SENTENCE OF DEATH SHOULD BE AFFIRMED ON APPEAL BY:

(a) REWEIGHING THE REMAINING AGGRAVATING FACTOR OR FACTORS AND ALL MITIGATING FACTORS AND THEN DETERMINING WHETHER DEATH IS THE APPROPRIATE PUNISHMENT IN THE CASE; OR

(b) APPLYING HARMLESS ERROR ANALYSIS BY CONSIDERING WHETHER, IF THE SENTENCING TRIBUNAL HAD NOT CONSIDERED THE INVALID AGGRAVATING FACTOR, IT WOULD HAVE NONETHELESS SENTENCED THE DEFENDANT TO DEATH; OR

(c) IF THE SUPREME COURT FINDS THE SENTENCING TRIBUNAL'S CONSIDERATION OF AN AGGRAVATING FACTOR WAS IMPROPER BECAUSE THE AGGRAVATING FACTOR WAS NOT GIVEN A CONSTITUTIONALLY NARROW CONSTRUCTION, DETERMINING WHETHER, BEYOND A REASONABLE DOUBT, THE SENTENCING TRIBUNAL WOULD HAVE RETURNED A VERDICT OF DEATH HAD THE AGGRAVATING FACTOR BEEN PROPERLY NARROWED; OR

(d) EMPLOYING ANY OTHER CONSTITUTIONALLY PERMISSIBLE METHOD OF REVIEW.

SECTION 2. 18-1.3-1201 (1), (2), (3), and (7) (b), Colorado Revised Statutes, as they will become effective October 1, 2002, are amended, and the said 18-1.3-1201, as it will become effective October 1, 2002, is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

18-1.3-1201. Imposition of sentence in class 1 felonies - appellate review. (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, ~~a panel of three judges, as soon as practicable,~~ THE TRIAL COURT shall conduct a separate sentencing hearing to determine whether ~~the defendant should be sentenced to death or life imprisonment~~ THE EXISTENCE OF ANY AGGRAVATING FACTORS, AS ENUMERATED IN SUBSECTION (5) OF THIS SECTION, AND WHETHER SUFFICIENT MITIGATING FACTORS, AS ENUMERATED IN SUBSECTION (4) OF THIS SECTION, EXIST WHICH OUTWEIGH ANY AGGRAVATING FACTOR OR FACTORS FOUND TO EXIST, unless the defendant was under the age of eighteen years at the time of the commission of the offense or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 11 of this article, in either of which cases, the defendant shall be sentenced to life imprisonment. THE HEARING ON AGGRAVATING AND MITIGATING FACTORS SHALL BE CONDUCTED BY THE TRIAL JUDGE BEFORE THE TRIAL JURY AS SOON AS PRACTICABLE. ALTERNATE JURORS SHALL NOT BE EXCUSED FROM THE CASE PRIOR TO SUBMISSION OF THE ISSUE OF GUILT TO THE TRIAL JURY AND SHALL REMAIN SEPARATELY SEQUESTERED UNTIL A VERDICT IS ENTERED BY THE TRIAL JURY. IF THE VERDICT OF THE TRIAL JURY IS THAT THE DEFENDANT IS GUILTY OF A CLASS 1 FELONY, THE ALTERNATE JURORS SHALL SIT AS ALTERNATE JURORS FOR THE HEARING ON AGGRAVATING AND MITIGATING FACTORS. IF, FOR ANY REASON SATISFACTORY TO THE COURT, ANY MEMBER OR MEMBERS OF THE TRIAL JURY ARE EXCUSED FROM PARTICIPATION IN THE HEARING ON AGGRAVATING AND MITIGATING FACTORS, THE TRIAL JUDGE SHALL REPLACE EACH JUROR OR JURORS WITH AN ALTERNATE JUROR OR JURORS. IF A TRIAL JURY WAS WAIVED OR IF THE DEFENDANT PLED GUILTY, THE HEARING ON AGGRAVATING AND MITIGATING FACTORS SHALL BE CONDUCTED BEFORE THE TRIAL JUDGE. THE COURT SHALL INSTRUCT THE DEFENDANT WHEN WAIVING HIS OR HER RIGHT TO A JURY TRIAL OR WHEN PLEADING GUILTY, THAT HE OR SHE IS ALSO WAIVING HIS OR HER RIGHT TO A JURY DETERMINATION OF THE EXISTENCE AND WEIGHT OF AGGRAVATING AND MITIGATING FACTORS.

(a.5) ~~(f) The panel of judges that conducts the sentencing hearing shall consist of the judge who presided at the trial or before whom the guilty plea was entered, or a replacement for said judge in the event he or she dies, resigns, is incapacitated, or is otherwise disqualified, and two additional district court judges designated by the chief justice of the Colorado supreme court. The chief justice may select the two additional district court judges, and any necessary replacement for the trial judge, from any judicial district in the state but is encouraged to select from the judicial district in which the case was filed or from~~

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~~adjoining judicial districts. In selecting the district court judges for the panel, the chief justice shall select only those district court judges who are regularly sitting judges; except that the chief justice, pursuant to section 5 (3) of article VI of the state constitution, may select a retired justice of the supreme court or a retired judge as one of the additional judges for the panel.~~

~~(II) The judge who presided at the trial and any district court judge who is appointed to serve on the panel may be subject to disqualification as provided in section 16-6-201, C.R.S.~~

~~(III) The trial judge shall be the presiding judge for purposes of the sentencing hearing. If a replacement judge has been appointed for the trial judge, the district court judges appointed to the panel shall choose a presiding judge from among themselves.~~

~~(a.7) At the sentencing hearing, in addition to the evidence presented by the parties, the three-judge panel shall consider the certified transcripts of the trial. The sentencing hearing shall be held as soon as practicable following the trial, but not later than sixty days after the trial verdict is returned, unless for good cause shown.~~

~~(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the panel of judges COURT deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section, and any matters relating to the personal characteristics of the victim and the impact of the crimes on the victim's family may be presented. Any such evidence, including but not limited to the testimony of members of the victim's immediate family, as defined in section 24-4.1-302 (6), C.R.S., which the panel of judges COURT deems to have probative value may be received, as long as each party is given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death THE EXISTENCE AND WEIGHT OF ANY AGGRAVATING AND MITIGATING FACTORS. THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.~~

~~(c) Both the prosecuting attorney and the defense shall notify each other of the names and addresses of any witnesses to be called in the sentencing hearing and the subject matter of such testimony. Such discovery shall be provided within a reasonable amount of time as determined by order of the panel of judges and shall be provided not less than twenty-four hours prior to the commencement of the sentencing hearing. Unless good cause is shown, noncompliance with this paragraph (c) shall result in the exclusion of such evidence without further sanction.~~

~~(d) The burden of proof as to the aggravating factors enumerated in subsection (5) of this section shall be beyond a reasonable doubt. There shall be no burden of proof as to proving or disproving mitigating factors.~~

~~(2) (a) After hearing all the evidence and arguments of the prosecuting attorney and the defendant, the panel of judges JURY shall unanimously determine whether to impose a sentence of death DELIBERATE AND RENDER A VERDICT based upon the following considerations:~~

~~(I) Whether at least one aggravating factor has been proved as enumerated in subsection (5) of this section; AND~~

~~(II) Whether sufficient mitigating factors exist which outweigh any aggravating factor or factors found to exist. and~~

~~(III) Based on the considerations in subparagraphs (I) and (II) of this paragraph (a), whether the defendant should be sentenced to death or life imprisonment.~~

~~(b) (I) In the event that no aggravating factors are found to exist THERE ARE FEWER THAN TEN JURORS WHO AGREE THAT AT LEAST ONE AGGRAVATING FACTOR, as enumerated in subsection (5) of this section, EXISTS OR IN THE EVENT THAT THERE ARE TEN JURORS WHO FIND THAT MITIGATING FACTORS OUTWEIGH THE AGGRAVATING FACTOR OR FACTORS THAT WERE PROVED, the panel of judges COURT shall sentence the defendant to life imprisonment.~~

~~(II) The panel of judges shall not impose a death sentence JUDGE SHALL NOT RENDER A VERDICT OF DEATH unless, BY THE AGREEMENT OF AT LEAST TEN JURORS, it unanimously THE JURY finds and specifies in writing that:~~

~~(A) At least one aggravating factor has been proved; and~~

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(B) There are insufficient mitigating factors to outweigh the aggravating factor or factors that were proved.

(c) (I) IF THE JURY MAKES THE FINDINGS SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION(2), THE TRIAL JUDGE SHALL DETERMINE WHETHER TO IMPOSE A SENTENCE OF DEATH OR LIFE IMPRISONMENT BASED UPON THE CONSIDERATIONS IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2).

(II) PRIOR TO THE TRIAL JUDGE'S RULING, THE PROSECUTING ATTORNEY AND THE DEFENDANT OR THE DEFENDANT'S COUNSEL MAY BE PERMITTED TO PRESENT ADDITIONAL EVIDENCE FOR OR AGAINST A SENTENCE OF DEATH AND SHALL BE PERMITTED TO PRESENT ARGUMENTS FOR OR AGAINST A SENTENCE OF DEATH.

(III) The sentence of the ~~panel of judges~~ JUDGE, whether to death or to life in prison, shall be supported by specific written findings of fact based upon the circumstances as set forth in subsections (4) and (5) of this section and upon the records of the trial, THE HEARING ON AGGRAVATING AND MITIGATING FACTORS, and the ~~sentencing hearing~~ EVIDENCE AND ARGUMENTS PRESENTED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (c).

(d) ~~If the panel of judges cannot unanimously~~ IN THE EVENT THAT THERE ARE FEWER THAN TEN JURORS WHO agree on a sentence, it shall make a record of each judge's position and shall then THE EXISTENCE OF AN AGGRAVATING FACTOR OR THAT ANY MITIGATING FACTORS OUTWEIGH ANY AGGRAVATING FACTOR OR FACTORS, THE JURY SHALL SO NOTIFY THE TRIAL JUDGE, THE JURY SHALL BE DISMISSED, AND THE COURT SHALL sentence the defendant to life imprisonment.

(2.5) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD BEFORE THE COURT ALONE, THE COURT SHALL DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT IN THE SAME MANNER IN WHICH A JURY DETERMINES ITS VERDICT UNDER PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. THE SENTENCE OF THE COURT SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES AS SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE TRIAL AND SENTENCING HEARING.

(3) (a) The provisions of this subsection (3) shall apply only in a class 1 felony case in which the prosecuting attorney has filed a statement of intent to seek the death penalty pursuant to rule 32.1 (b) of the Colorado rules of criminal procedure.

(b) The prosecuting attorney shall provide the defendant with the following information and materials not later than ~~five~~ TWENTY days after the verdict is returned ~~finding the defendant guilty of a class 1 felony~~ THE PROSECUTION FILES ITS WRITTEN INTENTION TO SEEK THE DEATH PENALTY OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE DEFENSE AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A list of all aggravating factors that are known to the prosecuting attorney at that time and that the prosecuting attorney intends to prove at the sentencing hearing;

(II) A list of all witnesses whom the prosecuting attorney may call at the sentencing hearing, specifying for each the witness' name, address, and date of birth and the subject matter of the witness' testimony;

(III) The written and recorded statements, including any notes of those statements, for each witness whom the prosecuting attorney may call at the sentencing hearing;

(IV) Any reports, recorded statements, and notes of any expert whom the prosecuting attorney may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(V) A list of books, papers, documents, photographs, or tangible objects that the prosecuting attorney may introduce at the sentencing hearing; and

(VI) All material or information that tends to mitigate or negate the finding of any of the aggravating factors the prosecuting attorney intends to prove at the sentencing hearing.

(b.5) UPON RECEIPT OF THE INFORMATION REQUIRED TO BE

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DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3), THE PROSECUTING ATTORNEY SHALL NOTIFY THE DEFENDANT AS SOON AS PRACTICABLE OF ANY ADDITIONAL WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL IN RESPONSE TO THE DEFENDANT'S DISCLOSURES.

(c) The defendant shall provide the prosecuting attorney with the following information and materials no later than ~~twenty~~ FORTY-FIVE days ~~after the verdict is returned finding the defendant guilty of a class 1 felony~~ BEFORE THE FIRST TRIAL DATE SET FOR THE BEGINNING OF THE DEFENDANT'S TRIAL OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE DEFENSE INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE PROSECUTING ATTORNEY AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A list of all witnesses whom the defendant may call at the sentencing hearing, specifying for each the witness' name, address, and date of birth and the subject matter of the witness' testimony;

(II) The written and recorded statements, including any notes of those statements, of each witness whom the defendant may call at the sentencing hearing;

(III) Any reports, recorded statements, and notes of any expert whom the defendant may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons; and

(IV) A list of books, papers, documents, photographs, or tangible objects that the defendant may introduce at the sentencing hearing.

(c.5) (I) ANY MATERIAL SUBJECT TO THIS SUBSECTION (3) THAT THE DEFENDANT BELIEVES CONTAINS INFORMATION THAT IS PRIVILEGED TO THE EXTENT THAT THE PROSECUTION CANNOT BE AWARE OF IT IN CONNECTION WITH ITS PREPARATION FOR, OR CONDUCT OF, THE TRIAL TO DETERMINE GUILT ON THE SUBSTANTIVE CHARGES AGAINST THE DEFENDANT SHALL BE SUBMITTED BY THE DEFENDANT TO THE TRIAL JUDGE UNDER SEAL NO LATER THAN FORTY-FIVE DAYS BEFORE TRIAL.

(II) THE TRIAL JUDGE SHALL REVIEW ANY SUCH MATERIAL SUBMITTED UNDER SEAL PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c.5) TO DETERMINE WHETHER IT IS IN FACT PRIVILEGED. ANY MATERIAL THE TRIAL JUDGE FINDS NOT TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTING ATTORNEY. ANY MATERIAL SUBMITTED UNDER SEAL THAT THE TRIAL JUDGE FINDS TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTION IF THE DEFENDANT IS CONVICTED OF A CLASS 1 FELONY.

(d) (I) Except as otherwise provided in subparagraph (II) of this paragraph (d), if the witnesses disclosed by the defendant pursuant to paragraph (c) of this subsection (3) include witnesses who may provide evidence concerning the defendant's mental condition at the sentencing hearing conducted pursuant to this section, the trial court, at the request of the prosecuting attorney, shall order that the defendant be examined and a report of said examination be prepared pursuant to section 16-8-106, C.R.S.

(II) The court shall not order an examination pursuant to subparagraph (I) of this paragraph (d) if:

(A) Such an examination was previously performed and a report was prepared in the same case; and

(B) The report included an opinion concerning how any mental disease or defect of the defendant or condition of mind caused by mental disease or defect of the defendant affects the mitigating factors that the defendant may raise at the sentencing hearing held pursuant to this section.

(e) If the witnesses disclosed by the defendant pursuant to paragraph (c) of this subsection (3) include witnesses who may provide evidence concerning the defendant's mental condition at a sentencing hearing conducted pursuant to this section, the provisions of section 16-8-109, C.R.S., concerning testimony of lay witnesses shall apply to said sentencing hearing.

(f) There is a continuing duty on the part of the prosecuting attorney and the defendant to disclose the information and materials specified in this subsection (3). If, after complying with the duty to

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disclose the information and materials described in this subsection (3), either party discovers or obtains any additional information and materials that are subject to disclosure under this subsection (3), the party shall promptly notify the other party and provide the other party with complete access to the information and materials.

(g) The trial court, upon a showing of extraordinary circumstances that could not have been foreseen and prevented, may grant an extension of time to comply with the requirements of this subsection (3).

(h) If it is brought to the attention of the court that either the prosecuting attorney or the defendant has failed to comply with the provisions of this subsection (3) or with an order issued pursuant to this subsection (3), the court may enter any order against such party that the court deems just under the circumstances, including but not limited to an order to permit the discovery or inspection of information and materials not previously disclosed, to grant a continuance, to prohibit the offending party from introducing the information and materials not disclosed, or to impose sanctions against the offending party.

(i) UNLESS GOOD CAUSE IS SHOWN, A PARTY'S FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (3) SHALL RESULT IN THE EXCLUSION OF THE EVIDENCE THAT IS THE SUBJECT OF SUCH NONCOMPLIANCE WITHOUT FURTHER SANCTION.

(7) (b) If any death sentence is imposed upon a defendant pursuant to the provisions of this section and, ON APPELLATE REVIEW INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (8) OF THIS SECTION, the imposition of such death sentence upon such defendant is held invalid for reasons other than unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, the case shall be remanded to the trial court to set a new sentencing hearing BEFORE A NEWLY IMPANELED JURY OR, IF THE DEFENDANT PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL JUDGE; except that, if the prosecutor informs the ~~panel of judges~~ TRIAL COURT that, in the opinion of the prosecutor, capital punishment would no longer be in the interest of justice, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment. If a death sentence imposed pursuant to this section is held invalid based on unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment.

(8) IF, ON APPEAL, THE SUPREME COURT FINDS ONE OR MORE OF THE AGGRAVATING FACTORS THAT WERE FOUND TO SUPPORT A SENTENCE TO DEATH TO BE INVALID FOR ANY REASON, THE SUPREME COURT SHALL DETERMINE WHETHER THE SENTENCE OF DEATH SHOULD BE AFFIRMED ON APPEAL BY:

(a) REWEIGHING THE REMAINING AGGRAVATING FACTOR OR FACTORS AND ALL MITIGATING FACTORS AND THEN DETERMINING WHETHER DEATH IS THE APPROPRIATE PUNISHMENT IN THE CASE; OR

(b) APPLYING HARMLESS ERROR ANALYSIS BY CONSIDERING WHETHER, IF THE SENTENCING TRIBUNAL HAD NOT CONSIDERED THE INVALID AGGRAVATING FACTOR, IT WOULD HAVE NONETHELESS SENTENCED THE DEFENDANT TO DEATH; OR

(c) IF THE SUPREME COURT FINDS THE SENTENCING TRIBUNAL'S CONSIDERATION OF AN AGGRAVATING FACTOR WAS IMPROPER BECAUSE THE AGGRAVATING FACTOR WAS NOT GIVEN A CONSTITUTIONALLY NARROW CONSTRUCTION, DETERMINING WHETHER, BEYOND A REASONABLE DOUBT, THE SENTENCING TRIBUNAL WOULD HAVE RETURNED A VERDICT OF DEATH HAD THE AGGRAVATING FACTOR BEEN PROPERLY NARROWED; OR

(d) EMPLOYING ANY OTHER CONSTITUTIONALLY PERMISSIBLE METHOD OF REVIEW.

SECTION 3. 16-11-403, Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-11-403. Week of execution - warrant. When a person is convicted of a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the ~~panel of judges~~ JUDGE passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not less FEWER than ninety days nor more than one hundred twenty days from the day of passing the sentence. Said warrant shall be directed to the executive director of the department of corrections or the executive director's

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designee commanding said executive director or designee to execute the sentence imposed upon some day within the week of time designated in the warrant and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall proceed to the correctional facilities at Canon City and deliver the convicted person, together with the warrant, to said executive director or designee, who shall keep the convict in confinement until ~~infliction~~ EXECUTION of the death penalty. Persons shall be permitted access to the inmate pursuant to prison rules. Such rules shall provide, at a minimum, for the inmate's attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate's family to have access to the inmate.

SECTION 4. 18-1.3-1205, Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1.3-1205. Week of execution - warrant. When a person is convicted of a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the ~~panel of judges~~ JUDGE passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not ~~less~~ FEWER than ninety days nor more than one hundred twenty days from the day of passing the sentence. Said warrant shall be directed to the executive director of the department of corrections or the executive director's designee commanding said executive director or designee to execute the sentence imposed upon some day within the week of time designated in the warrant and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall proceed to the correctional facilities at Canon City and deliver the convicted person, together with the warrant, to said executive director or designee, who shall keep the convict in confinement until ~~infliction~~ EXECUTION of the death penalty. Persons shall be permitted access to the inmate pursuant to prison rules. Such rules shall provide, at a minimum, for the inmate's attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate's family to have access to the inmate.

SECTION 5. 16-12-204 (1), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-12-204. Stay of execution - postconviction review.
(1) ~~The three-judge panel or~~ The trial court, ~~whichever is applicable,~~ upon the imposition of a death sentence, shall set the time of execution pursuant to section 16-11-403 and enter an order staying execution of the judgment and sentence until receipt of an order from the Colorado supreme court. The trial court shall direct the clerk of the trial court to mail to the Colorado supreme court, within seven days after the date upon which the sentence of death is imposed, a copy of the judgment, sentence, and mittimus.

SECTION 6. 16-12-204 (1), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

16-12-204. Stay of execution - postconviction review.
(1) ~~The three-judge panel or~~ The trial court, ~~whichever is applicable,~~ upon the imposition of a death sentence, shall set the time of execution pursuant to section 18-1.3-1205, C.R.S., and enter an order staying execution of the judgment and sentence until receipt of an order from the Colorado supreme court. The trial court shall direct the clerk of the trial court to mail to the Colorado supreme court, within seven days after the date upon which the sentence of death is imposed, a copy of the judgment, sentence, and mittimus.

SECTION 7. 18-1-105 (4), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

18-1-105. Felonies classified - presumptive penalties. (4) A person who has been convicted of a class 1 felony shall be punished by life imprisonment unless a ~~panel of judges imposes a death sentence pursuant to~~ PROCEEDING HELD TO DETERMINE SENTENCE ACCORDING TO the procedure set forth in section 16-11-103 OR 16-11-802, C.R.S., or SECTION 18-1.4-102 RESULTS IN A VERDICT THAT REQUIRES IMPOSITION OF THE DEATH PENALTY, IN WHICH EVENT SUCH PERSON SHALL BE SENTENCED TO DEATH. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1985, AND BEFORE JULY 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole for forty calendar years. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1990, life imprisonment shall

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mean imprisonment without the possibility of parole.

SECTION 8. 18-1.3-401 (4), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1.3-401. Felonies classified - presumptive penalties.

(4) A person who has been convicted of a class 1 felony shall be punished by life imprisonment unless a ~~panel of judges imposes a death sentence pursuant to~~ PROCEEDING HELD TO DETERMINE SENTENCE ACCORDING TO the procedure set forth in section 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102 RESULTS IN A VERDICT THAT REQUIRES IMPOSITION OF THE DEATH PENALTY, IN WHICH EVENT SUCH PERSON SHALL BE SENTENCED TO DEATH. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1985, AND BEFORE JULY 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole for forty calendar years. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole.

SECTION 9. 18-3-107 (3), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

18-3-107. First degree murder of a peace officer or firefighter - legislative declaration.

(3) A person convicted of first degree murder of a peace officer or firefighter shall be punished by life imprisonment without the possibility of parole for the rest of his or her natural life, unless a ~~panel of judges imposes a death sentence pursuant~~ PROCEEDING HELD TO DETERMINE SENTENCE ACCORDING TO the procedure set forth in section 16-11-103 OR 16-11-802, C.R.S., OR SECTION 18-1.4-102 RESULTS IN A VERDICT THAT REQUIRES IMPOSITION OF THE DEATH PENALTY, IN WHICH EVENT SUCH PERSON SHALL BE SENTENCED TO DEATH. Nothing in this subsection (3) shall be construed as limiting the power of the governor to grant reprieves, commutations, and pardons pursuant to section 7 of article IV of the Colorado constitution.

SECTION 10. 18-3-107 (3), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-3-107. First degree murder of a peace officer or firefighter - legislative declaration.

(3) A person convicted of first degree murder of a peace officer or firefighter shall be punished by life imprisonment without the possibility of parole for the rest of his or her natural life, unless a ~~panel of judges imposes a death sentence pursuant~~ PROCEEDING HELD TO DETERMINE SENTENCE ACCORDING TO the procedure set forth in section 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102 RESULTS IN A VERDICT THAT REQUIRES IMPOSITION OF THE DEATH PENALTY, IN WHICH EVENT SUCH PERSON SHALL BE SENTENCED TO DEATH. Nothing in this subsection (3) shall be construed as limiting the power of the governor to grant reprieves, commutations, and pardons pursuant to section 7 of article IV of the Colorado constitution.

SECTION 11. 16-10-101, Colorado Revised Statutes, is amended to read:

16-10-101. Jury trials - statement of policy.

The right of a person who is accused of an offense other than a noncriminal traffic infraction or offense, or other than a municipal charter, municipal ordinance, or county ordinance violation as provided in section 16-10-109 (1), to have a trial by jury is inviolate and a matter of substantive due process of law as distinguished from one of "practice and procedure". The people shall also have the right to refuse to consent to a waiver of a trial OR SENTENCING DETERMINATION by jury in all cases in which the accused has the right to request a trial OR SENTENCING DETERMINATION by jury.

SECTION 12. Title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 1.4

Applicability of Procedure in Class 1 Felony Cases for Crimes Committed on or after July 1, 1995, and Prior to the Effective Date of this Article

18-1.4-101. Applicability of procedure for the imposition of sentences in class 1 felony cases.

(1) IT IS THE EXPRESSED INTENTION OF THE GENERAL ASSEMBLY THAT THERE BE NO HIATUS IN THE IMPOSITION OF THE DEATH PENALTY AS A SENTENCE FOR THE COMMISSION OF A CLASS 1 FELONY IN THE STATE OF COLORADO AS A RESULT OF THE HOLDING OF THE UNITED STATES SUPREME COURT IN *RING V. ARIZONA*, 530 U.S. ____ (2002). TOWARD THAT END, THE PROVISIONS OF SECTION 16-11-103, C.R.S., AS IT EXISTED PRIOR TO THE PASSAGE OF SENATE BILL 95-54, ENACTED AT THE

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FIRST REGULAR SESSION OF THE SIXTIETH GENERAL ASSEMBLY, ARE REENACTED AS SECTION 18-1.4-102, AND ARE HEREBY MADE APPLICABLE TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995, AND PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE.

(2) IT IS THE EXPRESSED INTENTION OF THE GENERAL ASSEMBLY THAT THE ADOPTION OF SECTION 18-1.4-102 SHALL NOT BE CONSTRUED BY ANY COURT AS A LEGISLATIVE STATEMENT THAT THE PROVISIONS OF SENATE BILL 95-54, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTIETH GENERAL ASSEMBLY, ARE UNCONSTITUTIONAL IN ANY WAY OR THAT ANY DEATH SENTENCE OBTAINED PURSUANT TO THE PROVISIONS OF SENATE BILL 95-54, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTIETH GENERAL ASSEMBLY, IS INVALID IN ANY WAY.

(3) IT IS THE EXPRESSED INTENTION OF THE GENERAL ASSEMBLY THAT THIS ARTICLE IS INDEPENDENT FROM SECTION 16-11-103, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, AND SECTION 18-1.3-1201 AND THAT, IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID OR UNCONSTITUTIONAL, SUCH INVALIDITY OR UNCONSTITUTIONALITY SHALL NOT AFFECT THE APPLICATION OF SECTION 16-11-103, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, AND SECTION 18-1.3-1201 TO ANY OFFENSE COMMITTED ON OR AFTER THE EFFECTIVE DATE OF AMENDMENTS TO SAID SECTIONS ENACTED AT THE THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY.

18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995, and prior to the effective date of this article - appellate review.

(1) (a) UPON CONVICTION OF GUILT OF A DEFENDANT OF A CLASS 1 FELONY, THE TRIAL COURT SHALL CONDUCT A SEPARATE SENTENCING HEARING TO DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT, UNLESS THE DEFENDANT WAS UNDER THE AGE OF EIGHTEEN YEARS AT THE TIME OF THE COMMISSION OF THE OFFENSE, OR UNLESS THE DEFENDANT HAS BEEN DETERMINED TO BE A MENTALLY RETARDED DEFENDANT PURSUANT TO PART 4 OF ARTICLE 9 OF TITLE 16, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, IN EITHER OF WHICH CASES, THE DEFENDANT SHALL BE SENTENCED TO LIFE IMPRISONMENT. THE HEARING SHALL BE CONDUCTED BY THE TRIAL JUDGE BEFORE THE TRIAL JURY AS SOON AS PRACTICABLE. ALTERNATE JURORS SHALL NOT BE EXCUSED FROM THE CASE PRIOR TO SUBMISSION OF THE ISSUE OF GUILT TO THE TRIAL JURY AND SHALL REMAIN SEPARATELY SEQUESTERED UNTIL A VERDICT IS ENTERED BY THE TRIAL JURY. IF THE VERDICT OF THE TRIAL JURY IS THAT THE DEFENDANT IS GUILTY OF A CLASS 1 FELONY, THE ALTERNATE JURORS SHALL SIT AS ALTERNATE JURORS ON THE ISSUE OF PUNISHMENT. IF, FOR ANY REASON SATISFACTORY TO THE COURT, ANY MEMBER OR MEMBERS OF THE TRIAL JURY ARE EXCUSED FROM PARTICIPATION IN THE SENTENCING HEARING, THE TRIAL JUDGE SHALL REPLACE SUCH JUROR OR JURORS WITH AN ALTERNATE JUROR OR JURORS. IF A TRIAL JURY WAS WAIVED OR IF THE DEFENDANT PLEADED GUILTY, THE HEARING SHALL BE CONDUCTED BEFORE THE TRIAL JUDGE.

(b) ALL ADMISSIBLE EVIDENCE PRESENTED BY EITHER THE PROSECUTING ATTORNEY OR THE DEFENDANT THAT THE COURT DEEMS RELEVANT TO THE NATURE OF THE CRIME, AND THE CHARACTER, BACKGROUND, AND HISTORY OF THE DEFENDANT, INCLUDING ANY EVIDENCE PRESENTED IN THE GUILT PHASE OF THE TRIAL AND ANY MATTERS RELATING TO ANY OF THE AGGRAVATING OR MITIGATING FACTORS ENUMERATED IN SUBSECTIONS (4) AND (5) OF THIS SECTION MAY BE PRESENTED. ANY SUCH EVIDENCE WHICH THE COURT DEEMS TO HAVE PROBATIVE VALUE MAY BE RECEIVED, AS LONG AS EACH PARTY IS GIVEN AN OPPORTUNITY TO REBUT SUCH EVIDENCE. THE PROSECUTING ATTORNEY AND THE DEFENDANT OR THE DEFENDANT'S COUNSEL SHALL BE PERMITTED TO PRESENT ARGUMENTS FOR OR AGAINST A SENTENCE OF DEATH. FOR OFFENSES COMMITTED BEFORE JULY 1, 1985, THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR TWENTY CALENDAR YEARS. FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 1985, THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR FORTY CALENDAR YEARS. FOR OFFENSES WITHIN THE PURVIEW OF SECTION 17-22.5-104 (2) (d), C.R.S., THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(c) BOTH THE PROSECUTING ATTORNEY AND THE DEFENSE SHALL NOTIFY EACH OTHER OF THE NAMES AND ADDRESSES OF ANY

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WITNESSES TO BE CALLED IN THE SENTENCING HEARING AND THE SUBJECT MATTER OF SUCH TESTIMONY. SUCH DISCOVERY SHALL BE PROVIDED WITHIN A REASONABLE AMOUNT OF TIME AS DETERMINED BY ORDER OF THE COURT AND SHALL BE PROVIDED NOT LESS THAN TWENTY-FOUR HOURS PRIOR TO THE COMMENCEMENT OF THE SENTENCING HEARING. UNLESS GOOD CAUSE IS SHOWN, NONCOMPLIANCE WITH THIS PARAGRAPH (c) SHALL RESULT IN THE EXCLUSION OF SUCH EVIDENCE WITHOUT FURTHER SANCTION.

(d) THE BURDEN OF PROOF AS TO THE AGGRAVATING FACTORS ENUMERATED IN SUBSECTION (5) OF THIS SECTION SHALL BE BEYOND A REASONABLE DOUBT. THERE SHALL BE NO BURDEN OF PROOF AS TO PROVING OR DISPROVING MITIGATING FACTORS.

(2) (a) AFTER HEARING ALL THE EVIDENCE AND ARGUMENTS OF THE PROSECUTING ATTORNEY AND THE DEFENDANT, THE JURY SHALL DELIBERATE AND RENDER A VERDICT BASED UPON THE FOLLOWING CONSIDERATIONS:

(I) WHETHER AT LEAST ONE AGGRAVATING FACTOR HAS BEEN PROVED AS ENUMERATED IN SUBSECTION (5) OF THIS SECTION;

(II) WHETHER SUFFICIENT MITIGATING FACTORS EXIST WHICH OUTWEIGH ANY AGGRAVATING FACTOR OR FACTORS FOUND TO EXIST; AND

(III) BASED ON THE CONSIDERATIONS IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (a), WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT.

(b) (I) IN THE EVENT THAT NO AGGRAVATING FACTORS ARE FOUND TO EXIST AS ENUMERATED IN SUBSECTION (5) OF THIS SECTION, THE JURY SHALL RENDER A VERDICT OF LIFE IMPRISONMENT, AND THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(II) THE JURY SHALL NOT RENDER A VERDICT OF DEATH UNLESS IT FINDS AND SPECIFIES IN WRITING THAT:

(A) AT LEAST ONE AGGRAVATING FACTOR HAS BEEN PROVED; AND

(B) THERE ARE INSUFFICIENT MITIGATING FACTORS TO OUTWEIGH THE AGGRAVATING FACTOR OR FACTORS THAT WERE PROVED.

(c) IN THE EVENT THAT THE JURY'S VERDICT IS TO SENTENCE TO DEATH, SUCH VERDICT SHALL BE UNANIMOUS AND SHALL BE BINDING UPON THE COURT UNLESS THE COURT DETERMINES, AND SETS FORTH IN WRITING THE BASIS AND REASONS FOR SUCH DETERMINATION, THAT THE VERDICT OF THE JURY IS CLEARLY ERRONEOUS AS CONTRARY TO THE WEIGHT OF THE EVIDENCE, IN WHICH CASE THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(d) IF THE JURY'S VERDICT IS NOT UNANIMOUS, THE JURY SHALL BE DISCHARGED, AND THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(3) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD BEFORE THE COURT ALONE, THE COURT SHALL DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT IN THE SAME MANNER IN WHICH A JURY DETERMINES ITS VERDICT UNDER PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. THE SENTENCE OF THE COURT SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES AS SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE TRIAL AND THE SENTENCING HEARING.

(4) FOR PURPOSES OF THIS SECTION, MITIGATING FACTORS SHALL BE THE FOLLOWING FACTORS:

(a) THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME; OR

(b) THE DEFENDANT'S CAPACITY TO APPRECIATE WRONGFULNESS OF THE DEFENDANT'S CONDUCT OR TO CONFORM THE DEFENDANT'S CONDUCT TO THE REQUIREMENTS OF LAW WAS SIGNIFICANTLY IMPAIRED, BUT NOT SO IMPAIRED AS TO CONSTITUTE A DEFENSE TO PROSECUTION; OR

(c) THE DEFENDANT WAS UNDER UNUSUAL AND SUBSTANTIAL DURESS, ALTHOUGH NOT SUCH DURESS AS TO CONSTITUTE A DEFENSE TO PROSECUTION; OR

(d) THE DEFENDANT WAS A PRINCIPAL IN THE OFFENSE WHICH WAS COMMITTED BY ANOTHER, BUT THE DEFENDANT'S PARTICIPATION WAS RELATIVELY MINOR, ALTHOUGH NOT SO MINOR AS TO CONSTITUTE A DEFENSE TO PROSECUTION; OR

(e) THE DEFENDANT COULD NOT REASONABLY HAVE FORESEEN THAT THE DEFENDANT'S CONDUCT IN THE COURSE OF THE COMMISSION OF THE OFFENSE FOR WHICH THE DEFENDANT WAS CONVICTED WOULD CAUSE, OR WOULD CREATE A GRAVE RISK OF CAUSING, DEATH TO ANOTHER

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PERSON; OR
 (f) THE EMOTIONAL STATE OF THE DEFENDANT AT THE TIME THE
 CRIME WAS COMMITTED; OR
 (g) THE ABSENCE OF ANY SIGNIFICANT PRIOR CONVICTION; OR
 (h) THE EXTENT OF THE DEFENDANT'S COOPERATION WITH LAW
 ENFORCEMENT OFFICERS OR AGENCIES AND WITH THE OFFICE OF THE
 PROSECUTING DISTRICT ATTORNEY; OR
 (i) THE INFLUENCE OF DRUGS OR ALCOHOL; OR
 (j) THE GOOD FAITH, ALTHOUGH MISTAKEN, BELIEF BY THE
 DEFENDANT THAT CIRCUMSTANCES EXISTED WHICH CONSTITUTED A
 MORAL JUSTIFICATION FOR THE DEFENDANT'S CONDUCT; OR
 (k) THE DEFENDANT IS NOT A CONTINUING THREAT TO SOCIETY;
 OR
 (l) ANY OTHER EVIDENCE WHICH IN THE COURT'S OPINION
 BEARS ON THE QUESTION OF MITIGATION.
 (5) FOR PURPOSES OF THIS SECTION, AGGRAVATING FACTORS
 SHALL BE THE FOLLOWING FACTORS:
 (a) THE CLASS 1 FELONY WAS COMMITTED BY A PERSON UNDER
 SENTENCE OF IMPRISONMENT FOR A CLASS 1, 2, OR 3 FELONY AS DEFINED
 BY COLORADO LAW OR UNITED STATES LAW, OR FOR A CRIME COMMITTED
 AGAINST ANOTHER STATE OR THE UNITED STATES WHICH WOULD
 CONSTITUTE A CLASS 1, 2, OR 3 FELONY AS DEFINED BY COLORADO LAW;
 OR
 (b) THE DEFENDANT WAS PREVIOUSLY CONVICTED IN THIS
 STATE OF A CLASS 1 OR 2 FELONY INVOLVING VIOLENCE AS SPECIFIED IN
 SECTION 16-11-309, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, OR
 SECTION 18-1.3-406, OR WAS PREVIOUSLY CONVICTED BY ANOTHER STATE
 OR THE UNITED STATES OF AN OFFENSE WHICH WOULD CONSTITUTE A
 CLASS 1 OR 2 FELONY INVOLVING VIOLENCE AS DEFINED BY COLORADO
 LAW IN SECTION 16-11-309, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1,
 2002, OR SECTION 18-1.3-406; OR
 (c) THE DEFENDANT INTENTIONALLY KILLED ANY OF THE
 FOLLOWING PERSONS WHILE SUCH PERSON WAS ENGAGED IN THE COURSE
 OF THE PERFORMANCE OF SUCH PERSON'S OFFICIAL DUTIES, AND THE
 DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN THAT SUCH
 VICTIM WAS SUCH A PERSON ENGAGED IN THE PERFORMANCE OF SUCH
 PERSON'S OFFICIAL DUTIES, OR THE VICTIM WAS INTENTIONALLY KILLED IN
 RETALIATION FOR THE PERFORMANCE OF THE VICTIM'S OFFICIAL DUTIES:
 (I) A PEACE OFFICER OR FORMER PEACE OFFICER AS DEFINED IN
 SECTION 18-1-901 (3) (I); OR
 (II) A FIREFIGHTER AS DEFINED IN SECTION 24-33.5-1202 (4),
 C.R.S.; OR
 (III) A JUDGE, REFEREE, OR FORMER JUDGE OR REFEREE OF ANY
 COURT OF RECORD IN THE STATE OR FEDERAL SYSTEM OR IN ANY OTHER
 STATE COURT SYSTEM OR A JUDGE OR FORMER JUDGE IN ANY MUNICIPAL
 COURT IN THIS STATE OR IN ANY OTHER STATE. FOR PURPOSES OF THIS
 SUBPARAGRAPH (III), THE TERM "REFEREE" SHALL INCLUDE A HEARING
 OFFICER OR ANY OTHER OFFICER WHO EXERCISES JUDICIAL FUNCTIONS.
 (IV) AN ELECTED STATE, COUNTY, OR MUNICIPAL OFFICIAL; OR
 (V) A FEDERAL LAW ENFORCEMENT OFFICER OR AGENT OR
 FORMER FEDERAL LAW ENFORCEMENT OFFICER OR AGENT; OR
 (d) THE DEFENDANT INTENTIONALLY KILLED A PERSON
 KIDNAPPED OR BEING HELD AS A HOSTAGE BY THE DEFENDANT OR BY
 ANYONE ASSOCIATED WITH THE DEFENDANT; OR
 (e) THE DEFENDANT HAS BEEN A PARTY TO AN AGREEMENT TO
 KILL ANOTHER PERSON IN FURTHERANCE OF WHICH A PERSON HAS BEEN
 INTENTIONALLY KILLED; OR
 (f) THE DEFENDANT COMMITTED THE OFFENSE WHILE LYING IN
 WAIT, FROM AMBUSH, OR BY USE OF AN EXPLOSIVE OR INCENDIARY
 DEVICE. AS USED IN THIS PARAGRAPH (f), "EXPLOSIVE OR INCENDIARY
 DEVICE" MEANS:
 (I) DYNAMITE AND ALL OTHER FORMS OF HIGH EXPLOSIVES; OR
 (II) ANY EXPLOSIVE BOMB, GRENADE, MISSILE, OR SIMILAR
 DEVICE; OR
 (III) ANY INCENDIARY BOMB OR GRENADE, FIRE BOMB, OR
 SIMILAR DEVICE, INCLUDING ANY DEVICE WHICH CONSISTS OF OR
 INCLUDES A BREAKABLE CONTAINER INCLUDING A FLAMMABLE LIQUID OR
 COMPOUND, AND A WICK COMPOSED OF ANY MATERIAL WHICH, WHEN
 IGNITED, IS CAPABLE OF IGNITING SUCH FLAMMABLE LIQUID OR
 COMPOUND, AND CAN BE CARRIED OR THROWN BY ONE INDIVIDUAL ACTING
 ALONE.

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(g) THE DEFENDANT COMMITTED A CLASS 1, 2, OR 3 FELONY AND, IN THE COURSE OF OR IN FURTHERANCE OF SUCH OR IMMEDIATE FLIGHT THEREFROM, THE DEFENDANT INTENTIONALLY CAUSED THE DEATH OF A PERSON OTHER THAN ONE OF THE PARTICIPANTS; OR

(h) THE CLASS 1 FELONY WAS COMMITTED FOR PECUNIARY GAIN; OR

(i) IN THE COMMISSION OF THE OFFENSE, THE DEFENDANT KNOWINGLY CREATED A GRAVE RISK OF DEATH TO ANOTHER PERSON IN ADDITION TO THE VICTIM OF THE OFFENSE; OR

(j) THE DEFENDANT COMMITTED THE OFFENSE IN AN ESPECIALLY HEINOUS, CRUEL, OR DEPRAVED MANNER; OR

(k) THE CLASS 1 FELONY WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST OR PROSECUTION OR EFFECTING AN ESCAPE FROM CUSTODY. THIS FACTOR SHALL INCLUDE THE INTENTIONAL KILLING OF A WITNESS TO A CRIMINAL OFFENSE.

(l) THE DEFENDANT UNLAWFULLY AND INTENTIONALLY, KNOWINGLY, OR WITH UNIVERSAL MALICE MANIFESTING EXTREME INDIFFERENCE TO THE VALUE OF HUMAN LIFE GENERALLY, KILLED TWO OR MORE PERSONS DURING THE COMMISSION OF THE SAME CRIMINAL EPISODE; OR

(m) THE DEFENDANT INTENTIONALLY KILLED A CHILD WHO HAS NOT YET ATTAINED TWELVE YEARS OF AGE.

(6) (a) WHENEVER A SENTENCE OF DEATH IS IMPOSED UPON A PERSON PURSUANT TO THE PROVISIONS OF THIS SECTION, THE SUPREME COURT SHALL REVIEW THE PROPRIETY OF THAT SENTENCE, HAVING REGARD TO THE NATURE OF THE OFFENSE, THE CHARACTER AND RECORD OF THE OFFENDER, THE PUBLIC INTEREST, AND THE MANNER IN WHICH THE SENTENCE WAS IMPOSED, INCLUDING THE SUFFICIENCY AND ACCURACY OF THE INFORMATION ON WHICH IT WAS BASED. THE PROCEDURES TO BE EMPLOYED IN THE REVIEW SHALL BE AS PROVIDED BY SUPREME COURT RULE.

(b) A SENTENCE OF DEATH SHALL NOT BE IMPOSED PURSUANT TO THIS SECTION IF THE SUPREME COURT DETERMINES THAT THE SENTENCE WAS IMPOSED UNDER THE INFLUENCE OF PASSION OR PREJUDICE OR ANY OTHER ARBITRARY FACTOR OR THAT THE EVIDENCE PRESENTED DOES NOT SUPPORT THE FINDING OF STATUTORY AGGRAVATING CIRCUMSTANCES.

(7) (a) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID OR UNCONSTITUTIONAL, SUCH INVALIDITY OR UNCONSTITUTIONALITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION, WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID OR UNCONSTITUTIONAL PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

(b) IF ANY DEATH SENTENCE IMPOSED UPON A DEFENDANT PURSUANT TO THE PROVISIONS OF THIS SECTION AND THE IMPOSITION OF SUCH DEATH SENTENCE UPON SUCH DEFENDANT IS HELD INVALID OR UNCONSTITUTIONAL, SAID DEFENDANT SHALL BE RETURNED TO THE TRIAL COURT AND SHALL THEN BE SENTENCED TO LIFE IMPRISONMENT.

SECTION 13. 18-1.4-102 (1) (a), (1) (b), (2) (a) (III), and (2) (b) (I), the introductory portion to 18-1.4-102 (2) (b) (II), and 18-1.4-102 (2) (c), (2) (d), (6) (a), and (7), Colorado Revised Statutes, as enacted by House Bill 02S-1005, enacted at the Third Extraordinary Session of the Sixty-third General Assembly, are amended, and the said 18-1.4-102 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995, and prior to the effective date of this article - appellate review. (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, the trial court shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment THE EXISTENCE OF ANY AGGRAVATING FACTORS, AS ENUMERATED IN SUBSECTION (5) OF THIS SECTION, AND WHETHER SUFFICIENT MITIGATING FACTORS, AS ENUMERATED IN SUBSECTION (4) OF THIS SECTION, EXIST WHICH OUTWEIGH ANY AGGRAVATING FACTOR OR FACTORS FOUND TO EXIST, unless the defendant was under the age of eighteen years at the time of the commission of the offense, or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 4 of article 9 of title 16, C.R.S., as it existed prior to October 1, 2002, in either of which cases, the defendant shall be sentenced to life imprisonment. The hearing ON AGGRAVATING AND MITIGATING FACTORS shall be

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conducted by the trial judge before the trial jury as soon as practicable. Alternate jurors shall not be excused from the case prior to submission of the issue of guilt to the trial jury and shall remain separately sequestered until a verdict is entered by the trial jury. If the verdict of the trial jury is that the defendant is guilty of a class 1 felony, the alternate jurors shall sit as alternate jurors ~~on the issue of punishment~~ FOR THE HEARING ON AGGRAVATING AND MITIGATING FACTORS. If, for any reason satisfactory to the court, any member or members of the trial jury are excused from participation in the ~~sentencing~~ hearing ON AGGRAVATING AND MITIGATING FACTORS, the trial judge shall replace such juror or jurors with an alternate juror or jurors. If a trial jury was waived or if the defendant ~~pleaded~~ PLED guilty, the hearing ON AGGRAVATING AND MITIGATING FACTORS shall be conducted before the trial judge. THE COURT SHALL INSTRUCT THE DEFENDANT WHEN WAIVING HIS OR HER RIGHT TO A JURY TRIAL OR WHEN PLEADING GUILTY, THAT HE OR SHE IS ALSO WAIVING HIS OR HER RIGHT TO A JURY DETERMINATION OF THE EXISTENCE AND WEIGHT OF AGGRAVATING AND MITIGATING FACTORS.

(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the court deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, ~~and~~ any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section, AND ANY MATTERS RELATING TO THE PERSONAL CHARACTERISTICS OF THE VICTIM AND THE IMPACT OF THE CRIMES ON THE VICTIM'S FAMILY may be presented. Any such evidence, INCLUDING BUT NOT LIMITED TO THE TESTIMONY OF MEMBERS OF THE VICTIM'S IMMEDIATE FAMILY, AS DEFINED IN SECTION 24-4.1-302 (6), C.R.S., which the court deems to have probative value may be received, as long as each party is given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death. ~~For offenses committed before July 1, 1985, the jury shall be instructed that life imprisonment means life without the possibility of parole for twenty calendar years. For offenses committed on or after July 1, 1985, the jury shall be instructed that life imprisonment means life without the possibility of parole for forty calendar years. For offenses within the purview of section 17-22.5-104 (2) (d), C.R.S.,~~ THE EXISTENCE AND WEIGHT OF ANY AGGRAVATING AND MITIGATING FACTORS. The jury shall be instructed that life imprisonment means IMPRISONMENT FOR life without the possibility of parole.

(2) (a) After hearing all the evidence and arguments of the prosecuting attorney and the defendant, the jury shall deliberate and render a verdict based upon the following considerations:

(III) ~~Based on the considerations in subparagraphs (I) and (II) of this paragraph (a), whether the defendant should be sentenced to death or life imprisonment.~~

(2) (b) (I) ~~In the event that no aggravating factors are found to exist~~ THERE ARE FEWER THAN TEN JURORS WHO AGREE THAT AT LEAST ONE AGGRAVATING FACTOR, as enumerated in subsection (5) of this section, EXISTS OR IN THE EVENT THAT THERE ARE TEN JURORS WHO FIND THAT MITIGATING FACTORS OUTWEIGH THE AGGRAVATING FACTOR OR FACTORS THAT WERE PROVED, ~~the jury shall render a verdict of life imprisonment, and the court shall sentence the defendant to life imprisonment.~~

(II) The jury JUDGE shall not render a verdict of death unless, BY THE AGREEMENT OF AT LEAST TEN JURORS, ~~it~~ THE JURY finds and specifies in writing that:

(c) (I) IF THE JURY MAKES THE FINDINGS SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION(2), THE TRIAL JUDGE SHALL DETERMINE WHETHER TO IMPOSE A SENTENCE OF DEATH OR LIFE IMPRISONMENT BASED UPON THE CONSIDERATIONS IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2).

(II) PRIOR TO THE TRIAL JUDGE'S RULING, THE PROSECUTING ATTORNEY AND THE DEFENDANT OR THE DEFENDANT'S COUNSEL MAY BE PERMITTED TO PRESENT ADDITIONAL EVIDENCE FOR OR AGAINST A SENTENCE OF DEATH AND SHALL BE PERMITTED TO PRESENT ARGUMENTS FOR OR AGAINST A SENTENCE OF DEATH.

(III) ~~In the event that the jury's verdict is to sentence to death, such verdict shall be unanimous and shall be binding upon the court unless the court determines, and sets forth in writing the basis and reasons for such determination, that the verdict of the jury is clearly erroneous as contrary to the weight of the evidence, in which case the court shall~~

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~~sentence the defendant to life imprisonment.~~ THE SENTENCE OF THE JUDGE, WHETHER TO DEATH OR TO LIFE IN PRISON, SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES AS SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE TRIAL, ON AGGRAVATING AND MITIGATING FACTORS, AND THE EVIDENCE AND ARGUMENTS PRESENTED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (c).

(d) ~~If the jury's verdict is not unanimous~~ IN THE EVENT THERE ARE FEWER THAN TEN JURORS WHO AGREE ON THE EXISTENCE OF AN AGGRAVATING FACTOR OR THAT ANY MITIGATING FACTORS OUTWEIGH ANY AGGRAVATING FACTOR OR FACTORS, THE JURY SHALL SO NOTIFY THE TRIAL JUDGE, the jury shall be discharged, and the court shall sentence the defendant to life imprisonment.

(e) IF, AS OF THE EFFECTIVE DATE OF THIS PARAGRAPH (e), THE PROSECUTION HAS ANNOUNCED IT WILL BE SEEKING THE DEATH SENTENCE AS THE PUNISHMENT FOR A CONVICTION OF A CLASS 1 FELONY AND A DEFENDANT HAS BEEN CONVICTED AT TRIAL OF A CLASS 1 FELONY OR HAS PLED GUILTY TO A CLASS 1 FELONY, BUT A SENTENCING HEARING TO DETERMINE WHETHER THAT DEFENDANT SHALL BE SENTENCED TO DEATH OR LIFE IMPRISONMENT HAS NOT YET BEEN HELD, A JURY SHALL BE IMPANELED TO DETERMINE THE EXISTENCE AND WEIGHT OF AGGRAVATING AND MITIGATING FACTORS AT THE HEARING PURSUANT TO THE PROCEDURES SET FORTH IN THIS SECTION OR, IF THE DEFENDANT PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, THE SENTENCE SHALL BE DETERMINED BY THE TRIAL JUDGE.

(6) (a) Whenever a sentence of death is imposed upon a person pursuant to the provisions of this section, the supreme court shall review the propriety of that sentence, having regard to the nature of the offense, the character and record of the offender, the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based. The procedures to be employed in the review shall be as provided by supreme court rule. THE SUPREME COURT SHALL COMBINE ITS REVIEW PURSUANT TO THIS SUBSECTION (6) WITH CONSIDERATION OF ANY APPEAL THAT MAY BE FILED PURSUANT TO PART 2 OF ARTICLE 12 OF TITLE 16, C.R.S.

(7) (a) ~~If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section, which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable.~~ IT IS THE EXPRESSED INTENT OF THE GENERAL ASSEMBLY THAT THERE BE IN PLACE A VALID AND OPERATIVE PROCEDURE FOR THE IMPOSITION OF A SENTENCE OF DEATH CONCERNING CLASS 1 FELONIES COMMITTED ON OR AFTER JULY 1, 1995, AND PRIOR TO THE EFFECTIVE DATE OF THIS SECTION. TOWARDS THAT END, IF ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, BUT SEVERANCE OF SUCH PROVISIONS WOULD, THROUGH OPERATION OF THE REMAINING PROVISIONS OF THIS SECTION, MAINTAIN THIS SECTION AS A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THOSE REMAINING PROVISIONS ARE SEVERABLE AND ARE TO HAVE FULL FORCE AND EFFECT. IF, INSTEAD, ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, AND SEVERANCE OF SUCH PROVISIONS WOULD NOT, THROUGH OPERATION OF THE REMAINING PROVISIONS OF THIS SECTION, RENDER THIS SECTION A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH OFFENSES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS ENTIRE ARTICLE BE VOID AND INOPERATIVE.

(b) If any death sentence is imposed upon a defendant pursuant to the provisions of this section and, ON APPELLATE REVIEW INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (9) OF THIS SECTION, the imposition of such death sentence upon such defendant is held invalid, or unconstitutional, ~~said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment~~ FOR REASONS

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OTHER THAN UNCONSTITUTIONALITY OF THE DEATH PENALTY OR INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE SENTENCE, THE CASE SHALL BE REMANDED TO THE TRIAL COURT TO SET A NEW SENTENCING HEARING BEFORE A NEWLY IMPANELED JURY OR, IF THE DEFENDANT PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL JUDGE; EXCEPT THAT, IF THE PROSECUTOR INFORMS THE TRIAL COURT THAT, IN THE OPINION OF THE PROSECUTOR, CAPITAL PUNISHMENT WOULD NO LONGER BE IN THE INTEREST OF JUSTICE, SAID DEFENDANT SHALL BE RETURNED TO THE TRIAL COURT AND SHALL THEN BE SENTENCED TO LIFE IMPRISONMENT. IF A DEATH SENTENCE IMPOSED PURSUANT TO THIS SECTION IS HELD INVALID BASED ON UNCONSTITUTIONALITY OF THE DEATH PENALTY OR INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE SENTENCE, SAID DEFENDANT SHALL BE RETURNED TO THE TRIAL COURT AND SHALL THEN BE SENTENCED TO LIFE IMPRISONMENT.

SECTION 14. 18-1.4-102 (1) (c), Colorado Revised Statutes, as enacted by House Bill 02S-1005, enacted at the Third Extraordinary Session of the Sixty-third General Assembly, is amended, and the said 18-1.4-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995 and prior to the effective date of this article - appellate review. (1) (c) ~~Both the prosecuting attorney and the defense shall notify each other of the names and addresses of any witnesses to be called in the sentencing hearing and the subject matter of such testimony. Such discovery shall be provided within a reasonable amount of time as determined by order of the court and shall be provided not less than twenty-four hours prior to the commencement of the sentencing hearing. Unless good cause is shown, noncompliance with this paragraph (c) shall result in the exclusion of such evidence without further sanction.~~

(3.5) (a) THE PROVISIONS OF THIS SUBSECTION (3.5) SHALL APPLY ONLY IN A CLASS 1 FELONY CASE IN WHICH THE PROSECUTING ATTORNEY HAS FILED A STATEMENT OF INTENT TO SEEK THE DEATH PENALTY PURSUANT TO RULE 32.1 (b) OF THE COLORADO RULES OF CRIMINAL PROCEDURE.

(b) THE PROSECUTING ATTORNEY SHALL PROVIDE THE DEFENDANT WITH THE FOLLOWING INFORMATION AND MATERIALS NOT LATER THAN TWENTY DAYS AFTER THE PROSECUTION FILES ITS WRITTEN INTENTION TO SEEK THE DEATH PENALTY OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE DEFENSE AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A LIST OF ALL AGGRAVATING FACTORS THAT ARE KNOWN TO THE PROSECUTING ATTORNEY AT THAT TIME AND THAT THE PROSECUTING ATTORNEY INTENDS TO PROVE AT THE SENTENCING HEARING;

(II) A LIST OF ALL WITNESSES WHOM THE PROSECUTING ATTORNEY MAY CALL AT THE SENTENCING HEARING, SPECIFYING FOR EACH THE WITNESS' NAME, ADDRESS, AND DATE OF BIRTH AND THE SUBJECT MATTER OF THE WITNESS' TESTIMONY;

(III) THE WRITTEN AND RECORDED STATEMENTS, INCLUDING ANY NOTES OF THOSE STATEMENTS, FOR EACH WITNESS WHOM THE PROSECUTING ATTORNEY MAY CALL AT THE SENTENCING HEARING;

(IV) ANY REPORTS, RECORDED STATEMENTS, AND NOTES OF ANY EXPERT WHOM THE PROSECUTING ATTORNEY MAY CALL AS A WITNESS DURING THE SENTENCING HEARING, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS;

(V) A LIST OF BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS, OR TANGIBLE OBJECTS THAT THE PROSECUTING ATTORNEY MAY INTRODUCE AT THE SENTENCING HEARING; AND

(VI) ALL MATERIAL OR INFORMATION THAT TENDS TO MITIGATE OR NEGATE THE FINDING OF ANY OF THE AGGRAVATING FACTORS THE PROSECUTING ATTORNEY INTENDS TO PROVE AT THE SENTENCING HEARING.

(c) UPON RECEIPT OF THE INFORMATION REQUIRED TO BE DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3.5), THE PROSECUTING ATTORNEY SHALL NOTIFY THE

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DEFENDANT AS SOON AS PRACTICABLE OF ANY ADDITIONAL WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL IN RESPONSE TO THE DEFENDANT'S DISCLOSURES.

(d) THE DEFENDANT SHALL PROVIDE THE PROSECUTING ATTORNEY WITH THE FOLLOWING INFORMATION AND MATERIALS NO LATER THAN FORTY-FIVE DAYS BEFORE THE FIRST TRIAL DATE SET FOR THE BEGINNING OF THE DEFENDANT'S TRIAL OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE DEFENSE INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE PROSECUTING ATTORNEY AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A LIST OF ALL WITNESSES WHOM THE DEFENDANT MAY CALL AT THE SENTENCING HEARING, SPECIFYING FOR EACH THE WITNESS' NAME, ADDRESS, AND DATE OF BIRTH AND THE SUBJECT MATTER OF THE WITNESS' TESTIMONY;

(II) THE WRITTEN AND RECORDED STATEMENTS, INCLUDING ANY NOTES OF THOSE STATEMENTS, OF EACH WITNESS WHOM THE DEFENDANT MAY CALL AT THE SENTENCING HEARING;

(III) ANY REPORTS, RECORDED STATEMENTS, AND NOTES OF ANY EXPERT WHOM THE DEFENDANT MAY CALL AS A WITNESS DURING THE SENTENCING HEARING, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS; AND

(IV) A LIST OF BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS, OR TANGIBLE OBJECTS THAT THE DEFENDANT MAY INTRODUCE AT THE SENTENCING HEARING.

(e) (I) ANY MATERIAL SUBJECT TO THIS SUBSECTION (3.5) THAT THE DEFENDANT BELIEVES CONTAINS INFORMATION THAT IS PRIVILEGED TO THE EXTENT THAT THE PROSECUTION CANNOT BE AWARE OF IT IN CONNECTION WITH ITS PREPARATION FOR, OR CONDUCT OF, THE TRIAL TO DETERMINE GUILT ON THE SUBSTANTIVE CHARGES AGAINST THE DEFENDANT SHALL BE SUBMITTED BY THE DEFENDANT TO THE TRIAL JUDGE UNDER SEAL NO LATER THAN FORTY-FIVE DAYS BEFORE TRIAL.

(II) THE TRIAL JUDGE SHALL REVIEW ANY SUCH MATERIAL SUBMITTED UNDER SEAL PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (e) TO DETERMINE WHETHER IT IS IN FACT PRIVILEGED. ANY MATERIAL THE TRIAL JUDGE FINDS NOT TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTING ATTORNEY. ANY MATERIAL SUBMITTED UNDER SEAL THAT THE TRIAL JUDGE FINDS TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTION IF THE DEFENDANT IS CONVICTED OF A CLASS 1 FELONY.

(f) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (f), IF THE WITNESSES DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3.5) INCLUDE WITNESSES WHO MAY PROVIDE EVIDENCE CONCERNING THE DEFENDANT'S MENTAL CONDITION AT THE SENTENCING HEARING CONDUCTED PURSUANT TO THIS SECTION, THE TRIAL COURT, AT THE REQUEST OF THE PROSECUTING ATTORNEY, SHALL ORDER THAT THE DEFENDANT BE EXAMINED AND A REPORT OF SAID EXAMINATION BE PREPARED PURSUANT TO SECTION 16-8-106, C.R.S.

(II) THE COURT SHALL NOT ORDER AN EXAMINATION PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) IF:

(A) SUCH AN EXAMINATION WAS PREVIOUSLY PERFORMED AND A REPORT WAS PREPARED IN THE SAME CASE; AND

(B) THE REPORT INCLUDED AN OPINION CONCERNING HOW ANY MENTAL DISEASE OR DEFECT OF THE DEFENDANT OR CONDITION OF MIND CAUSED BY MENTAL DISEASE OR DEFECT OF THE DEFENDANT AFFECTS THE MITIGATING FACTORS THAT THE DEFENDANT MAY RAISE AT THE SENTENCING HEARING HELD PURSUANT TO THIS SECTION.

(g) IF THE WITNESSES DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3.5) INCLUDE WITNESSES WHO MAY PROVIDE EVIDENCE CONCERNING THE DEFENDANT'S MENTAL CONDITION AT A SENTENCING HEARING CONDUCTED PURSUANT TO THIS SECTION, THE PROVISIONS OF SECTION 16-8-109, C.R.S., CONCERNING TESTIMONY OF LAY WITNESSES SHALL APPLY TO SAID SENTENCING HEARING.

(h) THERE IS A CONTINUING DUTY ON THE PART OF THE PROSECUTING ATTORNEY AND THE DEFENDANT TO DISCLOSE THE

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INFORMATION AND MATERIALS SPECIFIED IN THIS SUBSECTION (3.5). IF, AFTER COMPLYING WITH THE DUTY TO DISCLOSE THE INFORMATION AND MATERIALS DESCRIBED IN THIS SUBSECTION (3.5), EITHER PARTY DISCOVERS OR OBTAINS ANY ADDITIONAL INFORMATION AND MATERIALS THAT ARE SUBJECT TO DISCLOSURE UNDER THIS SUBSECTION (3.5), THE PARTY SHALL PROMPTLY NOTIFY THE OTHER PARTY AND PROVIDE THE OTHER PARTY WITH COMPLETE ACCESS TO THE INFORMATION AND MATERIALS.

(i) THE TRIAL COURT, UPON A SHOWING OF EXTRAORDINARY CIRCUMSTANCES THAT COULD NOT HAVE BEEN FORESEEN AND PREVENTED, MAY GRANT AN EXTENSION OF TIME TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION (3.5).

(j) IF IT IS BROUGHT TO THE ATTENTION OF THE COURT THAT EITHER THE PROSECUTING ATTORNEY OR THE DEFENDANT HAS FAILED TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (3.5) OR WITH AN ORDER ISSUED PURSUANT TO THIS SUBSECTION (3.5), THE COURT MAY ENTER ANY ORDER AGAINST SUCH PARTY THAT THE COURT DEEMS JUST UNDER THE CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO AN ORDER TO PERMIT THE DISCOVERY OR INSPECTION OF INFORMATION AND MATERIALS NOT PREVIOUSLY DISCLOSED, TO GRANT A CONTINUANCE, TO PROHIBIT THE OFFENDING PARTY FROM INTRODUCING THE INFORMATION AND MATERIALS NOT DISCLOSED, OR TO IMPOSE SANCTIONS AGAINST THE OFFENDING PARTY.

(k) UNLESS GOOD CAUSE IS SHOWN, A PARTY'S FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (3.5) SHALL RESULT IN THE EXCLUSION OF THE EVIDENCE THAT IS THE SUBJECT OF SUCH NONCOMPLIANCE WITHOUT FURTHER SANCTION.

(8) WHEN REVIEWING A SENTENCE OF DEATH IMPOSED BY A THREE-JUDGE PANEL, IF THE COLORADO SUPREME COURT CONCLUDES THAT ANY ONE OR MORE OF THE DETERMINATIONS MADE BY THE THREE-JUDGE PANEL WERE CONSTITUTIONALLY REQUIRED TO HAVE BEEN MADE BY A JURY, THE SUPREME COURT SHALL:

(a) EXAMINE THE RECORD AND THE JURY'S VERDICTS OR THE DEFENDANT'S GUILTY PLEAS AT THE GUILT PHASE OF THE TRIAL AND DETERMINE WHETHER ANY OF THE AGGRAVATING FACTORS FOUND TO EXIST BY THE THREE-JUDGE PANEL WERE ALSO FAIRLY DETERMINED TO EXIST BEYOND A REASONABLE DOUBT BY THE JURY'S VERDICTS OR THE DEFENDANT'S GUILTY PLEAS; AND

(b) (I) IF THE SUPREME COURT DETERMINES THAT ONE OR MORE AGGRAVATING FACTORS WERE FAIRLY DETERMINED TO EXIST BEYOND A REASONABLE DOUBT BY THE JURY'S VERDICTS OR THE DEFENDANT'S GUILTY PLEAS, THE SUPREME COURT SHALL DETERMINE WHETHER THE SENTENCE OF DEATH SHOULD BE AFFIRMED ON APPEAL BY PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPHS (a) TO (d) OF SUBSECTION (9) OF THIS SECTION; OR

(II) IF THE SUPREME COURT DETERMINES THERE WERE NO AGGRAVATING FACTORS FAIRLY DETERMINED TO EXIST BEYOND A REASONABLE DOUBT BY THE JURY'S VERDICTS OR THE DEFENDANT'S GUILTY PLEAS, THE SUPREME COURT SHALL REMAND THE CASE TO THE TRIAL COURT FOR A SENTENCING HEARING BEFORE A NEWLY IMPANELED JURY.

(9) IF, ON APPEAL, THE SUPREME COURT FINDS ONE OR MORE OF THE AGGRAVATING FACTORS THAT WERE FOUND TO SUPPORT A SENTENCE TO DEATH TO BE INVALID FOR ANY REASON, THE SUPREME COURT SHALL DETERMINE WHETHER THE SENTENCE OF DEATH SHOULD BE AFFIRMED ON APPEAL BY:

(a) REWEIGHING THE REMAINING AGGRAVATING FACTOR OR FACTORS AND ALL MITIGATING FACTORS AND THEN DETERMINING WHETHER DEATH IS THE APPROPRIATE PUNISHMENT IN THE CASE; OR

(b) APPLYING HARMLESS ERROR ANALYSIS BY CONSIDERING WHETHER, IF THE SENTENCING TRIBUNAL HAD NOT CONSIDERED THE INVALID AGGRAVATING FACTOR, IT WOULD HAVE NONETHELESS SENTENCED THE DEFENDANT TO DEATH; OR

(c) IF THE SUPREME COURT FINDS THE SENTENCING TRIBUNAL'S CONSIDERATION OF AN AGGRAVATING FACTOR WAS IMPROPER BECAUSE THE AGGRAVATING FACTOR WAS NOT GIVEN A CONSTITUTIONALLY NARROW CONSTRUCTION, DETERMINING WHETHER, BEYOND A REASONABLE DOUBT, THE SENTENCING TRIBUNAL WOULD HAVE RETURNED A VERDICT OF DEATH HAD THE AGGRAVATING FACTOR BEEN PROPERLY NARROWED; OR

(d) EMPLOYING ANY OTHER CONSTITUTIONALLY PERMISSIBLE

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METHOD OF REVIEW.

SECTION 15. 18-1.4-102 (5) (m), Colorado Revised Statutes, as enacted by House Bill 02S-1005, enacted at the Third Extraordinary Session of the Sixty-third General Assembly, is amended, and the said 18-1.4-102 (5) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995, and prior to the effective date of this article - appellate review. (5) For purposes of this section, aggravating factors shall be the following factors:

(m) The defendant intentionally killed a child who has not yet attained twelve years of age; OR

(n) (I) THE DEFENDANT COMMITTED THE CLASS 1 FELONY AGAINST THE VICTIM BECAUSE OF THE VICTIM'S RACE, COLOR, ANCESTRY, RELIGION, OR NATIONAL ORIGIN.

(II) THE PROVISIONS OF THIS PARAGRAPH (n) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1998.

(o) (I) THE DEFENDANT'S POSSESSION OF THE WEAPON USED TO COMMIT THE CLASS 1 FELONY CONSTITUTED A FELONY OFFENSE UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.

(II) THE PROVISIONS OF THIS PARAGRAPH (o) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER AUGUST 2, 2000.

SECTION 16. Legislative declaration. It is the intent of the general assembly that there be a constitutional death penalty sentencing procedure in effect for offenses committed on or after July 1, 1995, and prior to the effective date of this act. To that end, the general assembly has enacted article 1.4 of title 18, Colorado Revised Statutes, in section 12 of this act, which recreates section 16-11-103, Colorado Revised Statutes, as it existed on June 30, 1995. In addition, in sections 13 through 15 of this act, the general assembly has enacted amendments to said article 1.4 of title 18, Colorado Revised Statutes, to reflect the changes made to section 16-11-103, Colorado Revised Statutes, on or after July 1, 1995, and prior to the effective date of this act, other than those changes that established a panel of three judges as the sentencing authority in capital cases. In enacting section 12 of this act separately from sections 13 through 15 of this act, it is the intent of the general assembly that, if any of the amendments made in sections 13 through 15 of this act are found by the United States Supreme Court or the Colorado Supreme Court to render section 18-1.4-102, Colorado Revised Statutes, unconstitutional or invalid such that it does not implement a valid and operative procedure for imposition of a sentence of death, any such amendments made in sections 13 through 15 of this act shall be inoperative and severable, and the provisions of article 1.4 of title 18, Colorado Revised Statutes, as enacted in section 12 of this act, shall apply to offenses committed on or after July 1, 1995, and prior to the effective date of this act.

SECTION 17. 16-8-103.6 (2) (a), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-8-103.6. Waiver of privilege. (2) (a) A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, raising the question of incompetency to proceed pursuant to section 16-8-110, or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S., or, for offenses committed on or after July 1, 1999, by seeking to introduce evidence concerning his or her mental condition pursuant to section 16-8-107 (3) waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for such mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for such mental condition.

SECTION 18. 16-8-103.6 (2) (a) , Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

16-8-103.6. Waiver of privilege. (2) (a) A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, raising the question of

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incompetency to proceed pursuant to section 16-8-110, or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S., or, for offenses committed on or after July 1, 1999, by seeking to introduce evidence concerning his or her mental condition pursuant to section 16-8-107 (3) waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for such mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for such mental condition.

SECTION 19. 16-8-106 (2) (b), (2) (c), and (3) (b), Colorado Revised Statutes, as they exist until October 1, 2002, are amended to read:

16-8-106. Examinations and report. (2) (b) The defendant shall have a privilege against self-incrimination during the course of an examination under this section. The fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial on the issues of insanity or competency and in any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. This paragraph (b) shall apply to offenses committed on or after July 1, 1995, but prior to July 1, 1999.

(c) The defendant shall cooperate with psychiatrists and other personnel conducting any examination ordered by the court pursuant to this section. Statements made by the defendant in the course of such examination shall be protected as provided in section 16-8-107. If the defendant does not cooperate with psychiatrists and other personnel conducting the examination, the court shall not allow the defendant to call any psychiatrist or other expert witness to provide evidence at the defendant's trial concerning the defendant's mental condition including, but not limited to, providing evidence on the issues of insanity or competency, or at any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. In addition, the fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial to rebut any evidence introduced by the defendant with regard to the defendant's mental condition including, but not limited to, the issues of insanity and competency, and in any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. This paragraph (c) shall apply to offenses committed on or after July 1, 1999.

(3) (b) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity, eligibility for release, or competency to proceed and in any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

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SECTION 20. 16-8-106 (2) (b), (2) (c), and (3) (b), Colorado Revised Statutes, as they will become effective October 1, 2002, are amended to read:

16-8-106. Examinations and report. (2) (b) The defendant shall have a privilege against self-incrimination during the course of an examination under this section. The fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial on the issues of insanity or competency and in any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S. This paragraph (b) shall apply to offenses committed on or after July 1, 1995, but prior to July 1, 1999.

(c) The defendant shall cooperate with psychiatrists and other personnel conducting any examination ordered by the court pursuant to this section. Statements made by the defendant in the course of such examination shall be protected as provided in section 16-8-107. If the defendant does not cooperate with psychiatrists and other personnel conducting the examination, the court shall not allow the defendant to call any psychiatrist or other expert witness to provide evidence at the defendant's trial concerning the defendant's mental condition including, but not limited to, providing evidence on the issues of insanity or competency, or at any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S. In addition, the fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial to rebut any evidence introduced by the defendant with regard to the defendant's mental condition including, but not limited to, the issues of insanity and competency, and in any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S. This paragraph (c) shall apply to offenses committed on or after July 1, 1999.

(3) (b) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity, eligibility for release, or competency to proceed and in any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

SECTION 21. 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado Revised Statutes, as they exist until October 1, 2002, are amended to read:

16-8-107. Evidence. (1) (b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination under section 16-8-108 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing hearing held pursuant to section ~~16-11-103 or 16-11-802~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S., only to prove the existence or absence of any mitigating factor.

(c) If the defendant testifies in his or her own behalf upon the trial of the issues raised by the plea of not guilty or at a sentencing hearing held pursuant to section ~~16-11-103 or 16-11-802~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S., the provisions of this section

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shall not bar any evidence used to impeach or rebut the defendant's testimony.

(1.5) (b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination under section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-1201, C.R.S., only to prove the existence or absence of any mitigating factor.

SECTION 22. 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado Revised Statutes, as they will become effective October 1, 2002, are amended to read:

16-8-107. Evidence. (1) (b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination under section 16-8-108 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing hearing held pursuant to section ~~18-1.3-1201 or 18-1.3-1302~~, 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102, C.R.S., only to prove the existence or absence of any mitigating factor.

(c) If the defendant testifies in his or her own behalf upon the trial of the issues raised by the plea of not guilty or at a sentencing hearing held pursuant to section ~~18-1.3-1201 or 18-1.3-1302~~, 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102, C.R.S., the provisions of this section shall not bar any evidence used to impeach or rebut the defendant's testimony.

(1.5) (b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination under section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S., only to prove the existence or absence of any mitigating factor.

SECTION 23. 16-11-101 (1) (c), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-11-101. Alternatives in sentencing - repeal. (1) Within the limitations of the penalties provided by the classification of the offense of which a person is found guilty, and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(c) The defendant shall be sentenced to death in those cases in which a death sentence is required under section ~~16-11-103~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S.

SECTION 24. 18-1.3-104 (1) (c), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1.3-104. Alternatives in imposition of sentence - repeal. (1) Within the limitations of the penalties provided by the classification of the offense of which a person is found guilty, and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(c) The defendant shall be sentenced to death in those cases in which a death sentence is required under section ~~18-1.3-1201~~ 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102.

SECTION 25. 16-12-202 (3), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-12-202. Unitary procedure for appeals - scope and applicability. (3) This part 2 shall apply to any class 1 felony conviction for which the death penalty is imposed as punishment, regardless of whether the sentence is imposed pursuant to section ~~16-11-103 or 16-11-802~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S., which death sentence is imposed on or after the date upon which the supreme court adopts rules implementing the unitary system of review established by this part 2.

SECTION 26. 16-12-202 (3), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

16-12-202. Unitary procedure for appeals - scope and applicability. (3) This part 2 shall apply to any class 1 felony conviction for which the death penalty is imposed as punishment, regardless of whether the sentence is imposed pursuant to section ~~18-1.3-1201 or 18-1.3-1302~~ 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102, C.R.S., which death sentence is imposed on or after the date upon which the supreme

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court adopts rules implementing the unitary system of review established by this part 2.

SECTION 27. 16-13-101 (1) (e), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-13-101. Punishment for habitual criminals.

(1) (e) Nothing in this subsection (1) is to be construed to prohibit a person convicted of a class 1 felony from being sentenced pursuant to section ~~16-11-103~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S.

SECTION 28. 18-1.3-801 (1) (e), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1.3-801. Punishment for habitual criminals.

(1) (e) Nothing in this subsection (1) is to be construed to prohibit a person convicted of a class 1 felony from being sentenced pursuant to section ~~18-1.3-1201~~ 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102.

SECTION 29. 18-1-409 (1), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

18-1-409. Appellate review of sentence for a felony.

(1) When sentence is imposed upon any person following a conviction of any felony, other than a class 1 felony in which a death sentence is automatically reviewed pursuant to section 16-11-103 (6) ~~C.R.S., or section 16-11-802 (6)~~ OR 16-11-802 (6), C.R.S., OR SECTION 18-1.4-102 (6), the person convicted shall have the right to one appellate review of the propriety of the sentence, having regard to the nature of the offense, the character of the offender, and the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based; except that, if the sentence is within a range agreed upon by the parties pursuant to a plea agreement, the defendant shall not have the right of appellate review of the propriety of the sentence. The procedures to be employed in the review shall be as provided by supreme court rule.

SECTION 30. 18-1-409 (1), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1-409. Appellate review of sentence for a felony.

(1) When sentence is imposed upon any person following a conviction of any felony, other than a class 1 felony in which a death sentence is automatically reviewed pursuant to section ~~18-1.3-1201 (6) or 18-1.3-1302 (6)~~ 18-1.3-1201 (6), 18-1.3-1302 (6), OR 18-1.4-102 (6), the person convicted shall have the right to one appellate review of the propriety of the sentence, having regard to the nature of the offense, the character of the offender, and the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based; except that, if the sentence is within a range agreed upon by the parties pursuant to a plea agreement, the defendant shall not have the right of appellate review of the propriety of the sentence. The procedures to be employed in the review shall be as provided by supreme court rule.

SECTION 31. 24-4.1-302.5 (1) (g), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

24-4.1-302.5. Rights afforded to victims.

(1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(g) The right to be present at the sentencing hearing, including any hearing conducted pursuant to section ~~16-11-103~~, 16-11-103 OR SECTION 18-1.4-102, C.R.S., for cases involving class 1 felonies, of any person convicted of a crime against such victim, and to inform the district attorney or the court, in writing, by a victim impact statement, or in person by an oral statement, of the harm that the victim has sustained as a result of the crime;

SECTION 32. 24-4.1-302.5 (1) (g), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

24-4.1-302.5. Rights afforded to victims.

(1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(g) The right to be present at the sentencing hearing, including any hearing conducted pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S., for cases involving class 1 felonies, of any person convicted of a crime against such victim, and to inform the district attorney or the court, in writing, by a victim impact statement, or in person by an oral statement, of the harm that the victim has sustained as a result of the crime;

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SECTION 33. Effective date - applicability. This act shall take effect upon passage and sections 1 and 2 of this act shall apply to offenses committed on or after said date.

SECTION 34. 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."

The amendment was declared **lost** by the following roll call vote:

YES	12	NO	23	EXCUSED	0	ABSENT	0
Anderson	N	Fitz-Gerald	N	May	Y	Takis	N
Andrews	Y	Gordon	N	McElhany	Y	Tate	N
Arnold	N	Hagedorn	N	Musgrave	Y	Taylor	N
Cairns	Y	Hanna	N	Nichol	N	Teck	Y
Chlouber	Y	Hernandez	N	Owen	Y	Thiebaut	N
Dyer	N	Hillman	Y	Pascoe	N	Tupa	N
Entz	N	Isgar	N	Perlmutter	N	Windels	N
Epps	Y	Lamborn	Y	Phillips	N	Mr. President	N
Evans	Y	Linkhart	N	Reeves	N		

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE

On motion of Senator Takis, the Report of the Committee of the Whole was adopted and, a majority of all members elected to the Senate having voted in the affirmative, the following action was taken:

Passed on Second Reading: **HB02S-1006** as amended, **HB02S-1005** as amended.

On motion of Senator Theibaut, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the calendar of Wednesday, July 10, was laid over until Thursday, July 11, retaining its place on the calendar.

Consideration of Memorials: **SM02S-001**.

Consideration of Resolutions: **SR02S-002, HJR02S-1002**.

On motion of Senator Thiebaut, the Senate adjourned until 9:30 a.m., Thursday, July 11, 2002.

Approved:

Stan Matsunaka
President of the Senate

Attest:

Karen Goldman
Secretary of the Senate

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