

## CHAPTER 262

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**CRIMINAL LAW AND PROCEDURE**

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**SENATE BILL 94-204**

BY SENATORS Mutzebaugh, Ament, Bishop, Blickensderfer, Lacy, Norton, Owens, R. Powers, Roberts, Schroeder, Traylor, and Wattenberg;  
also REPRESENTATIVES Adkins, Berry, Chlouber, Epps, Faatz, Fleming, Friednash, George, Jerke, Kaufman, Lawrence, Martin, Moellenberg, Nichol, Owen, Pierson, Prinster, Reeser, and Shoemaker.

**AN ACT****CONCERNING METHODS TO EXPEDITE REVIEW OF DEATH PENALTY CASES.**

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

**SECTION 1.** 16-12-101.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**16-12-101.5. Review of proceedings regarding class 1 felony convictions - legislative intent.** (1) THE GENERAL ASSEMBLY URGES THE COLORADO SUPREME COURT TO ADOPT AN EXPEDITED PROCESS TO REVIEW CLASS 1 FELONY CONVICTIONS WHERE THE DEATH PENALTY HAS BEEN IMPOSED AND ANY ORDER BY THE DISTRICT COURT GRANTING OR DENYING POSTCONVICTION RELIEF IN SUCH CASES. IT IS THE GENERAL ASSEMBLY'S INTENT THAT THE COLORADO SUPREME COURT GIVE PRIORITY TO CASES IN WHICH A SENTENCE OF DEATH HAS BEEN IMPOSED OVER OTHER CASES BEFORE THE COURT, EXCEPT TO THE EXTENT OF ANY CONFLICT WITH THE REQUIREMENT THAT THE COURT GIVE THE HIGHEST PRIORITY TO ENFORCEMENT ACTIONS BROUGHT IN ACCORDANCE WITH SECTION 20 (1) OF ARTICLE X OF THE STATE CONSTITUTION.

(2) In any DIRECT APPEAL OF ANY class 1 felony case in which a conviction is entered and in which a sentence of death is ordered, all challenges to any such conviction or sentence, with the exception of any newly discovered evidence or any claim of ineffective assistance of counsel, shall be included in the brief of the person challenging such conviction or sentence, as such brief is defined by rule 28 of the Colorado appellate rules, at the time such brief is filed with the supreme court of the state of Colorado. Any issue which is not raised in the manner prescribed in this

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

section shall be deemed to be irrevocably waived by the person challenging such conviction or sentence. The failure of such person to file a brief within any time limits ordered by the supreme court of the state of Colorado shall constitute an irrevocable waiver of all issues which could have been raised in such brief.

**SECTION 2.** The introductory portion to 18-1-410 (1) and 18-1-410 (2), Colorado Revised Statutes, 1986 Repl. Vol., are amended, and the said 18-1-410 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**18-1-410. Postconviction remedy.** (1) Notwithstanding the fact that no review of a conviction of crime was sought by appeal within the time prescribed therefor, or that a judgment of conviction was affirmed upon appeal, every person convicted of a crime is entitled as a matter of right to make applications for postconviction review. EXCEPT AS OTHERWISE REQUIRED BY SUBSECTION (1.5) OF THIS SECTION, an application for postconviction review must, in good faith, allege one or more of the following grounds to justify a hearing thereon:

(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.

(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) 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.

**SECTION 3.** 13-4-102 (1), Colorado Revised Statutes, 1987 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**13-4-102. Jurisdiction.** (1) Any provision of law to the contrary notwithstanding, the court of appeals shall have initial jurisdiction over appeals from final judgments of the district courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver, except in:

(h) CASES APPEALED FROM THE DISTRICT COURT GRANTING OR DENYING POSTCONVICTION RELIEF IN A CASE IN WHICH A SENTENCE OF DEATH HAS BEEN IMPOSED.

**SECTION 4.** 21-1-104 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 21-1-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**21-1-104. Duties of public defender.** (1) When representing an indigent person, the state public defender, only after the conditions of section 21-1-103 have been met, shall:

(b) Prosecute any appeals or other remedies before or after conviction that ~~he~~ THE STATE PUBLIC DEFENDER considers to be in the interest of justice, EXCEPT AS LIMITED IN SUBSECTION (3) OF THIS SECTION.

(3) IN ORDER TO EXPEDITE DEATH PENALTY APPEALS, STATE MONEYS SHALL NOT BE USED TO PROSECUTE ANY APPEAL ON BEHALF OF THE DEFENDANT IN ANY CLASS 1 FELONY CASE WHERE THE DEATH PENALTY HAS BEEN IMPOSED THAT IS NOT AN APPEAL AS OF RIGHT IN STATE COURT. IN ADDITION, IN ANY CLASS 1 FELONY CASE WHERE THE DEATH PENALTY HAS BEEN IMPOSED, STATE MONEYS SHALL NOT BE USED TO PROSECUTE ANY FEDERAL HABEAS CORPUS PROCEEDING ON BEHALF OF THE PETITIONER, UNLESS THE PETITIONER IS SEEKING TO PREVENT EXTRADITION. FOR PURPOSES OF THIS SUBSECTION (3), "APPEAL AS OF RIGHT" MEANS A DIRECT APPEAL ON BEHALF OF THE DEFENDANT OF THE VALIDITY OF THE UNDERLYING CONVICTION AND THE PROPRIETY OF THE SENTENCE AND A MOTION FOR POSTCONVICTION RELIEF PROPERLY BROUGHT BY THE DEFENDANT IN ACCORDANCE WITH RULE 35 OF THE COLORADO RULES OF CRIMINAL PROCEDURE AND ANY APPEAL ON BEHALF OF THE DEFENDANT OF THE DENIAL OF SUCH MOTION.

**SECTION 5. Effective date - applicability.** This act shall take effect July 1, 1994, and shall apply to sentences imposed on or after said date.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 31, 1994