CHAPTER 1

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 02S-1005

BY REPRESENTATIVE(S) Hefley, Cadman, Chavez, Clapp, Cloer, Coleman, Crane, Decker, Fairbank, Fritz, Grossman, Harvey, Hoppe, Jameson, Johnson, Kester, King, Mace, Mitchell, Ragsdale, Rhodes, Schultheis, Scott, Sinclair, Smith, Snook, Spence, Spradley, Stafford, Veiga, Vigil, Weddig, White, Williams S., and Young;
also SENATOR(S) Gordon, Hagedorn, and Hernandez.

AN ACT

CONCERNING DETERMINATION OF THE DEATH PENALTY BY A JURY.

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

SECTION 1. 16-11-103 (1), (2), (3.5), and (7), Colorado Revised Statutes, as they exist until October 1, 2002, are amended, and the said 16-11-103, as it exists until October 1, 2002, is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

16-11-103. Imposition of sentence in class 1 felonies - appellate review. (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, ~~a panel of three judges, as soon as practicable,~~ THE TRIAL COURT shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission of the offense or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 4 of article 9 of this title, in either of which cases, the defendant shall be sentenced to life imprisonment. THE HEARING SHALL BE CONDUCTED BY THE TRIAL JUDGE BEFORE THE TRIAL JURY AS SOON AS PRACTICABLE. ALTERNATE JURORS SHALL NOT BE EXCUSED FROM THE CASE PRIOR TO SUBMISSION OF THE ISSUE OF GUILT TO THE TRIAL JURY AND SHALL REMAIN SEPARATELY SEQUESTERED UNTIL A VERDICT IS ENTERED BY THE TRIAL JURY. IF THE VERDICT OF THE TRIAL JURY IS THAT THE DEFENDANT IS GUILTY OF A CLASS 1 FELONY, THE ALTERNATE JURORS SHALL SIT AS ALTERNATE JURORS ON THE ISSUE OF PUNISHMENT. IF, FOR ANY REASON SATISFACTORY TO THE COURT, ANY MEMBER OR MEMBERS OF THE TRIAL JURY ARE EXCUSED FROM PARTICIPATION IN THE SENTENCING HEARING, THE TRIAL JUDGE SHALL REPLACE EACH JUROR OR JURORS WITH AN ALTERNATE JUROR OR JURORS. IF A TRIAL JURY WAS WAIVED OR IF THE DEFENDANT

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

PLED GUILTY, THE HEARING SHALL BE CONDUCTED BEFORE THE TRIAL JUDGE. THE COURT SHALL INSTRUCT THE DEFENDANT WHEN WAIVING HIS OR HER RIGHT TO A JURY TRIAL OR WHEN PLEADING GUILTY, THAT HE OR SHE IS ALSO WAIVING HIS OR HER RIGHT TO A JURY DETERMINATION OF THE SENTENCE AT THE SENTENCING HEARING.

(a.5) ~~(I) The panel of judges that conducts the sentencing hearing shall consist of the judge who presided at the trial or before whom the guilty plea was entered, or a replacement for said judge in the event he or she dies, resigns, is incapacitated, or is otherwise disqualified, and two additional district court judges designated by the chief justice of the Colorado supreme court. The chief justice may select the two additional district court judges, and any necessary replacement for the trial judge, from any judicial district in the state but is encouraged to select from the judicial district in which the case was filed or from adjoining judicial districts. In selecting the district court judges for the panel, the chief justice shall select only those district court judges who are regularly sitting judges; except that the chief justice, pursuant to section 5 (3) of article VI of the state constitution, may select a retired justice of the supreme court or a retired judge as one of the additional judges for the panel.~~

~~(II) The judge who presided at the trial and any district court judge who is appointed to serve on the panel may be subject to disqualification as provided in section 16-6-201.~~

~~(III) The trial judge shall be the presiding judge for purposes of the sentencing hearing. If a replacement judge has been appointed for the trial judge, the district court judges appointed to the panel shall choose a presiding judge from among themselves.~~

(a.7) ~~At the sentencing hearing, in addition to the evidence presented by the parties, the three-judge panel shall consider the certified transcripts of the trial. The sentencing hearing shall be held as soon as practicable following the trial, but not later than sixty days after the trial verdict is returned, unless for good cause shown.~~

(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the ~~panel of judges~~ COURT deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section, and any matters relating to the personal characteristics of the victim and the impact of the crimes on the victim's family may be presented. Any such evidence, including but not limited to the testimony of members of the victim's immediate family, as defined in section 24-4.1-302 (6), C.R.S., which the ~~panel of judges~~ COURT deems to have probative value may be received, as long as each party is given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death. THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(c) ~~Both the prosecuting attorney and the defense shall notify each other of the names and addresses of any witnesses to be called in the sentencing hearing and the subject matter of such testimony. Such discovery shall be provided within a reasonable amount of time as determined by order of the panel of judges and shall be~~

~~provided not less than twenty-four hours prior to the commencement of the sentencing hearing. Unless good cause is shown, noncompliance with this paragraph (c) shall result in the exclusion of such evidence without further sanction.~~

(d) The burden of proof as to the aggravating factors enumerated in subsection (5) of this section shall be beyond a reasonable doubt. There shall be no burden of proof as to proving or disproving mitigating factors.

(2) (a) After hearing all the evidence and arguments of the prosecuting attorney and the defendant, the ~~panel of judges~~ JURY shall ~~unanimously determine whether to impose a sentence of death~~ DELIBERATE AND RENDER A VERDICT based upon the following considerations:

(I) Whether at least one aggravating factor has been proved as enumerated in subsection (5) of this section;

(II) Whether sufficient mitigating factors exist which outweigh any aggravating factor or factors found to exist; and

(III) Based on the considerations in subparagraphs (I) and (II) of this paragraph (a), whether the defendant should be sentenced to death or life imprisonment.

(b) (I) In the event that no aggravating factors are found to exist as enumerated in subsection (5) of this section, the ~~panel of judges~~ JURY shall RENDER A VERDICT OF LIFE IMPRISONMENT, AND THE COURT SHALL sentence the defendant to life imprisonment.

(II) The ~~panel of judges~~ JURY shall not ~~impose a~~ RENDER A VERDICT OF death ~~sentence~~ unless it unanimously finds and specifies in writing that:

(A) At least one aggravating factor has been proved; and

(B) There are insufficient mitigating factors to outweigh the aggravating factor or factors that were proved.

(c) ~~The sentence of the panel of judges, whether to death or to life in prison, shall be supported by specific written findings of fact based upon the circumstances as set forth in subsections (4) and (5) of this section and upon the records of the trial and the sentencing hearing.~~ IN THE EVENT THAT THE JURY'S VERDICT IS TO SENTENCE TO DEATH, SUCH VERDICT SHALL BE UNANIMOUS AND SHALL BE BINDING UPON THE COURT UNLESS THE COURT DETERMINES, AND SETS FORTH IN WRITING THE BASIS AND REASONS FOR SUCH DETERMINATION, THAT THE VERDICT OF THE JURY IS CLEARLY ERRONEOUS AS CONTRARY TO THE WEIGHT OF THE EVIDENCE, IN WHICH CASE THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(d) ~~If the panel of judges cannot unanimously agree on a sentence, it shall make a record of each judge's position and shall then sentence the defendant to life imprisonment.~~ IF THE JURY'S VERDICT IS NOT UNANIMOUS, THE JURY SHALL BE DISCHARGED, AND THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(3.2) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD BEFORE THE COURT ALONE, THE COURT SHALL DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT IN THE SAME MANNER IN WHICH A JURY DETERMINES ITS VERDICT UNDER PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. THE SENTENCE OF THE COURT SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES AS SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE TRIAL AND SENTENCING HEARING.

(3.5) (a) The provisions of this subsection (3.5) shall apply only in a class 1 felony case in which the prosecuting attorney has filed a statement of intent to seek the death penalty pursuant to rule 32.1 (b) of the Colorado rules of criminal procedure.

(b) The prosecuting attorney shall provide the defendant with the following information and materials not later than ~~five~~ TWENTY days after ~~the verdict is returned finding the defendant guilty of a class 1 felony~~ THE PROSECUTION FILES ITS WRITTEN INTENTION TO SEEK THE DEATH PENALTY OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE DEFENSE AS SOON AS PRACTICABLE BUT NOT LATER THAN FORTY-FIVE DAYS BEFORE TRIAL:

(I) A list of all aggravating factors that are known to the prosecuting attorney at that time and that the prosecuting attorney intends to prove at the sentencing hearing;

(II) A list of all witnesses whom the prosecuting attorney may call at the sentencing hearing, specifying for each the witness' name, address, and date of birth and the subject matter of the witness' testimony;

(III) The written and recorded statements, including any notes of those statements, for each witness whom the prosecuting attorney may call at the sentencing hearing;

(IV) ~~Any reports, recorded statements, and notes of any expert whom the prosecuting attorney may call as a witness during the sentencing hearing, including results of physical or mental examination and scientific test, experiments, or comparisons;~~

(V) A list of books, papers, documents, photographs, or tangible objects that the prosecuting attorney may introduce at the sentencing hearing; and

(VI) All material or information that tends to mitigate or negate the finding of any of the aggravating factors the prosecuting attorney intends to prove at the sentencing hearing.

(b.5) UPON RECEIPT OF THE INFORMATION REQUIRED TO BE DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3.5), THE PROSECUTING ATTORNEY SHALL NOTIFY THE DEFENDANT AS SOON AS PRACTICABLE OF ANY ADDITIONAL WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL IN RESPONSE TO THE DEFENDANT'S DISCLOSURES.

(c) The defendant shall provide the prosecuting attorney with the following information and materials no later than ~~twenty~~ THIRTY days ~~after the verdict is returned finding the defendant guilty of a class 1 felony~~ BEFORE THE FIRST TRIAL DATE SET FOR THE BEGINNING OF THE DEFENDANT'S TRIAL OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; HOWEVER, ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE DEFENSE INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE PROSECUTING ATTORNEY AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A list of all witnesses whom the defendant may call at the sentencing hearing, specifying for each the witness' name, address, and date of birth and the subject matter of the witness' testimony;

(II) The written and recorded statements, including any notes of those statements, of each witness whom the defendant may call at the sentencing hearing; AND

(III) ~~Any reports, recorded statements, and notes of any expert whom the defendant may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons; and~~

(IV) A list of books, papers, documents, photographs, or tangible objects that the defendant may introduce at the sentencing hearing.

(c.5) (I) ANY MATERIAL SUBJECT TO THIS SUBSECTION (3.5) THAT THE DEFENDANT BELIEVES CONTAINS INFORMATION THAT IS PRIVILEGED TO THE EXTENT THAT THE PROSECUTION CANNOT BE AWARE OF IT IN CONNECTION WITH ITS PREPARATION FOR, OR CONDUCT OF, THE TRIAL TO DETERMINE GUILT ON THE SUBSTANTIVE CHARGES AGAINST THE DEFENDANT SHALL BE SUBMITTED BY THE DEFENDANT TO THE TRIAL JUDGE UNDER SEAL NO LATER THAN FORTY-FIVE DAYS BEFORE TRIAL.

(II) THE TRIAL JUDGE SHALL REVIEW ANY SUCH MATERIAL SUBMITTED UNDER SEAL PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c.5) TO DETERMINE WHETHER IT IS IN FACT PRIVILEGED. ANY MATERIAL THE TRIAL JUDGE FINDS NOT TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTING ATTORNEY. ANY MATERIAL SUBMITTED UNDER SEAL THAT THE TRIAL JUDGE FINDS TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTION IF THE DEFENDANT IS CONVICTED OF A CLASS 1 FELONY.

(d) (I) Except as otherwise provided in subparagraph (II) of this paragraph (d), if the witnesses disclosed by the defendant pursuant to paragraph (c) of this subsection (3.5) include witnesses who may provide evidence concerning the defendant's mental condition at the sentencing hearing conducted pursuant to this section, the trial court, at the request of the prosecuting attorney, shall order that the defendant be examined and a report of said examination be prepared pursuant to section 16-8-106.

(II) The court shall not order an examination pursuant to subparagraph (I) of this paragraph (d) if:

(A) Such an examination was previously performed and a report was prepared in

the same case; and

(B) The report included an opinion concerning how any mental disease or defect of the defendant or condition of mind caused by mental disease or defect of the defendant affects the mitigating factors that the defendant may raise at the sentencing hearing held pursuant to this section.

(e) If the witnesses disclosed by the defendant pursuant to paragraph (c) of this subsection (3.5) include witnesses who may provide evidence concerning the defendant's mental condition at a sentencing hearing conducted pursuant to this section, the provisions of section 16-8-109 concerning testimony of lay witnesses shall apply to said sentencing hearing.

(f) There is a continuing duty on the part of the prosecuting attorney and the defendant to disclose the information and materials specified in this subsection (3.5). If, after complying with the duty to disclose the information and materials described in this subsection (3.5), either party discovers or obtains any additional information and materials that are subject to disclosure under this subsection (3.5), the party shall promptly notify the other party and provide the other party with complete access to the information and materials.

(g) The trial court, upon a showing of extraordinary circumstances that could not have been foreseen and prevented, may grant an extension of time to comply with the requirements of this subsection (3.5).

(h) If it is brought to the attention of the court that either the prosecuting attorney or the defendant has failed to comply with the provisions of this subsection (3.5) or with an order issued pursuant to this subsection (3.5), the court may enter any order against such party that the court deems just under the circumstances, including but not limited to an order to permit the discovery or inspection of information and materials not previously disclosed, to grant a continuance, to prohibit the offending party from introducing the information and materials not disclosed, or to impose sanctions against the offending party.

(7) (a) ~~If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section, which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable.~~ IF ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY STATUTE FOR CLASS 1 FELONIES, BUT SEVERANCE OF SUCH PROVISIONS WOULD, THROUGH OPERATION OF THE REMAINING PROVISIONS OF THIS SECTION, MAINTAIN THIS SECTION AS A VALID AND OPERATIVE DEATH PENALTY STATUTE FOR CLASS 1 FELONIES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THOSE REMAINING PROVISIONS ARE SEVERABLE AND ARE TO HAVE FULL FORCE AND EFFECT.

(b) If any death sentence IS imposed upon a defendant pursuant to the provisions of this section and, ON APPELLATE REVIEW INCLUDING CONSIDERATION PURSUANT TO

SUBSECTION (8) OF THIS SECTION, the imposition of such death sentence upon such defendant is held invalid for reasons other than unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, the case shall be remanded to the trial court to set a new sentencing hearing BEFORE A NEWLY IMPANELED JURY OR, IF THE DEFENDANT PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL JUDGE; except that, if the prosecutor informs the ~~panel of judges~~ TRIAL COURT that, in the opinion of the prosecutor, capital punishment would no longer be in the interest of justice, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment. If a death sentence imposed pursuant to this section is held invalid based on unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment.

(8) IF, ON APPEAL, THE SUPREME COURT FINDS ONE OR MORE OF THE AGGRAVATING FACTORS THAT WERE FOUND TO SUPPORT A SENTENCE TO DEATH TO BE INVALID FOR ANY REASON, THE SUPREME COURT MAY DETERMINE WHETHER THE SENTENCE OF DEATH SHOULD BE AFFIRMED ON APPEAL BY:

(a) REWEIGHING THE REMAINING AGGRAVATING FACTOR OR FACTORS AND ALL MITIGATING FACTORS AND THEN DETERMINING WHETHER DEATH IS THE APPROPRIATE PUNISHMENT IN THE CASE; OR

(b) APPLYING HARMLESS ERROR ANALYSIS BY CONSIDERING WHETHER, IF THE SENTENCING BODY HAD NOT CONSIDERED THE INVALID AGGRAVATING FACTOR, IT WOULD HAVE NONETHELESS SENTENCED THE DEFENDANT TO DEATH; OR

(c) IF THE SUPREME COURT FINDS THE SENTENCING BODY'S CONSIDERATION OF AN AGGRAVATING FACTOR WAS IMPROPER BECAUSE THE AGGRAVATING FACTOR WAS NOT GIVEN A CONSTITUTIONALLY NARROW CONSTRUCTION, DETERMINING WHETHER, BEYOND A REASONABLE DOUBT, THE SENTENCING BODY WOULD HAVE RETURNED A VERDICT OF DEATH HAD THE AGGRAVATING FACTOR BEEN PROPERLY NARROWED; OR

(d) EMPLOYING ANY OTHER CONSTITUTIONALLY PERMISSIBLE METHOD OF REVIEW.

SECTION 2. 18-1.3-1201 (1), (2), (3), and (7), Colorado Revised Statutes, as they will become effective October 1, 2002, are amended, and the said 18-1.3-1201, as it will become effective October 1, 2002, is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

18-1.3-1201. Imposition of sentence in class 1 felonies - appellate review. (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, ~~a panel of three judges, as soon as practicable,~~ THE TRIAL COURT shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission of the offense or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 11 of this article, in either of which cases, the defendant shall be sentenced to life imprisonment. THE HEARING SHALL BE CONDUCTED BY THE TRIAL JUDGE BEFORE THE TRIAL JURY AS SOON AS PRACTICABLE. ALTERNATE JURORS SHALL NOT BE EXCUSED FROM THE CASE PRIOR TO SUBMISSION OF THE ISSUE OF GUILT TO THE TRIAL JURY AND SHALL REMAIN SEPARATELY SEQUESTERED UNTIL A VERDICT IS ENTERED BY THE TRIAL JURY. IF THE VERDICT OF

THE TRIAL JURY IS THAT THE DEFENDANT IS GUILTY OF A CLASS 1 FELONY, THE ALTERNATE JURORS SHALL SIT AS ALTERNATE JURORS ON THE ISSUE OF PUNISHMENT. IF, FOR ANY REASON SATISFACTORY TO THE COURT, ANY MEMBER OR MEMBERS OF THE TRIAL JURY ARE EXCUSED FROM PARTICIPATION IN THE SENTENCING HEARING, THE TRIAL JUDGE SHALL REPLACE EACH JUROR OR JURORS WITH AN ALTERNATE JUROR OR JURORS. IF A TRIAL JURY WAS WAIVED OR IF THE DEFENDANT PLED GUILTY, THE HEARING SHALL BE CONDUCTED BEFORE THE TRIAL JUDGE. THE COURT SHALL INSTRUCT THE DEFENDANT WHEN WAIVING HIS OR HER RIGHT TO A JURY TRIAL OR WHEN PLEADING GUILTY, THAT HE OR SHE IS ALSO WAIVING HIS OR HER RIGHT TO A JURY DETERMINATION OF THE SENTENCE AT THE SENTENCING HEARING.

(a.5) ~~(I) The panel of judges that conducts the sentencing hearing shall consist of the judge who presided at the trial or before whom the guilty plea was entered, or a replacement for said judge in the event he or she dies, resigns, is incapacitated, or is otherwise disqualified, and two additional district court judges designated by the chief justice of the Colorado supreme court. The chief justice may select the two additional district court judges, and any necessary replacement for the trial judge, from any judicial district in the state but is encouraged to select from the judicial district in which the case was filed or from adjoining judicial districts. In selecting the district court judges for the panel, the chief justice shall select only those district court judges who are regularly sitting judges; except that the chief justice, pursuant to section 5 (3) of article VI of the state constitution, may select a retired justice of the supreme court or a retired judge as one of the additional judges for the panel.~~

~~(II) The judge who presided at the trial and any district court judge who is appointed to serve on the panel may be subject to disqualification as provided in section 16-6-201, C.R.S.~~

~~(III) The trial judge shall be the presiding judge for purposes of the sentencing hearing. If a replacement judge has been appointed for the trial judge, the district court judges appointed to the panel shall choose a presiding judge from among themselves.~~

(a.7) ~~At the sentencing hearing, in addition to the evidence presented by the parties, the three-judge panel shall consider the certified transcripts of the trial. The sentencing hearing shall be held as soon as practicable following the trial, but not later than sixty days after the trial verdict is returned, unless for good cause shown.~~

(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the ~~panel of judges~~ COURT deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section, and any matters relating to the personal characteristics of the victim and the impact of the crimes on the victim's family may be presented. Any such evidence, including but not limited to the testimony of members of the victim's immediate family, as defined in section 24-4.1-302 (6), C.R.S., which the ~~panel of judges~~ COURT deems to have probative value may be received, as long as each party is given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death. THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS IMPRISONMENT

FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(c) ~~Both the prosecuting attorney and the defense shall notify each other of the names and addresses of any witnesses to be called in the sentencing hearing and the subject matter of such testimony. Such discovery shall be provided within a reasonable amount of time as determined by order of the panel of judges and shall be provided not less than twenty-four hours prior to the commencement of the sentencing hearing. Unless good cause is shown, noncompliance with this paragraph (c) shall result in the exclusion of such evidence without further sanction.~~

(d) The burden of proof as to the aggravating factors enumerated in subsection (5) of this section shall be beyond a reasonable doubt. There shall be no burden of proof as to proving or disproving mitigating factors.

(2) (a) After hearing all the evidence and arguments of the prosecuting attorney and the defendant, the ~~panel of judges~~ JURY shall ~~unanimously determine whether to impose a sentence of death~~ DELIBERATE AND RENDER A VERDICT based upon the following considerations:

(I) Whether at least one aggravating factor has been proved as enumerated in subsection (5) of this section;

(II) Whether sufficient mitigating factors exist which outweigh any aggravating factor or factors found to exist; and

(III) Based on the considerations in subparagraphs (I) and (II) of this paragraph (a), whether the defendant should be sentenced to death or life imprisonment.

(b) (I) In the event that no aggravating factors are found to exist as enumerated in subsection (5) of this section, the ~~panel of judges~~ JURY shall RENDER A VERDICT OF LIFE IMPRISONMENT, AND THE COURT SHALL sentence the defendant to life imprisonment.

(II) The ~~panel of judges~~ JURY shall not ~~impose a~~ RENDER A VERDICT OF death ~~sentence~~ unless it unanimously finds and specifies in writing that:

(A) At least one aggravating factor has been proved; and

(B) There are insufficient mitigating factors to outweigh the aggravating factor or factors that were proved.

(c) ~~The sentence of the panel of judges, whether to death or to life in prison, shall be supported by specific written findings of fact based upon the circumstances as set forth in subsections (4) and (5) of this section and upon the records of the trial and the sentencing hearing.~~ IN THE EVENT THAT THE JURY'S VERDICT IS TO SENTENCE TO DEATH, SUCH VERDICT SHALL BE UNANIMOUS AND SHALL BE BINDING UPON THE COURT UNLESS THE COURT DETERMINES, AND SETS FORTH IN WRITING THE BASIS AND REASONS FOR SUCH DETERMINATION, THAT THE VERDICT OF THE JURY IS CLEARLY ERRONEOUS AS CONTRARY TO THE WEIGHT OF THE EVIDENCE, IN WHICH CASE THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(d) ~~If the panel of judges cannot unanimously agree on a sentence, it shall make a record of each judge's position and shall then sentence the defendant to life imprisonment.~~ IF THE JURY'S VERDICT IS NOT UNANIMOUS, THE JURY SHALL BE DISCHARGED, AND THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(2.5) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD BEFORE THE COURT ALONE, THE COURT SHALL DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT IN THE SAME MANNER IN WHICH A JURY DETERMINES ITS VERDICT UNDER PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. THE SENTENCE OF THE COURT SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES AS SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE TRIAL AND SENTENCING HEARING.

(3) (a) The provisions of this subsection (3) shall apply only in a class 1 felony case in which the prosecuting attorney has filed a statement of intent to seek the death penalty pursuant to rule 32.1 (b) of the Colorado rules of criminal procedure.

(b) The prosecuting attorney shall provide the defendant with the following information and materials not later than ~~five~~ TWENTY days after ~~the verdict is returned finding the defendant guilty of a class 1 felony~~ THE PROSECUTION FILES ITS WRITTEN INTENTION TO SEEK THE DEATH PENALTY OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE DEFENSE AS SOON AS PRACTICABLE BUT NOT LATER THAN FORTY-FIVE DAYS BEFORE TRIAL:

(I) A list of all aggravating factors that are known to the prosecuting attorney at that time and that the prosecuting attorney intends to prove at the sentencing hearing;

(II) A list of all witnesses whom the prosecuting attorney may call at the sentencing hearing, specifying for each the witness' name, address, and date of birth and the subject matter of the witness' testimony;

(III) The written and recorded statements, including any notes of those statements, for each witness whom the prosecuting attorney may call at the sentencing hearing;

(IV) ~~Any reports, recorded statements, and notes of any expert whom the prosecuting attorney may call as a witness during the sentencing hearing, including results of physical or mental examination and scientific test, experiments, or comparisons;~~

(V) A list of books, papers, documents, photographs, or tangible objects that the prosecuting attorney may introduce at the sentencing hearing; and

(VI) All material or information that tends to mitigate or negate the finding of any of the aggravating factors the prosecuting attorney intends to prove at the sentencing hearing.

(b.5) UPON RECEIPT OF THE INFORMATION REQUIRED TO BE DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3), THE PROSECUTING ATTORNEY SHALL NOTIFY THE DEFENDANT AS SOON AS PRACTICABLE OF ANY ADDITIONAL WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL IN RESPONSE TO THE DEFENDANT'S DISCLOSURES.

(c) The defendant shall provide the prosecuting attorney with the following information and materials no later than ~~twenty~~ THIRTY days ~~after the verdict is returned finding the defendant guilty of a class 1 felony~~ BEFORE THE FIRST TRIAL DATE SET FOR THE BEGINNING OF THE DEFENDANT'S TRIAL OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; HOWEVER, ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE DEFENSE INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE PROSECUTING ATTORNEY AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A list of all witnesses whom the defendant may call at the sentencing hearing, specifying for each the witness' name, address, and date of birth and the subject matter of the witness' testimony;

(II) The written and recorded statements, including any notes of those statements, of each witness whom the defendant may call at the sentencing hearing; AND

(III) ~~Any reports, recorded statements, and notes of any expert whom the defendant may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons; and~~

(IV) A list of books, papers, documents, photographs, or tangible objects that the defendant may introduce at the sentencing hearing.

(c.5) (I) ANY MATERIAL SUBJECT TO THIS SUBSECTION (3) THAT THE DEFENDANT BELIEVES CONTAINS INFORMATION THAT IS PRIVILEGED TO THE EXTENT THAT THE PROSECUTION CANNOT BE AWARE OF IT IN CONNECTION WITH ITS PREPARATION FOR, OR CONDUCT OF, THE TRIAL TO DETERMINE GUILT ON THE SUBSTANTIVE CHARGES AGAINST THE DEFENDANT SHALL BE SUBMITTED BY THE DEFENDANT TO THE TRIAL JUDGE UNDER SEAL NO LATER THAN FORTY-FIVE DAYS BEFORE TRIAL.

(II) THE TRIAL JUDGE SHALL REVIEW ANY SUCH MATERIAL SUBMITTED UNDER SEAL PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c.5) TO DETERMINE WHETHER IT IS IN FACT PRIVILEGED. ANY MATERIAL THE TRIAL JUDGE FINDS NOT TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTING ATTORNEY. ANY MATERIAL SUBMITTED UNDER SEAL THAT THE TRIAL JUDGE FINDS TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTION IF THE DEFENDANT IS CONVICTED OF A CLASS 1 FELONY.

(d) (I) Except as otherwise provided in subparagraph (II) of this paragraph (d), if the witnesses disclosed by the defendant pursuant to paragraph (c) of this subsection (3) include witnesses who may provide evidence concerning the defendant's mental condition at the sentencing hearing conducted pursuant to this section, the trial court, at the request of the prosecuting attorney, shall order that the defendant be examined

and a report of said examination be prepared pursuant to section 16-8-106, C.R.S.

(II) The court shall not order an examination pursuant to subparagraph (I) of this paragraph (d) if:

(A) Such an examination was previously performed and a report was prepared in the same case; and

(B) The report included an opinion concerning how any mental disease or defect of the defendant or condition of mind caused by mental disease or defect of the defendant affects the mitigating factors that the defendant may raise at the sentencing hearing held pursuant to this section.

(e) If the witnesses disclosed by the defendant pursuant to paragraph (c) of this subsection (3) include witnesses who may provide evidence concerning the defendant's mental condition at a sentencing hearing conducted pursuant to this section, the provisions of section 16-8-109, C.R.S., concerning testimony of lay witnesses shall apply to said sentencing hearing.

(f) There is a continuing duty on the part of the prosecuting attorney and the defendant to disclose the information and materials specified in this subsection (3). If, after complying with the duty to disclose the information and materials described in this subsection (3), either party discovers or obtains any additional information and materials that are subject to disclosure under this subsection (3), the party shall promptly notify the other party and provide the other party with complete access to the information and materials.

(g) The trial court, upon a showing of extraordinary circumstances that could not have been foreseen and prevented, may grant an extension of time to comply with the requirements of this subsection (3).

(h) If it is brought to the attention of the court that either the prosecuting attorney or the defendant has failed to comply with the provisions of this subsection (3) or with an order issued pursuant to this subsection (3), the court may enter any order against such party that the court deems just under the circumstances, including but not limited to an order to permit the discovery or inspection of information and materials not previously disclosed, to grant a continuance, to prohibit the offending party from introducing the information and materials not disclosed, or to impose sanctions against the offending party.

(7) (a) ~~If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section, which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable.~~ IF ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY STATUTE FOR CLASS 1 FELONIES, BUT SEVERANCE OF SUCH PROVISIONS WOULD, THROUGH OPERATION OF THE REMAINING PROVISIONS OF THIS SECTION, MAINTAIN THIS SECTION AS A VALID AND OPERATIVE DEATH PENALTY

STATUTE FOR CLASS 1 FELONIES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THOSE REMAINING PROVISIONS ARE SEVERABLE AND ARE TO HAVE FULL FORCE AND EFFECT.

(b) If any death sentence IS imposed upon a defendant pursuant to the provisions of this section and, ON APPELLATE REVIEW INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (8) OF THIS SECTION, the imposition of such death sentence upon such defendant is held invalid for reasons other than unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, the case shall be remanded to the trial court to set a new sentencing hearing BEFORE A NEWLY IMPANELED JURY OR, IF THE DEFENDANT PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL JUDGE; except that, if the prosecutor informs the ~~panel of judges~~ TRIAL COURT that, in the opinion of the prosecutor, capital punishment would no longer be in the interest of justice, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment. If a death sentence imposed pursuant to this section is held invalid based on unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment.

(8) IF, ON APPEAL, THE SUPREME COURT FINDS ONE OR MORE OF THE AGGRAVATING FACTORS THAT WERE FOUND TO SUPPORT A SENTENCE TO DEATH TO BE INVALID FOR ANY REASON, THE SUPREME COURT MAY DETERMINE WHETHER THE SENTENCE OF DEATH SHOULD BE AFFIRMED ON APPEAL BY:

(a) REWEIGHING THE REMAINING AGGRAVATING FACTOR OR FACTORS AND ALL MITIGATING FACTORS AND THEN DETERMINING WHETHER DEATH IS THE APPROPRIATE PUNISHMENT IN THE CASE; OR

(b) APPLYING HARMLESS ERROR ANALYSIS BY CONSIDERING WHETHER, IF THE SENTENCING BODY HAD NOT CONSIDERED THE INVALID AGGRAVATING FACTOR, IT WOULD HAVE NONETHELESS SENTENCED THE DEFENDANT TO DEATH; OR

(c) IF THE SUPREME COURT FINDS THE SENTENCING BODY'S CONSIDERATION OF AN AGGRAVATING FACTOR WAS IMPROPER BECAUSE THE AGGRAVATING FACTOR WAS NOT GIVEN A CONSTITUTIONALLY NARROW CONSTRUCTION, DETERMINING WHETHER, BEYOND A REASONABLE DOUBT, THE SENTENCING BODY WOULD HAVE RETURNED A VERDICT OF DEATH HAD THE AGGRAVATING FACTOR BEEN PROPERLY NARROWED; OR

(d) EMPLOYING ANY OTHER CONSTITUTIONALLY PERMISSIBLE METHOD OF REVIEW.

SECTION 3. 16-11-403, Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-11-403. Week of execution - warrant. When a person is convicted of a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the ~~panel of judges~~ JUDGE passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not ~~less~~ FEWER than ninety days nor more than one hundred twenty days from the day of passing the sentence. Said warrant shall be directed to the executive director of the department of corrections or the executive director's designee commanding said executive

director or designee to execute the sentence imposed upon some day within the week of time designated in the warrant and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall proceed to the correctional facilities at Canon City and deliver the convicted person, together with the warrant, to said executive director or designee, who shall keep the convict in confinement until ~~infliction~~ EXECUTION of the death penalty. Persons shall be permitted access to the inmate pursuant to prison rules. Such rules shall provide, at a minimum, for the inmate's attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate's family to have access to the inmate.

SECTION 4. 18-1.3-1205, Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1.3-1205. Week of execution - warrant. When a person is convicted of a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the ~~panel of judges~~ JUDGE passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not ~~less~~ FEWER than ninety days nor more than one hundred twenty days from the day of passing the sentence. Said warrant shall be directed to the executive director of the department of corrections or the executive director's designee commanding said executive director or designee to execute the sentence imposed upon some day within the week of time designated in the warrant and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall proceed to the correctional facilities at Canon City and deliver the convicted person, together with the warrant, to said executive director or designee, who shall keep the convict in confinement until ~~infliction~~ EXECUTION of the death penalty. Persons shall be permitted access to the inmate pursuant to prison rules. Such rules shall provide, at a minimum, for the inmate's attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate's family to have access to the inmate.

SECTION 5. 16-12-204 (1), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

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.

SECTION 6. 16-12-204 (1), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

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 18-1.3-1205, C.R.S., 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.

SECTION 7. 18-1-105 (4), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

18-1-105. Felonies classified - presumptive penalties. (4) A person who has been convicted of a class 1 felony shall be punished by life imprisonment unless a ~~panel of judges imposes a death sentence pursuant to~~ PROCEEDING HELD TO DETERMINE SENTENCE ACCORDING TO the procedure set forth in section 16-11-103 OR 16-11-802, C.R.S., or SECTION 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.

SECTION 8. 18-1.3-401 (4), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1.3-401. Felonies classified - presumptive penalties. (4) A person who has been convicted of a class 1 felony shall be punished by life imprisonment unless a ~~panel of judges imposes a death sentence pursuant to~~ 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.

SECTION 9. 18-3-107 (3), Colorado Revised Statutes, as it exists until October 1, 2002, is 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 ~~panel of judges imposes a death sentence pursuant~~ PROCEEDING HELD TO DETERMINE SENTENCE ACCORDING to the procedure set forth in section 16-11-103 OR 16-11-802, C.R.S., OR SECTION 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.

SECTION 10. 18-3-107 (3), Colorado Revised Statutes, as it will become

effective October 1, 2002, is 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 ~~panel of judges imposes a death sentence pursuant~~ 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.

SECTION 11. 16-10-101, Colorado Revised Statutes, is amended to read:

16-10-101. Jury trials - statement of policy. The right of a person who is accused of an offense other than a noncriminal traffic infraction or offense, or other than a municipal charter, municipal ordinance, or county ordinance violation as provided in section 16-10-109 (1), to have a trial by jury is inviolate and a matter of substantive due process of law as distinguished from one of "practice and procedure". The people shall also have the right to refuse to consent to a waiver of a trial OR SENTENCING DETERMINATION by jury in all cases in which the accused has the right to request a trial OR SENTENCING DETERMINATION by jury.

SECTION 12. Title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 1.4
Applicability of Procedure in Class 1 Felony Cases for Crimes Committed on or after July 1, 1995, and Prior to the Effective Date of this Article

18-1.4-101. Applicability of procedure for the imposition of sentences in class 1 felony cases. (1) IT IS THE EXPRESSED INTENTION OF THE GENERAL ASSEMBLY THAT THERE BE NO HIATUS IN THE IMPOSITION OF THE DEATH PENALTY AS A SENTENCE FOR THE COMMISSION OF A CLASS 1 FELONY IN THE STATE OF COLORADO AS A RESULT OF THE HOLDING OF THE UNITED STATES SUPREME COURT IN *RING V. ARIZONA*, 530 U.S. ___ (2002). TOWARD THAT END, THE PROVISIONS OF SECTION 16-11-103, C.R.S., AS IT EXISTED PRIOR TO THE PASSAGE OF SENATE BILL 95-54, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTIETH GENERAL ASSEMBLY, ARE REENACTED AS SECTION 18-1.4-102, AND ARE HEREBY MADE APPLICABLE TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995, AND PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE.

(2) IT IS THE EXPRESSED INTENTION OF THE GENERAL ASSEMBLY THAT THE ADOPTION OF SECTION 18-1.4-102 SHALL NOT BE CONSTRUED BY ANY COURT AS A LEGISLATIVE STATEMENT THAT THE PROVISIONS OF SENATE BILL 95-54, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTIETH GENERAL ASSEMBLY, ARE UNCONSTITUTIONAL IN ANY WAY OR THAT ANY DEATH SENTENCE OBTAINED PURSUANT TO THE PROVISIONS OF SENATE BILL 95-54, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTIETH GENERAL ASSEMBLY, IS INVALID IN ANY WAY.

(3) IT IS THE EXPRESSED INTENTION OF THE GENERAL ASSEMBLY THAT THIS ARTICLE IS INDEPENDENT FROM SECTION 16-11-103, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, AND SECTION 18-1.3-1201 AND THAT, IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID OR UNCONSTITUTIONAL, SUCH INVALIDITY OR UNCONSTITUTIONALITY SHALL NOT AFFECT THE APPLICATION OF SECTION 16-11-103, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, AND SECTION 18-1.3-1201 TO ANY OFFENSE COMMITTED ON OR AFTER THE EFFECTIVE DATE OF AMENDMENTS TO SAID SECTIONS ENACTED AT THE THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY.

18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995, and prior to the effective date of this article - appellate review. (1) (a) UPON CONVICTION OF GUILT OF A DEFENDANT OF A CLASS 1 FELONY, THE TRIAL COURT SHALL CONDUCT A SEPARATE SENTENCING HEARING TO DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT, UNLESS THE DEFENDANT WAS UNDER THE AGE OF EIGHTEEN YEARS AT THE TIME OF THE COMMISSION OF THE OFFENSE, OR UNLESS THE DEFENDANT HAS BEEN DETERMINED TO BE A MENTALLY RETARDED DEFENDANT PURSUANT TO PART 4 OF ARTICLE 9 OF TITLE 16, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, IN EITHER OF WHICH CASES, THE DEFENDANT SHALL BE SENTENCED TO LIFE IMPRISONMENT. THE HEARING SHALL BE CONDUCTED BY THE TRIAL JUDGE BEFORE THE TRIAL JURY AS SOON AS PRACTICABLE. ALTERNATE JURORS SHALL NOT BE EXCUSED FROM THE CASE PRIOR TO SUBMISSION OF THE ISSUE OF GUILT TO THE TRIAL JURY AND SHALL REMAIN SEPARATELY SEQUESTERED UNTIL A VERDICT IS ENTERED BY THE TRIAL JURY. IF THE VERDICT OF THE TRIAL JURY IS THAT THE DEFENDANT IS GUILTY OF A CLASS 1 FELONY, THE ALTERNATE JURORS SHALL SIT AS ALTERNATE JURORS ON THE ISSUE OF PUNISHMENT. IF, FOR ANY REASON SATISFACTORY TO THE COURT, ANY MEMBER OR MEMBERS OF THE TRIAL JURY ARE EXCUSED FROM PARTICIPATION IN THE SENTENCING HEARING, THE TRIAL JUDGE SHALL REPLACE SUCH JUROR OR JURORS WITH AN ALTERNATE JUROR OR JURORS. IF A TRIAL JURY WAS WAIVED OR IF THE DEFENDANT PLEADED GUILTY, THE HEARING SHALL BE CONDUCTED BEFORE THE TRIAL JUDGE.

(b) ALL ADMISSIBLE EVIDENCE PRESENTED BY EITHER THE PROSECUTING ATTORNEY OR THE DEFENDANT THAT THE COURT DEEMS RELEVANT TO THE NATURE OF THE CRIME AND THE CHARACTER, BACKGROUND, AND HISTORY OF THE DEFENDANT, INCLUDING ANY EVIDENCE PRESENTED IN THE GUILT PHASE OF THE TRIAL AND ANY MATTERS RELATING TO ANY OF THE AGGRAVATING OR MITIGATING FACTORS ENUMERATED IN SUBSECTIONS (4) AND (5) OF THIS SECTION, MAY BE PRESENTED. ANY SUCH EVIDENCE WHICH THE COURT DEEMS TO HAVE PROBATIVE VALUE MAY BE RECEIVED, AS LONG AS EACH PARTY IS GIVEN AN OPPORTUNITY TO REBUT SUCH EVIDENCE. THE PROSECUTING ATTORNEY AND THE DEFENDANT OR THE DEFENDANT'S COUNSEL SHALL BE PERMITTED TO PRESENT ARGUMENTS FOR OR AGAINST A SENTENCE OF DEATH. FOR OFFENSES COMMITTED BEFORE JULY 1, 1985, THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR TWENTY CALENDAR YEARS. FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 1985, THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR FORTY CALENDAR YEARS. FOR OFFENSES WITHIN THE PURVIEW OF SECTION 17-22.5-104 (2) (d), C.R.S., THE JURY SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(c) BOTH THE PROSECUTING ATTORNEY AND THE DEFENSE SHALL NOTIFY EACH OTHER OF THE NAMES AND ADDRESSES OF ANY WITNESSES TO BE CALLED IN THE SENTENCING HEARING AND THE SUBJECT MATTER OF SUCH TESTIMONY. SUCH DISCOVERY SHALL BE PROVIDED WITHIN A REASONABLE AMOUNT OF TIME AS DETERMINED BY ORDER OF THE COURT AND SHALL BE PROVIDED NOT LESS THAN TWENTY-FOUR HOURS PRIOR TO THE COMMENCEMENT OF THE SENTENCING HEARING. UNLESS GOOD CAUSE IS SHOWN, NONCOMPLIANCE WITH THIS PARAGRAPH (c) SHALL RESULT IN THE EXCLUSION OF SUCH EVIDENCE WITHOUT FURTHER SANCTION.

(d) THE BURDEN OF PROOF AS TO THE AGGRAVATING FACTORS ENUMERATED IN SUBSECTION (5) OF THIS SECTION SHALL BE BEYOND A REASONABLE DOUBT. THERE SHALL BE NO BURDEN OF PROOF AS TO PROVING OR DISPROVING MITIGATING FACTORS.

(2) (a) AFTER HEARING ALL THE EVIDENCE AND ARGUMENTS OF THE PROSECUTING ATTORNEY AND THE DEFENDANT, THE JURY SHALL DELIBERATE AND RENDER A VERDICT BASED UPON THE FOLLOWING CONSIDERATIONS:

(I) WHETHER AT LEAST ONE AGGRAVATING FACTOR HAS BEEN PROVED AS ENUMERATED IN SUBSECTION (5) OF THIS SECTION;

(II) WHETHER SUFFICIENT MITIGATING FACTORS EXIST WHICH OUTWEIGH ANY AGGRAVATING FACTOR OR FACTORS FOUND TO EXIST; AND

(III) BASED ON THE CONSIDERATIONS IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (a), WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT.

(b) (I) IN THE EVENT THAT NO AGGRAVATING FACTORS ARE FOUND TO EXIST AS ENUMERATED IN SUBSECTION (5) OF THIS SECTION, THE JURY SHALL RENDER A VERDICT OF LIFE IMPRISONMENT, AND THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(II) THE JURY SHALL NOT RENDER A VERDICT OF DEATH UNLESS IT FINDS AND SPECIFIES IN WRITING THAT:

(A) AT LEAST ONE AGGRAVATING FACTOR HAS BEEN PROVED; AND

(B) THERE ARE INSUFFICIENT MITIGATING FACTORS TO OUTWEIGH THE AGGRAVATING FACTOR OR FACTORS THAT WERE PROVED.

(c) IN THE EVENT THAT THE JURY'S VERDICT IS TO SENTENCE TO DEATH, SUCH VERDICT SHALL BE UNANIMOUS AND SHALL BE BINDING UPON THE COURT UNLESS THE COURT DETERMINES, AND SETS FORTH IN WRITING THE BASIS AND REASONS FOR SUCH DETERMINATION, THAT THE VERDICT OF THE JURY IS CLEARLY ERRONEOUS AS CONTRARY TO THE WEIGHT OF THE EVIDENCE, IN WHICH CASE THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(d) IF THE JURY'S VERDICT IS NOT UNANIMOUS, THE JURY SHALL BE DISCHARGED, AND THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

(3) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD BEFORE THE COURT

ALONE, THE COURT SHALL DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT IN THE SAME MANNER IN WHICH A JURY DETERMINES ITS VERDICT UNDER PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. THE SENTENCE OF THE COURT SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES AS SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE TRIAL AND THE SENTENCING HEARING.

(4) FOR PURPOSES OF THIS SECTION, MITIGATING FACTORS SHALL BE THE FOLLOWING FACTORS:

(a) THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME; OR

(b) THE DEFENDANT'S CAPACITY TO APPRECIATE WRONGFULNESS OF THE DEFENDANT'S CONDUCT OR TO CONFORM THE DEFENDANT'S CONDUCT TO THE REQUIREMENTS OF LAW WAS SIGNIFICANTLY IMPAIRED, BUT NOT SO IMPAIRED AS TO CONSTITUTE A DEFENSE TO PROSECUTION; OR

(c) THE DEFENDANT WAS UNDER UNUSUAL AND SUBSTANTIAL DURESS, ALTHOUGH NOT SUCH DURESS AS TO CONSTITUTE A DEFENSE TO PROSECUTION; OR

(d) THE DEFENDANT WAS A PRINCIPAL IN THE OFFENSE WHICH WAS COMMITTED BY ANOTHER, BUT THE DEFENDANT'S PARTICIPATION WAS RELATIVELY MINOR, ALTHOUGH NOT SO MINOR AS TO CONSTITUTE A DEFENSE TO PROSECUTION; OR

(e) THE DEFENDANT COULD NOT REASONABLY HAVE FORESEEN THAT THE DEFENDANT'S CONDUCT IN THE COURSE OF THE COMMISSION OF THE OFFENSE FOR WHICH THE DEFENDANT WAS CONVICTED WOULD CAUSE, OR WOULD CREATE A GRAVE RISK OF CAUSING, DEATH TO ANOTHER PERSON; OR

(f) THE EMOTIONAL STATE OF THE DEFENDANT AT THE TIME THE CRIME WAS COMMITTED; OR

(g) THE ABSENCE OF ANY SIGNIFICANT PRIOR CONVICTION; OR

(h) THE EXTENT OF THE DEFENDANT'S COOPERATION WITH LAW ENFORCEMENT OFFICERS OR AGENCIES AND WITH THE OFFICE OF THE PROSECUTING DISTRICT ATTORNEY; OR

(i) THE INFLUENCE OF DRUGS OR ALCOHOL; OR

(j) THE GOOD FAITH, ALTHOUGH MISTAKEN, BELIEF BY THE DEFENDANT THAT CIRCUMSTANCES EXISTED WHICH CONSTITUTED A MORAL JUSTIFICATION FOR THE DEFENDANT'S CONDUCT; OR

(k) THE DEFENDANT IS NOT A CONTINUING THREAT TO SOCIETY; OR

(l) ANY OTHER EVIDENCE WHICH IN THE COURT'S OPINION BEARS ON THE QUESTION OF MITIGATION.

(5) FOR PURPOSES OF THIS SECTION, AGGRAVATING FACTORS SHALL BE THE

FOLLOWING FACTORS:

(a) THE CLASS 1 FELONY WAS COMMITTED BY A PERSON UNDER SENTENCE OF IMPRISONMENT FOR A CLASS 1, 2, OR 3 FELONY AS DEFINED BY COLORADO LAW OR UNITED STATES LAW, OR FOR A CRIME COMMITTED AGAINST ANOTHER STATE OR THE UNITED STATES WHICH WOULD CONSTITUTE A CLASS 1, 2, OR 3 FELONY AS DEFINED BY COLORADO LAW; OR

(b) THE DEFENDANT WAS PREVIOUSLY CONVICTED IN THIS STATE OF A CLASS 1 OR 2 FELONY INVOLVING VIOLENCE AS SPECIFIED IN SECTION 16-11-309, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, OR SECTION 18-1.3-406, OR WAS PREVIOUSLY CONVICTED BY ANOTHER STATE OR THE UNITED STATES OF AN OFFENSE WHICH WOULD CONSTITUTE A CLASS 1 OR 2 FELONY INVOLVING VIOLENCE AS DEFINED BY COLORADO LAW IN SECTION 16-11-309, C.R.S., AS IT EXISTED PRIOR TO OCTOBER 1, 2002, OR SECTION 18-1.3-406; OR

(c) THE DEFENDANT INTENTIONALLY KILLED ANY OF THE FOLLOWING PERSONS WHILE SUCH PERSON WAS ENGAGED IN THE COURSE OF THE PERFORMANCE OF SUCH PERSON'S OFFICIAL DUTIES, AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN THAT SUCH VICTIM WAS SUCH A PERSON ENGAGED IN THE PERFORMANCE OF SUCH PERSON'S OFFICIAL DUTIES, OR THE VICTIM WAS INTENTIONALLY KILLED IN RETALIATION FOR THE PERFORMANCE OF THE VICTIM'S OFFICIAL DUTIES:

(I) A PEACE OFFICER OR FORMER PEACE OFFICER AS DEFINED IN SECTION 18-1-901 (3) (l); OR

(II) A FIREFIGHTER AS DEFINED IN SECTION 24-33.5-1202 (4), C.R.S.; OR

(III) A JUDGE, REFEREE, OR FORMER JUDGE OR REFEREE OF ANY COURT OF RECORD IN THE STATE OR FEDERAL SYSTEM OR IN ANY OTHER STATE COURT SYSTEM OR A JUDGE OR FORMER JUDGE IN ANY MUNICIPAL COURT IN THIS STATE OR IN ANY OTHER STATE. FOR PURPOSES OF THIS SUBPARAGRAPH (III), THE TERM "REFEREE" SHALL INCLUDE A HEARING OFFICER OR ANY OTHER OFFICER WHO EXERCISES JUDICIAL FUNCTIONS.

(IV) AN ELECTED STATE, COUNTY, OR MUNICIPAL OFFICIAL; OR

(V) A FEDERAL LAW ENFORCEMENT OFFICER OR AGENT OR FORMER FEDERAL LAW ENFORCEMENT OFFICER OR AGENT; OR

(d) THE DEFENDANT INTENTIONALLY KILLED A PERSON KIDNAPPED OR BEING HELD AS A HOSTAGE BY THE DEFENDANT OR BY ANYONE ASSOCIATED WITH THE DEFENDANT; OR

(e) THE DEFENDANT HAS BEEN A PARTY TO AN AGREEMENT TO KILL ANOTHER PERSON IN FURTHERANCE OF WHICH A PERSON HAS BEEN INTENTIONALLY KILLED; OR

(f) THE DEFENDANT COMMITTED THE OFFENSE WHILE LYING IN WAIT, FROM AMBUSH, OR BY USE OF AN EXPLOSIVE OR INCENDIARY DEVICE. AS USED IN THIS PARAGRAPH (f), "EXPLOSIVE OR INCENDIARY DEVICE" MEANS:

(I) DYNAMITE AND ALL OTHER FORMS OF HIGH EXPLOSIVES; OR

(II) ANY EXPLOSIVE BOMB, GRENADE, MISSILE, OR SIMILAR DEVICE; OR

(III) ANY INCENDIARY BOMB OR GRENADE, FIRE BOMB, OR SIMILAR DEVICE, INCLUDING ANY DEVICE WHICH CONSISTS OF OR INCLUDES A BREAKABLE CONTAINER INCLUDING A FLAMMABLE LIQUID OR COMPOUND, AND A WICK COMPOSED OF ANY MATERIAL WHICH, WHEN IGNITED, IS CAPABLE OF IGNITING SUCH FLAMMABLE LIQUID OR COMPOUND, AND CAN BE CARRIED OR THROWN BY ONE INDIVIDUAL ACTING ALONE.

(g) THE DEFENDANT COMMITTED A CLASS 1, 2, OR 3 FELONY AND, IN THE COURSE OF OR IN FURTHERANCE OF SUCH OR IMMEDIATE FLIGHT THEREFROM, THE DEFENDANT INTENTIONALLY CAUSED THE DEATH OF A PERSON OTHER THAN ONE OF THE PARTICIPANTS; OR

(h) THE CLASS 1 FELONY WAS COMMITTED FOR PECUNIARY GAIN; OR

(i) IN THE COMMISSION OF THE OFFENSE, THE DEFENDANT KNOWINGLY CREATED A GRAVE RISK OF DEATH TO ANOTHER PERSON IN ADDITION TO THE VICTIM OF THE OFFENSE; OR

(j) THE DEFENDANT COMMITTED THE OFFENSE IN AN ESPECIALLY HEINOUS, CRUEL, OR DEPRAVED MANNER; OR

(k) THE CLASS 1 FELONY WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST OR PROSECUTION OR EFFECTING AN ESCAPE FROM CUSTODY. THIS FACTOR SHALL INCLUDE THE INTENTIONAL KILLING OF A WITNESS TO A CRIMINAL OFFENSE.

(l) THE DEFENDANT UNLAWFULLY AND INTENTIONALLY, KNOWINGLY, OR WITH UNIVERSAL MALICE MANIFESTING EXTREME INDIFFERENCE TO THE VALUE OF HUMAN LIFE GENERALLY, KILLED TWO OR MORE PERSONS DURING THE COMMISSION OF THE SAME CRIMINAL EPISODE; OR

(m) THE DEFENDANT INTENTIONALLY KILLED A CHILD WHO HAS NOT YET ATTAINED TWELVE YEARS OF AGE.

(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.

(b) A SENTENCE OF DEATH SHALL NOT BE IMPOSED PURSUANT TO THIS SECTION IF THE SUPREME COURT DETERMINES THAT THE SENTENCE WAS IMPOSED UNDER THE INFLUENCE OF PASSION OR PREJUDICE OR ANY OTHER ARBITRARY FACTOR OR THAT THE EVIDENCE PRESENTED DOES NOT SUPPORT THE FINDING OF STATUTORY AGGRAVATING CIRCUMSTANCES.

(7) (a) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID OR UNCONSTITUTIONAL, SUCH INVALIDITY OR UNCONSTITUTIONALITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION, WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID OR UNCONSTITUTIONAL PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

(b) IF ANY DEATH SENTENCE IMPOSED UPON A DEFENDANT PURSUANT TO THE PROVISIONS OF THIS SECTION AND THE IMPOSITION OF SUCH DEATH SENTENCE UPON SUCH DEFENDANT IS HELD INVALID OR UNCONSTITUTIONAL, SAID DEFENDANT SHALL BE RETURNED TO THE TRIAL COURT AND SHALL THEN BE SENTENCED TO LIFE IMPRISONMENT.

SECTION 13. 18-1.4-102 (1) (a), (1) (b), (6) (a), and (7), Colorado Revised Statutes, as enacted by House Bill 02S-1005, enacted at the Third Extraordinary Session of the Sixty-third General Assembly, are amended, and the said 18-1.4-102 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995, and prior to the effective date of this article - appellate review. (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, the trial court shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission of the offense, or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 4 of article 9 of title 16, C.R.S., as it existed prior to October 1, 2002, in either of which cases, the defendant shall be sentenced to life imprisonment. The hearing shall be conducted by the trial judge before the trial jury as soon as practicable. Alternate jurors shall not be excused from the case prior to submission of the issue of guilt to the trial jury and shall remain separately sequestered until a verdict is entered by the trial jury. If the verdict of the trial jury is that the defendant is guilty of a class 1 felony, the alternate jurors shall sit as alternate jurors on the issue of punishment. If, for any reason satisfactory to the court, any member or members of the trial jury are excused from participation in the sentencing hearing, the trial judge shall replace such juror or jurors with an alternate juror or jurors. If a trial jury was waived or if the defendant ~~pleaded~~ PLED guilty, the hearing shall be conducted before the trial judge. THE COURT SHALL INSTRUCT THE DEFENDANT WHEN WAIVING HIS OR HER RIGHT TO A JURY TRIAL OR WHEN PLEADING GUILTY, THAT HE OR SHE IS ALSO WAIVING HIS OR HER RIGHT TO A JURY DETERMINATION OF THE SENTENCE AT THE SENTENCING HEARING.

(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the court deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, ~~and~~ any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section, AND ANY MATTERS RELATING TO THE PERSONAL CHARACTERISTICS OF THE VICTIM AND THE IMPACT OF THE CRIMES ON THE VICTIM'S FAMILY may be presented. Any such evidence, INCLUDING BUT NOT LIMITED TO THE TESTIMONY OF MEMBERS OF THE VICTIM'S IMMEDIATE FAMILY, AS DEFINED IN SECTION 24-4.1-302 (6), C.R.S., which the court deems to have probative value may be received, as long as each party is

given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death. ~~For offenses committed before July 1, 1985, the jury shall be instructed that life imprisonment means life without the possibility of parole for twenty calendar years. For offenses committed on or after July 1, 1985, the jury shall be instructed that life imprisonment means life without the possibility of parole for forty calendar years. For offenses within the purview of section 17-22.5-104 (2) (d), C.R.S.,~~ The jury shall be instructed that life imprisonment means IMPRISONMENT FOR life without the possibility of parole.

(e) IF, AS OF THE EFFECTIVE DATE OF THIS PARAGRAPH (e), THE PROSECUTION HAS ANNOUNCED IT WILL BE SEEKING THE DEATH SENTENCE AS THE PUNISHMENT FOR A CONVICTION OF A CLASS 1 FELONY AND A DEFENDANT HAS BEEN CONVICTED AT TRIAL OF A CLASS 1 FELONY OR HAS PLED GUILTY TO A CLASS 1 FELONY, BUT A SENTENCING HEARING TO DETERMINE WHETHER THAT DEFENDANT SHALL BE SENTENCED TO DEATH OR LIFE IMPRISONMENT HAS NOT YET BEEN HELD, A JURY SHALL BE IMPANELED TO DETERMINE THE SENTENCE AT THE SENTENCING HEARING PURSUANT TO THE PROCEDURES SET FORTH IN THIS SECTION OR, IF THE DEFENDANT PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, THE SENTENCE SHALL BE DETERMINED BY THE TRIAL JUDGE.

(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 TITLE 16, C.R.S.

(7) (a) ~~If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section, which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable.~~ IT IS THE EXPRESSED INTENT OF THE GENERAL ASSEMBLY THAT THERE BE IN PLACE A VALID AND OPERATIVE PROCEDURE FOR THE IMPOSITION OF A SENTENCE OF DEATH CONCERNING CLASS 1 FELONIES COMMITTED ON OR AFTER JULY 1, 1995, AND PRIOR TO THE EFFECTIVE DATE OF THIS SECTION. TOWARDS THAT END, IF ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, BUT SEVERANCE OF SUCH PROVISIONS WOULD, THROUGH OPERATION OF THE REMAINING PROVISIONS OF THIS SECTION, MAINTAIN THIS SECTION AS A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THOSE REMAINING PROVISIONS ARE SEVERABLE AND ARE TO HAVE FULL FORCE AND EFFECT. IF, INSTEAD, ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS SECTION DOES NOT

CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, AND SEVERANCE OF SUCH PROVISIONS WOULD NOT, THROUGH OPERATION OF THE REMAINING PROVISIONS OF THIS SECTION, RENDER THIS SECTION A VALID AND OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH OFFENSES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS ENTIRE ARTICLE BE VOID AND INOPERATIVE.

(b) If any death sentence IS imposed upon a defendant pursuant to the provisions of this section and, ON APPELLATE REVIEW INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (9) OF THIS SECTION, the imposition of such death sentence upon such defendant is held invalid ~~or unconstitutional, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment~~ FOR REASONS OTHER THAN UNCONSTITUTIONALITY OF THE DEATH PENALTY OR INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE SENTENCE, THE CASE SHALL BE REMANDED TO THE TRIAL COURT TO SET A NEW SENTENCING HEARING BEFORE A NEWLY IMPANELED JURY OR, IF THE DEFENDANT PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL JUDGE; EXCEPT THAT, IF THE PROSECUTOR INFORMS THE TRIAL COURT THAT, IN THE OPINION OF THE PROSECUTOR, CAPITAL PUNISHMENT WOULD NO LONGER BE IN THE INTEREST OF JUSTICE, SAID DEFENDANT SHALL BE RETURNED TO THE TRIAL COURT AND SHALL THEN BE SENTENCED TO LIFE IMPRISONMENT. IF A DEATH SENTENCE IMPOSED PURSUANT TO THIS SECTION IS HELD INVALID BASED ON UNCONSTITUTIONALITY OF THE DEATH PENALTY OR INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE SENTENCE, SAID DEFENDANT SHALL BE RETURNED TO THE TRIAL COURT AND SHALL THEN BE SENTENCED TO LIFE IMPRISONMENT.

SECTION 14. 18-1.4-102 (1) (c), Colorado Revised Statutes, as enacted by House Bill 02S-1005, enacted at the Third Extraordinary Session of the Sixty-third General Assembly, is amended, and the said 18-1.4-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995, and prior to the effective date of this article - appellate review. (1) (c) ~~Both the prosecuting attorney and the defense shall notify each other of the names and addresses of any witnesses to be called in the sentencing hearing and the subject matter of such testimony. Such discovery shall be provided within a reasonable amount of time as determined by order of the court and shall be provided not less than twenty-four hours prior to the commencement of the sentencing hearing. Unless good cause is shown, noncompliance with this paragraph (c) shall result in the exclusion of such evidence without further sanction.~~

(3.5) (a) THE PROVISIONS OF THIS SUBSECTION (3.5) SHALL APPLY ONLY IN A CLASS 1 FELONY CASE IN WHICH THE PROSECUTING ATTORNEY HAS FILED A STATEMENT OF INTENT TO SEEK THE DEATH PENALTY PURSUANT TO RULE 32.1 (b) OF THE COLORADO RULES OF CRIMINAL PROCEDURE.

(b) THE PROSECUTING ATTORNEY SHALL PROVIDE THE DEFENDANT WITH THE FOLLOWING INFORMATION AND MATERIALS NOT LATER THAN TWENTY DAYS AFTER THE PROSECUTION FILES ITS WRITTEN INTENTION TO SEEK THE DEATH PENALTY OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; EXCEPT THAT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS,

EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE DEFENSE AS SOON AS PRACTICABLE BUT NOT LATER THAN FORTY-FIVE DAYS BEFORE TRIAL:

(I) A LIST OF ALL AGGRAVATING FACTORS THAT ARE KNOWN TO THE PROSECUTING ATTORNEY AT THAT TIME AND THAT THE PROSECUTING ATTORNEY INTENDS TO PROVE AT THE SENTENCING HEARING;

(II) A LIST OF ALL WITNESSES WHOM THE PROSECUTING ATTORNEY MAY CALL AT THE SENTENCING HEARING, SPECIFYING FOR EACH THE WITNESS' NAME, ADDRESS, AND DATE OF BIRTH AND THE SUBJECT MATTER OF THE WITNESS' TESTIMONY;

(III) THE WRITTEN AND RECORDED STATEMENTS, INCLUDING ANY NOTES OF THOSE STATEMENTS, FOR EACH WITNESS WHOM THE PROSECUTING ATTORNEY MAY CALL AT THE SENTENCING HEARING;

(IV) A LIST OF BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS, OR TANGIBLE OBJECTS THAT THE PROSECUTING ATTORNEY MAY INTRODUCE AT THE SENTENCING HEARING; AND

(V) ALL MATERIAL OR INFORMATION THAT TENDS TO MITIGATE OR NEGATE THE FINDING OF ANY OF THE AGGRAVATING FACTORS THE PROSECUTING ATTORNEY INTENDS TO PROVE AT THE SENTENCING HEARING.

(c) UPON RECEIPT OF THE INFORMATION REQUIRED TO BE DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3.5), THE PROSECUTING ATTORNEY SHALL NOTIFY THE DEFENDANT AS SOON AS PRACTICABLE OF ANY ADDITIONAL WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL IN RESPONSE TO THE DEFENDANT'S DISCLOSURES.

(d) THE DEFENDANT SHALL PROVIDE THE PROSECUTING ATTORNEY WITH THE FOLLOWING INFORMATION AND MATERIALS NO LATER THAN THIRTY DAYS BEFORE THE FIRST TRIAL DATE SET FOR THE BEGINNING OF THE DEFENDANT'S TRIAL OR WITHIN SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE; HOWEVER, ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERT WHOM THE DEFENSE INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING SHALL BE PROVIDED TO THE PROSECUTING ATTORNEY AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS BEFORE TRIAL:

(I) A LIST OF ALL WITNESSES WHOM THE DEFENDANT MAY CALL AT THE SENTENCING HEARING, SPECIFYING FOR EACH THE WITNESS' NAME, ADDRESS, AND DATE OF BIRTH AND THE SUBJECT MATTER OF THE WITNESS' TESTIMONY;

(II) THE WRITTEN AND RECORDED STATEMENTS, INCLUDING ANY NOTES OF THOSE STATEMENTS, OF EACH WITNESS WHOM THE DEFENDANT MAY CALL AT THE SENTENCING HEARING; AND

(III) A LIST OF BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS, OR TANGIBLE OBJECTS THAT THE DEFENDANT MAY INTRODUCE AT THE SENTENCING HEARING.

(e) (I) ANY MATERIAL SUBJECT TO THIS SUBSECTION (3.5) THAT THE DEFENDANT BELIEVES CONTAINS INFORMATION THAT IS PRIVILEGED TO THE EXTENT THAT THE PROSECUTION CANNOT BE AWARE OF IT IN CONNECTION WITH ITS PREPARATION FOR, OR CONDUCT OF, THE TRIAL TO DETERMINE GUILT ON THE SUBSTANTIVE CHARGES AGAINST THE DEFENDANT SHALL BE SUBMITTED BY THE DEFENDANT TO THE TRIAL JUDGE UNDER SEAL NO LATER THAN FORTY-FIVE DAYS BEFORE TRIAL.

(II) THE TRIAL JUDGE SHALL REVIEW ANY SUCH MATERIAL SUBMITTED UNDER SEAL PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (e) TO DETERMINE WHETHER IT IS IN FACT PRIVILEGED. ANY MATERIAL THE TRIAL JUDGE FINDS NOT TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTING ATTORNEY. ANY MATERIAL SUBMITTED UNDER SEAL THAT THE TRIAL JUDGE FINDS TO BE PRIVILEGED SHALL BE PROVIDED FORTHWITH TO THE PROSECUTION IF THE DEFENDANT IS CONVICTED OF A CLASS 1 FELONY.

(f) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (f), IF THE WITNESSES DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3.5) INCLUDE WITNESSES WHO MAY PROVIDE EVIDENCE CONCERNING THE DEFENDANT'S MENTAL CONDITION AT THE SENTENCING HEARING CONDUCTED PURSUANT TO THIS SECTION, THE TRIAL COURT, AT THE REQUEST OF THE PROSECUTING ATTORNEY, SHALL ORDER THAT THE DEFENDANT BE EXAMINED AND A REPORT OF SAID EXAMINATION BE PREPARED PURSUANT TO SECTION 16-8-106, C.R.S.

(II) THE COURT SHALL NOT ORDER AN EXAMINATION PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) IF:

(A) SUCH AN EXAMINATION WAS PREVIOUSLY PERFORMED AND A REPORT WAS PREPARED IN THE SAME CASE; AND

(B) THE REPORT INCLUDED AN OPINION CONCERNING HOW ANY MENTAL DISEASE OR DEFECT OF THE DEFENDANT OR CONDITION OF MIND CAUSED BY MENTAL DISEASE OR DEFECT OF THE DEFENDANT AFFECTS THE MITIGATING FACTORS THAT THE DEFENDANT MAY RAISE AT THE SENTENCING HEARING HELD PURSUANT TO THIS SECTION.

(g) IF THE WITNESSES DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3.5) INCLUDE WITNESSES WHO MAY PROVIDE EVIDENCE CONCERNING THE DEFENDANT'S MENTAL CONDITION AT A SENTENCING HEARING CONDUCTED PURSUANT TO THIS SECTION, THE PROVISIONS OF SECTION 16-8-109, C.R.S., CONCERNING TESTIMONY OF LAY WITNESSES SHALL APPLY TO SAID SENTENCING HEARING.

(h) THERE IS A CONTINUING DUTY ON THE PART OF THE PROSECUTING ATTORNEY AND THE DEFENDANT TO DISCLOSE THE INFORMATION AND MATERIALS SPECIFIED IN THIS SUBSECTION (3.5). IF, AFTER COMPLYING WITH THE DUTY TO DISCLOSE THE INFORMATION AND MATERIALS DESCRIBED IN THIS SUBSECTION (3.5), EITHER PARTY DISCOVERS OR OBTAINS ANY ADDITIONAL INFORMATION AND MATERIALS THAT ARE SUBJECT TO DISCLOSURE UNDER THIS SUBSECTION (3.5), THE PARTY SHALL PROMPTLY NOTIFY THE OTHER PARTY AND PROVIDE THE OTHER PARTY WITH COMPLETE ACCESS TO THE INFORMATION AND MATERIALS.

(i) THE TRIAL COURT, UPON A SHOWING OF EXTRAORDINARY CIRCUMSTANCES THAT COULD NOT HAVE BEEN FORESEEN AND PREVENTED, MAY GRANT AN EXTENSION OF TIME TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION (3.5).

(j) IF IT IS BROUGHT TO THE ATTENTION OF THE COURT THAT EITHER THE PROSECUTING ATTORNEY OR THE DEFENDANT HAS FAILED TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (3.5) OR WITH AN ORDER ISSUED PURSUANT TO THIS SUBSECTION (3.5), THE COURT MAY ENTER ANY ORDER AGAINST SUCH PARTY THAT THE COURT DEEMS JUST UNDER THE CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO AN ORDER TO PERMIT THE DISCOVERY OR INSPECTION OF INFORMATION AND MATERIALS NOT PREVIOUSLY DISCLOSED, TO GRANT A CONTINUANCE, TO PROHIBIT THE OFFENDING PARTY FROM INTRODUCING THE INFORMATION AND MATERIALS NOT DISCLOSED, OR TO IMPOSE SANCTIONS AGAINST THE OFFENDING PARTY.

(8) WHEN REVIEWING A SENTENCE OF DEATH IMPOSED BY A THREE-JUDGE PANEL, IF THE COLORADO SUPREME COURT CONCLUDES THAT ANY ONE OR MORE OF THE DETERMINATIONS MADE BY THE THREE-JUDGE PANEL WERE CONSTITUTIONALLY REQUIRED TO HAVE BEEN MADE BY A JURY, THE SUPREME COURT MAY:

(a) EXAMINE THE RECORD AND THE JURY'S VERDICTS OR THE DEFENDANT'S GUILTY PLEAS AT THE GUILT PHASE OF THE TRIAL AND DETERMINE WHETHER ANY OF THE AGGRAVATING FACTORS FOUND TO EXIST BY THE THREE-JUDGE PANEL WERE ALSO FAIRLY DETERMINED TO EXIST BEYOND A REASONABLE DOUBT BY THE JURY'S VERDICTS OR THE DEFENDANT'S GUILTY PLEAS; AND

(b) (I) IF THE SUPREME COURT DETERMINES THAT ONE OR MORE AGGRAVATING FACTORS WERE FAIRLY DETERMINED TO EXIST BEYOND A REASONABLE DOUBT BY THE JURY'S VERDICTS OR THE DEFENDANT'S GUILTY PLEAS, THE SUPREME COURT SHALL DETERMINE WHETHER THE SENTENCE OF DEATH SHOULD BE AFFIRMED ON APPEAL BY PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPHS (a) TO (d) OF SUBSECTION (9) OF THIS SECTION; OR

(II) IF THE SUPREME COURT DETERMINES THERE WERE NO AGGRAVATING FACTORS FAIRLY DETERMINED TO EXIST BEYOND A REASONABLE DOUBT BY THE JURY'S VERDICTS OR THE DEFENDANT'S GUILTY PLEAS, THE SUPREME COURT SHALL REMAND THE CASE TO THE TRIAL COURT FOR A SENTENCING HEARING BEFORE A NEWLY IMPANELED JURY.

(9) IF, ON APPEAL, THE SUPREME COURT FINDS ONE OR MORE OF THE AGGRAVATING FACTORS THAT WERE FOUND TO SUPPORT A SENTENCE TO DEATH TO BE INVALID FOR ANY REASON, THE SUPREME COURT MAY DETERMINE WHETHER THE SENTENCE OF DEATH SHOULD BE AFFIRMED ON APPEAL BY:

(a) REWEIGHING THE REMAINING AGGRAVATING FACTOR OR FACTORS AND ALL MITIGATING FACTORS AND THEN DETERMINING WHETHER DEATH IS THE APPROPRIATE PUNISHMENT IN THE CASE; OR

(b) APPLYING HARMLESS ERROR ANALYSIS BY CONSIDERING WHETHER, IF THE SENTENCING BODY HAD NOT CONSIDERED THE INVALID AGGRAVATING FACTOR, IT WOULD HAVE NONETHELESS SENTENCED THE DEFENDANT TO DEATH; OR

(c) IF THE SUPREME COURT FINDS THE SENTENCING BODY'S CONSIDERATION OF AN AGGRAVATING FACTOR WAS IMPROPER BECAUSE THE AGGRAVATING FACTOR WAS NOT GIVEN A CONSTITUTIONALLY NARROW CONSTRUCTION, DETERMINING WHETHER, BEYOND A REASONABLE DOUBT, THE SENTENCING BODY WOULD HAVE RETURNED A VERDICT OF DEATH HAD THE AGGRAVATING FACTOR BEEN PROPERLY NARROWED; OR

(d) EMPLOYING ANY OTHER CONSTITUTIONALLY PERMISSIBLE METHOD OF REVIEW.

SECTION 15. 18-1.4-102 (5) (m), Colorado Revised Statutes, as enacted by House Bill 02S-1005, enacted at the Third Extraordinary Session of the Sixty-third General Assembly, is amended, and the said 18-1.4-102 (5) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995, and prior to the effective date of this article - appellate review. (5) For purposes of this section, aggravating factors shall be the following factors:

(m) The defendant intentionally killed a child who has not yet attained twelve years of age; OR

(n) (I) THE DEFENDANT COMMITTED THE CLASS 1 FELONY AGAINST THE VICTIM BECAUSE OF THE VICTIM'S RACE, COLOR, ANCESTRY, RELIGION, OR NATIONAL ORIGIN.

(II) THE PROVISIONS OF THIS PARAGRAPH (n) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1998.

(o) (I) THE DEFENDANT'S POSSESSION OF THE WEAPON USED TO COMMIT THE CLASS 1 FELONY CONSTITUTED A FELONY OFFENSE UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.

(II) THE PROVISIONS OF THIS PARAGRAPH (o) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER AUGUST 2, 2000.

SECTION 16. Legislative declaration. It is the intent of the general assembly that there be a constitutional death penalty sentencing procedure in effect for offenses committed on or after July 1, 1995, and prior to the effective date of this act. To that end, the general assembly has enacted article 1.4 of title 18, Colorado Revised Statutes, in section 12 of this act, which recreates section 16-11-103, Colorado Revised Statutes, as it existed on June 30, 1995. In addition, in sections 13 through 15 of this act, the general assembly has enacted amendments to said article 1.4 of title 18, Colorado Revised Statutes, to reflect the changes made to section 16-11-103, Colorado Revised Statutes, on or after July 1, 1995, and prior to the effective date of this act, other than those changes that established a panel of three judges as the sentencing authority in capital cases. In enacting section 12 of this act separately from sections 13 through 15 of this act, it is the intent of the general assembly that, if any of the amendments made in sections 13 through 15 of this act are found by the United States Supreme Court or the Colorado Supreme Court to render section 18-1.4-102, Colorado Revised Statutes, unconstitutional or invalid such that it does not implement a valid and operative procedure for imposition of a sentence of death, any such amendments made in sections 13 through 15 of this act shall be inoperative

and severable, and the provisions of article 1.4 of title 18, Colorado Revised Statutes, as enacted in section 12 of this act, shall apply to offenses committed on or after July 1, 1995, and prior to the effective date of this act.

SECTION 17. 16-8-103.6 (2) (a), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-8-103.6. Waiver of privilege. (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, raising the question of incompetency to proceed pursuant to section 16-8-110, or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 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 mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 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 mental condition.

SECTION 18. 16-8-103.6 (2) (a), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

16-8-103.6. Waiver of privilege. (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, raising the question of incompetency to proceed pursuant to section 16-8-110, 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~~ 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 mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to section ~~18-1.3-1201~~ 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 mental condition.

SECTION 19. 16-8-106 (2) (b), (2) (c), and (3) (b), Colorado Revised Statutes, as they exist until October 1, 2002, are amended to read:

16-8-106. Examinations and report. (2) (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 issues of insanity or competency and in any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 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 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 issues of insanity or competency, or at any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 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 issues of insanity and competency, and in any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. This paragraph (c) shall apply to offenses committed on or after July 1, 1999.

(3) (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 ~~16-11-103~~ 16-11-103 OR SECTION 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, eligibility for release, or competency to proceed and in any sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 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.

SECTION 20. 16-8-106 (2) (b), (2) (c), and (3) (b), Colorado Revised Statutes, as they will become effective October 1, 2002, are amended to read:

16-8-106. Examinations and report. (2) (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 issues of insanity or competency and in any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 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 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 issues of insanity or competency, or at any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 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 issues of insanity and competency, and in any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 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) (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~~ 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, eligibility for release, or competency to proceed and in any sentencing hearing held pursuant to section ~~18-1.3-1201~~ 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.

SECTION 21. 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado Revised Statutes, as they exist until October 1, 2002, 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 ~~16-11-103 or 16-11-802~~ 16-11-103 OR 16-11-802 OR SECTION 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 ~~16-11-103 or 16-11-802~~ 16-11-103 OR 16-11-802 OR SECTION 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 ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-1201, C.R.S., only to prove the existence or absence of any mitigating factor.

SECTION 22. 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado Revised Statutes, as they will become effective October 1, 2002, 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 or 18-1.3-1302,~~ 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 or 18-1.3-1302,~~ 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~~ 18-1.3-1201 OR 18-1.4-102, C.R.S., only to prove the existence or absence of any mitigating factor.

SECTION 23. 16-11-101 (1) (c), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-11-101. Alternatives in sentencing - repeal. (1) Within the limitations of the penalties provided by the classification of the offense of which a person is found guilty, and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(c) The defendant shall be sentenced to death in those cases in which a death sentence is required under section ~~16-11-103~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S.

SECTION 24. 18-1.3-104 (1) (c), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1.3-104. Alternatives in imposition of sentence - repeal. (1) Within the limitations of the penalties provided by the classification of the offense of which a person is found guilty, and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(c) The defendant shall be sentenced to death in those cases in which a death sentence is required under section ~~18-1.3-1201~~ 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102.

SECTION 25. 16-12-202 (3), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-12-202. Unitary procedure for appeals - scope and applicability. (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~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S., 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.

SECTION 26. 16-12-202 (3), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

16-12-202. Unitary procedure for appeals - scope and applicability. (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 ~~18-1.3-1201 or 18-1.3-1302~~ 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102, C.R.S., 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.

SECTION 27. 16-13-101 (1) (e), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

16-13-101. Punishment for habitual criminals. (1) (e) Nothing in this subsection (1) is to be construed to prohibit a person convicted of a class 1 felony from being sentenced pursuant to section ~~16-11-103~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S.

SECTION 28. 18-1.3-801 (1) (e), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1.3-801. Punishment for habitual criminals. (1) (e) Nothing in this subsection (1) is to be construed to prohibit a person convicted of a class 1 felony from being sentenced pursuant to section ~~18-1.3-1201~~ 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102.

SECTION 29. 18-1-409 (1), Colorado Revised Statutes, as it exists until October 1, 2002, is amended to read:

18-1-409. Appellate review of sentence for a felony. (1) When 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 16-11-103 (6) ~~C.R.S., or section 16-11-802 (6)~~ OR 16-11-802 (6), C.R.S., OR SECTION 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 30. 18-1-409 (1), Colorado Revised Statutes, as it will become effective October 1, 2002, is amended to read:

18-1-409. Appellate review of sentence for a felony. (1) When 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) or 18-1.3-1302 (6)~~ 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 31. 24-4.1-302.5 (1) (g), Colorado Revised Statutes, as it exists until October 1, 2002, 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 ~~16-11-103,~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S., for cases involving class 1 felonies, of any person convicted of a crime against such victim, and to inform the district attorney or the court, in writing, by a victim impact statement, or in person by an oral statement, of the harm that the victim has sustained as a result of the crime;

SECTION 32. 24-4.1-302.5 (1) (g), Colorado Revised Statutes, as it will become effective October 1, 2002, 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~~ 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 victim, and to inform the district attorney or the court, in writing, by a victim impact statement, or in person by an oral statement, of the harm that the victim has sustained as a result of the crime;

SECTION 33. Effective date - applicability. This act shall take effect upon passage and sections 1 and 2 of this act shall apply to offenses committed on or after said date.

SECTION 34. 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: July 12, 2002