First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REENGROSSED
This Version Includes All Amendments
Adopted in the House of Introduction

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.

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

HOUSE
3rd Reading Unamended
April 21, 2009

HOUSE
Amended 2nd Reading
April 15, 2009

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.

SECTION 1. Legislative declaration. (1) It is the intent of the general assembly to abolish the death penalty in the state of Colorado.

(2) It is the further intent of the general assembly to use the anticipated general fund savings from the abolition of the death penalty to increase funding to the cold case homicide team in the Colorado bureau of investigation that is created in section 24-33.5-425, Colorado Revised Statutes.

SECTION 2. Article 11 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 9

REPEAL OF THE DEATH PENALTY

16-11-901. Death penalty repeal - applicability - current sentences. AS OF THE EFFECTIVE DATE OF THIS PART 9, FOR OFFENSES COMMITTED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 9, THE DEATH PENALTY SHALL NOT BE A SENTENCING OPTION FOR A DEFENDANT CONVICTED OF A CLASS 1 FELONY IN THE STATE OF COLORADO. NOTHING IN THIS SECTION SHALL COMMUTE OR ALTER THE SENTENCE OF A DEFENDANT CONVICTED BEFORE THE EFFECTIVE DATE OF THIS PART 9.

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

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

(a) For ~~capital offenses~~ CLASS 1 FELONIES when proof is evident or presumption is great; or

(3) In any ~~capital~~ case INVOLVING A CLASS 1 FELONY, the defendant may make a written motion for admission to bail upon the

ground that the proof is not evident or that presumption is not great, and the court shall promptly conduct a hearing upon such motion. At such hearing, the burden shall be upon the people to establish that the proof is evident or that the presumption is great. The court may combine in a single hearing the questions as to whether the proof is evident or the presumption great with the determination of the existence of probable cause to believe that the defendant committed the crime charged.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant. ~~and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S.~~ It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity or eligibility for release, ~~and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102,~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~imposed.~~

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

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

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

18-1.3-401. Felonies classified - presumptive penalties. (1) (a) (I) As to any person sentenced for a felony committed after July 1, 1979, and before July 1, 1984, felonies are divided into five classes ~~which~~ THAT are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:

Class	**Presumptive Range**
1	Life imprisonment ~~or death~~

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

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

Class	**Presumptive Range**
1	Life imprisonment ~~or death~~
2	Eight to twelve years
3	Four to eight years
4	Two to four years
5	One to two years

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

Class	**Minimum Sentence**	**Maximum Sentence**
1	Life imprisonment	~~Death~~
2	Eight years imprisonment	Twenty-four years imprisonment
3	Four years imprisonment	Sixteen years imprisonment
4	Two years imprisonment	Eight years imprisonment
5	One year imprisonment	Four years imprisonment
6	One year imprisonment	Two years imprisonment

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

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

Class	**Minimum Sentence**	**Maximum Sentence**	**Mandatory Period of Parole**
1	Life imprisonment	~~Death~~	None
2	Eight years imprisonment	Twenty-four years imprisonment	Five years
3	Four years imprisonment	Twelve years imprisonment	Five years
4	Two years imprisonment	Six years imprisonment	Three years
5	One year imprisonment	Three years imprisonment	Two years
6	One year imprisonment	Eighteen months imprisonment	One year

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24-4.1-303. Procedures for assuring rights of victims of crimes. (4) After a crime has been charged, unless inconsistent with the requirements of investigative activities, the district attorney shall consult, where practicable, with the victim concerning the reduction of charges, negotiated pleas, diversion, dismissal, ~~seeking of death penalty,~~ or other disposition. Failure to comply with this subsection (4) shall not invalidate any decision, agreement, or disposition. This subsection (4) shall not be construed as a restriction on or delegation of the district attorney's authority under the constitution and laws of this state.

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

SECTION 23. Appropriation - adjustments to the 2009 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety, Colorado bureau of investigation, for the cold case homicide team for investigation and

1 administrative services, for the fiscal year beginning July 1, 2009, the sum
2 of eight hundred thirty-three thousand three hundred seventy-six dollars
3 ($833,376) and 8.0 FTE, or so much thereof as may be necessary, for the
4 implementation of section 24-33.5-425, Colorado Revised Statutes.
5 (2) For the implementation of this act, appropriations made in the
6 annual general appropriation act for the fiscal year beginning July 1,
7 2009, shall be adjusted as follows:
8 (a) The general fund appropriation to the judicial department, trial
9 courts, for court costs, jury costs, and court-appointed counsel, is
10 decreased by thirty-two thousand nine hundred fifty dollars ($32,950).
11 (b) The general fund appropriation to the judicial department, for
12 the public defender, is decreased by one million dollars ($1,000,000).
13 (c) The general fund appropriation to the judicial department, for
14 the alternate defense counsel, is decreased by five hundred eighty-two
15 thousand seven hundred fifty-eight dollars ($582,758).
16 **SECTION 24. Act subject to petition - effective date.** This act
17 shall take effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly that is
19 allowed for submitting a referendum petition pursuant to article V,
20 section 1 (3) of the state constitution, (August 5, 2009, if adjournment
21 sine die is on May 6, 2009); except that, if a referendum petition is filed
22 against this act or an item, section, or part of this act within such period,
23 then the act, item, section, or part, if approved by the people, shall take
24 effect on the date of the official declaration of the vote thereon by
25 proclamation of the governor.