

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

INTRODUCED

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 hearing, the burden shall be upon the people to establish that the proof is
2 evident or that the presumption is great. The court may combine in a
3 single hearing the questions as to whether the proof is evident or the
4 presumption great with the determination of the existence of probable
5 cause to believe that the defendant committed the crime charged.

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

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

14 **16-4-201. Bail after conviction.** (1) (a) After conviction, either
15 before or after sentencing, the defendant may orally, or in writing, move
16 for release on bail pending determination of a motion for a new trial or
17 motion in arrest of judgment or during any stay of execution or pending
18 review by an appellate court, and, except in cases where the defendant has
19 been convicted of a ~~capital offense~~ CLASS 1 FELONY, the trial court, in its
20 discretion, may continue the bond given for pretrial release, or may
21 release the defendant on increased bail, or require bond under one or
22 more of the alternatives set forth in section 16-4-104.

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

25 **16-8-103.6. Waiver of privilege.** (1) (a) A defendant who places
26 his or her mental condition at issue by pleading not guilty by reason of
27 insanity pursuant to section 16-8-103, OR asserting the affirmative

1 defense of impaired mental condition pursuant to section 16-8-103.5, ~~or~~
2 ~~disclosing witnesses who may provide evidence concerning the~~
3 ~~defendant's mental condition during a sentencing hearing held pursuant~~
4 ~~to section 18-1.3-1201 or 18-1.3-1302, C.R.S.~~, waives any claim of
5 confidentiality or privilege as to communications made by the defendant
6 to a physician or psychologist in the course of an examination or
7 treatment for ~~such~~ THE mental condition for the purpose of any trial OR
8 hearing on the issue of ~~such~~ THE mental condition. ~~or sentencing hearing~~
9 ~~conducted pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S.~~ The
10 court shall order both the prosecutor and the defendant to exchange the
11 names, addresses, reports, and statements of any physician or
12 psychologist who has examined or treated the defendant for ~~such~~ THE
13 mental condition.

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

1 psychologist who has examined or treated the defendant for ~~such~~ THE
2 mental condition.

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

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

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

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

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

1 ~~18-1.3-1201 or 18-1.3-1302, C.R.S.~~, the physicians and other personnel
2 conducting the examination may testify to the results of any such
3 procedures and the statements and reactions of the defendant insofar as
4 the same entered into the formation of their opinions as to the mental
5 condition of the defendant both at the time of the commission of the
6 alleged offense and at the present time. This paragraph (a) shall apply
7 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 or 18-1.4-102,~~
21 ~~C.R.S.~~ It shall also be permissible to conduct a narcoanalytic interview
22 of the defendant with such drugs as are medically appropriate and to
23 subject the defendant to polygraph examination. In any trial or hearing
24 on the issue of the defendant's sanity or eligibility for release, ~~and in any~~
25 ~~sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102,~~
26 ~~C.R.S.~~, the physicians and other personnel conducting the examination
27 may 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 (6) With respect to offenses committed on or after July 1, 1995,
7 the report of examination shall include, but is not limited to, the items
8 described in paragraphs (a) to (c) of subsection (5) of this section, and:

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

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

22 (b) Separate opinions as to the defendant's mental condition
23 including, but not limited to, whether the defendant was insane or is
24 ineligible for release, as those terms are defined in this article. ~~and, in any~~
25 ~~class 1 felony case, an opinion as to how the mental disease or defect or~~
26 ~~the condition of mind caused by mental disease or defect affects any~~
27 ~~mitigating factor.~~ The nature of the opinions required depends upon the

1 type of examination ordered by the court.

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

4 **16-8-107. Evidence.** (1) (b) ~~Evidence acquired directly or~~
5 ~~indirectly for the first time from a communication derived from the~~
6 ~~defendant's mental processes during the course of a court-ordered~~
7 ~~examination under section 16-8-108 or acquired pursuant to section~~
8 ~~16-8-103.6 is admissible at any sentencing hearing held pursuant to~~
9 ~~section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, C.R.S., only to prove~~
10 ~~the existence or absence of any mitigating factor.~~

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

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

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

24 **16-8.5-103. Determination of competency to proceed.** (8) If
25 the question of the defendant's incompetency to proceed is raised after a
26 jury is impaneled to try the issues raised by a plea of not guilty and the
27 court determines that the defendant is incompetent to proceed or orders

1 the defendant committed for a court-ordered competency evaluation, the
2 court may declare a mistrial. Declaration of a mistrial under these
3 circumstances does not constitute jeopardy, nor does it prohibit the trial
4 OR sentencing ~~or execution~~ of the defendant for the same offense after he
5 or she has been found restored to competency.

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

8 **16-8.5-108. Evidence.** (1) (c) If the defendant testifies on his or
9 her own behalf upon the trial of the issues raised by the plea of not guilty
10 or, for offenses that occurred before July 1, 1995, a plea of not guilty by
11 reason of impaired mental condition, ~~or at a sentencing hearing held~~
12 ~~pursuant to section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, 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 **SECTION 10.** 16-10-104 (1), Colorado Revised Statutes, is
16 amended to read:

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

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

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

18 **16-12-102. Appeals by the prosecution.** (1) The prosecution
19 may appeal any decision of a court in a criminal case upon any question
20 of law. Any order of a court that either dismisses one or more counts of
21 a charging document prior to trial or grants a new trial after the entry of
22 a verdict or judgment shall constitute a final order that shall be
23 immediately appealable pursuant to this subsection (1). If any act of the
24 general assembly is adjudged inoperative or unconstitutional in any
25 criminal case, it is the duty of the district attorney of the judicial district
26 in which the court making such decision is situated to appeal on behalf of
27 the people of the state of Colorado, unless the same issue of

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

12 **SECTION 12.** The introductory portion to 17-32-105 (3) (b) and
13 17-32-105 (3) (b) (I), Colorado Revised Statutes, are amended to read:

14 **17-32-105. Development of correctional education program -**
15 **goals and objectives.** (3) (b) A person in a correctional facility who
16 lacks basic and functional literacy skills shall be required to attend adult
17 basic education instruction unless ~~such~~ THE person:

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

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

21 **18-1-409. Appellate review of sentence for a felony.** (1) When
22 A sentence is imposed upon any person following a conviction of any
23 felony, ~~other than a class 1 felony in which a death sentence is~~
24 ~~automatically reviewed pursuant to section 18-1.3-1201 (6), 18-1.3-1302~~
25 ~~(6), or 18-1.4-102 (6),~~ the person convicted shall have the right to one
26 appellate review of the propriety of the sentence, having regard to the
27 nature of the offense, the character of the offender, and the public

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

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

9 **18-1-410. Postconviction remedy.** (1.5) ~~An application for~~
10 ~~postconviction review in a class 1 felony case where a sentence of death~~
11 ~~has been imposed shall be limited to claims of newly discovered evidence~~
12 ~~and ineffective assistance of counsel; except that, for any sentence of~~
13 ~~death imposed on or after the date upon which the Colorado supreme~~
14 ~~court adopts rules implementing the unitary system of review established~~
15 ~~by part 2 of article 12 of title 16, C.R.S., any application for~~
16 ~~postconviction review in such case shall be governed by the provisions of~~
17 ~~part 2 of article 12 of title 16, C.R.S.~~

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

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

27 (3) (a) ~~Except as otherwise provided in paragraph (b) of this~~

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

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

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

19 **18-1.3-401. Felonies classified - presumptive penalties.**
20 (1) (a) (I) As to any person sentenced for a felony committed after July
21 1, 1979, and before July 1, 1984, felonies are divided into five classes
22 ~~which~~ THAT 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 plus one year of parole
27	3	Four to eight years plus one year of parole

1 4 Two to four years plus one year of parole

2 5 One to two years plus one year of parole

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

7	Class	Presumptive Range
8	1	Life imprisonment or death
9	2	Eight to twelve years
10	3	Four to eight years
11	4	Two to four years
12	5	One to two years

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

17	Class	Minimum Sentence	Maximum Sentence
18	1	Life imprisonment	Death
19	2	Eight years imprisonment	Twenty-four years imprisonment
20	3	Four years imprisonment	Sixteen years imprisonment
21	4	Two years imprisonment	Eight years imprisonment
22	5	One year imprisonment	Four years imprisonment
23	6	One year imprisonment	Two years imprisonment

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

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

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

25 (5) ~~In the event the death penalty as provided for in this section is~~
26 ~~held to be unconstitutional by the Colorado supreme court or the United~~
27 ~~States supreme court, a person convicted of a crime punishable by death~~

1 ~~under the laws of this state shall be punished by life imprisonment. In~~
2 ~~such circumstance, the court which previously sentenced a person to~~
3 ~~death shall cause such person to be brought before the court, and the court~~
4 ~~shall sentence such person to life imprisonment.~~

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

8 **18-1.3-1408. Applicability.** THIS PART 14 SHALL ONLY APPLY TO
9 THOSE PERSONS SENTENCED TO DEATH BEFORE THE EFFECTIVE DATE OF
10 THIS SECTION.

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

13 **18-3-102. Murder in the first degree.** (1) A person commits the
14 crime of murder in the first degree if:

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

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

19 **18-3-107. First degree murder of a peace officer or firefighter**
20 **- legislative declaration.** (3) A person convicted of first degree murder
21 of a peace officer or firefighter shall be punished by life imprisonment
22 without the possibility of parole for the rest of his or her natural life.
23 ~~unless a proceeding held to determine sentence according to the~~
24 ~~procedure set forth in section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102~~
25 ~~results in a verdict that requires imposition of the death penalty, in which~~
26 ~~event such person shall be sentenced to death.~~ Nothing in this subsection
27 (3) shall be construed as limiting the power of the governor to grant

1 reprieves, commutations, and pardons pursuant to section 7 of article IV
2 of the Colorado constitution.

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

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

14 **18-3-301. First degree kidnapping.** (2) Whoever commits first
15 degree kidnapping is guilty of a class 1 felony if the person kidnapped
16 shall have suffered bodily injury. ~~but no person convicted of first degree~~
17 ~~kidnapping shall suffer the death penalty if the person kidnapped was~~
18 ~~liberated alive prior to the conviction of the kidnapper.~~

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

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

24 (g) The right to be present at the sentencing hearing ~~including any~~
25 ~~hearing conducted pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S.,~~
26 ~~for cases involving class 1 felonies;~~ of any person convicted of a crime
27 against ~~such~~ THE victim, and to inform the district attorney and the court,

1 in writing, by a victim impact statement, and by an oral statement, of the
2 harm that the victim has sustained as a result of the crime, with the
3 determination of whether the victim makes written input or oral input, or
4 both, to be made at the sole discretion of the victim;

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

7 **24-4.1-303. Procedures for assuring rights of victims of crimes.**

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

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

21 **SECTION 23. Appropriation.** In addition to any other
22 appropriation, there is hereby appropriated, out of any moneys in the
23 general fund not otherwise appropriated, to the department of public
24 safety, cold case homicide team, for investigation and administrative
25 services, for the fiscal year beginning July 1, 2009, the sum of _____
26 dollars (\$) and _____ FTE, or so much thereof as may be necessary,
27 for the implementation of section 24-33.5-425, Colorado Revised

1 Statutes.

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