

CHAPTER 268

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 97-1225

BY REPRESENTATIVES Adkins, Epps, Hagedorn, S. Johnson, Kaufman, Lamborn, McPherson, Morrison, Nichol, Paschall, Pfiffner, Reeser, Schwarz, Smith, Tool, Young, and Zimmerman;
also SENATORS Wells, B. Alexander, Chlouber, Dennis, and Powers.

AN ACT

CONCERNING A UNITARY PROCEDURE FOR REVIEW IN CLASS 1 FELONY CASES IN WHICH A DEATH SENTENCE IS SOUGHT AS PUNISHMENT.

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

SECTION 1. Article 12 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2
UNITARY REVIEW IN DEATH PENALTY CASES**

16-12-201. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE PURPOSE OF THIS PART 2 IS TO ESTABLISH AN EXPEDITED SYSTEM OF UNITARY REVIEW OF CLASS 1 FELONY CASES IN WHICH A DEATH SENTENCE IS IMPOSED.

(2) THE GENERAL ASSEMBLY FINDS THAT ENACTMENT OF THIS PART 2 WILL ACCOMPLISH THE FOLLOWING GOALS:

(a) ENSURING COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL "ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996", 28 U.S.C. SEC. 2261, ET SEQ.;

(b) IMPROVING THE ACCURACY, COMPLETENESS, AND JUSTICE OF REVIEW PROCEEDINGS BY REQUIRING THAT POSTCONVICTION REVIEW COMMENCE

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

IMMEDIATELY AFTER THE IMPOSITION OF A SENTENCE OF DEATH;

(c) ALLOWING FOR THE FULL AND FAIR EXAMINATION OF ALL LEGALLY COGNIZABLE POSTCONVICTION AND APPELLATE ISSUES BY THE TRIAL COURT AND THE COLORADO SUPREME COURT; AND

(d) ELIMINATING, TO THE FULLEST EXTENT POSSIBLE, UNREASONABLE AND UNJUST DELAYS IN THE RESOLUTION OF POSTCONVICTION ISSUES BY COMBINING AND REDUCING THE NUMBER OF PROCEEDINGS IN CLASS 1 FELONY CASES.

16-12-202. Unitary procedure for appeals - scope and applicability.

(1) NOTWITHSTANDING ANY STATE STATUTE OR RULE OF THE COLORADO SUPREME COURT TO THE CONTRARY, THIS PART 2 AND THE SUPREME COURT RULES ADOPTED PURSUANT TO THIS PART 2 ESTABLISH THE ONLY PROCEDURE FOR CHALLENGING A SENTENCE OF DEATH OR THE CONVICTION THAT RESULTED IN THE SENTENCE OF DEATH.

(2) THIS PART 2 DOES NOT APPLY TO CLASS 1 FELONY CASES IN WHICH A SENTENCE OF DEATH IS NOT SOUGHT OR TO CLASS 1 FELONY CONVICTIONS FOR WHICH THE DEATH PENALTY IS NOT IMPOSED.

(3) THIS PART 2 SHALL APPLY TO ANY CLASS 1 FELONY CONVICTION FOR WHICH THE DEATH PENALTY IS IMPOSED AS PUNISHMENT, REGARDLESS OF WHETHER THE SENTENCE IS IMPOSED PURSUANT TO SECTION 16-11-103 OR 16-11-802, WHICH DEATH SENTENCE IS IMPOSED ON OR AFTER THE DATE UPON WHICH THE SUPREME COURT ADOPTS RULES IMPLEMENTING THE UNITARY SYSTEM OF REVIEW ESTABLISHED BY THIS PART 2.

(4) FOR CASES IN WHICH A DEATH SENTENCE IS IMPOSED PRIOR TO THE DATE UPON WHICH THE COLORADO SUPREME COURT ADOPTS RULES IMPLEMENTING THE UNITARY SYSTEM OF REVIEW ESTABLISHED BY THIS PART 2, APPELLATE REVIEW AND POSTCONVICTION REVIEW SHALL BE AS OTHERWISE PROVIDED BY LAW.

16-12-203. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DIRECT APPEAL" MEANS THE APPEAL TO THE COLORADO SUPREME COURT OF ANY ISSUES RAISED AT THE ENTRY OF A GUILTY PLEA, BEFORE TRIAL, AT TRIAL, AT THE PENALTY PHASE HEARING, OR IN A MOTION FOR NEW TRIAL.

(2) "DIRECT APPEAL COUNSEL" MEANS THE ATTORNEY RETAINED BY THE DEFENDANT, OR APPOINTED BY THE TRIAL COURT TO REPRESENT AN INDIGENT DEFENDANT, AS THE SUCCESSOR TO TRIAL COUNSEL FOR PURPOSES OF REPRESENTING THE DEFENDANT IN DIRECT APPEAL PROCEEDINGS.

(3) "NEW POSTCONVICTION COUNSEL" MEANS THE ATTORNEY RETAINED BY THE DEFENDANT, OR APPOINTED BY THE TRIAL COURT TO REPRESENT AN INDIGENT DEFENDANT, FOR THE PURPOSES OF REPRESENTING THE DEFENDANT IN POSTCONVICTION REVIEW AND POSTCONVICTION REVIEW APPEAL PROCEEDINGS. NEW POSTCONVICTION COUNSEL CANNOT HAVE PREVIOUSLY REPRESENTED THE DEFENDANT WITH REGARD TO THE CLASS 1 FELONY CHARGE.

(4) "POSTCONVICTION REVIEW" MEANS REVIEW AS PROVIDED IN THIS PART 2 BY THE TRIAL COURT THAT OCCURS AFTER CONVICTION IN A CLASS 1 FELONY CASE IN WHICH THE DEATH PENALTY IS IMPOSED AS PUNISHMENT.

(5) "POSTCONVICTION REVIEW APPEAL" MEANS THE APPEAL TO THE COLORADO SUPREME COURT OF ANY ISSUES RAISED IN POSTCONVICTION REVIEW PROCEEDINGS.

(6) "TRIAL COUNSEL" MEANS THE ATTORNEY WHO REPRESENTS THE DEFENDANT WITH REGARD TO THE CLASS 1 FELONY CHARGE: FOR THE PURPOSES OF ANY GUILTY PLEA; BEFORE TRIAL; AT TRIAL; AT THE PENALTY PHASE HEARING; FOR THE PURPOSES OF A MOTION FOR NEW TRIAL; FOR THE PURPOSES OF POSTCONVICTION REVIEW IF THE DEFENDANT CHOOSES TO CONTINUE WITH TRIAL COUNSEL FOR PURPOSES OF POSTCONVICTION REVIEW; AND FOR THE PURPOSES OF DIRECT APPEAL IF THE DEFENDANT CHOOSES TO CONTINUE WITH TRIAL COUNSEL FOR PURPOSES OF DIRECT APPEAL. "TRIAL COUNSEL" DOES NOT INCLUDE NEW POSTCONVICTION COUNSEL APPOINTED PURSUANT TO SECTION 16-12-205 OR DIRECT APPEAL COUNSEL.

16-12-204. Stay of execution - postconviction review. (1) THE THREE-JUDGE PANEL OR THE TRIAL COURT, WHICHEVER IS APPLICABLE, UPON THE IMPOSITION OF A DEATH SENTENCE, SHALL SET THE TIME OF EXECUTION PURSUANT TO SECTION 16-11-403 AND ENTER AN ORDER STAYING EXECUTION OF THE JUDGMENT AND SENTENCE UNTIL RECEIPT OF AN ORDER FROM THE COLORADO SUPREME COURT. THE TRIAL COURT SHALL DIRECT THE CLERK OF THE TRIAL COURT TO MAIL TO THE COLORADO SUPREME COURT, WITHIN SEVEN DAYS AFTER THE DATE UPON WHICH THE SENTENCE OF DEATH IS IMPOSED, A COPY OF THE JUDGMENT, SENTENCE, AND MITTIMUS.

(2) THE TRIAL COURT SHALL ORDER THE DEFENDANT, TRIAL COUNSEL, AND THE PROSECUTION TO ATTEND A HEARING TO BE HELD AFTER THE DATE UPON WHICH THE SENTENCE OF DEATH IS IMPOSED. AT THE HEARING, THE TRIAL COURT SHALL:

(a) ADVISE THE DEFENDANT OF THE NATURE OF REVIEW AS PROVIDED IN THIS PART 2;

(b) ADVISE THE DEFENDANT OF THE RIGHT TO DIRECT APPEAL COUNSEL;

(c) ADVISE THE DEFENDANT THAT THE ISSUE OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL BEFORE TRIAL, AT TRIAL, OR DURING THE PENALTY PHASE HEARING MAY ONLY BE RAISED ON POSTCONVICTION REVIEW AND ON POSTCONVICTION REVIEW APPEAL;

(d) ADVISE THE DEFENDANT THAT THE ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL DURING DIRECT APPEAL BY TRIAL COUNSEL OR DIRECT APPEAL COUNSEL MAY ONLY BE RAISED BY WAY OF A PETITION FOR REHEARING FILED IN THE COLORADO SUPREME COURT BY NEW POSTCONVICTION COUNSEL OR THE DEFENDANT PURSUANT TO THE RULES ADOPTED BY THE COLORADO SUPREME COURT TO IMPLEMENT THIS PART 2;

(e) DETERMINE WHETHER THE DEFENDANT INTENDS TO PURSUE POSTCONVICTION REVIEW; AND

(f) IF THE DEFENDANT INTENDS TO PURSUE POSTCONVICTION REVIEW, DETERMINE WHETHER THE DEFENDANT INTENDS TO PROCEED WITH OR WITHOUT COUNSEL.

(3) AFTER A FULL DISCUSSION ON THE RECORD, IF THE DEFENDANT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVES THE RIGHT TO PURSUE POSTCONVICTION REVIEW, TRIAL COUNSEL OR DIRECT APPEAL COUNSEL, IF APPOINTED OR RETAINED, OR THE DEFENDANT, IF PROCEEDING WITHOUT COUNSEL, MAY FILE ANY NOTICE OF APPEAL WITH THE COLORADO SUPREME COURT, AS PROVIDED BY COLORADO SUPREME COURT RULE.

16-12-205. Postconviction review - appointment of new postconviction counsel - qualifications - compensation. (1) AT THE HEARING HELD PURSUANT TO SECTION 16-12-204 (2), IF THE DEFENDANT CHOOSES TO PURSUE POSTCONVICTION REVIEW, THE TRIAL COURT SHALL ENTER AN ORDER APPOINTING NEW POSTCONVICTION COUNSEL FOR THE DEFENDANT IF THE TRIAL COURT FINDS THAT THE DEFENDANT IS INDIGENT AND EITHER THE DEFENDANT REQUESTS AND ACCEPTS SUCH APPOINTMENT OR THE TRIAL COURT FINDS THAT THE DEFENDANT IS UNABLE TO COMPETENTLY DECIDE WHETHER TO ACCEPT OR REJECT THE APPOINTMENT. HOWEVER, THE TRIAL COURT SHALL NOT APPOINT NEW POSTCONVICTION COUNSEL IF:

(a) THE DEFENDANT HAS RETAINED NEW POSTCONVICTION COUNSEL; OR

(b) THE DEFENDANT HAS ELECTED TO PROCEED WITHOUT COUNSEL AND THE TRIAL COURT FINDS, AFTER A FULL DISCUSSION ON THE RECORD, THAT THE DEFENDANT'S ELECTION TO PROCEED WITHOUT COUNSEL IS KNOWING, INTELLIGENT, AND VOLUNTARY; OR

(c) THE DEFENDANT ELECTS TO HAVE TRIAL COUNSEL CONTINUE REPRESENTING THE DEFENDANT FOR PURPOSES OF POSTCONVICTION REVIEW AND THE TRIAL COURT FINDS, AFTER A FULL DISCUSSION ON THE RECORD, THAT:

(I) THE DEFENDANT UNDERSTANDS THAT NEW POSTCONVICTION COUNSEL CAN BE RETAINED BY THE DEFENDANT FOR PURPOSES OF POSTCONVICTION REVIEW OR APPOINTED BY THE TRIAL COURT FOR THE DEFENDANT IF THE DEFENDANT IS INDIGENT;

(II) THE DEFENDANT UNDERSTANDS THAT, BY ELECTING TO HAVE TRIAL COUNSEL CONTINUE TO REPRESENT THE DEFENDANT FOR PURPOSES OF POSTCONVICTION REVIEW, THE DEFENDANT WAIVES THE RIGHT TO CHALLENGE THE EFFECTIVENESS OF TRIAL COUNSEL'S REPRESENTATION AT ANY STAGE OF THE PROCEEDINGS;

(III) THE DEFENDANT'S ELECTION TO HAVE TRIAL COUNSEL CONTINUE TO REPRESENT THE DEFENDANT FOR PURPOSES OF POSTCONVICTION REVIEW IS KNOWING, INTELLIGENT, AND VOLUNTARY; AND

(IV) TRIAL COUNSEL AGREES TO CONTINUE REPRESENTING THE DEFENDANT FOR PURPOSES OF POSTCONVICTION REVIEW.

(2) IN APPOINTING NEW POSTCONVICTION COUNSEL TO REPRESENT AN INDIGENT DEFENDANT, THE TRIAL COURT SHALL APPOINT ONE OR MORE ATTORNEYS WHO, ALONE OR IN COMBINATION, MEET ALL OF THE FOLLOWING MINIMUM QUALIFICATIONS:

(a) EACH APPOINTED ATTORNEY SHALL BE LICENSED TO PRACTICE LAW IN COLORADO OR BE ADMITTED TO PRACTICE IN COLORADO SOLELY FOR THE PURPOSE OF REPRESENTING THE DEFENDANT;

(b) AT LEAST ONE OF THE APPOINTED ATTORNEYS SHALL HAVE A MINIMUM OF FIVE YEARS' EXPERIENCE IN CRIMINAL LAW LITIGATION, INCLUDING WORK ON TRIALS AND POSTCONVICTION PROCEEDINGS;

(c) AT LEAST ONE OF THE APPOINTED ATTORNEYS SHALL HAVE A MINIMUM OF THREE YEARS' EXPERIENCE IN TRYING FELONY CASES, INCLUDING HAVING TRIED AT LEAST FIVE FELONY CASES TO VERDICT IN THE PRECEDING FIVE YEARS OR HAVING TRIED A MINIMUM TOTAL OF TWENTY-FIVE FELONY CASES; AND

(d) AT LEAST ONE OF THE APPOINTED ATTORNEYS SHALL HAVE A MINIMUM OF THREE YEARS' EXPERIENCE IN HANDLING APPEALS OF FELONY CASES, HAVING SERVED AS COUNSEL IN AT LEAST FIVE APPEALS IN FELONY CASES.

(3) IN APPOINTING NEW POSTCONVICTION COUNSEL, THE TRIAL COURT MAY ALSO CONSIDER THE FOLLOWING FACTORS:

(a) WHETHER THE ATTORNEY UNDER CONSIDERATION HAS PREVIOUSLY APPEARED AS COUNSEL IN A CLASS 1 FELONY CASE IN WHICH THE DEATH PENALTY WAS SOUGHT;

(b) WHETHER THE ATTORNEY UNDER CONSIDERATION HAS TRIED AT LEAST ONE FIRST DEGREE MURDER CASE TO VERDICT;

(c) WHETHER, WITHIN THE PRECEDING FIVE YEARS, THE ATTORNEY UNDER CONSIDERATION HAS TAUGHT OR ATTENDED A CONTINUING LEGAL EDUCATION COURSE THAT DEALT IN SUBSTANTIAL PART WITH THE TRIAL, APPEAL, AND POSTCONVICTION REVIEW OF CLASS 1 FELONY CASES IN WHICH THE DEATH PENALTY IS SOUGHT;

(d) THE WORKLOAD OF THE ATTORNEY UNDER CONSIDERATION AND HOW THAT WORKLOAD WOULD AFFECT THE ATTORNEY'S REPRESENTATION OF THE DEFENDANT;

(e) THE DILIGENCE AND ABILITY OF THE ATTORNEY UNDER CONSIDERATION; AND

(f) ANY OTHER FACTOR THAT MAY BE RELEVANT TO A DETERMINATION OF WHETHER THE ATTORNEY UNDER CONSIDERATION WILL FAIRLY, EFFICIENTLY, AND EFFECTIVELY REPRESENT THE DEFENDANT FOR PURPOSES OF POSTCONVICTION REVIEW.

(4) IN ANY CASE IN WHICH THE TRIAL COURT APPOINTS NEW POSTCONVICTION COUNSEL OR NEW POSTCONVICTION COUNSEL IS RETAINED, SAID NEW POSTCONVICTION COUNSEL SHALL NOT BE RETAINED OR APPOINTED TO ACT AS CO-COUNSEL WITH TRIAL COUNSEL AND SHALL NOT BE ASSOCIATED OR AFFILIATED WITH TRIAL COUNSEL. NEW POSTCONVICTION COUNSEL SHALL EXERCISE INDEPENDENT JUDGMENT AND ACT INDEPENDENTLY FROM TRIAL COUNSEL.

(5) THE INEFFECTIVENESS OF COUNSEL DURING POSTCONVICTION REVIEW SHALL NOT BE A BASIS FOR RELIEF.

(6) THE OFFICE OF THE PUBLIC DEFENDER OR THE OFFICE OF ALTERNATIVE DEFENSE COUNSEL, WHICHEVER IS APPROPRIATE, SHALL PAY THE COMPENSATION AND REASONABLE LITIGATION EXPENSES OF DEFENDANT'S COUNSEL INCURRED DURING THE UNITARY REVIEW PROCEEDING.

16-12-206. Postconviction review - motion. (1) (a) IN ANY CASE IN WHICH A DEFENDANT HAS BEEN CONVICTED OF A CLASS 1 FELONY AND BEEN SENTENCED TO DEATH, ALL MOTIONS FOR POSTCONVICTION REVIEW AND ALL POSTCONVICTION REVIEW PROCEEDINGS ARE GOVERNED BY THIS PART 2 AND BY THE SUPREME COURT RULES ADOPTED TO IMPLEMENT THIS PART 2.

(b) ANY MOTION FOR POSTCONVICTION REVIEW SHALL STATE WITH PARTICULARITY THE GROUNDS UPON WHICH THE DEFENDANT INTENDS TO RELY, INCLUDING A STATEMENT OF THE FACTS AND CITATIONS OF LAW. A MOTION FOR POSTCONVICTION REVIEW MAY INCLUDE ONLY THOSE ISSUES SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (1) AND SHALL NOT INCLUDE ANY ISSUES THAT WERE RAISED AT THE ENTRY OF ANY GUILTY PLEA, BEFORE TRIAL, AT TRIAL, AT THE PENALTY PHASE HEARING, OR IN THE MOTION FOR NEW TRIAL.

(c) A MOTION FOR POSTCONVICTION REVIEW MAY RAISE ONLY THE FOLLOWING ISSUES:

(I) WHETHER THERE EXISTS EVIDENCE OF MATERIAL FACTS, NOT PREVIOUSLY PRESENTED AND HEARD, WHICH BY THE EXERCISE OF REASONABLE DILIGENCE COULD NOT HAVE BEEN KNOWN OR LEARNED BY THE DEFENDANT OR TRIAL COUNSEL PRIOR TO THE IMPOSITION OF THE SENTENCE AND WHICH REQUIRE THAT THE CONVICTION OR THE DEATH SENTENCE BE VACATED IN THE INTERESTS OF JUSTICE; OR

(II) WHETHER THE CONVICTION WAS OBTAINED OR THE SENTENCE WAS IMPOSED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES OR COLORADO; OR

(III) WHETHER THE DEFENDANT WAS CONVICTED UNDER A STATUTE THAT VIOLATES THE CONSTITUTION OF THE UNITED STATES OR COLORADO OR WHETHER THE CONDUCT FOR WHICH THE DEFENDANT WAS PROSECUTED WAS CONSTITUTIONALLY PROTECTED; OR

(IV) WHETHER THE JUDGMENT WAS RENDERED WITHOUT JURISDICTION OVER THE DEFENDANT OR THE SUBJECT MATTER; OR

(V) ANY OTHER GROUNDS THAT ARE PROPERLY THE BASIS FOR COLLATERAL ATTACK UPON A CRIMINAL JUDGMENT; OR

(VI) WHETHER TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE.

(2) BY ALLEGING THAT TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE, THE DEFENDANT AUTOMATICALLY WAIVES THE ATTORNEY-CLIENT PRIVILEGE BETWEEN THE DEFENDANT AND TRIAL COUNSEL, BUT ONLY WITH RESPECT TO THE INFORMATION THAT IS RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE.

(3) NEITHER THE DEFENDANT NOR THE PROSECUTION MAY FILE A MOTION FOR

RECONSIDERATION OR REHEARING OF THE TRIAL COURT'S RULING ON THE MOTION FOR POSTCONVICTION REVIEW. THE GRANTING OR DENYING OF A MOTION FOR POSTCONVICTION REVIEW UNDER THIS SECTION IS A FINAL ORDER REVIEWABLE ON APPEAL BY THE COLORADO SUPREME COURT.

16-12-207. Supreme court - appeal - filing of notice. (1) (a) IF THE DEFENDANT WAIVES HIS OR HER RIGHT TO POSTCONVICTION REVIEW AS PROVIDED IN SECTION 16-12-204, BUT INTENDS TO PROCEED WITH DIRECT APPEAL, TRIAL COUNSEL, DIRECT APPEAL COUNSEL, IF APPOINTED OR RETAINED, OR THE DEFENDANT, IF PROCEEDING ON DIRECT APPEAL WITHOUT COUNSEL, SHALL FILE ANY NOTICE OF APPEAL FOR PURPOSES OF DIRECT APPEAL IN THE COLORADO SUPREME COURT.

(b) IF THE TRIAL COURT CONDUCTS POSTCONVICTION REVIEW AND THE DEFENDANT INTENDS TO SEEK DIRECT APPEAL OR POSTCONVICTION REVIEW APPEAL, THE NOTICES OF APPEAL, INCLUDING BOTH DIRECT APPEAL AND POSTCONVICTION REVIEW APPEAL ISSUES, SHALL BE FILED IN THE COLORADO SUPREME COURT.

(2) ANY APPEAL TO THE COLORADO SUPREME COURT FILED BY THE DEFENDANT PURSUANT TO THIS PART 2 SHALL CONSOLIDATE AND RESOLVE, IN ONE PROCEEDING, ALL DIRECT APPEAL AND POSTCONVICTION REVIEW APPEAL ISSUES.

(3) THE PROSECUTION MAY APPEAL ANY FINAL RULING BY THE TRIAL COURT IN THE COURSE OF PROCEEDINGS PURSUANT TO THIS PART 2, INCLUDING BUT NOT LIMITED TO:

(a) A RULING GRANTING A MOTION FOR NEW TRIAL OR OTHER RELIEF; AND

(b) A RULING BY THE TRIAL COURT GRANTING POSTCONVICTION RELIEF; AND

(c) A RULING BY THE TRIAL COURT THAT ANY STATUTE, INCLUDING BUT NOT LIMITED TO A STATUTE PROVIDING FOR THE IMPOSITION OF THE DEATH PENALTY, IS ADJUDGED INOPERATIVE OR UNCONSTITUTIONAL FOR ANY REASON.

(4) ANY APPEAL FILED BY THE DEFENDANT OR BY THE PROSECUTION PURSUANT TO THIS PART 2 SHALL BE TAKEN DIRECTLY TO THE COLORADO SUPREME COURT.

16-12-208. Supreme court - rules. (1) NO LATER THAN JANUARY 1, 1998, THE COLORADO SUPREME COURT SHALL ADOPT RULES TO ESTABLISH PROCEDURES, INCLUDING TIME LIMITS, FOR THE POSTCONVICTION REVIEW AND UNITARY APPEAL PROCESS CREATED BY THIS PART 2.

(2) THE RULES ADOPTED BY THE COLORADO SUPREME COURT PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL ADDRESS, BUT ARE NOT LIMITED TO:

(a) FILING AND RESOLUTION OF MOTIONS FOR NEW TRIAL;

(b) THE TIMING OF THE ADVISEMENT HEARING DESCRIBED IN SECTION 16-12-204 (2);

(c) THE PREPARATION OF TRANSCRIPTS FOR POSTCONVICTION REVIEW AND UNITARY APPEAL;

(d) FILING AND RESOLUTION OF MOTIONS FOR POSTCONVICTION REVIEW, INCLUDING BUT NOT LIMITED TO PROVISIONS FOR DETERMINING WHETHER EVIDENTIARY HEARINGS ARE NECESSARY TO RESOLVE SUCH MOTIONS;

(e) RECIPROCAL DISCOVERY FOR THE DEFENDANT AND THE PROSECUTION DURING THE POSTCONVICTION REVIEW PROCESS;

(f) PROMPT ACCESS BY NEW POSTCONVICTION COUNSEL TO TRIAL COUNSEL'S FILES AND MATERIALS;

(g) WAIVER OF A DEFENDANT'S RIGHT TO POSTCONVICTION REVIEW AND APPEAL OF A CONVICTION AND SENTENCE OF DEATH;

(h) RESOLUTION OF CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL BY WAY OF A PETITION FOR REHEARING;

(i) FILING OF NOTICES OF APPEAL IN THE SUPREME COURT;

(j) CERTIFICATION OF THE APPELLATE RECORD TO THE SUPREME COURT;

(k) FILING OF BRIEFS IN THE SUPREME COURT;

(l) ESTABLISHMENT OF EXPEDITED PROCEDURES FOR RESOLVING SECOND OR SUBSEQUENT REQUESTS FOR RELIEF FILED BY A DEFENDANT AFTER CONCLUSION OF THE PROCESS ESTABLISHED BY THIS PART 2, INCLUDING BUT NOT LIMITED TO MOTIONS FILED UNDER SECTION 16-12-209;

(m) CREATION OF MEANINGFUL SANCTIONS FOR VIOLATIONS OF THE RULES PROMULGATED BY THE SUPREME COURT; AND

(n) ISSUANCE AND DISSOLUTION OF STAYS OF EXECUTION.

(3) THE SUPREME COURT RULES ADOPTED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL ENSURE THAT ALL PROCEEDINGS FOR POSTCONVICTION REVIEW, THE CERTIFICATION OF THE RECORD, AND ALL APPELLATE BRIEFING SHALL BE COMPLETED WITHIN TWO YEARS AFTER THE DATE UPON WHICH THE SENTENCE OF DEATH IS IMPOSED. THERE SHALL BE NO EXTENSIONS OF TIME OF ANY KIND BEYOND THE TWO-YEAR PERIOD.

(4) UNLESS OTHERWISE PROVIDED IN THIS PART 2, THE COLORADO APPELLATE RULES GOVERN THE PROCEDURES TO BE FOLLOWED IN APPEALS TO THE COLORADO SUPREME COURT OF TRIAL COURT RULINGS UNDER THIS PART 2.

(5) THE GENERAL ASSEMBLY URGES THE COLORADO SUPREME COURT TO RENDER ITS DECISIONS EXPEDITIOUSLY IN REVIEW OF CLASS 1 FELONY CONVICTIONS WHERE THE DEATH PENALTY HAS BEEN IMPOSED AND ANY ORDER BY THE TRIAL 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 ALL 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.

16-12-209. Limitation on postconviction review. (1) NO FURTHER POSTCONVICTION REVIEW IS AVAILABLE TO THE DEFENDANT AFTER THE TIME SPECIFIED BY SUPREME COURT RULE FOR FILING A PETITION FOR POSTCONVICTION REVIEW HAS EXPIRED. ANY CLAIM OR PETITION FILED THEREAFTER SHALL BE DEEMED WAIVED AND SHALL BE DISMISSED SUMMARILY UNLESS THE DEFENDANT ESTABLISHES THAT:

(a) THE FAILURE TO RAISE THE CLAIM WITHIN THE TIME LIMIT WAS THE DIRECT RESULT OF INTERFERENCE BY GOVERNMENT OFFICIALS WITH THE PRESENTATION OF THE CLAIM IN A MANNER WHICH VIOLATED THE CONSTITUTION OR LAWS OF THE UNITED STATES OR COLORADO; OR

(b) THE FACTS UPON WHICH THE CLAIM ARE BASED WERE UNKNOWN TO THE DEFENDANT AND COULD NOT HAVE BEEN ASCERTAINED BY THE EXERCISE OF DUE DILIGENCE; OR

(c) THE RIGHT ASSERTED BY THE DEFENDANT IS A CONSTITUTIONAL RIGHT THAT WAS RECOGNIZED BY THE SUPREME COURT OF EITHER THE UNITED STATES OR COLORADO AFTER THE TIME LIMITS SPECIFIED BY SUPREME COURT RULE FOR THE FILING OF THE PETITION FOR POSTCONVICTION REVIEW HAD EXPIRED AND THE CONSTITUTIONAL RIGHT APPLIES RETROACTIVELY.

(2) IF THE DEFENDANT FILES A MOTION FOR POSTCONVICTION REVIEW RAISING ANY OF THE GROUNDS SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE MOTION SHALL BE FILED WITH THE TRIAL COURT WITHIN THIRTY DAYS AFTER THE DATE UPON WHICH THE GROUNDS ARE DISCOVERED.

16-12-210. Severability. IF ANY PROVISION OF THIS PART 2 OR THE APPLICATION OF THIS PART 2 TO ANY PERSON OR CIRCUMSTANCE IS HELD TO BE INVALID OR UNCONSTITUTIONAL, SUCH INVALIDITY OR UNCONSTITUTIONALITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS PART 2 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID OR UNCONSTITUTIONAL PROVISION OR APPLICATION. THEREFORE, TO THIS END, THE PROVISIONS OF THIS PART 2 ARE DECLARED TO BE SEVERABLE.

SECTION 2. 16-11-103 (6) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-103. Imposition of sentence in class 1 felonies - appellate review. (6) (a) Whenever a sentence of death is imposed upon a person pursuant to the provisions of this section, the supreme court shall review the propriety of that sentence, having regard to the nature of the offense, the character and record of the offender, 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. The procedures to be employed in the review shall be as provided by supreme court rule. THE SUPREME COURT SHALL COMBINE ITS REVIEW PURSUANT TO THIS SUBSECTION (6) WITH CONSIDERATION OF ANY APPEAL THAT MAY BE FILED PURSUANT TO PART 2 OF ARTICLE 12 OF THIS TITLE.

SECTION 3. 16-11-802 (6) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-802. Imposition of sentences in class 1 felonies for crimes committed on or after July 1, 1988, and prior to September 20, 1991 - appellate review. (6) (a) Whenever a sentence of death is imposed upon a person pursuant to the provisions of this section, the supreme court shall review the propriety of that sentence, having regard to the nature of the offense, the character and record of the offender, 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. The procedures to be employed in the review shall be as provided by supreme court rule. THE SUPREME COURT SHALL COMBINE ITS REVIEW PURSUANT TO THIS SUBSECTION (6) WITH CONSIDERATION OF ANY APPEAL THAT MAY BE FILED PURSUANT TO PART 2 OF ARTICLE 12 OF THIS TITLE.

SECTION 4. 16-12-101.5 (2), 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. (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~~ IMPOSED PRIOR TO THE DATE UPON WHICH THE COLORADO SUPREME COURT ADOPTS RULES IMPLEMENTING THE UNITARY SYSTEM OF REVIEW ESTABLISHED BY PART 2 OF THIS ARTICLE, 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 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 5. 18-1-410 (1.5) and (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, 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.

(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 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: June 4, 1997