

Third Extraordinary Session
Sixty-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 02S-2027.02 Michael Dohr

SENATE BILL 02S-008

SENATE SPONSORSHIP

Pascoe, Thiebaut, and Tate

HOUSE SPONSORSHIP

Marshall,

Senate Committees

Judiciary

Appropriations

House Committees

A BILL FOR AN ACT

101 CONCERNING A LIFE SENTENCE AS THE HIGHEST PENALTY FOR CLASS

102 1 FELONY CRIMES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Repeals the death penalty in Colorado. Commutes the sentence of any inmates currently under a death sentence to a sentence of life imprisonment without parole.

Makes conforming amendments.

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

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

1 ACCUSED AND THE VICTIM, SOCIO-ECONOMIC FACTORS, AND THE ACCIDENT
2 OF THE LOCATION OF THE TRIAL. IN ADDITION, THE PUBLIC MAY BE
3 SAFE-GUARDED AS EFFECTIVELY, AND IN A LESS COSTLY MANNER, WITH A
4 SENTENCE OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

5 (5) CONSEQUENTLY, THE GENERAL ASSEMBLY FINDS IT IS
6 BENEFICIAL TO REPLACE THE PENALTY OF CAPITAL PUNISHMENT WITH A
7 SENTENCE OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

8 **16-11-902. Death penalty repeal - applicability - commute**
9 **current sentences.** AS OF THE EFFECTIVE DATE OF THIS PART 9, THE
10 DEATH PENALTY IS NO LONGER AVAILABLE AS A SENTENCING OPTION FOR
11 DEFENDANTS CONVICTED OF CLASS 1 FELONIES IN THE STATE OF
12 COLORADO. AS OF THE EFFECTIVE DATE OF THIS PART 9, ANY INMATE
13 UNDER THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONS WHO IS
14 INCARCERATED UNDER A DEATH SENTENCE SHALL HAVE HIS OR HER
15 SENTENCE COMMUTED TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT
16 THE POSSIBILITY OF PAROLE.

17 **SECTION 2. Repeal.** Part 3 of article 8 of title 16, part 4 of
18 article 9 of title 16, 16-11-101 (1) (c), 16-11-103, part 4 of article 11 of
19 title 16, part 8 of article 11 of title 16, 16-12-202, 16-12-204, 16-13-101
20 (1) (e), and 27-10.5-139, Colorado Revised Statutes, as they exist until
21 October 1, 2002, are repealed.

22 **SECTION 3. Repeal.** 16-12-202, 16-12-204, 18-1.3-104 (1) (c),
23 18-1.3-801 (1) (e), parts 11, 12, 13, and 14 of article 1.3 of title 18, and
24 27-10.5-139, Colorado Revised Statutes, as they will become effective
25 October 1, 2002, are repealed.

26 **SECTION 4. Repeal.** 13-4-102 (1) (h), 16-10-110, 16-12-101.5,
27 16-12-201, 16-12-203, 16-12-205, 16-12-206, 16-12-207, 16-12-208,

1 16-12-209, 16-12-210, 16-17-101, 18-3-107 (4), and 21-1-104 (3),
2 Colorado Revised Statutes, are repealed.

3 **SECTION 5.** 16-12-102 (1), Colorado Revised Statutes, is
4 amended to read:

5 **16-12-102. Appeals by the prosecution.** (1) The prosecution
6 may appeal any decision of a court in a criminal case upon any question
7 of law. Any order of a court that either dismisses one or more counts of
8 a charging document prior to trial or grants a new trial after the entry of
9 a verdict or judgment shall constitute a final order that shall be
10 immediately appealable pursuant to this subsection (1). If any act of the
11 general assembly is adjudged inoperative or unconstitutional in any
12 criminal case, it is the duty of the district attorney of the judicial district
13 in which the court making such decision is situated to appeal on behalf
14 of the people of the state of Colorado, unless the same issue of
15 constitutionality is already pending before a reviewing court in another
16 case. Nothing in this section shall authorize placing the defendant in
17 jeopardy a second time for the same offense. No docket fee shall be
18 required of the people upon an appeal under this section. The procedure
19 to be followed in filing and prosecuting appeals under this section shall
20 be as provided by applicable rule of the supreme court of Colorado.
21 ~~However, if a statute providing for the imposition of the death penalty is~~
22 ~~adjudged inoperative or inapplicable for any reason, such adjudication~~
23 ~~shall constitute a final order that shall be immediately appealable to the~~
24 ~~supreme court of Colorado, notwithstanding any statute or court rule to~~
25 ~~the contrary.~~

26 **SECTION 6.** 17-32-105 (3) (b) (I), Colorado Revised Statutes,
27 is amended as follows:

1 **17-32-105. Development of correctional education program -**
2 **goals and objectives.** (3) (b) A person in a correctional facility who
3 lacks basic and functional literacy skills shall be required to attend adult
4 basic education instruction unless such person:

5 (I) Is serving a life sentence; ~~or is under sentence of death;~~

6 **SECTION 7.** 18-1-105 (1) (a) (I), (1) (a) (II), (1) (a) (IV), (1) (a)
7 (V) (A), (4), and (5), Colorado Revised Statutes, as they exist until
8 October 1, 2002, are amended as follows:

9 **18-1-105. Felonies classified - presumptive penalties.**

10 (1) (a) (I) As to any person sentenced for a felony committed after July
11 1, 1979, and before July 1, 1984, felonies are divided into five classes
12 which are distinguished from one another by the following presumptive
13 ranges of penalties which are authorized upon conviction:

14	Class	Presumptive Range
15	1	Life imprisonment or death
16	2	Eight to twelve years plus one year of parole
17	3	Four to eight years plus one year of parole
18	4	Two to four years plus one year of parole
19	5	One to two years plus one year of parole

20 (II) As to any person sentenced for a felony committed on or after
21 July 1, 1984, and before July 1, 1985, felonies are divided into five
22 classes which are distinguished from one another by the following
23 presumptive ranges of penalties which are authorized upon conviction:

24	Class	Presumptive Range
25	1	Life imprisonment or death
26	2	Eight to twelve years
27	3	Four to eight years

1	5	One year	Three years	Two years
2		imprisonment	imprisonment	
3	6	One year	Eighteen months	One year
4		imprisonment	imprisonment	

5 (4) A person who has been convicted of a class 1 felony shall be
6 punished by life imprisonment. ~~unless a panel of judges imposes a death~~
7 ~~sentence pursuant to the procedure set forth in section 16-11-103, C.R.S.~~
8 As to any person sentenced for a class 1 felony, for an act committed on
9 or after July 1, 1985, AND PRIOR TO JULY 1, 1990, life imprisonment shall
10 mean imprisonment without the possibility of parole for forty calendar
11 years. As to any person sentenced for a class 1 felony, for an act
12 committed on or after July 1, 1990, life imprisonment shall mean
13 imprisonment without the possibility of parole.

14 (5) ~~In the event the death penalty as provided for in this section~~
15 ~~is held to be unconstitutional by the Colorado supreme court or the~~
16 ~~United States supreme court, a person convicted of a crime punishable by~~
17 ~~death under the laws of this state shall be punished by life imprisonment.~~
18 ~~In such circumstance, the court which previously sentenced a person to~~
19 ~~death shall cause such person to be brought before the court, and the~~
20 ~~court shall sentence such person to life imprisonment.~~

21 **SECTION 8.** 18-1.3-401 (1) (a) (I), (1) (a) (II), (1) (a) (IV), (1)
22 (a) (V) (A), (4), and (5), Colorado Revised Statutes, as they will become
23 effective October 1, 2002, are amended to read:

24 **18-1.3-401. Felonies classified - presumptive penalties.**
25 (1) (a) (I) As to any person sentenced for a felony committed after July
26 1, 1979, and before July 1, 1984, felonies are divided into five classes
27 which are distinguished from one another by the following presumptive

1 ranges of penalties which are authorized upon conviction:

2	Class	Presumptive Range
3	1	Life imprisonment or death
4	2	Eight to twelve years plus one year of parole
5	3	Four to eight years plus one year of parole
6	4	Two to four years plus one year of parole
7	5	One to two years plus one year of parole

8 (II) As to any person sentenced for a felony committed on or after
9 July 1, 1984, and before July 1, 1985, felonies are divided into five
10 classes which are distinguished from one another by the following
11 presumptive ranges of penalties which are authorized upon conviction:

12	Class	Presumptive Range
13	1	Life imprisonment or death
14	2	Eight to twelve years
15	3	Four to eight years
16	4	Two to four years
17	5	One to two years

18 (IV) As to any person sentenced for a felony committed on or
19 after July 1, 1985, but prior to July 1, 1993, felonies are divided into six
20 classes which are distinguished from one another by the following
21 presumptive ranges of penalties which are authorized upon conviction:

22	Class	Minimum Sentence	Maximum Sentence
23	1	Life imprisonment	Death LIFE IMPRISONMENT
24	2	Eight years imprisonment	Twenty-four years imprisonment
25	3	Four years imprisonment	Sixteen years imprisonment
26	4	Two years imprisonment	Eight years imprisonment
27	5	One year imprisonment	Four years imprisonment

1 6 One year imprisonment Two years imprisonment

2 (V) (A) As to any person sentenced for a felony committed on or
3 after July 1, 1993, felonies are divided into six classes which are
4 distinguished from one another by the following presumptive ranges of
5 penalties which are authorized upon conviction:

6	Class	Minimum Sentence	Maximum Sentence	Mandatory Period of Parole
8	1	Life imprisonment	Death LIFE IMPRISONMENT	None
10	2	Eight years imprisonment	Twenty-four years imprisonment	Five years
12	3	Four years imprisonment	Twelve years imprisonment	Five years
14	4	Two years imprisonment	Six years imprisonment	Three years
16	5	One year imprisonment	Three years imprisonment	Two years
18	6	One year imprisonment	Eighteen months imprisonment	One year

20 (4) A person who has been convicted of a class 1 felony shall be
21 punished by life imprisonment. ~~unless a panel of judges imposes a death~~
22 ~~sentence pursuant to the procedure set forth in section 18-1.3-1201.~~ As
23 to any person sentenced for a class 1 felony, for an act committed on or
24 after July 1, 1985, AND PRIOR TO JULY 1, 1990, life imprisonment shall
25 mean imprisonment without the possibility of parole for forty calendar
26 years. As to any person sentenced for a class 1 felony, for an act
27 committed on or after July 1, 1990, life imprisonment shall mean

1 imprisonment without the possibility of parole.

2 (5) ~~In the event the death penalty as provided for in this section~~
3 ~~is held to be unconstitutional by the Colorado supreme court or the~~
4 ~~United States supreme court, a person convicted of a crime punishable by~~
5 ~~death under the laws of this state shall be punished by life imprisonment.~~
6 ~~In such circumstance, the court which previously sentenced a person to~~
7 ~~death shall cause such person to be brought before the court, and the~~
8 ~~court shall sentence such person to life imprisonment.~~

9 **SECTION 9.** 18-1-409 (1), Colorado Revised Statutes, as it exists
10 until October 1, 2002, is amended to read:

11 **18-1-409. Appellate review of sentence for a felony.** (1) When
12 sentence is imposed upon any person following a conviction of any
13 felony, ~~other than a class 1 felony in which a death sentence is~~
14 ~~automatically reviewed pursuant to section 16-11-103 (6), C.R.S., or~~
15 ~~section 16-11-802 (6), C.R.S.,~~ the person convicted shall have the right
16 to one appellate review of the propriety of the sentence, having regard to
17 the nature of the offense, the character of the offender, and the public
18 interest, and the manner in which the sentence was imposed, including
19 the sufficiency and accuracy of the information on which it was based;
20 except that, if the sentence is within a range agreed upon by the parties
21 pursuant to a plea agreement, the defendant shall not have the right of
22 appellate review of the propriety of the sentence. The procedures to be
23 employed in the review shall be as provided by supreme court rule.

24 **SECTION 10.** 18-1-409 (1), Colorado Revised Statutes, as it will
25 become effective October 1, 2002, is amended to read:

26 **18-1-409. Appellate review of sentence for a felony.** (1) When
27 sentence is imposed upon any person following a conviction of any

1 felony, ~~other than a class 1 felony in which a death sentence is~~
2 ~~automatically reviewed pursuant to section 18-1.3-1201 (6) or~~
3 ~~18-1.3-1302(6)~~; the person convicted shall have the right to one appellate
4 review of the propriety of the sentence, having regard to the nature of the
5 offense, the character of the offender, and the public interest, and the
6 manner in which the sentence was imposed, including the sufficiency and
7 accuracy of the information on which it was based; except that, if the
8 sentence is within a range agreed upon by the parties pursuant to a plea
9 agreement, the defendant shall not have the right of appellate review of
10 the propriety of the sentence. The procedures to be employed in the
11 review shall be as provided by supreme court rule.

12 **SECTION 11.** 18-1-410 (1.5), (2), and (3), Colorado Revised
13 Statutes, are amended to read:

14 **18-1-410. Postconviction remedy.** (1.5) ~~An application for~~
15 ~~postconviction review in a class 1 felony case where a sentence of death~~
16 ~~has been imposed shall be limited to claims of newly discovered evidence~~
17 ~~and ineffective assistance of counsel; except that, for any sentence of~~
18 ~~death imposed on or after the date upon which the Colorado supreme~~
19 ~~court adopts rules implementing the unitary system of review established~~
20 ~~by part 2 of article 12 of title 16, C.R.S., any application for~~
21 ~~postconviction review in such case shall be governed by the provisions~~
22 ~~of part 2 of article 12 of title 16, C.R.S.~~

23 (2) (a) ~~Except as otherwise required by paragraph (b) of this~~
24 ~~subsection (2)~~; Procedures to be followed in implementation of the right
25 to postconviction remedy shall be as prescribed by rule of the supreme
26 court of the state of Colorado.

27 (b) ~~In any class 1 felony case where a sentence of death has been~~

1 imposed, the district court shall expeditiously consider an application for
2 postconviction remedy. It is the general assembly's intent that the district
3 court give priority to cases in which a sentence of death has been
4 imposed.

5 (3) (a) ~~Except as otherwise provided in paragraph (b) of this~~
6 ~~subsection (3), an appeal of any order by the district court granting or~~
7 ~~denying postconviction relief in a case in which a sentence of death has~~
8 ~~been imposed shall be to the Colorado supreme court as provided by~~
9 ~~section 13-4-102 (1) (h), C.R.S. The procedures to be followed in the~~
10 ~~implementation of such review shall be in accordance with any rules~~
11 ~~adopted by the Colorado supreme court in response to the legislative~~
12 ~~intent expressed in section 16-12-101.5 (1), C.R.S.~~

13 (b) ~~In any class 1 felony case in which a sentence of death is~~
14 ~~imposed on or after the date upon which the Colorado supreme court~~
15 ~~adopts rules implementing the unitary system of review established under~~
16 ~~part 2 of article 12 of title 16, C.R.S., the procedures for appealing any~~
17 ~~order by the district court granting or denying postconviction relief and~~
18 ~~review by the Colorado supreme court of such order shall be governed by~~
19 ~~the provisions of part 2 of article 12 of title 16, C.R.S., and by such rules~~
20 ~~adopted by the supreme court.~~

21 **SECTION 12.** 18-3-107 (3), Colorado Revised Statutes, as it
22 exists until October 1, 2002, is amended to read:

23 **18-3-107. First degree murder of a peace officer or firefighter**
24 **- legislative declaration.** (3) A person convicted of first degree murder
25 of a peace officer or firefighter shall be punished by life imprisonment
26 without the possibility of parole for the rest of his or her natural life.
27 ~~unless a panel of judges imposes a death sentence pursuant to the~~

1 ~~procedure set forth in section 16-11-103, C.R.S.~~ Nothing in this
2 subsection (3) shall be construed as limiting the power of the governor to
3 grant reprieves, commutations, and pardons pursuant to section 7 of
4 article IV of the Colorado constitution.

5 **SECTION 13.** 18-3-107 (3), Colorado Revised Statutes, as it
6 will become effective October 1, 2002, is amended to read:

7 **18-3-107. First degree murder of a peace officer or firefighter**
8 **- legislative declaration.** (3) A person convicted of first degree murder
9 of a peace officer or firefighter shall be punished by life imprisonment
10 without the possibility of parole for the rest of his or her natural life.
11 ~~unless a panel of judges imposes a death sentence pursuant to the~~
12 ~~procedure set forth in section 18-1.3-1201.~~ Nothing in this subsection (3)
13 shall be construed as limiting the power of the governor to grant
14 reprieves, commutations, and pardons pursuant to section 7 of article IV
15 of the Colorado constitution.

16 **SECTION 14.** 18-3-301 (2), Colorado Revised Statutes, is
17 amended to read:

18 **18-3-301. First degree kidnapping.** (2) Whoever commits first
19 degree kidnapping is guilty of a class 1 felony if the person kidnapped
20 shall have suffered bodily injury. ~~but no person convicted of first degree~~
21 ~~kidnapping shall suffer the death penalty if the person kidnapped was~~
22 ~~liberated alive prior to the conviction of the kidnapper.~~

23 **SECTION 15.** 24-4.1-303 (4), Colorado Revised Statutes, is
24 amended to read:

25 **24-4.1-303. Procedures for assuring rights of victims of crimes.**
26 (4) After a crime has been charged, unless inconsistent with the
27 requirements of investigative activities, the district attorney shall consult,

1 where practicable, with the victim concerning the reduction of charges,
2 negotiated pleas, diversion, dismissal, ~~seeking of death penalty~~, or other
3 disposition. Failure to comply with this subsection (4) shall not
4 invalidate any decision, agreement, or disposition. This subsection (4)
5 shall not be construed as a restriction on or delegation of the district
6 attorney's authority under the constitution and laws of this state.

7 **SECTION 16.** 16-8-103.6 (1) (a) and (2) (a), Colorado Revised
8 Statutes, as they exist until October 1, 2002, are amended to read:

9 **16-8-103.6. Waiver of privilege.** (1) (a) A defendant who places
10 his or her mental condition at issue by pleading not guilty by reason of
11 insanity pursuant to section 16-8-103, asserting the affirmative defense
12 of impaired mental condition pursuant to section 16-8-103.5, OR raising
13 the question of incompetency to proceed pursuant to section 16-8-110 ~~or~~
14 ~~disclosing witnesses who may provide evidence concerning the~~
15 ~~defendant's mental condition during a sentencing hearing held pursuant~~
16 ~~to section 16-11-103 or 16-11-802~~ waives any claim of confidentiality or
17 privilege as to communications made by the defendant to a physician or
18 psychologist in the course of an examination or treatment for such mental
19 condition for the purpose of any trial OR hearing on the issue of such
20 mental condition. ~~or sentencing hearing conducted pursuant to section~~
21 ~~16-11-103 or 16-11-802.~~ The court shall order both the prosecutor and
22 the defendant to exchange the names, addresses, reports, and statements
23 of any physician or psychologist who has examined or treated the
24 defendant for such mental condition.

25 (2) (a) A defendant who places his or her mental condition at
26 issue by pleading not guilty by reason of insanity pursuant to section
27 16-8-103, BY raising the question of incompetency to proceed pursuant

1 to section 16-8-110, ~~or disclosing witnesses who may provide evidence~~
2 ~~concerning the defendant's mental condition during a sentencing hearing~~
3 ~~held pursuant to section 16-11-103~~ or, for offenses committed on or after
4 July 1, 1999, by seeking to introduce evidence concerning his or her
5 mental condition pursuant to section 16-8-107 (3) waives any claim of
6 confidentiality or privilege as to communications made by the defendant
7 to a physician or psychologist in the course of an examination or
8 treatment for such mental condition for the purpose of any trial OR
9 hearing on the issue of such mental condition. ~~or sentencing hearing~~
10 ~~conducted pursuant to section 16-11-103~~. The court shall order both the
11 prosecutor and the defendant to exchange the names, addresses, reports,
12 and statements of any physician or psychologist who has examined or
13 treated the defendant for such mental condition.

14 **SECTION 17.** 16-8-103.6 (1) (a) and (2) (a), Colorado Revised
15 Statutes, as they will become effective October 1, 2002, are amended to
16 read:

17 **16-8-103.6. Waiver of privilege.** (1) (a) A defendant who places
18 his or her mental condition at issue by pleading not guilty by reason of
19 insanity pursuant to section 16-8-103, asserting the affirmative defense
20 of impaired mental condition pursuant to section 16-8-103.5, OR raising
21 the question of incompetency to proceed pursuant to section 16-8-110 ~~or~~
22 ~~disclosing witnesses who may provide evidence concerning the~~
23 ~~defendant's mental condition during a sentencing hearing held pursuant~~
24 ~~to section 18-1.3-1201 or 18-1.3-1302, C.R.S.~~, waives any claim of
25 confidentiality or privilege as to communications made by the defendant
26 to a physician or psychologist in the course of an examination or
27 treatment for such mental condition for the purpose of any trial OR

1 hearing on the issue of such mental condition. ~~or sentencing hearing~~
2 ~~conducted pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S.~~ The
3 court shall order both the prosecutor and the defendant to exchange the
4 names, addresses, reports, and statements of any physician or
5 psychologist who has examined or treated the defendant for such mental
6 condition.

7 (2) (a) A defendant who places his or her mental condition at
8 issue by pleading not guilty by reason of insanity pursuant to section
9 16-8-103, BY raising the question of incompetency to proceed pursuant
10 to section 16-8-110, ~~or disclosing witnesses who may provide evidence~~
11 ~~concerning the defendant's mental condition during a sentencing hearing~~
12 ~~held pursuant to section 18-1.3-1201, C.R.S.~~, or, for offenses committed
13 on or after July 1, 1999, by seeking to introduce evidence concerning his
14 or her mental condition pursuant to section 16-8-107 (3) waives any
15 claim of confidentiality or privilege as to communications made by the
16 defendant to a physician or psychologist in the course of an examination
17 or treatment for such mental condition for the purpose of any trial OR
18 hearing on the issue of such mental condition. ~~or sentencing hearing~~
19 ~~conducted pursuant to section 18-1.3-1201, C.R.S.~~ The court shall order
20 both the prosecutor and the defendant to exchange the names, addresses,
21 reports, and statements of any physician or psychologist who has
22 examined or treated the defendant for such mental condition.

23 **SECTION 18.** 16-8-106 (2), (3) (a), and (3) (b), Colorado
24 Revised Statutes, as they exist until October 1, 2002, are amended to
25 read:

26 **16-8-106. Examinations and report.** (2) (a) The defendant shall
27 have a privilege against self-incrimination during the course of an

1 examination under this section. The fact of the defendant's
2 noncooperation with psychiatrists and other personnel conducting the
3 examination may be admissible in the defendant's trial on the issues of
4 insanity, competency, or impaired mental condition. ~~and in any~~
5 ~~sentencing hearing held pursuant to section 16-11-103 or 16-11-802.~~
6 This paragraph (a) shall apply only to offenses committed before July 1,
7 1995.

8 (b) The defendant shall have a privilege against self-incrimination
9 during the course of an examination under this section. The fact of the
10 defendant's noncooperation with psychiatrists and other personnel
11 conducting the examination may be admissible in the defendant's trial on
12 the issues of insanity or competency. ~~and in any sentencing hearing held~~
13 ~~pursuant to section 16-11-103.~~ This paragraph (b) shall apply to offenses
14 committed on or after July 1, 1995, but prior to July 1, 1999.

15 (c) The defendant shall cooperate with psychiatrists and other
16 personnel conducting any examination ordered by the court pursuant to
17 this section. Statements made by the defendant in the course of such
18 examination shall be protected as provided in section 16-8-107. If the
19 defendant does not cooperate with psychiatrists and other personnel
20 conducting the examination, the court shall not allow the defendant to
21 call any psychiatrist or other expert witness to provide evidence at the
22 defendant's trial concerning the defendant's mental condition including,
23 but not limited to, providing evidence on the issues of insanity or
24 competency. ~~or at any sentencing hearing held pursuant to section~~
25 ~~16-11-103.~~ In addition, the fact of the defendant's noncooperation with
26 psychiatrists and other personnel conducting the examination may be
27 admissible in the defendant's trial to rebut any evidence introduced by the

1 defendant with regard to the defendant's mental condition including, but
2 not limited to, the issues of insanity and competency. ~~and in any~~
3 ~~sentencing hearing held pursuant to section 16-11-103.~~ This paragraph
4 (c) shall apply to offenses committed on or after July 1, 1999.

5 (3) (a) To aid in forming an opinion as to the mental condition of
6 the defendant, it is permissible in the course of an examination under this
7 section to use confessions and admissions of the defendant and any other
8 evidence of the circumstances surrounding the commission of the offense,
9 as well as the medical and social history of the defendant, in questioning
10 the defendant. When the defendant is noncooperative with psychiatrists
11 and other personnel conducting the examination, an opinion of the mental
12 condition of the defendant may be rendered by such psychiatrists or other
13 personnel based upon such confessions, admissions, and any other
14 evidence of the circumstances surrounding the commission of the offense,
15 as well as the known medical and social history of the defendant, and
16 such opinion may be admissible into evidence at trial. ~~and in any~~
17 ~~sentencing hearing held pursuant to section 16-11-103 or 16-11-802.~~ It
18 shall also be permissible to conduct a narcoanalytic interview of the
19 defendant with such drugs as are medically appropriate and to subject the
20 defendant to polygraph examination. In any trial or hearing on the issue
21 of the defendant's sanity, eligibility for release, impaired mental
22 condition, or competency to proceed, ~~and in any sentencing hearing held~~
23 ~~pursuant to section 16-11-103 or 16-11-802,~~ the physicians and other
24 personnel conducting the examination may testify to the results of any
25 such procedures and the statements and reactions of the defendant insofar
26 as the same entered into the formation of their opinions as to the mental
27 condition of the defendant both at the time of the commission of the

1 alleged offense and at the present time. This paragraph (a) shall apply
2 only to offenses committed before July 1, 1995.

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

27 **SECTION 19.** 16-8-106 (2), (3) (a), and (3) (b), Colorado

1 Revised Statutes, as they will become effective October 1, 2002, are
2 amended to read:

3 **16-8-106. Examinations and report.** (2) (a) The defendant shall
4 have a privilege against self-incrimination during the course of an
5 examination under this section. The fact of the defendant's
6 noncooperation with psychiatrists and other personnel conducting the
7 examination may be admissible in the defendant's trial on the issues of
8 insanity, competency, or impaired mental condition. ~~and in any~~
9 ~~sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302,~~
10 ~~C.R.S.~~ This paragraph (a) shall apply only to offenses committed before
11 July 1, 1995.

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

19 (c) The defendant shall cooperate with psychiatrists and other
20 personnel conducting any examination ordered by the court pursuant to
21 this section. Statements made by the defendant in the course of such
22 examination shall be protected as provided in section 16-8-107. If the
23 defendant does not cooperate with psychiatrists and other personnel
24 conducting the examination, the court shall not allow the defendant to
25 call any psychiatrist or other expert witness to provide evidence at the
26 defendant's trial concerning the defendant's mental condition including,
27 but not limited to, providing evidence on the issues of insanity or

1 competency. ~~or at any sentencing hearing held pursuant to section~~
2 ~~18-1.3-1201, C.R.S.~~ In addition, the fact of the defendant's
3 noncooperation with psychiatrists and other personnel conducting the
4 examination may be admissible in the defendant's trial to rebut any
5 evidence introduced by the defendant with regard to the defendant's
6 mental condition including, but not limited to, the issues of insanity and
7 competency. ~~and in any sentencing hearing held pursuant to section~~
8 ~~18-1.3-1201, C.R.S.~~ This paragraph (c) shall apply to offenses
9 committed on or after July 1, 1999.

10 (3) (a) To aid in forming an opinion as to the mental condition of
11 the defendant, it is permissible in the course of an examination under this
12 section to use confessions and admissions of the defendant and any other
13 evidence of the circumstances surrounding the commission of the offense,
14 as well as the medical and social history of the defendant, in questioning
15 the defendant. When the defendant is noncooperative with psychiatrists
16 and other personnel conducting the examination, an opinion of the mental
17 condition of the defendant may be rendered by such psychiatrists or other
18 personnel based upon such confessions, admissions, and any other
19 evidence of the circumstances surrounding the commission of the offense,
20 as well as the known medical and social history of the defendant, and
21 such opinion may be admissible into evidence at trial. ~~and in any~~
22 ~~sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302,~~
23 ~~C.R.S.~~ It shall also be permissible to conduct a narcoanalytic interview
24 of the defendant with such drugs as are medically appropriate and to
25 subject the defendant to polygraph examination. In any trial or hearing
26 on the issue of the defendant's sanity, eligibility for release, impaired
27 mental condition, or competency to proceed, ~~and in any sentencing~~

1 ~~hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S.~~, the
2 physicians and other personnel conducting the examination may testify
3 to the results of any such procedures and the statements and reactions of
4 the defendant insofar as the same entered into the formation of their
5 opinions as to the mental condition of the defendant both at the time of
6 the commission of the alleged offense and at the present time. This
7 paragraph (a) shall apply only to offenses committed before July 1, 1995.

8 (b) To aid in forming an opinion as to the mental condition of the
9 defendant, it is permissible in the course of an examination under this
10 section to use confessions and admissions of the defendant and any other
11 evidence of the circumstances surrounding the commission of the offense,
12 as well as the medical and social history of the defendant, in questioning
13 the defendant. When the defendant is noncooperative with psychiatrists
14 and other personnel conducting the examination, an opinion of the mental
15 condition of the defendant may be rendered by such psychiatrists or other
16 personnel based upon such confessions, admissions, and any other
17 evidence of the circumstances surrounding the commission of the offense,
18 as well as the known medical and social history of the defendant, and
19 such opinion may be admissible into evidence at trial. ~~and in any~~
20 ~~sentencing hearing held pursuant to section 18-1.3-1201, C.R.S.~~ It shall
21 also be permissible to conduct a narcoanalytic interview of the defendant
22 with such drugs as are medically appropriate and to subject the defendant
23 to polygraph examination. In any trial or hearing on the issue of the
24 defendant's sanity, eligibility for release, or competency to proceed, ~~and~~
25 ~~in any sentencing hearing held pursuant to section 18-1.3-1201, C.R.S.~~,
26 the physicians and other personnel conducting the examination may
27 testify to the results of any such procedures and the statements and

1 reactions of the defendant insofar as the same entered into the formation
2 of their opinions as to the mental condition of the defendant both at the
3 time of the commission of the alleged offense and at the present time.
4 This paragraph (b) shall apply to offenses committed on or after July 1,
5 1995.

6 **SECTION 20.** 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado
7 Revised Statutes, as they exist until October 1, 2002, are amended to
8 read:

9 **16-8-107. Evidence.** (1) (b) ~~Evidence acquired directly or~~
10 ~~indirectly for the first time from a communication derived from the~~
11 ~~defendant's mental processes during the course of a court-ordered~~
12 ~~examination under section 16-8-108 or acquired pursuant to section~~
13 ~~16-8-103.6 is admissible at any sentencing hearing held pursuant to~~
14 ~~section 16-11-103 or 16-11-802 only to prove the existence or absence of~~
15 ~~any mitigating factor.~~

16 (c) If the defendant testifies in his or her own behalf upon the trial
17 of the issues raised by the plea of not guilty, ~~or at a sentencing hearing~~
18 ~~held pursuant to section 16-11-103 or 16-11-802,~~ the provisions of this
19 section shall not bar any evidence used to impeach or rebut the
20 defendant's testimony.

21 (1.5) (b) ~~Evidence acquired directly or indirectly for the first time~~
22 ~~from a communication derived from the defendant's mental processes~~
23 ~~during the course of a court-ordered examination under section 16-8-106~~
24 ~~or acquired pursuant to section 16-8-103.6 is admissible at any sentencing~~
25 ~~hearing held pursuant to section 16-11-103 only to prove the existence or~~
26 ~~absence of any mitigating factor.~~

27 **SECTION 21.** 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado

1 Revised Statutes, as they will become effective October 1, 2002, are
2 amended to read:

3 **16-8-107. Evidence.** (1) (b) ~~Evidence acquired directly or~~
4 ~~indirectly for the first time from a communication derived from the~~
5 ~~defendant's mental processes during the course of a court-ordered~~
6 ~~examination under section 16-8-108 or acquired pursuant to section~~
7 ~~16-8-103.6 is admissible at any sentencing hearing held pursuant to~~
8 ~~section 18-1.3-1201 or 18-1.3-1302, C.R.S., only to prove the existence~~
9 ~~or absence of any mitigating factor.~~

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

15 (1.5) (b) ~~Evidence acquired directly or indirectly for the first time~~
16 ~~from a communication derived from the defendant's mental processes~~
17 ~~during the course of a court-ordered examination under section 16-8-106~~
18 ~~or acquired pursuant to section 16-8-103.6 is admissible at any sentencing~~
19 ~~hearing held pursuant to section 18-1.3-1201, C.R.S., only to prove the~~
20 ~~existence or absence of any mitigating factor.~~

21 **SECTION 22.** 16-8-110 (1), (2) (c), and (3), Colorado Revised
22 Statutes, are amended to read:

23 **16-8-110. Mental incompetency to proceed - effect - how and**
24 **when raised.** (1) (a) No person shall be tried OR sentenced ~~or executed~~
25 if such person is incompetent to proceed at that stage of the proceedings
26 against him or her. This paragraph (a) shall apply only to offenses
27 committed before July 1, 1995.

1 (b) No person shall be tried OR sentenced ~~or executed~~ if such
2 person is incompetent to proceed at that stage of the proceedings against
3 him or her. This paragraph (b) shall apply to offenses committed on or
4 after July 1, 1995.

5 (2) The question of the defendant's competency to proceed shall
6 be raised in the following manner:

7 (c) ~~By the affidavit of any chief officer of an institution having~~
8 ~~custody of a defendant awaiting execution.~~

9 (3) ~~Notwithstanding any provision of this part 1 or part 2 of this~~
10 ~~article to the contrary, the question of whether a convicted person is~~
11 ~~mentally incompetent to be executed shall be raised and determined as~~
12 ~~provided in part 3 of this article.~~

13 **SECTION 23.** 16-8-111 (3) and (4), Colorado Revised Statutes,
14 are amended to read:

15 **16-8-111. Determination of incompetency to proceed.** (3) If the
16 question of defendant's incompetency to proceed was raised after a jury
17 was impaneled to try the issues raised by a plea of not guilty and the
18 court determines that the defendant is incompetent to proceed or orders
19 the defendant committed for a competency examination, the court may
20 declare a mistrial. Declaration of a mistrial under these circumstances
21 does not constitute jeopardy, nor does it prohibit the trial OR sentencing
22 ~~or execution~~ of the defendant for the same offense after he OR SHE has
23 been found restored to competency.

24 (4) ~~Notwithstanding any provision of this part 1 or part 2 of this~~
25 ~~article to the contrary, the question of whether a convicted person is~~
26 ~~mentally incompetent to be executed shall be raised and determined as~~
27 ~~provided in part 3 of this article.~~

1 **SECTION 24.** 18-3-102 (1) (c), Colorado Revised Statutes, is
2 amended to read:

3 **18-3-102. Murder in the first degree.** (1) A person commits the
4 crime of murder in the first degree if:

5 (c) ~~By perjury or subornation of perjury he procures the~~
6 ~~conviction and execution of any innocent person; or~~

7 **SECTION 25.** 24-4.1-302.5 (1) (g), Colorado Revised Statutes,
8 as it exists until October 1, 2002, is amended to read:

9 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
10 preserve and protect a victim's rights to justice and due process, each
11 victim of a crime shall have the following rights:

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

18 **SECTION 26.** 24-4.1-302.5 (1) (g), Colorado Revised Statutes,
19 as it will become effective October 1, 2002, is amended to read:

20 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
21 preserve and protect a victim's rights to justice and due process, each
22 victim of a crime shall have the following rights:

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

1 that the victim has sustained as a result of the crime;

2 **SECTION 27.** 16-4-101 (1) (a), (3), and (4), Colorado Revised
3 Statutes, are amended to read:

4 **16-4-101. Bailable offenses.** (1) All persons shall be bailable by
5 sufficient sureties except:

6 (a) ~~For capital offenses when proof is evident or presumption is~~
7 ~~great; or~~

8 (3) ~~In any capital case, the defendant may make a written motion~~
9 ~~for admission to bail upon the ground that the proof is not evident or that~~
10 ~~presumption is not great, and the court shall promptly conduct a hearing~~
11 ~~upon such motion. At such hearing, the burden shall be upon the people~~
12 ~~to establish that the proof is evident or that the presumption is great. The~~
13 ~~court may combine in a single hearing the questions as to whether the~~
14 ~~proof is evident or the presumption great with the determination of the~~
15 ~~existence of probable cause to believe that the defendant committed the~~
16 ~~crime charged.~~

17 (4) ~~Except in the case of a capital offense,~~ If a person is denied
18 bail under this section, the trial of the person shall be commenced not
19 more than ninety days after the date on which bail is denied. If the trial
20 is not commenced within ninety days and the delay is not attributable to
21 the defense, the court shall immediately schedule a bail hearing and shall
22 set the amount of the bail for the person.

23 **SECTION 28.** 16-4-201 (1), Colorado Revised Statutes, is
24 amended to read:

25 **16-4-201. Bail after conviction.** (1) After conviction, either
26 before or after sentencing, the defendant may orally, or in writing, move
27 for release on bail pending determination of a motion for a new trial or

1 motion in arrest of judgment or during any stay of execution or pending
2 review by an appellate court, and ~~except in cases where the defendant has~~
3 ~~been convicted of a capital offense~~, the trial court, in its discretion, may
4 continue the bond given for pretrial release, or may release the defendant
5 on increased bail, or require bond under one or more of the alternatives
6 set forth in section 16-4-104. The district attorney must be present at the
7 time the court passes on a defendant's motion for release on bail after
8 conviction. No bond shall be continued in effect following a plea of
9 guilty or of nolo contendere or following conviction unless the written
10 consents of the sureties, if any, are filed of record. No court shall require
11 the posting of any form of bond which allows for the continuance of said
12 bond after a plea of guilty or of nolo contendere or following conviction
13 without the filing of record of written consents of the sureties, if any.

14 **SECTION 29.** 16-10-104 (1), Colorado Revised Statutes, is
15 amended to read:

16 **16-10-104. Peremptory challenges.** (1) ~~In capital cases, the~~
17 ~~state and the defendant, when there is one defendant, shall each be~~
18 ~~entitled to ten peremptory challenges.~~ In all other cases, where there is
19 one defendant and the punishment may be by imprisonment in the
20 correctional facilities operated by the department of corrections, the state
21 and the defendant shall each be entitled to five peremptory challenges,
22 and in all other cases to three peremptory challenges. If there is more
23 than one defendant, ~~each side shall be entitled to an additional three~~
24 ~~peremptory challenges for every defendant after the first in capital cases,~~
25 ~~but not exceeding twenty peremptory challenges to each side; in all other~~
26 ~~cases, where~~ IF the punishment may be by imprisonment in the
27 correctional facilities operated by the department of corrections, EACH

1 SIDE SHALL BE ENTITLED to two additional peremptory challenges for
2 every defendant after the first, not exceeding fifteen peremptory
3 challenges to each side; and in all other cases, to one additional
4 peremptory challenge for every defendant after the first, not exceeding
5 ten peremptory challenges to each side. In any case where there are
6 multiple defendants, every peremptory challenge shall be made and
7 considered as the joint peremptory challenge of all defendants. In case
8 of the consolidation of any indictments, informations, complaints, or
9 summonses and complaints for trial, such consolidated cases shall be
10 considered, for all purposes concerning peremptory challenges, as though
11 the defendants had been joined in the same indictment, information,
12 complaint, or summons and complaint. When trial is held on a plea of
13 not guilty by reason of insanity, the number of peremptory challenges
14 shall be the same as if trial were on the issue of substantive guilt.

15 **SECTION 30. Safety clause.** The general assembly hereby
16 finds, determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.