

CHAPTER 135

CRIMINAL LAW AND PROCEDURE

SENATE BILL 01-104

BY SENATOR(S) Fitz-Gerald, Arnold, Dennis, Dyer (Arapahoe), Epps, Hagedorn, Lamborn, May, McElhany, and Nichol;
also REPRESENTATIVE(S) Mitchell, Clapp, and Coleman.

AN ACT

CONCERNING THE DETERMINATION OF WHETHER A CONVICTED PERSON IS MENTALLY INCOMPETENT TO
BE EXECUTED.

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

SECTION 1. Legislative declaration. The general assembly hereby finds that the provisions of this act are procedural in nature and do not alter the elements of a crime or deprive a defendant of a defense to a crime. Therefore, the provisions of this act are not retrospective and may constitutionally apply to all cases in which the question of whether a convicted person is mentally incompetent to be executed is raised, regardless of whether the offense for which the convicted person received a death sentence was committed prior to, on, or after the effective date of this act.

SECTION 2. Article 8 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 3
COMPETENCY OF PERSONS TO BE EXECUTED**

16-8-301. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COLORADO MENTAL HEALTH INSTITUTE" MEANS THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO.

(2) "MENTALLY INCOMPETENT TO BE EXECUTED" MEANS THAT, DUE TO A MENTAL DISEASE OR DEFECT, A PERSON WHO HAS BEEN SENTENCED TO DEATH IS PRESENTLY UNAWARE THAT HE OR SHE IS TO BE PUNISHED FOR THE CRIME OF MURDER OR THAT HE OR SHE IS UNAWARE THAT THE IMPENDING PUNISHMENT FOR THAT CRIME IS DEATH.

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

16-8-302. Mental competency to be executed - presumptions. (1) A PERSON WHO IS SENTENCED TO DEATH SHALL NOT BE EXECUTED SO LONG AS THE PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED.

(2) ANY CONVICTED PERSON WHO IS SENTENCED TO DEATH IS PRESUMED MENTALLY COMPETENT TO BE EXECUTED. A CONVICTED PERSON MAY BE FOUND MENTALLY INCOMPETENT TO BE EXECUTED ONLY ON CLEAR AND CONVINCING EVIDENCE OF SUCH CONDITION. THE PARTY ASSERTING THAT THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED BEARS THE BURDEN OF PROOF REGARDING SUCH CONDITION AND THE BURDEN OF PRODUCING EVIDENCE OF SUCH CONDITION.

16-8-303. Mental incompetency to be executed - filing of motion. (1) (a) IF, AFTER A SENTENCE OF DEATH IS IMPOSED, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, THE CONVICTED PERSON'S ATTORNEY, OR AN ATTORNEY FOR THE STATE HAS A GOOD FAITH REASON TO BELIEVE THAT THE CONVICTED PERSON MAY BE MENTALLY INCOMPETENT TO BE EXECUTED, THE EXECUTIVE DIRECTOR, THE CONVICTED PERSON'S ATTORNEY, OR THE STATE ATTORNEY MAY FILE A MOTION RAISING THE ISSUE OF WHETHER THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED. THE MOTION SHALL BE FILED IN THE DISTRICT COURT IN THE JUDICIAL DISTRICT IN WHICH THE CONVICTED PERSON WAS SENTENCED AND SHALL BE DIRECTED TO THE JUDGE WHO PRESIDED OVER THE CONVICTED PERSON'S SENTENCING HEARING. IF THAT JUDGE IS UNAVAILABLE, THE CHIEF JUDGE OF THE SAME JUDICIAL DISTRICT SHALL DECIDE THE MOTION. THE MOTION SHALL BE FILED IN BOTH THE DISTRICT COURT CLERK'S OFFICE AND THE OFFICE OF THE JUDGE WHO WILL HEAR THE MOTION. ON THE SAME DAY THE MOTION AND ACCOMPANYING MATERIALS ARE FILED WITH THE COURT, THE MOTION AND ALL ACCOMPANYING MATERIALS SHALL BE SERVED UPON THE OFFICE OF THE PROSECUTING ATTORNEY WHO TRIED THE CASE AND THE ATTORNEY GENERAL'S OFFICE.

(b) IF THE JUDGE WHO PRESIDED AT THE SENTENCING HEARING HAS A GOOD FAITH REASON TO BELIEVE THAT THE CONVICTED PERSON MAY BE MENTALLY INCOMPETENT TO BE EXECUTED, THE JUDGE SHALL SO ADVISE THE CONVICTED PERSON'S ATTORNEY OR SHALL APPOINT AN ATTORNEY TO INVESTIGATE THE ISSUE AND FILE ANY MOTIONS THE ATTORNEY DEEMS APPROPRIATE UNDER THIS PART 3.

(2) (a) A MOTION FILED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL SET FORTH THE FACTS RELATING TO THE CONVICTED PERSON'S CONVICTION AND SENTENCE AND THE FACTS GIVING RISE TO THE BELIEF THAT THE CONVICTED PERSON MAY BE MENTALLY INCOMPETENT TO BE EXECUTED AND SHALL REQUEST THE DISTRICT COURT TO ORDER THAT THE CONVICTED PERSON BE EXAMINED FOR MENTAL INCOMPETENCY TO BE EXECUTED. THE MOTION SHALL BE ACCOMPANIED BY THE NAMES AND ADDRESSES OF ANY MENTAL HEALTH EXPERTS WHO HAVE EXAMINED THE CONVICTED PERSON WITH RESPECT TO THE ISSUE OF WHETHER THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED AND THE RESULTS OF THOSE EXAMINATIONS, AS WELL AS ANY RECORDS OF ANY OTHER MENTAL HEALTH EXAMINATIONS, TREATMENT, OR REPORTS THAT ARE NOT PRIVILEGED AND ARE AVAILABLE TO THE MOVING PARTY OR IN THE MOVING PARTY'S POSSESSION. IF THE MOVING PARTY HAS ANY QUESTION REGARDING WHETHER ANY SUCH REPORT IS PRIVILEGED, THE REPORT SHALL BE SUBMITTED TO THE COURT EX PARTE AND THE

COURT SHALL MAKE A DETERMINATION AS TO RELEASE OF THE REPORT. IF THE MOVING PARTY IS THE CONVICTED PERSON'S ATTORNEY, THE CONVICTED PERSON SHALL BE DEEMED TO HAVE WAIVED ANY CLAIM OF CONFIDENTIALITY OR PRIVILEGE AS TO COMMUNICATIONS MADE BY THE CONVICTED PERSON TO ANY PHYSICIAN, PSYCHIATRIST, OR PSYCHOLOGIST IN THE COURSE OF EXAMINATION OR TREATMENT FOR ANY MENTAL HEALTH CONDITION FOR WHICH THE CONVICTED PERSON HAS RECEIVED TREATMENT, AND THE MOVING PARTY SHALL INCLUDE ANY RECORDS OF ANY OTHER MENTAL HEALTH EXAMINATIONS, TREATMENT, OR REPORTS.

(b) ON RECEIPT OF A MOTION RAISING THE ISSUE OF WHETHER A CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED, THE CLERK OF THE DISTRICT COURT SHALL TRANSMIT COPIES OF THE MOTION TO THE SUPREME COURT. THE CLERK OF THE DISTRICT COURT SHALL TRANSMIT COPIES OF ALL SUBSEQUENT FILINGS TO THE SUPREME COURT AS THEY ARE RECEIVED.

16-8-304. Mental incompetency to be executed - examination. (1) (a) ON RECEIPT OF A MOTION FILED PURSUANT TO SECTION 16-8-303, THE DISTRICT COURT SHALL DETERMINE WHETHER THE MOTION IS TIMELY, AS PRESCRIBED BY SECTION 16-8-305, AND WHETHER IT PRESENTS REASONABLE GROUNDS FOR ORDERING AN EXAMINATION. PRIOR TO MAKING ANY DETERMINATIONS, THE DISTRICT COURT SHALL ENSURE THAT THE PROSECUTION HAS AN OPPORTUNITY TO RESPOND TO THE MOTION AND TO SUBMIT ANY ADDITIONAL INFORMATION FOR CONSIDERATION. THE DISTRICT COURT SHALL ALSO PROVIDE AN OPPORTUNITY FOR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, THE CONVICTED PERSON'S ATTORNEY, OR AN ATTORNEY FOR THE STATE TO RESPOND TO THE MOTION AND TO SUBMIT ADDITIONAL INFORMATION FOR CONSIDERATION. ALL RESPONSES AND ADDITIONAL SUBMISSIONS SHALL BE FILED WITH THE COURT WITHIN THREE DAYS FOLLOWING THE FILING OF THE MOTION. WITHIN FIVE DAYS FOLLOWING THE FILING OF THE MOTION, THE DISTRICT COURT SHALL DETERMINE WHETHER THERE ARE REASONABLE GROUNDS FOR ORDERING THE EXAMINATION, BASED ON THE MOTION AND ANY SUPPORTING INFORMATION, ANY INFORMATION SUBMITTED BY THE PROSECUTING ATTORNEY OR ANY OTHER RESPONDING PARTY, AND THE RECORD IN THE CASE, INCLUDING TRANSCRIPTS OF PREVIOUS HEARINGS AND ORDERS.

(b) THE DISTRICT COURT SHALL ISSUE A STAY OF EXECUTION UPON A SHOWING OF REASONABLE GROUNDS FOR GRANTING THE STAY. A STAY OF EXECUTION MAY BE REQUESTED ONLY BY THE CONVICTED PERSON'S ATTORNEY, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, OR AN ATTORNEY FOR THE STATE.

(2) (a) IF THE COURT FINDS THERE ARE NO REASONABLE GROUNDS FOR THE REQUESTED EXAMINATION, THE COURT SHALL DISMISS THE MOTION. IF THE COURT FINDS THE MOTION IS TIMELY AND THERE ARE REASONABLE GROUNDS FOR ORDERING AN EXAMINATION, THE COURT MAY ORDER THE CONVICTED PERSON TO SUBMIT TO PHYSICAL, NEUROLOGICAL, PSYCHIATRIC, PSYCHOLOGICAL, OR OTHER EXAMINATIONS OR EVALUATIONS THAT ARE REASONABLY NECESSARY TO ADEQUATELY DETERMINE WHETHER THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED.

(b) THE COLORADO MENTAL HEALTH INSTITUTE SHALL CREATE AND MAINTAIN A LIST OF LICENSED, QUALIFIED PSYCHIATRISTS AND PSYCHOLOGISTS WHO SHALL BE AVAILABLE TO PERFORM THE EXAMINATIONS REQUIRED PURSUANT TO THIS PART 3.

(c) IF THE COURT DETERMINES AN EXAMINATION IS NECESSARY, THE COURT SHALL APPOINT ONE OR MORE LICENSED PSYCHIATRISTS TO OBSERVE AND EXAMINE THE CONVICTED PERSON. IN MAKING SUCH APPOINTMENT, THE COURT MAY SELECT ONE OR MORE LICENSED PSYCHIATRISTS FROM THE LIST PREPARED BY THE COLORADO MENTAL HEALTH INSTITUTE PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) OR APPOINT ANOTHER QUALIFIED, LICENSED PSYCHIATRIST. IF REQUESTED IN THE MOTION FOR COMPETENCY EXAMINATION OR BY MOTION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, THE PROSECUTION, OR THE ATTORNEY FOR THE CONVICTED PERSON OR BY REQUEST OF THE APPOINTED PSYCHIATRIST, AND FOR GOOD CAUSE SHOWN, THE COURT MAY ORDER FURTHER EXAMINATIONS, INCLUDING THE SERVICES OF LICENSED PSYCHOLOGISTS, LICENSED PHYSICIANS, OR PSYCHIATRISTS. ALL EXAMINATIONS SHALL BE COMPLETED AND REPORTS FILED WITH THE COURT WITHIN THIRTY DAYS FOLLOWING THE COURT'S INITIAL APPOINTMENT OF EXPERTS.

(3) (a) ANY EXAMINATION ORDERED PURSUANT TO THIS SECTION SHALL BE CONDUCTED AT A DEPARTMENT OF CORRECTIONS FACILITY.

(b) AT THE TIME OF APPOINTMENT OF EXPERTS, THE PARTIES SHALL DISCLOSE TO THE APPOINTED EXPERTS AND TO EACH OTHER THE NAMES AND ADDRESSES OF ANY OTHER PREVIOUSLY UNDISCLOSED MENTAL HEALTH EXPERTS WHO HAVE EXAMINED THE CONVICTED PERSON AND THE RESULTS OF THE EXAMINATIONS, AS WELL AS ANY AND ALL RECORDS OF ANY OTHER PREVIOUSLY UNDISCLOSED MENTAL HEALTH EXAMINATIONS, TREATMENT, OR REPORTS THAT ARE NOT PRIVILEGED. IF THE PARTY HAS ANY QUESTION REGARDING WHETHER ANY SUCH RECORDS ARE PRIVILEGED, THE RECORDS SHALL BE SUBMITTED TO THE COURT EX PARTE AND THE COURT SHALL MAKE A DETERMINATION AS TO RELEASE OF THE RECORD. THE APPOINTED EXPERTS SHALL MAKE COPIES OF THEIR REPORTS AVAILABLE TO ALL OF THE PARTIES AT THE TIME OF FILING THE REPORTS WITH THE COURT. THE EXPERTS' REPORTS SHALL INDICATE WHETHER THE CONVICTED PERSON HAS A MENTAL DISEASE OR DEFECT WHICH RENDERS THE CONVICTED PERSON MENTALLY INCOMPETENT TO BE EXECUTED.

(4) THE CONVICTED PERSON SHALL SUBMIT TO AND COOPERATE IN ALL EXAMINATIONS OR EVALUATIONS ORDERED BY THE COURT, REGARDLESS OF WHICH PARTY SELECTS THE EXAMINING MENTAL HEALTH EXPERT. THE DISTRICT COURT SHALL CONSIDER ANY RELEVANT EVIDENCE CONCERNING THE ISSUE OF THE CONVICTED PERSON'S COMPETENCY TO BE EXECUTED, INCLUDING BUT NOT LIMITED TO THE CONVICTED PERSON'S REFUSAL TO BE EXAMINED OR EVALUATED.

(5) (a) AFTER THE EXAMINATIONS ARE COMPLETED AND REPORTS ARE FILED, THE COURT SHALL CONDUCT A HEARING WITHIN FIVE DAYS FOLLOWING THE COURT'S RECEIPT OF ALL REPORTS FROM APPOINTED EXPERTS. THE HEARING SHALL BE LIMITED TO THE SOLE ISSUE OF WHETHER THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED. AT THE HEARING, ALL PARTIES MAY PRESENT EVIDENCE, CROSS-EXAMINE WITNESSES, AND PRESENT ARGUMENT OR, BY STIPULATION, MAY SUBMIT THE MATTER FOR THE COURT'S DETERMINATION ON THE BASIS OF THE EXPERTS' REPORTS OR OTHER EVIDENCE.

(b) THE COLORADO RULES OF EVIDENCE SHALL APPLY TO EACH HEARING HELD PURSUANT TO THIS SECTION. THE TRANSCRIPT OF THE HEARING SHALL BE FORWARDED TO THE COLORADO SUPREME COURT WITHIN THREE DAYS FOLLOWING

THE CONCLUSION OF THE HEARING.

(6) (a) WITHIN THREE DAYS FOLLOWING THE CONCLUSION OF THE HEARING HELD PURSUANT TO SUBSECTION (5) OF THIS SECTION, THE DISTRICT COURT, EITHER ON THE RECORD OR BY WRITTEN RULING, SHALL SPECIFICALLY STATE ITS FINDINGS ON THE MOTION RAISING THE ISSUE OF WHETHER THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED. IF THE RULING IS IN WRITTEN FORM, IT SHALL BE TRANSMITTED BY FACSIMILE OR ELECTRONIC MAIL TO ALL PARTIES AND THE COLORADO SUPREME COURT ON THE SAME DAY OF ITS ISSUANCE.

(b) IF THE COURT FINDS THE CONVICTED PERSON IS NOT MENTALLY INCOMPETENT TO BE EXECUTED, THE COURT SHALL IMMEDIATELY REMAND THE CONVICTED PERSON TO THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS WHO SHALL EXECUTE THE JUDGMENT AS SPECIFIED IN THE WARRANT ISSUED PURSUANT TO SECTION 16-11-403. IF THE WEEK SPECIFIED IN THE WARRANT HAS PASSED, THE DISTRICT COURT SHALL ISSUE A NEW WARRANT DESIGNATING A WEEK OF TIME WITHIN WHICH THE SENTENCE SHALL BE EXECUTED.

(c) IF THE COURT FINDS THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED, THE COURT SHALL STAY THE EXECUTION AND SHALL IMMEDIATELY TRANSMIT A COPY OF ITS ORDER TO THE COLORADO SUPREME COURT.

(7) THE TIME FRAMES SPECIFIED IN THIS SECTION SHALL APPLY ONLY IF THE MOTION FILED PURSUANT TO SECTION 16-8-303 IS FILED WITHIN ONE HUNDRED TWENTY DAYS PRIOR TO THE CONVICTED PERSON'S EXECUTION DATE. IN ALL OTHER CASES, THE COURT SHALL ESTABLISH TIME FRAMES FOR FILING OF RESPONSES AND ADDITIONAL SUBMISSIONS AND FOR COMPLETION OF THE EXAMINATIONS AND SHALL HEAR AND RULE ON THE MOTION AS EXPEDITIOUSLY AS POSSIBLE.

16-8-305. Mentally incompetent to be executed - untimely or successive motions. (1) A MOTION RAISING THE ISSUE OF WHETHER A CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED THAT IS FILED PURSUANT TO SECTION 16-8-304 FEWER THAN THIRTY DAYS BEFORE THE SCHEDULED EXECUTION IS UNTIMELY AND SHALL NOT BE CONSIDERED BY THE COURT UNLESS IT IS ACCOMPANIED BY BOTH OF THE FOLLOWING:

(a) AT LEAST ONE AFFIDAVIT FROM A LICENSED PHYSICIAN, LICENSED PSYCHIATRIST, OR LICENSED PSYCHOLOGIST WHO HAS EXAMINED THE CONVICTED PERSON THAT STATES THE PHYSICIAN'S, PSYCHIATRIST'S, OR PSYCHOLOGIST'S OPINION THAT THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED; AND

(b) A STATEMENT THAT ESTABLISHES GOOD CAUSE FOR THE FAILURE TO FILE THE MOTION IN A TIMELY MANNER.

(2) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), IF THE COURT HAS DETERMINED, PURSUANT TO SECTION 16-8-304 OR 16-8-306 (3), THAT A CONVICTED PERSON IS NOT MENTALLY INCOMPETENT TO BE EXECUTED, NO FURTHER CONSIDERATION OF THE CONVICTED PERSON'S MENTAL INCOMPETENCE TO BE EXECUTED MAY BE GRANTED BY THE COURT.

(b) A SUCCESSIVE MOTION RAISING THE ISSUE OF WHETHER A CONVICTED PERSON

IS MENTALLY INCOMPETENT TO BE EXECUTED MAY BE FILED ONLY IF THE SUCCESSIVE MOTION IS ACCOMPANIED BY AN AFFIDAVIT FROM A LICENSED PHYSICIAN, LICENSED PSYCHIATRIST, OR LICENSED PSYCHOLOGIST WHO HAS EXAMINED THE CONVICTED PERSON THAT SHOWS A SUBSTANTIAL CHANGE OF CIRCUMSTANCES SINCE THE PREVIOUS MOTION WAS DENIED OR THE PRIOR DETERMINATION OF RESTORATION TO COMPETENCY TO BE EXECUTED WAS MADE AND THE SHOWING IS SUFFICIENT TO RAISE A SIGNIFICANT QUESTION REGARDING WHETHER THE CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED.

16-8-306. Persons mentally incompetent to be executed - restoration to competency. (1) THE COURT MAY ORDER A RESTORATION HEARING AT ANY TIME ON ITS OWN MOTION, ON MOTION OF AN ATTORNEY FOR THE STATE, OR ON MOTION OF THE CONVICTED PERSON'S ATTORNEY. THE COURT SHALL ORDER A HEARING IF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS FILES A REPORT THAT THE CONVICTED PERSON IS NO LONGER MENTALLY INCOMPETENT TO BE EXECUTED.

(2) AT THE HEARING, IF THE QUESTION IS CONTESTED, THE BURDEN OF SUBMITTING EVIDENCE AND THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE SHALL BE UPON THE PARTY ASSERTING THAT THE CONVICTED PERSON IS MENTALLY COMPETENT TO BE EXECUTED.

(3) AT THE HEARING, THE COURT SHALL DETERMINE WHETHER THE CONVICTED PERSON IS MENTALLY COMPETENT TO BE EXECUTED AND, IF SO, SHALL ORDER THAT THE EXECUTION BE CONDUCTED ACCORDING TO THE ORIGINAL WARRANT ISSUED PURSUANT TO SECTION 16-11-403, IF UNEXPIRED, OR SHALL ISSUE A NEW WARRANT APPOINTING A TIME FOR EXECUTION OF THE JUDGMENT.

16-8-307. Appeal of determination of mental incompetency to be executed. (1) WITHIN FIVE WORKING DAYS AFTER THE DISTRICT COURT RULES ON A MOTION RAISING THE ISSUE OF WHETHER A CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED FILED PURSUANT TO THIS PART 3, A PARTY MAY FILE WITH THE COLORADO SUPREME COURT A PETITION TO OBTAIN A REVIEW OF THE DISTRICT COURT'S DECISION AND REQUESTING A STAY OF EXECUTION PENDING THE REVIEW.

(2) THE SUPREME COURT SHALL EXPEDITE ITS REVIEW OF THE DISTRICT COURT'S DECISION AND, IF THE DESIGNATED WEEK OF EXECUTION IN AN EXISTING WARRANT OF CONVICTION HAS NOT PASSED, SHALL NOT TAKE MORE THAN FIVE WORKING DAYS TO RENDER ITS DECISION.

SECTION 3. 16-8-110, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-8-110. Mental incompetency to proceed - effect - how and when raised. (3) NOTWITHSTANDING ANY PROVISION OF THIS PART 1 OR PART 2 OF THIS ARTICLE TO THE CONTRARY, THE QUESTION OF WHETHER A CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED SHALL BE RAISED AND DETERMINED AS PROVIDED IN PART 3 OF THIS ARTICLE.

SECTION 4. 16-8-111 (1), Colorado Revised Statutes, is amended, and the said 16-8-111 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-8-111. Determination of incompetency to proceed. (1) Whenever the question of a defendant's incompetency to proceed is raised, the court shall make a preliminary finding either that the defendant is competent to proceed or that ~~he~~ THE DEFENDANT is not. If the court feels that the information available to it is inadequate for making such finding, it may order a competency examination or such other investigation as it deems advisable. ~~If the defendant is awaiting the execution of a death sentence, the district court of the county in which the defendant is confined may make the preliminary finding; otherwise, it shall be made by the trial court.~~

(4) NOTWITHSTANDING ANY PROVISION OF THIS PART 1 OR PART 2 OF THIS ARTICLE TO THE CONTRARY, THE QUESTION OF WHETHER A CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED SHALL BE RAISED AND DETERMINED AS PROVIDED IN PART 3 OF THIS ARTICLE.

SECTION 5. 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: April 19, 2001