

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 09-0282.01 Michael Dohr

HOUSE BILL 09-1274

HOUSE SPONSORSHIP

Weissmann,

SENATE SPONSORSHIP

Carroll M., Groff

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CAPITAL CRIMES, AND MAKING AN APPROPRIATION IN**
102 **CONNECTION THEREWITH.**

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. Declares the intent of the general assembly to use the savings from the abolition of the death penalty to fund the cold case unit in the Colorado bureau of investigation. 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 ground that the proof is not evident or that presumption is not great, and
2 the court shall promptly conduct a hearing upon such motion. At such
3 hearing, the burden shall be upon the people to establish that the proof is
4 evident or that the presumption is great. The court may combine in a
5 single hearing the questions as to whether the proof is evident or the
6 presumption great with the determination of the existence of probable
7 cause to believe that the defendant committed the crime charged.

8 (4) Except in the case of a ~~capital offense~~ CLASS 1 FELONY, if a
9 person is denied bail under this section, the trial of the person shall be
10 commenced not more than ninety days after the date on which bail is
11 denied. If the trial is not commenced within ninety days and the delay is
12 not attributable to the defense, the court shall immediately schedule a bail
13 hearing and shall set the amount of the bail for the person.

14 **SECTION 4.** 16-4-201 (1) (a), Colorado Revised Statutes, is
15 amended to read:

16 **16-4-201. Bail after conviction.** (1) (a) After conviction, either
17 before or after sentencing, the defendant may orally, or in writing, move
18 for release on bail pending determination of a motion for a new trial or
19 motion in arrest of judgment or during any stay of execution or pending
20 review by an appellate court, and, except in cases where the defendant has
21 been convicted of a ~~capital offense~~ CLASS 1 FELONY, the trial court, in its
22 discretion, may continue the bond given for pretrial release, or may
23 release the defendant on increased bail, or require bond under one or
24 more of the alternatives set forth in section 16-4-104.

25 **SECTION 5.** 16-8-103.6 (1) (a) and (2) (a), Colorado Revised
26 Statutes, is amended to read:

27 **16-8-103.6. Waiver of privilege.** (1) (a) A defendant who places

1 his or her mental condition at issue by pleading not guilty by reason of
2 insanity pursuant to section 16-8-103, OR asserting the affirmative
3 defense of impaired mental condition pursuant to section 16-8-103.5, ~~or~~
4 ~~disclosing witnesses who may provide evidence concerning the~~
5 ~~defendant's mental condition during a sentencing hearing held pursuant~~
6 ~~to section 18-1.3-1201 or 18-1.3-1302, C.R.S.~~, waives any claim of
7 confidentiality or privilege as to communications made by the defendant
8 to a physician or psychologist in the course of an examination or
9 treatment for ~~such~~ THE mental condition for the purpose of any trial OR
10 hearing on the issue of ~~such~~ THE mental condition. ~~or sentencing hearing~~
11 ~~conducted pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S.~~ The
12 court shall order both the prosecutor and the defendant to exchange the
13 names, addresses, reports, and statements of any physician or
14 psychologist who has examined or treated the defendant for ~~such~~ THE
15 mental condition.

16 (2) (a) A defendant who places his or her mental condition at issue
17 by pleading not guilty by reason of insanity pursuant to section 16-8-103
18 ~~or disclosing witnesses who may provide evidence concerning the~~
19 ~~defendant's mental condition during a sentencing hearing held pursuant~~
20 ~~to section 18-1.3-1201 or 18-1.4-102, C.R.S.~~, or, for offenses committed
21 on or after July 1, 1999, by seeking to introduce evidence concerning his
22 or her mental condition pursuant to section 16-8-107 (3) waives any claim
23 of confidentiality or privilege as to communications made by the
24 defendant to a physician or psychologist in the course of an examination
25 or treatment for ~~such~~ THE mental condition for the purpose of any trial OR
26 hearing on the issue of ~~such~~ THE mental condition. ~~or sentencing hearing~~
27 ~~conducted pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S.~~ The

1 court shall order both the prosecutor and the defendant to exchange the
2 names, addresses, reports, and statements of any physician or
3 psychologist who has examined or treated the defendant for ~~such~~ THE
4 mental condition.

5 **SECTION 6.** 16-8-106 (2), (3) (a), (3) (b), (6) (b), and (7) (b),
6 Colorado Revised Statutes, are amended to read:

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

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

22 (c) The defendant shall cooperate with psychiatrists and other
23 personnel conducting any examination ordered by the court pursuant to
24 this section. Statements made by the defendant in the course of ~~such~~ THE
25 examination shall be protected as provided in section 16-8-107. If the
26 defendant does not cooperate with psychiatrists and other personnel
27 conducting the examination, the court shall not allow the defendant to call

1 any psychiatrist or other expert witness to provide evidence at the
2 defendant's trial concerning the defendant's mental condition including,
3 but not limited to, providing evidence on the issue of insanity. ~~or at any~~
4 ~~sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102,~~
5 ~~C.R.S.~~ In addition, the fact of the defendant's noncooperation with
6 psychiatrists and other personnel conducting the examination may be
7 admissible in the defendant's trial to rebut any evidence introduced by the
8 defendant with regard to the defendant's mental condition including, but
9 not limited to, the issue of insanity. ~~and in any sentencing hearing held~~
10 ~~pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S.~~ This paragraph (c)
11 shall apply to offenses committed on or after July 1, 1999.

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

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

10 (b) To aid in forming an opinion as to the mental condition of the
11 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 18-1.4-102,~~
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 or eligibility for release, ~~and in any~~
27 ~~sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102,~~

1 ~~C.R.S.~~, the physicians and other personnel conducting the examination
2 may testify to the results of any such procedures and the statements and
3 reactions of the defendant insofar as the same entered into the formation
4 of their opinions as to the mental condition of the defendant both at the
5 time of the commission of the alleged offense and at the present time.
6 This paragraph (b) shall apply to offenses committed on or after July 1,
7 1995.

8 (6) With respect to offenses committed on or after July 1, 1995,
9 the report of examination shall include, but is not limited to, the items
10 described in paragraphs (a) to (c) of subsection (5) of this section, and:

11 (b) Separate opinions as to whether the defendant was insane or
12 is ineligible for release, as those terms are defined in this article. ~~and, in~~
13 ~~any class 1 felony case, an opinion as to how the mental disease or defect~~
14 ~~or the condition of mind caused by mental disease or defect affects any~~
15 ~~mitigating factor.~~ The nature of the opinions required depends upon the
16 type of examination ordered by the court.

17 (7) With respect to offenses committed on or after July 1, 1999,
18 when a defendant has undergone an examination pursuant to the
19 provisions of this section because the defendant has given notice pursuant
20 to section 16-8-107 (3) that he or she intends to introduce expert opinion
21 evidence concerning his or her mental condition, the report of
22 examination shall include, but is not limited to, the items described in
23 paragraphs (a) to (c) of subsection (5) of this section and:

24 (b) Separate opinions as to the defendant's mental condition
25 including, but not limited to, whether the defendant was insane or is
26 ineligible for release, as those terms are defined in this article. ~~and, in any~~
27 ~~class 1 felony case, an opinion as to how the mental disease or defect or~~

1 ~~the condition of mind caused by mental disease or defect affects any~~
2 ~~mitigating factor.~~ The nature of the opinions required depends upon the
3 type of examination ordered by the court.

4 **SECTION 7.** 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado
5 Revised Statutes, are amended to read:

6 **16-8-107. Evidence.** (1) (b) ~~Evidence acquired directly or~~
7 ~~indirectly for the first time from a communication derived from the~~
8 ~~defendant's mental processes during the course of a court-ordered~~
9 ~~examination under section 16-8-108 or acquired pursuant to section~~
10 ~~16-8-103.6 is admissible at any sentencing hearing held pursuant to~~
11 ~~section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, C.R.S., only to prove~~
12 ~~the existence or absence of any mitigating factor.~~

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

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

24 **SECTION 8.** 16-8.5-103 (8), Colorado Revised Statutes, is
25 amended to read:

26 **16-8.5-103. Determination of competency to proceed.** (8) If
27 the question of the defendant's incompetency to proceed is raised after a

1 jury is impaneled to try the issues raised by a plea of not guilty and the
2 court determines that the defendant is incompetent to proceed or orders
3 the defendant committed for a court-ordered competency evaluation, the
4 court may declare a mistrial. Declaration of a mistrial under these
5 circumstances does not constitute jeopardy, nor does it prohibit the trial
6 OR sentencing ~~or execution~~ of the defendant for the same offense after he
7 or she has been found restored to competency.

8 **SECTION 9.** 16-8.5-108 (1) (c), Colorado Revised Statutes, is
9 amended to read:

10 **16-8.5-108. Evidence.** (1) (c) If the defendant testifies on his or
11 her own behalf upon the trial of the issues raised by the plea of not guilty
12 or, for offenses that occurred before July 1, 1995, a plea of not guilty by
13 reason of impaired mental condition, ~~or at a sentencing hearing held~~
14 ~~pursuant to section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, C.R.S.,~~ the
15 provisions of this section shall not bar any evidence used to impeach or
16 rebut the defendant's testimony.

17 **SECTION 10.** 16-10-104 (1), Colorado Revised Statutes, is
18 amended to read:

19 **16-10-104. Peremptory challenges.** (1) ~~In capital cases, the~~
20 ~~state and the defendant, when there is one defendant, shall each be~~
21 ~~entitled to ten peremptory challenges.~~ In all ~~other~~ cases where there is
22 one defendant and the punishment may be by imprisonment in the
23 correctional facilities operated by the department of corrections, the state
24 and the defendant shall each be entitled to five peremptory challenges and
25 in all other cases to three peremptory challenges. ~~If~~ WHERE there is more
26 than one defendant ~~each side shall be entitled to an additional three~~
27 ~~peremptory challenges for every defendant after the first in capital cases,~~

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

18 **SECTION 11.** 16-12-102 (1), Colorado Revised Statutes, is
19 amended to read:

20 **16-12-102. Appeals by the prosecution.** (1) The prosecution
21 may appeal any decision of a court in a criminal case upon any question
22 of law. Any order of a court that either dismisses one or more counts of
23 a charging document prior to trial or grants a new trial after the entry of
24 a verdict or judgment shall constitute a final order that shall be
25 immediately appealable pursuant to this subsection (1). If any act of the
26 general assembly is adjudged inoperative or unconstitutional in any
27 criminal case, it is the duty of the district attorney of the judicial district

1 in which the court making such decision is situated to appeal on behalf of
2 the people of the state of Colorado, unless the same issue of
3 constitutionality is already pending before a reviewing court in another
4 case. Nothing in this section shall authorize placing the defendant in
5 jeopardy a second time for the same offense. No docket fee shall be
6 required of the people upon an appeal under this section. The procedure
7 to be followed in filing and prosecuting appeals under this section shall
8 be as provided by applicable rule of the supreme court of Colorado.
9 ~~However, if a statute providing for the imposition of the death penalty is~~
10 ~~adjudged inoperative or inapplicable for any reason, such adjudication~~
11 ~~shall constitute a final order that shall be immediately appealable to the~~
12 ~~supreme court of Colorado, notwithstanding any statute or court rule to~~
13 ~~the contrary.~~

14 **SECTION 12.** The introductory portion to 17-32-105 (3) (b) and
15 17-32-105 (3) (b) (I), Colorado Revised Statutes, are amended to read:

16 **17-32-105. Development of correctional education program -**
17 **goals and objectives.** (3) (b) A person in a correctional facility who
18 lacks basic and functional literacy skills shall be required to attend adult
19 basic education instruction unless ~~such~~ THE person:

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

21 **SECTION 13.** 18-1-409 (1), Colorado Revised Statutes, is
22 amended to read:

23 **18-1-409. Appellate review of sentence for a felony.** (1) When
24 A sentence is imposed upon any person following a conviction of any
25 felony, ~~other than a class 1 felony in which a death sentence is~~
26 ~~automatically reviewed pursuant to section 18-1.3-1201 (6), 18-1.3-1302~~
27 ~~(6), or 18-1.4-102 (6),~~ the person convicted shall have the right to one

1 appellate review of the propriety of the sentence, having regard to the
2 nature of the offense, the character of the offender, and the public
3 interest, and the manner in which the sentence was imposed, including the
4 sufficiency and accuracy of the information on which it was based; except
5 that, if the sentence is within a range agreed upon by the parties pursuant
6 to a plea agreement, the defendant shall not have the right of appellate
7 review of the propriety of the sentence. The procedures to be employed
8 in the review shall be as provided by supreme court rule.

9 **SECTION 14.** 18-1-410 (1.5), (2), and (3), Colorado Revised
10 Statutes, are amended to read:

11 **18-1-410. Postconviction remedy.** (1.5) ~~An application for~~
12 ~~postconviction review in a class 1 felony case where a sentence of death~~
13 ~~has been imposed shall be limited to claims of newly discovered evidence~~
14 ~~and ineffective assistance of counsel; except that, for any sentence of~~
15 ~~death imposed on or after the date upon which the Colorado supreme~~
16 ~~court adopts rules implementing the unitary system of review established~~
17 ~~by part 2 of article 12 of title 16, C.R.S., any application for~~
18 ~~postconviction review in such case shall be governed by the provisions of~~
19 ~~part 2 of article 12 of title 16, C.R.S.~~

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

24 (b) ~~In any class 1 felony case where a sentence of death has been~~
25 ~~imposed, the district court shall expeditiously consider an application for~~
26 ~~postconviction remedy. It is the general assembly's intent that the district~~
27 ~~court give priority to cases in which a sentence of death has been~~

1 imposed.

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

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

18 **SECTION 15.** 18-1.3-401 (1) (a) (I), (1) (a) (II), (1) (a) (IV), (1)
19 (a) (V) (A), (4) (a), and (5), Colorado Revised Statutes, are amended to
20 read:

21 **18-1.3-401. Felonies classified - presumptive penalties.**

22 (1) (a) (I) As to any person sentenced for a felony committed after July
23 1, 1979, and before July 1, 1984, felonies are divided into five classes
24 ~~which~~ THAT are distinguished from one another by the following
25 presumptive ranges of penalties which are authorized upon conviction:

26	Class	Presumptive Range
27	1	Life imprisonment or death

- 1 2 Eight to twelve years plus one year of parole
- 2 3 Four to eight years plus one year of parole
- 3 4 Two to four years plus one year of parole
- 4 5 One to two years plus one year of parole

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

9	Class	Presumptive Range
10	1	Life imprisonment or death
11	2	Eight to twelve years
12	3	Four to eight years
13	4	Two to four years
14	5	One to two years

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

19	Class	Minimum Sentence	Maximum Sentence
20	1	Life imprisonment	Death
21	2	Eight years imprisonment	Twenty-four years imprisonment
22	3	Four years imprisonment	Sixteen years imprisonment
23	4	Two years imprisonment	Eight years imprisonment
24	5	One year imprisonment	Four years imprisonment
25	6	One year imprisonment	Two years imprisonment

26 (V) (A) As to any person sentenced for a felony committed on or
 27 after July 1, 1993, felonies are divided into six classes ~~which~~ THAT are

1 distinguished from one another by the following presumptive ranges of
 2 penalties which are authorized upon conviction:

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

16 (4) (a) A person who has been convicted of a class 1 felony shall
 17 be punished by life imprisonment in the department of corrections. ~~unless~~
 18 ~~a proceeding held to determine sentence according to the procedure set~~
 19 ~~forth in section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, results in a~~
 20 ~~verdict that requires imposition of the death penalty, in which event such~~
 21 ~~person shall be sentenced to death.~~ As to any person sentenced for a class
 22 1 felony, for an act committed on or after July 1, 1985, and before July 1,
 23 1990, life imprisonment shall mean imprisonment without the possibility
 24 of parole for forty calendar years. As to any person sentenced for a class
 25 1 felony, for an act committed on or after July 1, 1990, life imprisonment
 26 shall mean imprisonment without the possibility of parole.

27 (5) ~~In the event the death penalty as provided for in this section is~~

1 ~~held to be unconstitutional by the Colorado supreme court or the United~~
2 ~~States supreme court, a person convicted of a crime punishable by death~~
3 ~~under the laws of this state shall be punished by life imprisonment. In~~
4 ~~such circumstance, the court which previously sentenced a person to~~
5 ~~death shall cause such person to be brought before the court, and the court~~
6 ~~shall sentence such person to life imprisonment.~~

7 **SECTION 16.** Part 14 of article 1.3 of title 18, Colorado Revised
8 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
9 read:

10 **18-1.3-1408. Applicability.** THIS PART 14 SHALL ONLY APPLY TO
11 THOSE PERSONS SENTENCED TO DEATH BEFORE THE EFFECTIVE DATE OF
12 THIS SECTION.

13 **SECTION 17. Repeal.** 18-3-102 (1) (c), Colorado Revised
14 Statutes, is repealed as follows:

15 **18-3-102. Murder in the first degree.** (1) A person commits the
16 crime of murder in the first degree if:

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

19 **SECTION 18.** 18-3-107 (3) and (4), Colorado Revised Statutes,
20 are amended to read:

21 **18-3-107. First degree murder of a peace officer or firefighter**
22 **- legislative declaration.** (3) A person convicted of first degree murder
23 of a peace officer or firefighter shall be punished by life imprisonment
24 without the possibility of parole for the rest of his or her natural life.
25 ~~unless a proceeding held to determine sentence according to the~~
26 ~~procedure set forth in section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102~~
27 ~~results in a verdict that requires imposition of the death penalty, in which~~

1 ~~event such person shall be sentenced to death.~~ Nothing in this subsection
2 (3) shall be construed as limiting the power of the governor to grant
3 reprieves, commutations, and pardons pursuant to section 7 of article IV
4 of the Colorado constitution.

5 (4) ~~In the event the death penalty as provided for in this section is~~
6 ~~held to be unconstitutional by the Colorado supreme court or the United~~
7 ~~States supreme court, a person convicted of first degree murder of a peace~~
8 ~~officer or firefighter under subsection (1) of this section shall be punished~~
9 ~~by life imprisonment without the possibility of parole. In such~~
10 ~~circumstance, the court which previously sentenced a person to death~~
11 ~~shall cause such person to be brought before the court, and the court shall~~
12 ~~sentence such person to life imprisonment without the possibility of~~
13 ~~parole.~~

14 **SECTION 19.** 18-3-301 (2), Colorado Revised Statutes, is
15 amended to read:

16 **18-3-301. First degree kidnapping.** (2) Whoever commits first
17 degree kidnapping is guilty of a class 1 felony if the person kidnapped
18 shall have suffered bodily injury. ~~but no person convicted of first degree~~
19 ~~kidnapping shall suffer the death penalty if the person kidnapped was~~
20 ~~liberated alive prior to the conviction of the kidnapper.~~

21 **SECTION 20.** 24-4.1-302.5 (1) (g), Colorado Revised Statutes,
22 is amended to read:

23 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
24 preserve and protect a victim's rights to justice and due process, each
25 victim of a crime shall have the following rights:

26 (g) The right to be present at the sentencing hearing ~~including any~~
27 ~~hearing conducted pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S.,~~

1 for cases involving class 1 felonies, of any person convicted of a crime
2 against such THE victim, and to inform the district attorney and the court,
3 in writing, by a victim impact statement, and by an oral statement, of the
4 harm that the victim has sustained as a result of the crime, with the
5 determination of whether the victim makes written input or oral input, or
6 both, to be made at the sole discretion of the victim;

7 **SECTION 21.** 24-4.1-303 (4), Colorado Revised Statutes, is
8 amended to read:

9 **24-4.1-303. Procedures for assuring rights of victims of crimes.**

10 (4) After a crime has been charged, unless inconsistent with the
11 requirements of investigative activities, the district attorney shall consult,
12 where practicable, with the victim concerning the reduction of charges,
13 negotiated pleas, diversion, dismissal, ~~seeking of death penalty~~, or other
14 disposition. Failure to comply with this subsection (4) shall not invalidate
15 any decision, agreement, or disposition. This subsection (4) shall not be
16 construed as a restriction on or delegation of the district attorney's
17 authority under the constitution and laws of this state.

18 **SECTION 22. Repeal.** 13-4-102 (1) (h); 16-8.5-108 (1) (b);
19 16-10-110; 16-12-101.5; part 2 of article 12 of title 16; 16-17-101;
20 18-1.3-104 (1) (c); 18-1.3-801 (1) (e); parts 11, 12, and 13 of article 1.3
21 of title 18; article 1.4 of title 18; 21-1-104 (3); and 27-10.5-139, Colorado
22 Revised Statutes, are repealed.

23 **SECTION 23. Appropriation.** In addition to any other
24 appropriation, there is hereby appropriated, out of any moneys in the
25 general fund not otherwise appropriated, for the fiscal year beginning July
26 1, 2009, the sum of _____ dollars (\$) and _____ FTE, or so much
27 thereof as may be necessary, for the implementation of this act. Of such

1 sum, _____ dollars (\$) and _____ FTE, or so much thereof as may be
2 necessary, is appropriated to the department of public safety, cold case
3 homicide team, for investigation and administrative services, for the
4 implementation of section 24-33.5-425, Colorado Revised Statutes;
5 _____ dollars (\$) and 2.0 FTE, or so much thereof as may be necessary,
6 is appropriated to the department of law for defense of any capital appeals
7 ongoing on the effective date of this act and to assist district attorneys in
8 the prosecution of cold cases. ■■■

9 **SECTION 24. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.