Colorado Revised Statutes 2015

TITLE 16

CRIMINAL PROCEEDINGS

CODE OF CRIMINAL PROCEDURE

ARTICLE 1

General Provisions

16-1-101. Short title. (1) Articles 1 to 13 of this title shall be known and may be cited as the "Colorado Code of Criminal Procedure". Within those articles, the "Colorado Code of Criminal Procedure" is sometimes referred to as "this code".

(2) The portion of any section, subsection, paragraph, or subparagraph contained in this code which precedes a list of examples, requirements, conditions, or other items may be referred to and cited as the "introductory portion" of such section, subsection, paragraph, or subparagraph.

16-1-102. Scope. The provisions of this code are intended to create, define, and protect rights, duties, and obligations as distinguished from matters wholly procedural. Except as specifically set forth in this code, the provisions of this code are not applicable to proceedings under the "Colorado Children's Code" or to violations of municipal charters or municipal ordinances.

16-1-103. Purpose. This code is intended to provide for the just determination of every criminal proceeding. Its provisions shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unjustifiable expense and delay, the effective apprehension and trial of persons accused of crime, the just determination of every criminal proceeding by a fair and impartial trial, an adequate review, and the preservation of the public welfare and the fundamental human rights of individuals.

16-1-104. Definitions. (1) The following definitions in this section are applicable

generally in this code. Other terms which need definition, but which are used only in a limited number of sections of this code are defined in the particular section or article in which the terms appear. Definitions set forth in any section of this code are applicable whenever the same term is used in the same sense in another section of this code, unless the definition is specifically limited or the context indicates that it is inapplicable.

(2) "Arraignment" means the formal act of calling the defendant into open court, informing him of the offense with which he is charged, and the entry of a plea to the charge.

(3) "Bail" means a security, which may include a bond with or without monetary conditions, required by a court for the release of a person in custody set to provide reasonable assurance of public safety and court appearance.

(3.5) "Bail bonding agent" or "bonding agent" means an individual who is in the business of writing appearance bonds and who is subject to regulation by the division of insurance in the department of regulatory agencies, including an insurance producer, cash-bonding agent, or professional cash-bail agent.

(4) "Bind over" means to require a defendant, following a preliminary hearing, to appear and answer in a court having jurisdiction to try the defendant for the crime with which he is charged.

(5) "Bond" means a bail bond which is an undertaking, with or without sureties or security, entered into by a person in custody by which he binds himself to comply with the conditions of the undertaking and in default of such compliance to pay the amount of bail or other sum fixed, if any, in the bond.

(6) "Charge" means a formal written statement presented to a court accusing a person of the commission of a crime. The charge may be made by complaint, information, or indictment.

(7) "Complaint" means a written statement charging the commission of a crime by an alleged offender, filed in the county court.

(7.5) "Correctional facility" means any facility under the supervision of the department of corrections in which persons are or may be lawfully held in custody as a result of conviction of a crime.

(8) "Court of record" means any court except a municipal court unless otherwise defined by a particular section.

(8.5) (a) (I) "Crime of violence" means a crime in which the defendant used, or possessed and threatened the use of, a deadly weapon during the commission or attempted commission of any crime committed against an elderly person or a person with a disability or a crime of murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, or criminal extortion, or during the immediate flight therefrom, or the defendant caused serious bodily injury or death to any person, other than himself or herself or another participant, during the commission or attempted commission of any such felony or during the immediate flight therefrom.

(II) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (II), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411 (1), C.R.S., and "bodily injury" shall have the same meaning as set forth in section 18-1-901 (3) (c), C.R.S.

(III) The provisions of subparagraph (II) of this paragraph (a) shall apply only to felony unlawful sexual offenses.

(b) As used in this subsection (8.5), "elderly person" means a person who is sixty years of age or older. "Person with a disability" means a person who is disabled because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision in both eyes to such a degree as to constitute virtual blindness.

(9) "Custody" means the restraint of a person's freedom in any significant way.

(10) "Felony complaint" means a written statement of the essential facts constituting the offense charged, signed by the prosecutor, and filed in the court having jurisdiction over the offense charged.

(11) "Indictment" means a written statement, presented by a grand jury to the district court, which charges the commission of a crime by an alleged offender.

(12) "Information" means a written statement signed by a district attorney presented to the district court, which charges the commission of a crime by an alleged offender.

(13) "Personal recognizance" means a bond secured only by the personal obligation of the person giving the bond.

(14) "Preliminary hearing" means a hearing on a complaint filed in the county court or an information filed in the district court, to determine if there is probable cause to believe that an offense has been committed and that the person charged committed it.

(15) "Prosecuting attorney" means any attorney who is authorized to appear for and on behalf of the state of Colorado in a criminal case.

(16) A "search warrant" is a written order made by a judge of a court of record commanding a peace officer to search the person, premises, place, property, or thing described in the search warrant and to seize property described or identified therein.

(17) "Summons" means a written order or notice directing that a person appear before a designated court at a stated time and place and answer to a charge against him.

(18) A "warrant" is a written order issued by a judge of a court of record directed to any peace officer commanding the arrest of the person named or described in the order.

16-1-105. Interpretation of words and phrases. (1) In interpreting this code, such words and phrases as are defined in this article shall have the meanings indicated by their definitions, unless a particular context clearly requires a different meaning.

(2) Words or phrases not defined in this code but which are defined in the "Colorado Criminal Code" (title 18, C.R.S.) shall have the meanings given therein except when a particular context clearly requires a different meaning.

(3) Words and phrases used in this code and not expressly defined shall be construed according to the rules governing the construction of statutes of this state.

16-1-106. Electronic transmission of documents required for arrest and search warrants under code authorized - definitions. (1) Whenever a written application for a warrant is required, it shall include both a written application and a sworn or affirmed affidavit.

A peace officer may submit an application and affidavit for a warrant and the court may issue the warrant by an electronically or electromagnetically transmitted facsimile or by an electronic transfer that may include an electronic signature. Whenever a sworn or affirmed affidavit is required, the court may orally administer the oath or affirmation to the affiant and the affiant may then electronically transmit back to the court a written affidavit of the oath or affirmation.

(2) Procedures governing application for and issuance of arrest or search warrants consistent with this section may be established by rule of the Colorado supreme court, which rule should require the court administrator to establish paper quality and durability standards for warrants issued pursuant to this section.

(3) (a) Any electronically or electromagnetically transmitted facsimile of a document authorized to be made by this section shall be treated as an original document.

(b) A warrant, signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission or by electronic transfer with electronic signatures to the judge, who may act upon the transmitted documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone by the judge. The affidavit with electronic signature received by the judge or magistrate and the warrant approved by the judge or magistrate, signed with electronic signature, shall be deemed originals. The judge or magistrate shall facilitate the filing of the original affidavit and original warrant with the clerk of the court and shall take reasonable steps to prevent tampering with the affidavit and warrant. The issuing judge or magistrate shall also forward a copy of the warrant and affidavit, with electronic signatures, to the affiant. This subsection (3) does not authorize the court to issue warrants without having in its possession either a faxed copy of the signed affidavit and warrant or an electronic copy of the affidavit and warrant with electronic signatures.

(4) For purposes of this section:

(a) "Digital signature" means a document hash-encrypted with a private cryptographic key that can be used to authenticate the identity of the sender of a message or the signer of a document and can ensure that the original content of the message or document that has been sent is unchanged.

(b) "Digitized signature" means an electronic representation of an actual handwritten signature in which the image of a handwritten signature is created and saved using various methods, such as using a signature pad, scanning a handwritten signature, or digital photography. A digitized signature may be captured at the time the user applies the signature, or a previously saved image may be applied.

(c) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document. An electronic signature may include, but is not limited to, a digitized signature or a digital signature.

16-1-107. Integrated court on-line network - municipal court records - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The report on the pilot project on criminal background checks for child care providers, prepared for the state department of human services, was presented to the general

assembly in August of 2000;

(b) Said report contained several recommendations for the improvement of the process of obtaining accurate and complete criminal history records for child care workers and volunteers;

(c) Some of those recommendations involved the records contained in the integrated Colorado on-line network (ICON) of the state judicial department and the ability to identify case dispositions;

(d) Other recommendations involved the work of the courts and the state judicial department in assisting in the completion and implementation of the integrated criminal justice information system program established by article 20.5 of this title.

(2) The general assembly further finds and declares that, in order to assure that criminal background checks for child care workers are accurate and complete, it is critical that the criminal justice agencies participating in the integrated criminal justice information system program established by article 20.5 of this title and political subdivisions continue to work with each other to complete and implement such program in a timely manner and consider the integration of municipal records, including the county court records of the city and county of Denver, into such program.

16-1-108. Admission of records in court. (1) In a trial or hearing, all official records and documents of the state of Colorado, as defined in section 42-2-121 (2) (c), C.R.S., shall:

(a) Be admissible in all county and district courts within the state of Colorado without further foundation;

(b) Be statutory exceptions to rule 802 of the Colorado rules of evidence; and

(c) Constitute prima facie proof of the information contained in the record or document if the record or document is accompanied by a certificate stating that the executive director of the department of revenue, or the executive director's appointee, has custody of the record or document and accompanied by and attached to a cover page that:

(I) Specifies the number of pages, exclusive of the cover page, that constitute the record or document being submitted; and

(II) Bears the signature of the executive director of the department of revenue, or the executive director's appointee, attesting to the authenticity of the record or document; and

(III) Bears the official seal of the department of revenue or a stamped or printed facsimile of the seal.

(2) As used in subsection (1) of this section, "official records and documents" includes any mechanically or electronically reproduced copy, photograph, or printout of a record or document or any portion of a record or document filed with, maintained by, or prepared by the department of revenue pursuant to section 42-2-121 (2) (c), C.R.S. The department of revenue may also permit the electronic transmission of information for direct recording in the department of revenue's records and systems. Information transmitted by an electronic means that is approved by the department of revenue constitutes an official record for the purposes of this section, regardless of whether an original source document for the information exists or ever existed. The certificate and cover page and its contents required by subsection (1) of this section may be electronically produced and transmitted. An electronic reproduction of the certificate and

cover page, including an electronic signature of the executive director of the department of revenue or of the executive director's appointee and an electronic reproduction of the official seal of the department of revenue, shall be admissible in court as set forth in subsection (1) of this section.

(3) A record or document shall not be required to include every page of a record or document filed with, maintained by, or prepared by the department of revenue pursuant to this section to be an official record or document, if the official record or document includes all of those portions of the record or document relevant to the trial or hearing for which it is prepared. There shall be a presumption that the official record or document contains all information that is relevant to the trial or hearing.

16-1-109. Eyewitness identification procedures - legislative declaration - definitions - policies and procedures - training - admissibility. (1) The general assembly finds and declares that:

(a) Over the past forty years, a large body of peer-reviewed scientific research and practice has demonstrated that simple systematic changes in the administration of eyewitness identification procedures by all law enforcement agencies can greatly improve the accuracy of those identifications and strengthen public safety while protecting the innocent;

(b) The integrity of Colorado's criminal justice system benefits from adherence to peer-reviewed research-based practices in the investigation of criminal activity; and

(c) Colorado will benefit from the development and use of written law enforcement policies that are derived from peer-reviewed scientific research and research-based practices, which will ultimately improve the accuracy of eyewitness identification and strengthen the criminal justice system in Colorado.

(2) As used in this section, unless the context otherwise requires:

(a) "Blind" means the administrator of a live lineup, photo array, or showup does not know the identity of the suspect.

(b) "Blinded" means the administrator of a live lineup, photo array, or showup may know who the suspect is but does not know in which position the suspect is placed in the photo array when it is viewed by the eyewitness.

(c) "Eyewitness" means a person who observed another person at or near the scene of an offense.

(d) "Filler" means either a person or a photograph of a person who is not suspected of the offense in question and is included in an identification procedure.

(e) "Live lineup" means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons who are not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

(f) "Peace officers standards and training board" or "P.O.S.T. board" means the board created in section 24-31-302, C.R.S., for the certification of peace officers in Colorado.

(g) "Photo array" means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of

other persons who are not suspected of the offense, is displayed to an eyewitness either in hard copy form or via electronic means for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

(h) "Showup" means an identification procedure in which an eyewitness is presented with a single suspect in person for the purpose of determining whether the eyewitness identifies the individual as the perpetrator.

(3) (a) On or before July 1, 2016, any Colorado law enforcement agency charged with enforcing the criminal laws of Colorado and that, as part of any criminal investigation, uses or might use any eyewitness identification procedure shall adopt written policies and procedures concerning law enforcement-conducted eyewitness identifications. The policies and procedures adopted and implemented by a law enforcement agency must be consistent with eyewitness identification procedures of nationally recognized peer-reviewed research or the policies and procedures developed, agreed upon, and recommended by the Colorado attorney general's office and the Colorado district attorneys' council. The policies and procedures must include, but need not be limited to, the following:

(I) Protocols guiding the use of a showup;

(II) Protocols guiding the recommended use of a blind administration of both photo arrays and live lineups or the recommended use of a blinded administration of the identification process when circumstances prevent the use of a blind administration;

(III) The development of a set of easily understood instructions for eyewitnesses that, at a minimum, advise the eyewitness that the alleged perpetrator may or may not be present in the photo array or live lineup and that the investigation will continue whether or not the eyewitness identifies anyone as the alleged perpetrator in the photo array or live lineup;

(IV) Instructions to the law enforcement agency regarding the appropriate choice and use of fillers in compiling a live lineup or photo array, including ensuring that fillers match the original description of the perpetrator; and

(V) Protocols regarding the documentation of the eyewitness' level of confidence as elicited at the time he or she first identifies an alleged perpetrator or other person and memorialized verbatim in writing.

(b) On or before July 1, 2016, all Colorado law enforcement agencies that conduct eyewitness identifications shall adopt and implement the written policies and procedures required by paragraph (a) of this subsection (3). If a law enforcement agency does not complete or adopt its own written policies and procedures relating to eyewitness identifications, the law enforcement agency must, on or before July 1, 2016, adopt and implement the model policies and procedures as developed and approved in 2015 by the Colorado attorney general and the Colorado district attorneys' council.

(c) Local law enforcement policies and procedures relating to eyewitness identification are public documents. All such policies and procedures must be available, without cost, to the public upon request pursuant to the provisions of this section.

(d) Subject to available resources, law enforcement shall create, conduct, or facilitate professional training programs for law enforcement officers and other relevant personnel on methods and technical aspects of eyewitness identification policies and procedures. While these training programs shall be approved by the P.O.S.T. board, any programs may be created,

provided, and conducted by any law enforcement agency, the office of the attorney general, the Colorado district attorneys' council, or any other P.O.S.T-approved training entity.

(4) Policies and procedures adopted and implemented by a law enforcement agency pursuant to this section shall be reviewed by the agency at least every five years to ensure consistency with nationally recognized peer-reviewed research.

(5) Compliance or failure to comply with any of the requirements of this section is considered relevant evidence in any case involving eyewitness identification, as long as such evidence is otherwise admissible.

ARTICLE 2

County Court Provisions

PART 1

SIMPLIFIED PROCEDURES IN THE COUNTY COURT

16-2-101. Misdemeanor and petty offense procedures - statement of purpose. In order to provide a simple and expeditious method for the prosecution of misdemeanors and petty offenses in county courts but one which also guarantees to the defendant his constitutional rights, the general assembly does hereby establish a simplified criminal procedure for misdemeanors and petty offenses to be used under the circumstances set forth in this code in sections 16-2-102 to 16-2-114.

16-2-102. Definitions. As used in sections 16-2-104 to 16-2-114, "summons and complaint" means a document combining the functions of both a summons and a complaint.

16-2-103. Application of article. (1) Sections 16-2-102 to 16-2-114 apply only to the prosecution of misdemeanors and petty offenses in county courts under simplified procedure and have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies.

(2) Any matter arising in a proceeding under simplified procedure not specifically covered by sections 16-2-102 to 16-2-114 shall be subject to the other provisions of this code and any other applicable statute or court rule or, in the absence of such statute or court rule, to the application of common law principles. In any case due regard shall be had for speed and simplicity.

16-2-104. Issuance of summons and complaint. A summons and complaint may be issued by any peace officer for an offense constituting a misdemeanor or a petty offense committed in his presence or, if not committed in his presence, which he has probable cause to believe was committed and probable cause to believe was committed by the person charged. Except for penalty assessment notices, which shall be handled according to the procedures set forth in section 16-2-201, a copy of a summons and complaint so issued shall be filed immediately with the county court before which appearance is required, and a second copy shall be given to the district attorney or deputy district attorney for the county.

16-2-105. Issuance of summons after complaint. (Repealed)

16-2-106. Content of summons and complaint. A summons and complaint issued by a peace officer shall contain the name of the defendant, shall identify the offense charged, including a citation of the statute alleged to have been violated, shall contain a brief statement or description of the offense charged, including the date and approximate location thereof, and shall direct the defendant to appear before a specified county court at a stated date, time, and place.

16-2-107. Content of summons after complaint. A summons issued out of the county court after a complaint is filed need contain only the date, time, and place of appearance of the defendant, but a copy of the complaint shall be attached to and served with the summons.

16-2-108. Place of appearance and trial. The place at which the summons directs the defendant to appear shall be the place at which the court having jurisdiction over the matter customarily sits. It shall be a location at which the county court of the county in which the offense was alleged to have been committed sits regularly unless otherwise provided by this section. If the summons and complaint is issued by a peace officer and served personally upon the defendant by such peace officer, it may direct appearance at a location in which the county court of an adjoining county sits regularly if such a place is agreed to be more convenient by both the peace officer and the defendant. Costs and fines, to the extent provided by law, shall be retained by the county in which the matter is heard.

16-2-109. Service of summons. A summons issued by the county court in a prosecution for a misdemeanor or class 1 petty offense may be served by giving a copy to the defendant personally or by leaving a copy at the defendant's usual place of abode with some person over the age of eighteen years residing therein or by mailing a copy to the defendant's last known address by certified mail, return receipt requested, not less than fourteen days prior to the time the defendant is required to appear. Service by mail shall be complete upon the return of the receipt signed by the defendant. Personal service shall be made by any disinterested party over the age of

eighteen years.

16-2-110. Failure to appear. If a person upon whom a summons or summons and complaint has been served pursuant to this part 1 fails to appear in person or by counsel at the place and time specified therein, a bench warrant may issue for his arrest.

16-2-111. Admission to bail pending appearance. Any person charged with a misdemeanor or petty offense by complaint filed in the county court shall be admitted to bail or pretrial release as provided in article 4 of this code. When the county judge or judges are not immediately available for purposes of admission to bail or pretrial release of persons arrested and brought to the county court or jail, on charges of committing a misdemeanor or petty offense, such persons may be admitted to bail or be given a pretrial release by an appropriate officer designated by court rule. Unless otherwise provided by statute or supreme court rule, the county court shall provide by rule for the conditions and circumstances under which an admission to bail or pretrial release will be granted pending appearance before the judge, but in no event shall any such rule require conditions or impose liabilities in excess of those required by this code for cases filed in the district court.

16-2-112. Arrest followed by a complaint. If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time he is arraigned. The provisions of this section are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105.

16-2-113. Appearance of defendant before judge - subsequent procedure. (1) Upon appearance of the defendant before the judge in response to a summons or following arrest for a misdemeanor or a petty offense and in all proceedings thereafter unless otherwise provided in this code, the Colorado rules of criminal procedure are applicable. Prosecution may be conducted on the summons and complaint or the separate complaint if one has been filed. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise, the case shall be set for trial as soon as possible.

(2) Upon appearance before a judge for an offense under section 42-2-138 (1) (d) or 42-4-1301 (1) or (2) (a), C.R.S., the judge may order conditions of the summons, including but not limited to drug and alcohol evaluation and treatment. For a violation of an order entered pursuant to this subsection (2), a court may revoke the summons, issue a warrant for the defendant's arrest, and impose bail pursuant to the provisions of article 4 of this title.

16-2-114. Appeals. (1) The defendant may appeal a judgment of the county court in a criminal action under simplified procedure to the district court of the county. To appeal, the defendant shall, within thirty-five days after the date of entry of the judgment or the denial of posttrial motions, whichever is later, file notice of appeal in the county court, post any advance costs that are required for the preparation of the record, and serve a copy of the notice of appeal upon the appellee. The defendant shall also, within such thirty-five days, docket the appeal in the district court and pay the docket fee. No motion for new trial or in arrest of judgment shall be required as a prerequisite to an appeal, but such motions may be made pursuant to applicable rule of the Colorado supreme court.

(2) The notice of appeal shall state with particularity the alleged errors of the county court or other grounds relied upon for the appeal and shall include a stipulation or designation of the evidence and other proceedings which the appellant desires to have included in the record certified to the district court. If the appellant intends to urge upon appeal that the judgment or a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to that finding or conclusion. The appellee shall have fourteen days after service upon him or her of the notice of appeal to file with the clerk of the county court and serve upon the appellant a designation of any additional parts of the transcript or record which he or she deems necessary. The advance cost of preparing the additional record shall be posted by the appellant with the clerk of the county court within seven days after service upon him or her of the appellee's designation, or the appeal will be dismissed. If the district court finds that any part of the additional record designated by the appellee was unessential to a complete understanding of the questions raised by the appeal, it shall order the appellee to reimburse the appellant for the cost advanced for the preparation of that part without regard to the outcome of the appeal.

(3) Upon the filing of a notice of appeal and upon the posting of any advance costs by the appellant, as are required for the preparation of a record, unless the appellant is granted leave to proceed as an indigent, the clerk of the county court shall prepare and issue as soon as possible a record of the proceedings in the county court, including the summons and complaint or warrant, the separate complaint if any has been issued, and the judgment. The record shall also include a transcription or a joint stipulation of such part of the actual evidence and other proceedings as the parties designate. If the proceedings have been recorded electronically, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the court, either by him or her or under his or her supervision, within forty-two days after the filing of the notice of appeal or within such additional time as may be granted by the county court. The clerk shall notify in writing the opposing parties of the completion of the record, and such parties shall have fourteen days within which to file objections. If none are received, the record shall be certified forthwith by the clerk. If objections are made, the parties shall be called for hearing and the objections settled by the county judge and the record then certified.

(4) When the record has been duly certified and any additional fees therefor paid, it shall be filed with the clerk of the district court by the clerk of the county court, and the opposing parties shall be notified by the clerk of the county court of the filing.

(5) A written brief setting out matters relied upon as constituting error and outlining any arguments to be made shall be filed in the district court by the appellant within twenty-one days after certification of the record. A copy of the appellant's brief shall be served upon the appellee. The appellee may file an answering brief within twenty-one days after such service. A reply brief may be filed within fourteen days after service of the answering brief. In the discretion of the district court, the time for filing briefs and answers may be extended.

(6) Pending the docketing of the appeal, a stay of execution shall be granted by the county court upon request. If a sentence of imprisonment has been imposed, the defendant may be required to post bail, and if a fine and costs have been imposed, a deposit of the amount thereof or the posting of a bond for the payment thereof may be required by the county court. Upon a request for stay of execution made anytime after the docketing of the appeal, this action may be taken by the district court. Stays of execution granted by the county court or district court and, with the written consent of the sureties if any, bonds posted with such courts shall remain in effect until after final disposition of the appeal, unless modified by the district court.

(7) If for any reason an adequate record cannot be certified to the district court, the case shall be tried de novo in that court. No action on appeal shall result in an increase in penalty.

(8) Unless there is further review by the supreme court upon writ of certiorari pursuant to the rules of that court, after final disposition of the appeal the judgment on appeal entered by the district court shall be certified to the county court for action as directed by the district court, except in cases tried de novo by the district court or in cases in which the district court modifies the county court judgment, and, in such cases, the judgment on appeal shall be that of the district court and so enforceable.

(9) Repealed.

PART 2

PENALTY ASSESSMENT PROCEDURE

16-2-201. Penalty assessment procedure. (1) When a person is arrested for a class 2 petty offense, the arresting officer may either give the person a penalty assessment notice and release him upon its terms or take him before a judge of the county court in the county in which the alleged offense occurred. The choice of procedures shall be based upon circumstances which reasonably persuade the officer that the alleged offender is likely or unlikely to comply with the terms of the penalty assessment notice. Such circumstances may include the officer accompanying the offender to a post office or mailbox and witnessing the deposit in the mail of the notice with payment of the fine attached.

(1.5) The provisions of subsection (1) of this section notwithstanding, when an officer comes upon an unattended vehicle which is parked in apparent violation of any county parking ordinance, the officer may place upon the vehicle a penalty assessment notice as specified in subsection (2) of this section; except that said notice shall contain the license plate number and state of registration of the vehicle and need not contain the identification of the alleged offender.

(2) The penalty assessment notice shall be a summons and complaint containing

identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and any other matter reasonably adapted to effectuating the purposes of this section. A duplicate copy shall be sent to the clerk of the county court in the county in which the alleged offense occurred. The provisions of this section shall not apply to penalties assessed pursuant to authority of law outside this code unless this section is specifically referred to in such other law.

(3) If the person given a penalty assessment notice chooses to acknowledge his guilt, he may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he chooses not to acknowledge his guilt, he shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he was found guilty, but customary court costs may be assessed against him in addition to the fine.

ARTICLE 2.5

Peace Officers

PART 1

PEACE OFFICERS

16-2.5-101. Peace officer - description - general authority. (1) A person who is included within the provisions of this article and who meets all standards imposed by law on a peace officer is a peace officer, and, notwithstanding any other provision of law, no person other than a person designated in this article is a peace officer. A peace officer may be certified by the peace officers standards and training board pursuant to part 3 of article 31 of title 24, C.R.S., and, at a minimum, has the authority to enforce all laws of the state of Colorado while acting within the scope of his or her authority and in the performance of his or her duties, unless otherwise limited within this part 1.

(2) A peace officer certified by the peace officers standards and training board shall have the authority to carry firearms at all times, concealed or otherwise, subject to the written firearms policy created by the agency employing the peace officer. All other peace officers shall have the authority to carry firearms, concealed or otherwise, while engaged in the performance of their duties or as otherwise authorized by the written policy of the agency employing the officer.

(3) As used in every statute, unless the context otherwise requires, "law enforcement officer" means a peace officer.

16-2.5-102. Certified peace officer - P.O.S.T. certification required. The following peace officers shall meet all the standards imposed by law on a peace officer and shall be certified by the peace officers standards and training board, referred to in this article as the "P.O.S.T. board": A chief of police; a police officer; a sheriff; an undersheriff; a deputy sheriff; a Colorado state patrol officer; a town marshal; a deputy town marshal; a reserve police officer; a reserve deputy sheriff; a reserve deputy town marshal; the director of the Colorado bureau of investigation; a police officer or reserve police officer employed by a state institution of higher education; a Colorado wildlife officer; a Colorado parks and recreation officer; a Colorado police administrator or police officer employed by the Colorado mental health institute at Pueblo; an attorney general criminal investigator; a community parole officer; a public transit officer; a municipal court marshal; and the department of corrections inspector general.

16-2.5-103. Sheriff - undersheriff - certified deputy sheriff - noncertified deputy sheriff. (1) A sheriff, an undersheriff, and a deputy sheriff are peace officers whose authority shall include the enforcement of all laws of the state of Colorado. A sheriff shall be certified by the P.O.S.T. board pursuant to section 30-10-501.6, C.R.S. An undersheriff and a deputy sheriff shall be certified by the P.O.S.T. board.

(2) A noncertified deputy sheriff or detention officer is a peace officer employed by a county or city and county whose authority is limited to the duties assigned by and while working under the direction of the chief of police, sheriff, an official who has the duties of a sheriff in a city and county, or chief executive of the employing law enforcement agency.

16-2.5-104. Coroner. A coroner is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to part 6 of article 10 of title 30, C.R.S.

16-2.5-105. Police officer. A police officer, including a chief of police employed by a municipality, is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

16-2.5-106. Southern Ute Indian police officer. A Southern Ute Indian police officer is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-107. Ute Mountain Ute Indian police officer. A Ute Mountain Ute Indian police officer is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-108. Town marshal - deputy. A town marshal or deputy town marshal is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

16-2.5-109. Fire arson investigator. A fire arson investigator authorized by a unit of local government is a peace officer while engaged in the performance of his or her duties whose authority shall be limited to the enforcement of arson and related laws and who may be certified by the P.O.S.T. board.

16-2.5-110. Reserve police officer - reserve deputy sheriff - reserve deputy town marshal - definitions. (1) (a) A reserve police officer, a reserve deputy sheriff, and a reserve deputy town marshal are reserve officers.

(b) "Reserve officer" means a person authorized by a city, city and county, town, county, or state institution of higher education within this state to act as a reserve police officer, reserve deputy sheriff, or reserve town marshal for certain specific and limited periods of time while the person is authorized to be on duty and acting at the express direction or under the direct supervision of a fully P.O.S.T.-certified peace officer pursuant to section 16-2.5-103, 16-2.5-105, 16-2.5-108, or 16-2.5-120. A reserve officer is a peace officer while engaged in the performance of his or her duties whose authority shall be limited to the authority granted by his or her authorizing agency.

(c) A reserve officer:

(I) Shall obtain reserve certification by the P.O.S.T. board as a reserve officer; or

(II) May be a fully P.O.S.T.-certified peace officer serving as a volunteer and may be granted full peace officer status and authority at the discretion of the appointing authority.

(2) A city, city and county, town, county, or state institution of higher education assigning duties to a reserve officer beyond those duties included in the P.O.S.T. board training shall assume the responsibility for ensuring that the reserve officer is adequately trained for the duties. Any expenses associated with the additional training shall be authorized by the city, city and county, town, county, or state institution of higher education. If the jurisdiction allows or requires the reserve officer to carry or use a firearm while on duty, the reserve officer shall be certified for firearms proficiency with the same frequency and subject to the same requirements as a P.O.S.T.-certified peace officer in the jurisdiction. A reserve officer who does not comply with the training requirements set forth in this subsection (2) is not authorized to enforce the laws of the state of Colorado.

(3) (Deleted by amendment, L. 2007, p. 121, § 1, effective August 3, 2007.)

(3.5) If a police chief, sheriff, or town marshal determines that a reserve officer has been adequately trained to perform a law-enforcement function that the police chief, sheriff, or town marshal is required to perform, the police chief, sheriff, or town marshal may allow the reserve officer to perform the function either in uniform or in civilian clothes, whichever is appropriate.

(4) When performing extradition duties, the reserve officer shall be accompanied by a P.O.S.T.-certified officer.

(5) A reserve officer may be compensated for his or her time during a declared emergency or during a time of special need. In all other circumstances, a reserve officer shall serve without compensation, but may be reimbursed at the discretion of the city, city and county, town, county, or state institution of higher education benefitting from the services of the reserve officer for any authorized out-of-pocket expenses incurred in the course of his or her duties. The city, city and county, town, county, or state institution of higher education shall pay the cost of workers' compensation benefits for injuries incurred by a reserve officer while on duty and while acting within the scope of his or her assigned duties. A reserve officer is an authorized volunteer for purposes of article 10 of title 24, C.R.S.

(6) For the purposes of this section:

(a) "Direct supervision" means an assignment given by a fully P.O.S.T.-certified peace officer to a reserve officer, which assignment is carried out in the personal presence of, or in direct radio or telephone contact with, and under the immediate control of, the fully P.O.S.T.-certified peace officer.

(b) "Express direction" means a defined, task-specific assignment given by a fully P.O.S.T.-certified peace officer to a reserve officer. The fully P.O.S.T.-certified peace officer need not be present while the reserve officer carries out the assignment.

(7) For the purposes of this section, a person serving as a citizen auxiliary is not a peace officer and the P.O.S.T. board shall not require the person to be certified.

16-2.5-111. Executive director of the department of public safety - deputy executive director of the department of public safety - director of the division of criminal justice in the department of public safety. The executive director and deputy executive director of the department of public safety and the director of the division of criminal justice in the department of public safety are peace officers whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-112. Director of the division of homeland security and emergency management. The director of the division of homeland security and emergency management in the department of public safety is a peace officer whose authority includes the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-113. Colorado bureau of investigation director - agent. A director of the Colorado bureau of investigation is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board. A Colorado bureau of investigation agent is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado pursuant to section 24-33.5-409, C.R.S., and who may be

certified by the P.O.S.T. board.

16-2.5-114. Colorado state patrol officer. A Colorado state patrol officer is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado pursuant to section 24-33.5-212, C.R.S., and who shall be certified by the P.O.S.T. board.

16-2.5-115. Port of entry officer. A port of entry officer is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 42-8-104, C.R.S.

16-2.5-116. Colorado wildlife officer - special wildlife officer. (1) A Colorado wildlife officer employed by the Colorado division of parks and wildlife in the department of natural resources is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado pursuant to section 33-1-102 (4.3), C.R.S., and who shall be certified by the P.O.S.T. board. Each Colorado wildlife officer shall be required to complete a minimum of forty hours of continuing law enforcement education per calendar year, or such number of hours as may otherwise be required by law.

(2) A special wildlife officer is a peace officer whose authority is limited as defined by the director of the division of parks and wildlife pursuant to section 33-1-110 (5), C.R.S.

16-2.5-117. Colorado parks and recreation officer - special parks and recreation officer. (1) A Colorado parks and recreation officer employed by the Colorado division of parks and wildlife in the department of natural resources is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado pursuant to section 33-10-102 (17), C.R.S., and who shall be certified by the P.O.S.T. board. Each Colorado parks and recreation officer shall be required to complete a minimum of forty hours of continuing law enforcement education per calendar year, or such number of hours as may otherwise be required by law.

(2) A special parks and recreation officer is a peace officer whose authority is limited as defined by the director of the division of parks and wildlife pursuant to section 33-10-109 (1) (f), C.R.S.

16-2.5-118. Commissioner of agriculture. The commissioner of agriculture or his or her designee is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to the "Farm Products Act", section 12-16-114, C.R.S., the "Commodity Handler Act", section 12-16-210, C.R.S., the "Animal Protection Act", section 35-42-107 (4), C.R.S., and the "Pet Animal Care and Facilities Act", section 35-80-109 (6), C.R.S.

16-2.5-119. State brand inspector. A state brand inspector is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 35-53-128, C.R.S.

16-2.5-120. Colorado state higher education security officer. A Colorado state higher education security officer employed by a state institution of higher education pursuant to sections 24-7-101 to 24-7-106, C.R.S., is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-121. Executive director of the department of revenue - senior director of enforcement for the department of revenue. The executive director and the senior director of enforcement of the department of revenue are peace officers while engaged in the performance of their duties whose authority includes the enforcement of laws and rules regarding automobile dealers pursuant to section 12-6-105 (1) (d) (II), C.R.S., the lottery pursuant to sections 24-35-205 (3) and 24-35-206 (7), C.R.S., medical marijuana pursuant to article 43.3 of title 12, C.R.S., limited gaming pursuant to section 12-47.1-204, C.R.S., liquor pursuant to section 12-47-904 (1), C.R.S., and racing events pursuant to section 12-60-203 (1), C.R.S., and the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-122. Auto industry investigator. An auto industry investigator is a peace officer while engaged in the performance of his or her duties whose authority shall be limited to the enforcement of section 12-6-105 (1) (d) (II), C.R.S.

16-2.5-123. Director of the division of gaming - gaming investigator. The director of the division of gaming in the department of revenue or a gaming investigator in the department of revenue is a peace officer while engaged in the performance of his or her duties whose primary authority shall be as stated in section 12-47.1-204, C.R.S., and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-124. Liquor enforcement investigator. A liquor enforcement investigator is a peace officer while engaged in the performance of his or her duties and while acting under proper orders or regulations whose primary authority shall be as stated in sections 12-47-904 (1) and 24-35-504, C.R.S., and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-124.5. Director of marijuana enforcement and marijuana enforcement investigator. The director of the marijuana enforcement division or a marijuana enforcement

investigator is a peace officer while engaged in the performance of his or her duties and while acting under proper orders or rules pursuant to article 43.3 or 43.4 of title 12, C.R.S., and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-125. State lottery investigator. A state lottery investigator is a peace officer while engaged in the performance of his or her duties whose primary authority shall be as stated in sections 24-35-205 (3) and 24-35-206 (7), C.R.S., and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-126. Director of racing events - racing events supervisor - racing events investigator. The director of racing events, a racing events supervisor, and a racing events investigator are peace officers while engaged in the performance of their duties whose primary authority shall be as stated in section 12-60-203 (1), C.R.S., and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-127. State student loan investigator. A state student loan investigator is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 23-3.1-104 (2) (q), C.R.S.

16-2.5-128. Colorado attorney general - chief deputy attorney general - solicitor general - assistant solicitor general - deputy attorney general - assistant attorney general of criminal enforcement - assistant attorney general and employee as designated. The attorney general, chief deputy attorney general, solicitor general, assistant solicitors general, deputy attorneys general, assistant attorneys general of criminal enforcement, and certain other assistant attorneys general and employees of the department of law who are designated by the attorney general are peace officers whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-129. Attorney general criminal investigator. An attorney general criminal investigator is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

16-2.5-130. P.O.S.T. director - P.O.S.T. board investigator. The director of the P.O.S.T. board and a P.O.S.T. board investigator are peace officers while engaged in the performance of their duties whose primary authority shall include the enforcement of laws and rules pertaining to the training and certification of peace officers and shall include the

enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-131. Chief security officer for the general assembly. The chief security officer for the general assembly is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 2-2-402, C.R.S.

16-2.5-132. District attorney - assistant district attorney - chief deputy district attorney - deputy district attorney - special deputy district attorney - special prosecutor. A district attorney, an assistant district attorney, a chief deputy district attorney, a deputy district attorney, a special deputy district attorney, and a special prosecutor are peace officers whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-133. District attorney chief investigator - district attorney investigator. A district attorney chief investigator and a district attorney investigator are peace officers whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

16-2.5-134. Department of corrections inspector general - department of corrections investigator. The department of corrections inspector general and a department of corrections investigator are peace officers whose authority shall be pursuant to section 17-1-103.8, C.R.S., and whose authority shall include the enforcement of all the laws of the state of Colorado. A department of corrections investigator may be certified by the P.O.S.T. board. The inspector general shall be certified by the P.O.S.T. board.

16-2.5-135. Executive director of the department of corrections - warden - corrections officer. The executive director of the department of corrections, a warden, a corrections officer employed by the department of corrections, or other department of corrections employee assigned by the executive director, is a peace officer while engaged in the performance of his or her duties pursuant to title 17, C.R.S., whose primary authority is the supervision of persons in the custody or confinement of the department of corrections and who may be certified by the P.O.S.T. board.

16-2.5-136. Community parole officer. A community parole officer employed by the department of corrections is responsible for supervising offenders in the community and supporting the division of adult parole in providing assistance to parolees to secure employment, housing, and other services to support their successful reintegration into the community while

recognizing the need for public safety. A community parole officer is a peace officer whose authority shall be pursuant to section 17-27-105.5, C.R.S., and whose authority shall include the enforcement of all laws of the state of Colorado, and who shall be certified by the P.O.S.T. board.

16-2.5-137. Adult probation officer. An adult probation officer is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to part 2 of article 11 of this title.

16-2.5-138. Juvenile probation officer - juvenile parole officer. A juvenile probation officer and a juvenile parole officer are peace officers while engaged in the performance of their duties whose authority shall be limited pursuant to sections 19-2-926 and 19-2-1003, C.R.S.

16-2.5-139. Police administrator - police officer employed by the Colorado mental health institute at Pueblo. A police administrator and a police officer employed by the Colorado mental health institute at Pueblo are peace officers whose authority shall include the enforcement of all laws of the state of Colorado pursuant to article 7 of title 24, C.R.S., and who shall be certified by the P.O.S.T. board. Each police administrator or police officer employed by the Colorado mental health institute at Pueblo shall complete a minimum of forty hours of continuing law enforcement education per calendar year, or such number of hours as may otherwise be required by law.

16-2.5-140. Correctional security officer employed by the Colorado mental health institute at Pueblo. A correctional security officer employed by the Colorado mental health institute at Pueblo is a peace officer while engaged in the performance of his or her duties as provided in article 7 of title 24, C.R.S., and whose authority shall include the enforcement of all laws of the state of Colorado, and who may be certified by the P.O.S.T. board.

16-2.5-141. Colorado state security guard. A Colorado state security guard is a peace officer while engaged in the performance of his or her duties pursuant to article 7 of title 24, C.R.S., whose authority shall be limited to the scope and authority of his or her assigned duties and who may be certified by the P.O.S.T. board.

16-2.5-142. Railroad peace officer. A railroad peace officer is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 40-32-104.5, C.R.S., and who may be certified by the P.O.S.T. board.

16-2.5-143. Public utilities commission member. A public utilities commission member is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to articles 1 to 17 of title 40, C.R.S.

16-2.5-144. Colorado National Guardsman. A Colorado National Guardsman is a peace officer while acting under call of the governor in cases of emergency or civil disorder. His or her authority shall be limited to the period of call-up specified by the governor and shall be exercised only if the executive order of the governor calling the National Guard to state duty specifies that enforcement of the laws of the state of Colorado is a purpose for the call-up.

16-2.5-145. Municipal court marshal. A municipal court marshal who is employed by a municipality and is specifically designated a peace officer by the municipality is a peace officer while engaged in the performance of his or her duties. The authority of such a municipal court marshal shall be limited to providing security for the municipal court, transporting, detaining, and maintaining control over prisoners, executing all arrest warrants within the municipal court and its grounds, executing municipal court arrest warrants within the municipal limits, and serving legal process issued by the municipal court within the municipal limits. A municipal court marshal shall be certified by the P.O.S.T. board.

16-2.5-146. Public transit officer - definitions. (1) A public transit officer who is employed by a public transportation entity and is specifically designated a peace officer by the public transportation entity is a peace officer while engaged in the performance of his or her duties in accordance with any policies and procedures adopted by the public transportation entity. A public transit officer's authority includes the enforcement of all laws of the state of Colorado. A public transit officer shall be certified by the P.O.S.T. board.

(2) As used in this section, "public transportation entity" means a mass transit district, a mass transit authority, or any public entity authorized under the laws of this state to provide mass transportation services to the general public.

16-2.5-147. Federal special agents. (1) A special agent of the federal bureau of investigation or the United States bureau of alcohol, tobacco, firearms, and explosives, a deputy or special deputy United States marshal, or an officer of the federal protective service of the United States department of homeland security immigration and customs enforcement, in any jurisdiction within the state of Colorado, is a peace officer whose authority is limited as provided in this section. The special agent, deputy or special deputy, or officer is authorized to act in the following circumstances:

(a) The special agent, deputy or special deputy, or officer is:

(I) Responding to a nonfederal felony or misdemeanor that has been committed in the

presence of the special agent, deputy or special deputy, or officer;

(II) Responding to an emergency situation in which the special agent, deputy or special deputy, or officer has probable cause to believe that a nonfederal felony or misdemeanor involving injury or threat of injury to a person or property has been, or is being, committed and immediate action is required to prevent escape, serious bodily injury, or destruction of property;

(III) Rendering assistance at the request of a Colorado peace officer; or

(IV) Effecting an arrest or providing assistance as part of a bona fide task force or joint investigation with Colorado peace officers; and

(b) The agent, deputy or special deputy, or officer acts in accordance with the rules and regulations of his or her employing agency.

(2) A special agent of the federal bureau of investigation or the United States bureau of alcohol, tobacco, firearms, and explosives, a deputy or special deputy United States marshal, or an officer of the federal protective service of the United States department of homeland security immigration and customs enforcement is a person who is employed by the United States government, assigned to the federal bureau of investigation, the United States bureau of alcohol, tobacco, firearms, and explosives, the United States marshal service, or the federal protective service of the United States department of homeland security immigration and customs enforcement, empowered to effect an arrest with or without a warrant for violations of the United States code, and authorized to carry a firearm and use deadly force in the performance of the special agent's, deputy's or special deputy's, or officer's official duties as a federal law enforcement officer.

(3) Upon effecting an arrest under the authority of this section, a special agent of the federal bureau of investigation or the United States bureau of alcohol, tobacco, firearms, and explosives, a deputy or special deputy United States marshal, or an officer of the federal protective service of the United States department of homeland security immigration and customs enforcement shall immediately surrender custody of the arrested individual to a Colorado peace officer.

(4) This section does not impose liability on or require indemnification or create a waiver of sovereign immunity by the state of Colorado for any action performed under this section by a special agent of the federal bureau of investigation or the United States bureau of alcohol, tobacco, firearms, and explosives, a deputy or special deputy United States marshal, or an officer of the federal protective service of the United States department of homeland security immigration and customs enforcement.

(5) Nothing in this section shall be construed to expand the authority of federal law enforcement officers to initiate or conduct an independent investigation into violations of Colorado law.

16-2.5-148. Colorado state higher education police officer. A Colorado state higher education police officer employed by a state institution of higher education pursuant to article 7.5 of title 24, C.R.S., is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

16-2.5-149. City attorney - town attorney - senior assistant city attorney - assistant city attorney - chief deputy city attorney - deputy city attorney - special deputy city attorney - prosecuting attorney - senior prosecuting attorney - senior prosecutor - special prosecutor. (1) A city attorney, town attorney, senior assistant city attorney, assistant city attorney, chief deputy city attorney, deputy city attorney, special deputy city attorney, prosecuting attorney, senior prosecuting attorney, senior prosecutor, or special prosecutor employed or contracted by a municipality, city, town, statutory city or town, or city and county is a peace officer only while engaged in the performance of his or her duties as a prosecutor. Such peace officer's authority shall include the enforcement of all laws of the municipality, city, town, statutory city or town, or city and county and the state of Colorado, and the peace officer may be certified by the P.O.S.T. board.

(2) Notwithstanding the provisions of subsection (1) of this section, the peace officer status conferred by subsection (1) of this section shall not be available to an attorney specified in subsection (1) of this section who chooses to practice as a criminal defense attorney in the state of Colorado while also working as a prosecuting attorney or an attorney who contracts with a municipality, city, town, statutory city or town, or city and county, local government to serve as a city attorney, town attorney, senior assistant city attorney, assistant city attorney, chief deputy city attorney, deputy city attorney, special deputy city attorney, prosecuting attorney, senior prosecuting attorney, senior prosecutor, or special prosecutor on a less than a full-time basis.

16-2.5-150. Fort Carson police officers. A Fort Carson police officer is a peace officer while engaged in the performance of his or her duties. Fort Carson police officers are employed by the Fort Carson police, a federal civilian law enforcement agency within the state of Colorado. A Fort Carson police officer's authority includes enforcing all the laws of the constitution of the United States, the United States code, the "Uniform Code of Military Justice", 10 U.S.C. chapter 47, and the laws of the state of Colorado within the jurisdiction and properties of Fort Carson and the Piñon Canyon maneuver site, including all fixed and mobile properties of Fort Carson and the Piñon Canyon maneuver site. A Fort Carson police officer may be P.O.S.T.-certified.

16-2.5-151. Federal secret service agents. (1) A special agent, uniform division officer, physical security technician, physical security specialist, or special officer of the United States secret service, referred to in this section as a "secret service agent", in any jurisdiction within the state of Colorado, is a peace officer whose authority is limited as provided in this section. The secret service agent is a peace officer in the following circumstances:

(a) (I) Responding to a nonfederal felony or misdemeanor that has been committed in his or her presence;

(II) Responding to an emergency situation in which he or she has probable cause to believe that a nonfederal felony or misdemeanor involving injury or threat of injury to a person or property has been, or is being, committed and immediate action is required to prevent escape, serious bodily injury, or destruction of property;

(III) Rendering assistance at the request of a Colorado peace officer; or

(IV) Effecting an arrest or providing assistance as part of a bona fide task force or joint investigation with Colorado peace officers; and

(b) The secret service agent acts in accordance with the rules and regulations of his or her employing agency.

(2) A secret service agent is a person who is employed by the United States government, assigned to the United States secret service, empowered to effect an arrest with or without a warrant for violations of the United States code, and authorized to carry a firearm and use deadly force in the performance of his or her duties as a federal law enforcement officer.

(3) Upon effecting an arrest under the authority of this section, a secret service agent shall immediately surrender custody of the arrested individual to a Colorado peace officer.

(4) This section does not impose liability on or require indemnification or create a waiver of sovereign immunity by the state of Colorado for any action performed under this section by a secret service agent.

(5) Nothing in this section shall be construed to expand the authority of federal law enforcement officers to initiate or conduct an independent investigation into violations of Colorado law.

PART 2

SUNRISE REVIEW OF PEACE OFFICER STATUS

16-2.5-201. General assembly sunrise review of groups seeking statutory peace officer status. (1) The general assembly finds that it is necessary to ensure that clear standards exist for obtaining peace officer status in the state of Colorado. The general assembly further finds it made statutory changes in 2003 to end the stratification of peace officers and ensure all peace officers receive a consistent level of statutory protection. The general assembly therefore declares, in order to maintain clear standards and consistent statutory protections for peace officers, it is necessary for the P.O.S.T. board to review a group that seeks peace officer status either for the group or for a specific position, prior to the group seeking authorization from the general assembly for the status.

(2) No later than July 1 of any year, a group, or political subdivision of the state that seeks peace officer status either for the group or for a specific position, shall submit to the P.O.S.T. board, for its review, a proposal containing the following information:

(a) A complete description of the position or a description of the group proposed for peace officer status and an estimate of the number of persons who hold the position or are in the group;

(b) A description of the specific need for the authority and protections required for the position or group;

(c) The benefit to the public that would result from granting the status;

(d) The costs associated with granting the status; and

(e) A resolution or letter of support for proposed change in status from the chief

executive officer of the unit of government or political subdivision employing the group or overseeing the proposed position.

(3) After receiving the information specified in subsection (2) of this section, the P.O.S.T. board shall prepare an analysis, evaluation, and recommendation of the proposed status. The analysis, evaluation, and recommendation shall be based upon criteria established by the P.O.S.T. board in rules adopted pursuant to section 16-2.5-203.

(4) (a) The P.O.S.T. board shall conduct a hearing with the group seeking peace officer status for the group or for a specific position.

(b) At the hearing, the determination as to whether peace officer status is needed shall be based upon the criteria contained in the P.O.S.T. board rules.

(5) After the hearing, the P.O.S.T. board shall submit a report to the group seeking peace officer status for the group or specific position and to the judiciary committees of the house of representatives and the senate no later than October 15 of the year following the year in which the proposal was submitted.

(6) The group seeking peace officer status for the group or specific position may request members of the general assembly to present appropriate legislation to the general assembly during each of the two regular sessions that immediately succeed the date of the report required pursuant to subsection (2) of this section without having to comply again with the provisions of subsections (2) and (4) of this section. Bills introduced pursuant to this subsection (6) shall count against the number of bills to which members of the general assembly are limited by joint rule of the senate and the house of representatives. The general assembly shall not consider peace officer status of more than five positions or groups in any one session of the general assembly.

(7) This section is exempt from the provisions of section 24-1-136 (11), C.R.S., and the periodic reporting requirement of that section shall remain in effect until changed by the general assembly acting by bill.

16-2.5-202. P.O.S.T. board review of peace officer status. (1) For a position, group, or political subdivision that received peace officer status after July 1, 2003, and did not go through the process described in section 16-2.5-201, the P.O.S.T. board shall review the peace officer authority of the position, group, or political subdivision.

(2) The P.O.S.T. board shall require the group that received the peace officer status or the group or political subdivision that oversees a position that received peace officer status to submit to the P.O.S.T. board the information required in section 16-2.5-201 (2).

(3) After receiving the information, the P.O.S.T. board shall prepare an analysis, evaluation, and recommendation of the peace officer status. The analysis, evaluation, and recommendation shall be based upon the criteria established in P.O.S.T. board rule.

(4) The P.O.S.T. board shall conduct a hearing concerning peace officer status for the group or the specific position, pursuant to the provisions of section 16-2.5-201 (4).

(5) The P.O.S.T. board shall submit a report to the group or political subdivision seeking to retain peace officer status, either for the group or for a specific position, and to the judiciary committees of the house of representatives and the senate no later than October 15 of the year following the year in which the P.O.S.T. board began the review. The report may include

legislative recommendations.

16-2.5-203. Rules. Pursuant to article 4 of title 24, C.R.S., the P.O.S.T. board shall promulgate rules establishing the criteria that shall be applied in determining whether to recommend peace officer status for a group or specific position as provided in section 16-2.5-201 (4).

PART 3

PEACE OFFICER-INVOLVED SHOOTINGS

16-2.5-301. Peace officer-involved shooting investigations - protocol. (1) Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado bureau of investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

(2) Each law enforcement agency shall post the protocol on its web site or, if it does not have a web site, make it publicly available upon request. The protocols required by this section shall be completed and implemented by December 31, 2015.

ARTICLE 2.7

Missing Person Reports -
Unidentified Human Remains

16-2.7-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "DNA" means deoxyribonucleic acid.

(2) "Missing person" means a person whose whereabouts are unknown and whose safety or welfare is the subject of concern.

16-2.7-102. Missing person reports - acceptance. (1) Any person with relevant, credible information suggesting that a person is missing may make a missing person report to a law enforcement agency.

(2) A law enforcement agency shall accept without delay a missing person report that is submitted in person if:

(a) The missing person resides, or was last known to reside, within the jurisdiction of the law enforcement agency and the missing person's last-known location is the missing person's residence or his or her location is unknown; or

(b) There is credible information indicating that the missing person was last believed to be within the jurisdiction of the law enforcement agency.

(3) Each law enforcement agency is encouraged to accept a missing person report submitted by telephone or by electronic or other media to the extent that:

(a) The report meets the conditions of paragraph (a) or (b) of subsection (2) of this section; and

(b) Acceptance of the report is consistent with law enforcement policies or practices.

(4) A law enforcement agency shall not refuse to accept a missing person report on the basis that the missing person has not yet been missing for any length of time.

(5) Notwithstanding the provisions of subsections (2) and (3) of this section, a law enforcement agency is not required to accept a missing person report if the person is the subject of a missing person report under investigation by another law enforcement agency within this state.

16-2.7-103. Missing person reports - response. Upon receiving a report of a missing person, a law enforcement agency shall assess the information received from the reporting person and other available information. The law enforcement agency shall then determine the best course of action based on the circumstances. If the missing person is eighteen years of age or older and has allegedly been missing for twenty-four hours or more, such action shall include entry of relevant information into state and national databases and appropriate communications with other law enforcement agencies that may assist in locating the missing person. If the missing person is under eighteen years of age, the law enforcement agency shall, within twenty-four hours after receiving the report, notify the Colorado bureau of investigation pursuant to section 24-33.5-415.1 (3), C.R.S.

Editor's note: This version of this section is effective until January 1, 2016.

16-2.7-103. Missing person reports - response. (1) Upon receiving a report of a missing person, a law enforcement agency shall assess the information received from the reporting person and other available information. The law enforcement agency shall then determine the best course of action based on the circumstances.

(2) (a) If the missing person is eighteen years of age or older and has allegedly been missing for twenty-four hours or more, the appropriate course of action includes entry of relevant information into state and national databases and appropriate communications with other law enforcement agencies that may assist in locating the missing person.

(b) (I) If the missing person is under eighteen years of age, the law enforcement agency

shall, within twenty-four hours after receiving the report, notify the Colorado bureau of investigation pursuant to section 24-33.5-415.1 (3), C.R.S.; or

(II) If the missing person is under eighteen years of age and under the legal custody of the state department of human services or a county department of human or social services, the law enforcement agency shall, within twenty-four hours after receiving notification pursuant to section 19-1-115.3, C.R.S., notify the Colorado bureau of investigation for transmission to the federal bureau of investigation for entry into the national crime information center database.

Editor's note: This version of this section is effective January 1, 2016.

16-2.7-104. Unidentified human remains - reporting - DNA samples. (1) Except as provided in section 24-80-1303, C.R.S., with regard to anthropological investigations, a person who has custody of unidentified human remains shall immediately notify the coroner or medical examiner of the county in which the remains are located and the sheriff, police chief, or land managing agency official in accordance with section 24-80-1302 (1), C.R.S.

(2) If a coroner or medical examiner takes legal custody of unidentified human remains pursuant to section 24-80-1302 (2), C.R.S., or section 30-10-606 (1.2), C.R.S., the coroner or medical examiner shall make reasonable attempts to identify the human remains. These attempts may include, but need not be limited to, obtaining:

(a) Photographs of the human remains prior to an autopsy;

(b) Dental or skeletal X rays of the human remains;

(c) Photographs of items found with the human remains;

(d) Fingerprints from the human remains;

(e) Samples of tissue suitable for DNA typing from the human remains;

(f) Samples of whole bone or hair from the human remains suitable for DNA typing.

(3) If a coroner or medical examiner takes legal custody of unidentified human remains pursuant to section 24-80-1302 (2), C.R.S., or section 30-10-606 (1.2), C.R.S., the coroner or medical examiner shall:

(a) Enter information concerning the physical appearance and structure of the unidentified human remains, including DNA typing information, into the national crime information center database; or

(b) Work with law enforcement officials to ensure that information concerning the physical appearance and structure of the unidentified human remains, including DNA typing information, is entered into the national crime information center database.

(4) A coroner or medical examiner shall neither dispose of nor engage in actions that will materially affect unidentified human remains before the coroner or medical examiner:

(a) Obtains from the unidentified human remains samples suitable for DNA identification and archiving, if possible;

(b) Obtains photographs of the unidentified human remains; and

(c) Exhausts all other appropriate steps for identification of the human remains.

(5) Until all available information concerning the physical appearance and structure of unidentified human remains is entered into the national crime information center database, cremation of unidentified human remains is prohibited.

ARTICLE 3

Arrest - Searches and Seizures

PART 1

AUTHORITY OF PEACE OFFICER TO MAKE AN ARREST

16-3-101. Arrest - when and how made. (1) An arrest may be made on any day and at any time of the day or night.

(2) All necessary and reasonable force may be used in making an arrest.

(3) All necessary and reasonable force may be used to effect an entry upon any building or property or part thereof to make an authorized arrest.

16-3-102. Arrest by peace officer. (1) A peace officer may arrest a person when:

(a) He has a warrant commanding that such person be arrested; or

(b) Any crime has been or is being committed by such person in his presence; or

(c) He has probable cause to believe that an offense was committed and has probable cause to believe that the offense was committed by the person to be arrested.

16-3-103. Stopping of suspect. (1) A peace officer may stop any person who he reasonably suspects is committing, has committed, or is about to commit a crime and may require him to give his name and address, identification if available, and an explanation of his actions. A peace officer shall not require any person who is stopped pursuant to this section to produce or divulge such person's social security number. The stopping shall not constitute an arrest.

(2) When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that his personal safety requires it, he may conduct a pat-down search of that person for weapons.

16-3-104. Arrest by peace officer from another jurisdiction - definitions. (1) As used in this section:

(a) "State" means any state of the United States and the District of Columbia;

(b) "Peace officer" means any officer of another state having powers of arrest in that state;

(c) "Fresh pursuit" means the pursuit without unnecessary delay of a person who has committed a crime or who is reasonably believed to have committed a crime.

(2) Any peace officer of another state who enters this state in fresh pursuit and continues within this state in fresh pursuit of a person in order to arrest him on the ground that he has committed a crime in the other state has the same authority to arrest and hold such person in custody as a peace officer of this state has to arrest and hold a person in custody.

(3) Except as otherwise provided by law, if an arrest is made in this state by a peace officer of another state in accordance with the provisions of this section, he shall without unnecessary delay take the person arrested before the nearest available judge of a court of record. Such judge shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, he shall commit the person arrested to await the time provided by law for issuance of an extradition warrant by the governor of this state, or the waiver thereof, and shall set bail if the offense is bailable under the laws of the state of Colorado. If the judge determines that the arrest was unlawful, he shall order the discharge of the person arrested.

16-3-105. Release by arresting authority. (1) When a person has been arrested without a warrant, he may be released by the arresting authority on its own authority if:

(a) The arresting officer or a responsible command officer of the arresting authority is satisfied that there are no adequate grounds for criminal complaint against the person arrested; or

(b) The offense for which the person was arrested and is being held is a misdemeanor or petty offense and the arresting officer or a responsible command officer of the arresting authority is satisfied that the person arrested will obey a summons commanding his appearance at a later date.

(1.5) No person arrested for any crime or offense, the underlying factual basis of which includes an act of domestic violence as defined in section 18-6-800.3 (1), C.R.S., shall be released at the scene of the alleged crime pursuant to subsection (1) of this section.

(2) If the person is released in accordance with subsection (1) (b) of this section, he shall be given a summons and complaint as provided for in sections 16-2-104 and 16-2-106 and shall sign a written acknowledgment of its receipt and a promise to appear at the time and place specified.

16-3-106. Peace officer may pursue offender. When any peace officer is in fresh pursuit of any alleged offender, having a warrant for his arrest or having knowledge that such warrant has been issued, or, in the absence of an arrest warrant, when the offense was committed in the officer's presence or the officer has reasonable grounds to believe that the alleged offender has committed a criminal offense, and the alleged offender crosses a boundary line marking the territorial limit of his authority, such peace officer may pursue him beyond such boundary line and make the arrest, issue a summons and complaint, or issue a notice of penalty assessment.

16-3-107. Custodial care of prisoner in transit. It is lawful for any peace officer who has the custody of any alleged offender following an arrest to pass through any counties which lie on his route between the place of arrest and the county to which he is taking the alleged offender and to lodge him in any jail on his route for safe custody for one night or more, as the occasion requires.

16-3-107.5. Transportation of prisoners - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Contracting entity" means any person or entity contracting with this state, another state, or a political subdivision of this or another state to transport a prisoner; except that "contracting entity" shall not include the department of corrections, any community corrections program operated pursuant to this title, or a county sheriff of a county located within the state of Colorado.

(b) "Prisoner" means any person convicted of an offense in Colorado or any other state or any person under arrest for suspicion of the commission of a crime in Colorado or any other state.

(c) "Secure facility" means a county, city and county, or municipal jail or a nonstate-owned prison facility, as defined in section 17-24-125 (1) (b), C.R.S.

(d) "Supervising individual" means a person employed by a contracting entity to transport prisoners from one location to another.

(e) "Transport" means to move a prisoner within, into, out of, or through the state of Colorado.

(2) (a) A supervising individual in each vehicle in which one or more prisoners are being transported by a contracting entity shall maintain a log book that documents for each prisoner:

(I) His or her name, date of birth, social security number, and any prescribed medication;

(II) The name of the jurisdictional authority authorizing the transportation, the date and time that the prisoner was first picked up, and the date and time that the prisoner was released to the jurisdictional authority;

(III) The date, time, length, and purpose of any stop made by the vehicle transporting any prisoner; and

(IV) Information concerning any injuries suffered by the prisoner while being transported.

(b) Upon request, a supervising individual shall surrender for inspection the log book required by paragraph (a) of this subsection (2) to any federal, state, county, or municipal law enforcement officer.

(3) Whenever a prisoner is transported by a contracting entity, the prisoner:

(a) At a minimum, shall be shackled and placed in a transport belt or chains with handcuffs and shall be under the observation of at least one supervising individual who shall remain awake;

(b) (Deleted by amendment, L. 2000, p. 852, § 59, effective May 24, 2000.)

(c) Shall not be shackled to another prisoner; and

(d) Shall have available in the vehicle in which the prisoner is being transported appropriate attire for the season, including footwear.

(3.5) Any vehicle in which one or more prisoners are being transported by a contracting entity shall only contain as many individuals as the vehicle was designed to carry.

(4) (a) At least once every twenty-four hours that a prisoner is being transported by a contracting entity, the prisoner shall be housed unshackled in a cell at a secure facility for a period of not less than six hours and permitted to shower and sleep.

(b) The contracting entity or the supervising individual shall, if practicable, notify the chief law enforcement officer in charge of the secure facility in which the prisoner is to be housed, at least twenty-four hours prior to the delivery of the prisoner to the secure facility, of each prisoner's name, date of birth, criminal history, and any special medical needs.

(5) Whenever a vehicle transporting one or more prisoners for a contracting entity stops for more than two hours for any reason:

(a) The supervising individual shall promptly notify, if practicable, the law enforcement agency of the local jurisdiction in which the vehicle is stopped; and

(b) All prisoners shall be housed in a secure facility unless, according to the chief law enforcement officer of the secure facility, it would be impractical to do so.

(6) Whenever a vehicle transporting prisoners for a contracting entity enters the state, a supervising individual shall promptly notify the Colorado bureau of investigation of the number of prisoners and the location or locations within the state where the vehicle is scheduled to stop.

(7) Whenever a prisoner is housed in a secure facility, the contracting entity shall pay to the operator of the secure facility providing the housing the actual cost of housing the prisoner.

(8) Any individual or entity who violates any provision of subsections (2) to (5) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars.

(9) If any prisoner being transported escapes due to the negligence of the contracting entity or a supervising individual, the contracting entity shall be held liable for all actual costs incurred by any governmental entity in recapturing the escaped prisoner and all actual damages caused by the escaped prisoner while at large.

16-3-108. Issuance of arrest warrant without information or complaint. A court shall issue an arrest warrant only on affidavit sworn to or affirmed before the judge or a notary public and relating facts sufficient to establish probable cause that an offense has been committed and probable cause that a particular person committed that offense. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take the person without unnecessary delay before the nearest judge of a court of record. Once a person is brought before the judge, the Colorado rules of criminal procedure are applicable.

16-3-109. Peace officer - authority to make arrest while off duty. A peace officer, as

described in section 16-2.5-101, who, while off duty, is employed in a capacity specifically permitted by policies and procedures adopted by such officer's governmental entity employer shall possess the status and authority which would otherwise be afforded an on-duty peace officer as described in section 16-2.5-101, acting within the course and scope of such officer's employment. To be within the scope of this section, a peace officer employed by a nongovernmental entity must be in uniform with the peace officer's public entity badge plainly visible, or such peace officer must have been approved for plain clothes work by the peace officer's governmental employer.

16-3-110. Peace officers - duties. (1) For the purposes of this section, "peace officer" means:

(a) A peace officer as described in section 16-2.5-101; or

(b) A federal law enforcement officer who, pursuant to federal statutes and the policy of the agency by which the officer is employed, is authorized to use deadly physical force in the performance of his or her duties.

(2) A peace officer shall have the authority to act in any situation in which a felony or misdemeanor has been or is being committed in such officer's presence, and such authority shall exist regardless of whether such officer is in the jurisdiction of the law enforcement agency that employs such officer or in some other jurisdiction within the state of Colorado or whether such officer was acting within the scope of such officer's duties when he or she observed the commission of the crime, when such officer has been authorized by such agency to so act. The local law enforcement agency having jurisdiction shall be immediately notified of the arrest and any person arrested shall be released to the custody of the local law enforcement agency.

(3) This section shall not be construed to authorize any federal officer to use deadly physical force in excess of that authorized in section 18-1-707, C.R.S.

PART 2

AUTHORITY OF PERSON NOT A PEACE OFFICER TO MAKE AN ARREST

16-3-201. Arrest by a private person. A person who is not a peace officer may arrest another person when any crime has been or is being committed by the arrested person in the presence of the person making the arrest.

16-3-202. Assisting peace officer - arrest - furnishing information - immunity. (1) A peace officer making an arrest may command the assistance of any person who is in the vicinity.

(2) A person commanded to assist a peace officer has the same authority to arrest as the officer who commands his assistance.

(3) A person commanded to assist a peace officer in making an arrest shall not be civilly

or criminally liable for any reasonable conduct in aid of the officer or for any acts expressly directed by the officer.

(4) Private citizens, acting in good faith, shall be immune from any civil liability for reporting to any police officer or law enforcement authority the commission or suspected commission of any crime or for giving other information to aid in the prevention of any crime.

16-3-203. Preventing a crime - reimbursement. Any person who is not a peace officer as defined in section 24-31-301 (5), C.R.S., who is made the defendant in any civil action as a result of having sought to prevent a crime being committed against any other person, and who has judgment entered in his favor shall be entitled to all his court costs and to reasonable attorney fees incurred in such action.

PART 3

SEARCHES AND SEIZURES

16-3-301. Search warrants - issuance - grounds. (1) A search warrant authorized by this section may be issued by any judge of a court of record.

(2) A search warrant may be issued under this section to search for and seize any property:

(a) Which is stolen or embezzled; or

(b) Which is designed or intended for use as a means of committing a criminal offense; or

(c) Which is or has been used as a means of committing a criminal offense; or

(d) The possession of which is illegal; or

(e) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or

(f) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or

(g) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health; or

(h) Which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

(3) A search warrant may be issued under this section to search for any person for whom a lawful arrest warrant is outstanding.

16-3-301.1. Court orders for the production of records - definitions. (1) A judge of a court of record may order the production of records.

(2) A court may order the production of records under this section to require the

production of records in the actual or constructive control of a business entity:

(a) That have been stolen or embezzled;

(b) That are designed or intended for use as a means of committing a criminal offense;

(c) That are or have been used as a means of committing a criminal offense;

(d) The possession of which is illegal;

(e) That would be material evidence in a subsequent criminal prosecution in this state, another state, or federal court;

(f) The seizure of which is expressly required, authorized, or permitted by a statute of this state or the United States; or

(g) That would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest order is outstanding.

(3) (a) A court shall order the production of records only on receipt of an affidavit sworn to or affirmed before the judge and relating facts sufficient to:

(I) Identify or describe, as nearly as may be, the business entity that is in actual or constructive control of the records;

(II) Identify or describe, as nearly as may be, the records that shall be produced;

(III) Establish the grounds for issuance of the court order for production of records or probable cause to believe the grounds exist; and

(IV) Establish probable cause that the records described are in the actual or constructive control of the business entity.

(b) The affidavit required by paragraph (a) of this subsection (3) may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before the issuance of the court order for the production of records. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a court order for the production of records shall be attached to the court order for the production of records filed with the court.

(4) (a) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that the grounds exist, the court shall issue a court order for the production of records, which shall:

(I) Identify or describe, as nearly as may be, the business entity that is in actual or constructive control of the records;

(II) Identify or describe, as nearly as may be, the records that shall be produced;

(III) State the grounds or probable cause for its issuance; and

(IV) State the names of the persons whose affidavits or testimony have been taken in support of the motion.

(b) The court order for the production of records may also contain other and further orders that the court deems necessary to comply with the provisions of this statute, or to provide for the custody or delivery to the proper person of the records produced and seized under the order, or otherwise to accomplish the purpose of the order.

(c) Unless the court otherwise directs, every court order for the production of records shall authorize a Colorado criminal investigator or peace officer:

(I) To serve the order during normal business hours of the business entity or at any other convenient time for the business entity that is in actual or constructive control of the records; and

(II) To receive the records during normal business hours of the business entity that is in

the actual or constructive control of the records.

(5) (a) A court order for the production of records may be granted to a Colorado criminal investigator or peace officer whose affidavit supports the issuance of the order. The Colorado criminal investigator or peace officer granted the order need not have authorization to execute a search warrant in the jurisdiction in which the business entity is located.

(b) A court order for the production of records shall be served upon the business entity to whom it is directed within fourteen days after its date.

(c) A court order for production of records may be served in the same manner as a summons in a civil action or by personal service on a manager or supervisor of the business entity that is in actual or constructive control of the records or through any electronic or other means established and utilized by the business to receive service of process.

(6) (a) A business entity that is properly served with a court order for the production of records shall deliver the records, or copies of the records, identified in the court order to the officer who is designated in the court order within thirty-five days after the date the court order is served. The business entity shall also provide a notarized attestation of accuracy that the records produced represent complete and accurate copies of all records identified in the court order that are in the actual or constructive control of the business entity. If the business entity does not produce all records identified in the court order for production of records, the records not produced shall be identified. The attestation of accuracy shall be signed by the records custodian, or an officer or director of the business entity, who shall attest to the truth of the attestation to the best of the person's knowledge, information, and belief. The attestation may also attest to any one or all of the following: That the records were made at or near the time by, or from information transmitted by, a person with knowledge; that the records were kept in the course of a regular business activity; and that it was the regular practice of the business to record the information contained in the records. The business entity need only provide a copy of the attestation at the time of providing the records to the officer and may provide the original of the attestation to the officer within fourteen days after providing the records. The records and attestation of accuracy shall be sufficient to establish the authenticity of the records produced, without further necessity of extrinsic evidence.

(b) A business entity that is served with a court order for the production of records may file a motion in the court that issued the court order to allow for an extension of time in which to comply with the court order. The motion shall be filed within the time period required to produce the records. The motion shall state with particularity the reasons why the business entity cannot comply with the court order. The motion shall be served upon the Colorado criminal investigator or peace officer named in the court order.

(c) Upon the filing of a motion for an extension of time, the court shall hold a hearing within fourteen days, unless the business entity and the Colorado criminal investigator or peace officer named in the court order agree to a later time. The court may grant an extension for a reasonable time for the business to produce the records upon good cause shown or by agreement with the Colorado criminal investigator or peace officer named in the court order.

(d) Failure of the business entity to comply with the requirements of a court order for the production of records shall support a finding of contempt of court.

(e) Upon receiving the records from the business entity, the criminal investigator or

peace officer named in the court order shall file a return and inventory with the court indicating the records that have been received and the date upon which the records were received. The criminal investigator or peace officer named in the court order may also file with the court the original of the attestation of authenticity and completeness.

(7) Records produced pursuant to a court order for the production of records may be supplied in any form or format that is convenient for the business entity and that may be accessed by the Colorado criminal investigator or peace officer named in the court order or his or her agency or department. Production of records using proprietary software or another method that is not accessible shall not constitute compliance with the requirements of the court order. The court may order the defendant pay the cost of production of records.

(8) A cause of action shall not lie against a business entity or an officer, director, or employee, for providing records pursuant to a court order for the production of records.

(9) Nothing in this section shall preclude a Colorado criminal investigator or peace officer from seeking a search warrant.

(10) The provisions of this section shall govern the procedures for court orders for the production of records. Motions to suppress evidence seized pursuant to a court order for the production of records shall be governed by the rules of criminal procedure.

(11) As used in this section, unless the context otherwise requires:

(a) "Actual or constructive control" means the records are maintained or stored in any form or format on the premises of the business entity or at another location or facility under the custody or control of the business entity or a parent or subsidiary business, including pursuant to an agreement or contract with the business entity or any parent or subsidiary business and third-party service provider, in Colorado or elsewhere.

(b) "Business entity" means a corporation or other entity that is subject to the provisions of title 7, C.R.S.; a foreign corporation qualified to do business in this state pursuant to article 115 of title 7, C.R.S., specifically including a federally chartered or authorized financial institution; a corporation or other entity that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of individuals doing business in the state.

(c) "Colorado criminal investigator" means an employee of the Colorado department of regulatory agencies, the Colorado department of labor and employment, or the Colorado department of revenue who has been classified as a criminal investigator by the director of the employing department.

(d) "Peace officer" means a peace officer as described in section 16-2.5-101.

(e) "Records" shall include all documents, electronic notations, journal entries, data, reports, statements, financial documentation, correspondence, electronic mail, or other information retained by a business entity in connection with business activity, but shall not include an item that is privileged pursuant to section 13-90-107, C.R.S., unless the person who possesses the privilege gives consent.

16-3-302. Search warrants - municipalities - inspections - grounds. A search warrant may be issued by a judge of any municipal court by compliance with the applicable rule of the Colorado municipal court rules.

16-3-303. Search warrants - application. (1) A search warrant shall issue only on affidavit sworn to or affirmed before the judge and relating facts sufficient to:

(a) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(b) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(c) Establish the grounds for issuance of the warrant or probable cause to believe that such grounds exist; and

(d) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.

(3) Procedures governing application for and issuance of search warrants consistent with this section may be established by rule of the supreme court.

(4) A no-knock search warrant shall be issued only if the affidavit for such warrant:

(a) Complies with the provisions of subsections (1), (2), and (3) of this section;

(b) Specifically requests the issuance of a no-knock search warrant; and

(c) Has been reviewed and approved for legal sufficiency and signed by a district attorney pursuant to section 20-1-106.1 (1) (b), C.R.S. Such review and approval may take place as allowed by statute or court rule or by means of facsimile transmission, telephonic transmission, or other electronic transfer.

(5) If the grounds for the issuance of a no-knock search warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant. The statement shall not identify the confidential informant.

(6) For the purposes of this section, unless the context otherwise requires, "no-knock search warrant" means a search warrant served by entry without prior identification.

16-3-303.5. Location information - search warrant required - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Electronic communication service" means a service that provides the ability to send or receive wire or electronic communications to users of the service.

(b) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(c) "Government entity" means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

(d) "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device on a cellular telephone network or a location information service rather than obtained from a service provider.

(e) "Location information service" means the provision of a global positioning service or other mapping, locational, or directional information service.

(f) "Remote computing service" means the provision of computer storage or processing services by means of an electronic communications system.

(2) Except as provided in subsection (3) or (4) of this section, a government entity shall not obtain the location information of an electronic device without a search warrant issued by a court pursuant to the provisions of this part 3, a subpoena, or a court order.

(3) A government entity may obtain location information of an electronic device without a warrant, subpoena, or court order under any of the following circumstances:

(a) The device is reported stolen by the owner;

(b) In order to respond to the user's call for emergency services;

(c) With the informed, affirmative consent of:

(I) The owner or user of the electronic device;

(II) The next of kin of the owner or user of the electronic device if the owner or user is believed to be deceased or is reported missing and unable to be contacted; or

(III) The child's parent or legal guardian if the owner or user is under eighteen years of age;

(d) There exist exigent circumstances such that the search would be recognized as constitutionally permissible without the warrant;

(e) A representative of the government entity has a good faith belief that his or her actions were legal and, under the information available at the time, a reasonable person would believe that his or her actions were legal;

(f) The owner or user of the electronic device has voluntarily or publicly disclosed the location information;

(g) The electronic device has been abandoned by the owner or user; or

(h) In accordance with any other judicially recognized exception to the search warrant requirement.

(4) The provisions of this section do not apply to probation departments within the judicial department or to the division of adult parole within the department of corrections.

(5) Any evidence obtained in violation of this section is not admissible in a civil, criminal, or administrative proceeding and shall not be used in an affidavit of probable cause in an effort to obtain a search warrant, subpoena, or court order. In order to seek suppression of evidence pursuant to this subsection (5) in any proceeding, the person seeking the suppression of evidence must have an ownership, leasehold, rental, or legitimate possessory interest in or a reasonable expectation of privacy in the electronic device at issue.

(6) (a) A court shall not admit location information obtained pursuant to this section or evidence derived from that information at a trial, hearing, or other proceeding unless the party seeking to introduce the evidence provides a copy of the warrant, subpoena, or court order and any accompanying affidavit to each party pursuant to rule 16 of the Colorado rules of criminal

procedure, or any successor rule.

(b) A court may waive the requirement under paragraph (a) of this subsection (6) if the court finds that it was not possible to provide a party with the warrant, subpoena, or court order and any accompanying application within the time required by rule 16 of the Colorado rules of criminal procedure, or any successor rule, and that the party will not be prejudiced by the delay in receiving the information.

(7) An electronic communication service provider and its officers, employees, or agents are not liable for providing information, facilities, or assistance in compliance with the terms of a search warrant, subpoena, or court order issued pursuant to this section or when provided without a warrant, subpoena, or court order issued pursuant to this section or if otherwise provided for by law.

(8) This section does not apply to a law enforcement agency obtaining basic subscriber information from an electronic communications service provider pursuant to a valid subpoena, court order, or search warrant.

16-3-304. Search warrants - contents. (1) If the judge is satisfied that grounds for the application exist or that there is probable cause to believe that such grounds exist, he shall issue a search warrant, which shall:

(a) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(b) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(c) State the grounds or probable cause for its issuance; and

(d) State the names of the persons whose affidavits or testimony have been taken in support thereof.

(2) The search warrant may also contain such other and further orders as the judge deems necessary to comply with the provisions of a statute, charter, or ordinance, or to provide for the custody or delivery to the proper officer of any property seized under the warrant, or otherwise to accomplish the purposes of the warrant.

(3) Unless the court otherwise directs, every search warrant authorizes the officer executing the same:

(a) To execute and serve the warrant at any time; and

(b) To use and employ such force as is reasonably necessary in the performance of the duties commanded by the warrant.

16-3-305. Search warrants - direction - execution and return. (1) Except as otherwise provided in this section, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.

(2) A search warrant issued by a judge of a municipal court shall be directed to any officer authorized by law to execute it in the municipality wherein the property is located.

(3) Any judge issuing a search warrant, on the grounds stated in section 16-3-301, for the

search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported may make an order authorizing a peace officer to be named in the warrant to execute the same, and the person named in such order may execute the warrant anywhere in the state. All sheriffs, coroners, police officers, and officers of the Colorado state patrol, when required, in their respective counties, shall aid and assist in the execution of such warrant. The order authorized by this subsection (3) may also authorize execution of the warrant by any officer authorized by law to execute it in the county wherein the property is located.

(4) When any officer, having a warrant for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported is in pursuit thereof and the person, motor vehicle, aircraft, or other object crosses or enters into another county, such officer is authorized to execute the warrant in the other county.

(5) It is the duty of all peace officers into whose hands any search warrant comes to execute the same, in their respective counties or municipalities, and make due return thereof. Procedures consistent with this section for the execution and return of search warrants may be provided by rule of the supreme court.

(6) A search warrant shall be executed within fourteen days after its date.

16-3-306. Search warrants - joinder. The search of one or more persons, premises, places, or things, or any combination of persons, premises, places, or things, may be commanded in a single warrant or in separate warrants, if compliance is made with section 16-3-303 (1) (d).

16-3-307. Limiting clause. Nothing in this part 3 shall be construed to require the issuance of a search warrant in cases in which such warrant is not required by law. This statute does not modify any statute inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

16-3-308. Evidence - admissibility - declaration of purpose - definitions. (1) Evidence which is otherwise admissible in a criminal proceeding shall not be suppressed by the trial court if the court determines that the evidence was seized by a peace officer, as described in section 16-2.5-101, as a result of a good faith mistake or of a technical violation.

(2) As used in subsection (1) of this section:

(a) "Good faith mistake" means a reasonable judgmental error concerning the existence of facts or law which if true would be sufficient to constitute probable cause.

(b) "Technical violation" means a reasonable good faith reliance upon a statute which is later ruled unconstitutional, a warrant which is later invalidated due to a good faith mistake, or a court precedent which is later overruled.

(3) Evidence which is otherwise admissible in a criminal proceeding and which is obtained as a result of a confession voluntarily made in a noncustodial setting shall not be suppressed by the trial court.

(4) (a) It is hereby declared to be the public policy of the state of Colorado that, when evidence is sought to be excluded from the trier of fact in a criminal proceeding because of the conduct of a peace officer leading to its discovery, it will be open to the proponent of the evidence to urge that the conduct in question was taken in a reasonable, good faith belief that it was proper, and in such instances the evidence so discovered should not be kept from the trier of fact if otherwise admissible. This section is necessary to identify the characteristics of evidence which will be admissible in a court of law. This section does not address or attempt to prescribe court procedure.

(b) It shall be prima facie evidence that the conduct of the peace officer was performed in the reasonable good faith belief that it was proper if there is a showing that the evidence was obtained pursuant to and within the scope of a warrant, unless the warrant was obtained through intentional and material misrepresentation.

16-3-309. Admissibility of laboratory test results. (1) When evidence is seized in so small a quantity or unstable condition that qualitative laboratory testing will not leave a sufficient quantity of the evidence for independent analysis by the defendant's expert and when a state agent, in the regular performance of his duties, can reasonably foresee that the evidence might be favorable to the defendant, the trial court shall not suppress the prosecution's evidence if the court determines that the testing was performed in good faith and in accordance with regular procedures designed to preserve the evidence which might have been favorable to the defendant.

(2) The trial court shall consider the following factors in determining, pursuant to subsection (1) of this section, whether the state has met its obligation to preserve the evidence:

(a) Whether or not a suspect has been identified and apprehended and whether or not the suspect has retained counsel or has had counsel appointed for him at the time of testing;

(b) Whether the state should have used an available test method more likely to preserve the results of seized evidence;

(c) Whether, when the test results are susceptible to subjective interpretation, the state should have photographed or otherwise documented the test results as evidence;

(d) Whether the state should have preserved the used test samples;

(e) Whether it was necessary for the state agency to conduct quantitative analysis of the evidence;

(f) Whether there is a sufficient sample for the defendant's expert to utilize for analysis and the suspect or defendant has made a specific request to preserve such sample;

(g) If paragraph (f) of this subsection (2) cannot be complied with, in view of the small amount of evidence, or when the state's duty to preserve the evidence would otherwise be enhanced, whether it was reasonable for the state to have contacted the defendant to determine if he wished his expert to be present during the testing.

(3) With regard to testing performed on blood, urine, and breath samples which form the basis for a conclusion upon which a statutory presumption arises, it is hereby declared to be the public policy of the state of Colorado that when the prosecution's evidence of test results is sought to be excluded from the trier of fact in a criminal proceeding because the testing destroyed evidence which might have been favorable to the defense, it shall be open to the proponent of the

evidence to urge that the testing in question was performed in good faith and in accordance with regular procedures designed to preserve the evidence which might have been favorable to the defense, and, in such instances, the evidence so discovered should not be kept from the trier of fact if otherwise admissible.

(4) For all other types of blood analysis, breath analysis, and urine analysis and for laboratory testing, such as serial number restoration, firearms testing, and gunpowder pattern testing, it is hereby declared to be the public policy of the state of Colorado that, when the prosecution's evidence of test results is sought to be excluded from the trier of fact in a criminal proceeding because of the destruction of evidence upon which the test was performed, it shall be open to the proponent of the evidence to urge that the testing in question was performed in a reasonable, good faith belief that it was proper and, in such instances, the evidence so discovered should not be kept from the trier of fact if otherwise admissible.

(5) Any report or copy thereof or the findings of the criminalistics laboratory shall be received in evidence in any court, preliminary hearing, or grand jury proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person. Any party may request that such employee or technician testify in person at a criminal trial on behalf of the state before a jury or to the court, by notifying the witness and other party at least fourteen days before the date of such criminal trial.

(6) In no event shall evidence be suppressed which results from laboratory testing performed before identification of a suspect for the sole reason that the later identified suspect or his attorney was not present at the time of the testing.

(7) This section is necessary to identify the characteristics of evidence which will be admissible in a court of law. This section does not address or attempt to prescribe court procedure.

16-3-310. Oral advisement and consent prior to search of a vehicle or a person during a police contact. (1) (a) Prior to conducting a consensual search of a person who is not under arrest, the person's effects, or a vehicle, a peace officer shall comply with paragraph (b) of this subsection (1).

(b) A peace officer may conduct a consensual search only after articulating the following factors to, and subsequently receiving consent from, the person subject to the search or the person with the apparent or actual authority to provide permission to search the vehicle or effects. The factors are:

(I) The person is being asked to voluntarily consent to a search; and

(II) The person has the right to refuse the request to search.

(c) After providing the advisement required in paragraph (b) of this subsection (1), a peace officer may conduct the requested search only if the person subject to the search voluntarily provides verbal or written consent. Other evidence of knowing and voluntary consent may be acceptable, if the person is unable to provide written or verbal consent.

(2) A peace officer providing the advisement required pursuant to subsection (1) of this section need not provide a specific recitation of the advisement; substantial compliance with the

substance of the factors is sufficient to comply with the requirement.

(3) If a defendant moves to suppress any evidence obtained in the course of the search, the court shall consider the failure to comply with the requirements of this section as a factor in determining the voluntariness of the consent.

(4) This section shall not apply to a search conducted pursuant to section 16-3-103, a valid search incident to or subsequent to a lawful arrest, or a search for which there is a legal basis other than voluntary consent. This shall include, but not be limited to, a search in a correctional facility or on correctional facility property, a detention facility, county detention facility, custody facility, juvenile correctional facility or any mental health institute or mental health facility operated by or under a contract with the department of human services, a community corrections facility, or a jail or a search of a person subject to probation or parole by a community supervision or parole officer when the person has consented to search as a term and condition of any probation or parole.

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16-3-311. Peace officer incident recordings. (1) A person has the right to lawfully record any incident involving a peace officer and to maintain custody and control of that recording and the device used to record the recording. A peace officer shall not seize a recording or recording device without consent, without a search warrant or subpoena, or without a lawful exception to the warrant requirement.

(2) (a) If a peace officer seeks to obtain from a person a device used to record an incident involving a peace officer in order to access the recording as possible evidence in an investigation, the officer shall first:

(I) Advise the person of his or her name, his or her badge number or other identifying number, and the name of the law enforcement agency;

(II) Identify the legal reason for which the information is requested; and

(III) If practicable under the circumstances, inquire whether the person will voluntarily provide the officer with a copy of the specific recording that is relevant to the investigation either by voluntarily providing the device to the officer or immediately electronically transferring the information to the officer or the law enforcement agency so that the person may retain possession of his or her device, the recording, and any personal non-evidentiary private information contained on the device.

(b) If the person consents voluntarily to the transfer of the device to law enforcement, the peace officer shall limit his or her search of the device to a search for the recording that is relevant evidence to the investigation, and the device shall be returned to the person upon request and with all convenient speed.

(c) If the person consents to an electronic transfer of the recording, the electronic transfer shall take place as soon as possible and without unnecessary delay.

(d) In circumstances when the immediate electronic transfer is not practicable or if the person does not consent to the electronic transfer of the evidentiary information or to the seizure of the device, the peace officer may arrange for the transfer or delivery of the information or device with the person to the peace officer or to the law enforcement agency by any alternative

means consistent with any policies and procedures of the law enforcement agency.

(e) Notwithstanding the provisions of this section, a peace officer has the authority to temporarily seize and maintain control over a device that was used to record an incident involving a peace officer for no longer than seventy-two hours to obtain a search warrant when exigent circumstances exist such that the peace officer believes it is necessary to save a life or when the peace officer has a reasonable, articulable, good-faith belief that seizure of the device is necessary to prevent the destruction of the evidentiary recording while a warrant is obtained.

(3) The provisions of this section do not apply to devices seized incident to arrest.

(4) Nothing in this section shall be construed to allow a person to interfere with a peace officer in the lawful performance of his or her duties.

Editor's note: This section is effective one year after passage.

PART 4

RIGHTS OF PERSONS IN CUSTODY

16-3-401. Treatment while in custody. (1) No unlawful means of any kind shall be used to obtain a statement, admission, or confession from any person in custody.

(2) Persons arrested or in custody shall be treated humanely and provided with adequate food, shelter, and, if required, medical treatment. Anyone receiving medical treatment while held in custody may be assessed a medical treatment charge as provided in section 17-26-104.5, C.R.S.

16-3-402. Right to communicate with attorney and family. (1) Persons who are arrested shall have the right to communicate with an attorney of their choice and a member of their family by making a reasonable number of telephone calls or by communicating in any other reasonable manner. Such communication shall be permitted at the earliest possible time after arrival at the police station, sheriff's office, jail, or other like confinement facility to which such person is first taken after arrest.

(2) If the accused is transferred to a new place of custody, his right to communicate with an attorney and a member of his family is renewed.

(2.5) If the victim is able to demonstrate through the use of caller identification or other credible evidence that the incarcerated defendant has called the victim from the jail or correctional facility in violation of the protection order issued pursuant to section 18-1-1001, C.R.S., or in violation of any other valid protection order or emergency protection order in effect, the defendant shall not be entitled to further telephone calls except to such defendant's attorney, which calls shall be placed by a jail or correctional facility staff member. If the defendant was

arrested for violating an order not to contact certain family members, the right to contact those family members by telephone shall be prohibited, and the jail or correctional facility staff shall place all outgoing telephone calls that the defendant wishes to make that are not identified in the protection order as prohibited.

(3) (a) Consistent with the provisions of section 21-1-103, C.R.S., if any person in custody indicates in any manner his desire to speak with an attorney or the court determines that an inquiry into the matter of indigency should occur, the public defender shall be permitted to communicate with that person to determine whether that person has counsel and, if the person desires that the public defender represent him, to make an initial determination as to whether the person is indigent. If the public defender determines that the person is indigent, such person shall apply for representation by the public defender in accordance with section 21-1-103, C.R.S.

(b) The public defender, upon his request and with due regard for reasonable law enforcement administrative procedures, shall be permitted to determine whether or not any person in custody has been taken without unnecessary delay before the nearest available county or district judge.

16-3-403. Right to consult with attorney. Any person committed, imprisoned, or arrested for any cause, whether or not such person is charged with an offense, shall be allowed to consult with an attorney-at-law of this state whom such person desires to see or consult, alone and in private at the place of custody, as many times and for such period each time as is reasonable. Except where extradition proceedings have been completed or are not required by law, when any such person is about to be moved beyond the limits of this state, the person to be moved shall be entitled to a reasonable delay for the purpose of obtaining counsel and of availing himself of the laws of this state for the security of personal liberty.

16-3-404. Duty of officers to admit attorney. (1) All peace officers or persons having in custody any person committed, imprisoned, or arrested for any alleged cause shall forthwith admit any attorney-at-law in this state, upon the demand of the prisoner or of a friend, relative, spouse, or attorney of the prisoner, to see and consult the person so imprisoned, alone and in private, at the jail or other place of custody, if such person so imprisoned expressly consents to see or to consult with the attorney.

(2) Any peace officer or person violating the duty imposed by this section or section 16-3-403 shall forfeit and pay not less than one hundred dollars nor more than one thousand dollars to the person imprisoned or to his attorney for the benefit of the person imprisoned, to be recovered in any court of competent jurisdiction.

16-3-405. Strip searches - when authorized or prohibited. (1) No person arrested for a traffic or a petty offense shall be strip searched, prior to arraignment, unless there is reasonable belief that the individual is concealing a weapon or a controlled substance or that the individual, upon identification, is a parolee or an offender serving a sentence in any correctional facility in

the state or that the individual is arrested for driving while under the influence of drugs.

(2) As used in this section, "strip search" means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, or female breasts of such person.

(3) Any strip search that is conducted shall be performed by a person of the same sex as the arrested person and on premises where the search cannot be observed by persons not physically conducting the search.

(4) Every peace officer or employee of a police department or sheriff's department conducting a strip search shall obtain the written permission of the police commander or an agent thereof or a sheriff or an agent thereof designated for the purposes of authorizing a strip search in accordance with this section.

(5) No search of any body cavity other than the mouth shall be conducted without the written permission of the police commander or an agent thereof or a sheriff or an agent thereof authorizing a body cavity search. The search must be performed under sanitary conditions and conducted by a licensed physician or nurse.

(6) Any peace officer or employee of a police department or a sheriff's department who knowingly or intentionally fails to comply with any provision of this section commits second degree official misconduct, as defined in section 18-8-405, C.R.S. Nothing contained in this section shall preclude prosecution of a peace officer or employee of a police department or sheriff's department under any other provision of the law.

(7) Nothing in this section shall be construed as limiting the statutory or common-law rights of any person for the purposes of any civil action or injunctive relief.

(8) The provisions of subsections (1) to (6) of this section shall not apply when, following arraignment and pursuant to a court order, the person is taken into custody by or remanded to a sheriff or a correctional facility.

PART 5

WARRANTS AND BONDS FOR PERSONS ILLEGALLY IN THE COUNTRY

16-3-501. Warrants issued for persons illegally in the country. (1) If a person has posted a bond in a criminal case, at any stage of a criminal proceeding, and the person is released to the United States immigration and customs enforcement agency, the court shall issue a warrant commanding the arrest of the person when contacted anywhere within the United States and shall set the amount of the bond on the warrant. The warrant shall be entered in the Colorado crime information center and the national crime information center databases. The criminal case shall remain active for an indefinite period of time; except that the case may be dismissed upon a motion by the district attorney.

(2) A bond issued pursuant to this section shall include all known aliases for the person and the person's date of birth.

16-3-502. No dismissal of cases against persons illegally in the country. (1) A court shall not dismiss criminal charges against a person because the person has been removed or is facing removal from the United States prior to a conviction or other disposition of all criminal charges against the person; except that the court may dismiss the criminal charges upon a motion of the district attorney.

(2) A court shall not dismiss criminal charges against a person who has been convicted or pled guilty to a crime because the person has been removed or is facing removal from the United States. The defendant shall serve his or her sentence and pay all restitution prior to removal.

(3) If the provisions of part 3 of article 4.1 of title 24, C.R.S., apply, the victim shall be consulted pursuant to the provisions of sections 24-4.1-302.5 and 24-4.1-303, C.R.S.

16-3-503. Bonds recovered for persons illegally in the country. (1) (a) When a law enforcement agency holding a defendant charged with a felony or a class 1 or class 2 misdemeanor determines that, based on investigation, including consideration of the defendant's inability to produce one of the identifying documents listed in subsection (3) of this section, there is probable cause to find that the defendant is likely illegally present in the United States, the law enforcement agency shall notify the defendant's bail bonding agent in writing before the bond is posted. Prior to posting a bond for a defendant charged with a felony or a class 1 or class 2 misdemeanor, a defendant or person other than a professional bonding agent shall execute a waiver that states the person understands that the bond or fees shall be forfeited if the defendant is removed from the country.

(b) Except as provided in paragraph (a) of this subsection (1), a defendant or person other than a professional bonding agent who posts bond on a felony or a class 1 or class 2 misdemeanor, either pre-trial or post-conviction, for a defendant who is determined to be illegally present in the country shall not be entitled to recover the posted bond or fees if the defendant is removed from the country, and the bond or fees shall be forfeited.

(c) If it is determined that a defendant is illegally present in the country after an appearance bond is posted on a felony or a class 1 or class 2 misdemeanor, the jail or court shall return all documents concerning the defendant that are signed by the bail bonding agent to the agent, and the agent shall return any premium, commission, or fee, not including premium financing fees, bond filing fees charged by a court or law enforcement agency, and the actual cost of storing collateral in a secure, self-service public storage facility, to the court for forfeiture under subsection (2) of this section.

(2) Fifty percent of the amount of bonds and fees forfeited pursuant to subsection (1) of this section shall be credited to the capital construction fund created in section 24-75-302, C.R.S., for appropriation to the corrections expansion reserve fund created in section 17-1-116, C.R.S., for the purpose of prison bed construction and prison operations. Fifty percent of the amount of bonds and fees forfeited pursuant to subsection (1) of this section shall be credited to the county jail assistance fund created in section 17-26-137, C.R.S.

(3) For purposes of this section, an identifying document includes the following:

(a) A certified birth certificate issued within the United States or a state or federal government-issued identification card with a photograph;

(b) A valid military identification card issued by the United States government;

(c) A valid military dependent's identification card issued by the United States government;

(d) A valid Native American tribal identification document with a photograph;

(e) A certificate of United States citizenship, form N-560 or N-561;

(f) A certificate of naturalization, form N-550 or N-570;

(g) A passport issued by the United States government;

(h) A valid foreign passport showing lawful presence in the United States;

(i) A permanent resident card or alien registration receipt card with photograph, form I-551;

(j) An unexpired temporary resident card, form I-688;

(k) An unexpired employment authorization card, form I-688A;

(l) An unexpired reentry permit, form I-327;

(m) An unexpired refugee travel document, form I-571; or

(n) An unexpired employment authorization document, form I-688B.

ARTICLE 4

Release from Custody Pending
Final Adjudication

PART 1

RELEASE ON BAIL

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

(a) For capital offenses when proof is evident or presumption is great; or

(b) When, after a hearing held within ninety-six hours of arrest and upon reasonable notice, the court finds that the proof is evident or the presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril if the accused were released on bail and such person is accused in any of the following cases:

(I) A crime of violence alleged to have been committed while on probation or parole resulting from the conviction of a crime of violence;

(II) A crime of violence alleged to have been committed while on bail pending the disposition of a previous crime of violence charge for which probable cause has been found;

(III) A crime of violence alleged to have been committed after two previous felony

convictions, or one such previous felony conviction if such conviction was for a crime of violence, upon charges separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony;

(IV) A crime of possession of a weapon by a previous offender alleged to have been committed in violation of section 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), or (5), C.R.S.;

(V) Sexual assault, as described in section 18-3-402, sexual assault in the first degree, as described in section 18-3-402, as it existed prior to July 1, 2000, sexual assault in the second degree, as described in section 18-3-403, as it existed prior to July 1, 2000, sexual assault on a child, as described in section 18-3-405, or sexual assault on a child by one in a position of trust, as described in section 18-3-405.3 in which the victim is fourteen years of age or younger and seven or more years younger than the accused.

(c) When a person has been convicted of a crime of violence or a crime of possession of a weapon by a previous offender, as described in section 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), or (5), C.R.S., at the trial court level and such person is appealing such conviction or awaiting sentencing for such conviction and the court finds that the public would be placed in significant peril if the convicted person were released on bail.

(2) For purposes of this section, "crime of violence" shall have the same meaning as set forth in section 18-1.3-406 (2), C.R.S.

(3) In any capital case, the defendant may make a written motion for admission to bail upon the ground that the proof is not evident or that presumption is not great, and the court shall promptly conduct a hearing upon such motion. At such hearing, the burden shall be upon the people to establish that the proof is evident or that the presumption is great. The court may combine in a single hearing the questions as to whether the proof is evident or the presumption great with the determination of the existence of probable cause to believe that the defendant committed the crime charged.

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

(5) When a person is arrested for a crime of violence, as defined in section 16-1-104 (8.5), or a criminal offense alleging the use or possession of a deadly weapon or the causing of bodily injury to another person, or a criminal offense alleging the possession of a weapon by a previous offender, as described in section 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), or (5), C.R.S., and such person is on parole, the law enforcement agency making the arrest shall notify the department of corrections within twenty-four hours. The person so arrested shall not be eligible for bail to be set until at least seventy-two hours from the time of his or her arrest has passed.

16-4-102. Right to bail - before conviction. Any person who is in custody, and for whom the court has not set bond and conditions of release pursuant to the applicable rule of

criminal procedure, and who is not subject to the provisions of section 16-4-101 (5), has the right to a hearing to determine bond and conditions of release. A person in custody may also request a hearing so that bond and conditions of release can be set. Upon receiving the request, the judge shall notify the district attorney immediately of the arrested person's request, and the district attorney shall have the right to attend and advise the court of matters pertinent to the type of bond and conditions of release to be set. The judge shall also order the appropriate law enforcement agency having custody of the prisoner to bring him or her before the court forthwith, and the judge shall set bond and conditions of release if the offense for which the person was arrested is bailable. It shall not be a prerequisite to bail that a criminal charge of any kind has been filed.

16-4-103. Setting and selection type of bond - criteria. (1) At the first appearance of a person in custody before any court or any person designated by the court to set bond, the court or person shall determine the type of bond and conditions of release unless the person is subject to the provisions of section 16-4-101.

(2) If an indictment, information, or complaint has been filed and the type of bond and conditions of release have been fixed upon return of the indictment or filing of the information or complaint, the court shall review the propriety of the type of bond and conditions of release upon first appearance of a person in custody.

(3) (a) The type of bond and conditions of release shall be sufficient to reasonably ensure the appearance of the person as required and to protect the safety of any person or the community, taking into consideration the individual characteristics of each person in custody, including the person's financial condition.

(b) In determining the type of bond and conditions of release, if practicable and available in the jurisdiction, the court shall use an empirically developed risk assessment instrument designed to improve pretrial release decisions by providing to the court information that classifies a person in custody based upon predicted level of risk of pretrial failure.

(4) When the type of bond and conditions of release are determined by the court, the court shall:

(a) Presume that all persons in custody are eligible for release on bond with the appropriate and least-restrictive conditions consistent with provisions in paragraph (a) of subsection (3) of this section unless a person is otherwise ineligible for release pursuant to the provisions of section 16-4-101 and section 19 of article II of the Colorado constitution. A monetary condition of release must be reasonable, and any other condition of conduct not mandated by statute must be tailored to address a specific concern.

(b) To the extent a court uses a bond schedule, the court shall incorporate into the bond schedule conditions of release and factors that consider the individualized risk and circumstances of a person in custody and all other relevant criteria and not solely the level of offense; and

(c) Consider all methods of bond and conditions of release to avoid unnecessary pretrial incarceration and levels of community-based supervision as conditions of pretrial release.

(5) The court may also consider the following criteria as appropriate and relevant in making a determination of the type of bond and conditions of release:

(a) The employment status and history of the person in custody;

(b) The nature and extent of family relationships of the person in custody;

(c) Past and present residences of the person in custody;

(d) The character and reputation of the person in custody;

(e) Identity of persons who agree to assist the person in custody in attending court at the proper time;

(f) The likely sentence, considering the nature and the offense presently charged;

(g) The prior criminal record, if any, of the person in custody and any prior failures to appear for court;

(h) Any facts indicating the possibility of violations of the law if the person in custody is released without certain conditions of release;

(i) Any facts indicating that the defendant is likely to intimidate or harass possible witnesses; and

(j) Any other facts tending to indicate that the person in custody has strong ties to the community and is not likely to flee the jurisdiction.

(6) When a person is charged with an offense punishable by fine only, any monetary condition of release shall not exceed the amount of the maximum fine penalty.

16-4-104. Types of bond set by the court. (1) The court shall determine, after consideration of all relevant criteria, which of the following types of bond is appropriate for the pretrial release of a person in custody, subject to the relevant statutory conditions of release listed in section 16-4-105. The person may be released upon execution of:

(a) An unsecured personal recognizance bond in an amount specified by the court. The court may require additional obligors on the bond as a condition of the bond.

(b) An unsecured personal recognizance bond with additional nonmonetary conditions of release designed specifically to reasonably ensure the appearance of the person in court and the safety of any person or persons or the community;

(c) A bond with secured monetary conditions when reasonable and necessary to ensure the appearance of the person in court or the safety of any person or persons or the community. The financial conditions shall state an amount of money that the person must post with the court in order for the person to be released. The person may be released from custody upon execution of bond in the full amount of money to be secured by any one of the following methods, as selected by the person to be released, unless the court makes factual findings on the record with respect to the person to be released that a certain method of bond, as selected by the court, is necessary to ensure the appearance of the person in court or the safety of any person, persons, or the community:

(I) By a deposit with the clerk of the court of an amount of cash equal to the monetary condition of the bond;

(II) By real estate situated in this state with unencumbered equity not exempt from execution owned by the accused or any other person acting as surety on the bond, which unencumbered equity shall be at least one and one-half the amount of the security set in the bond;

(III) By sureties worth at least one and one-half of the security set in the bond; or

(IV) By a bail bonding agent, as defined in section 16-1-104 (3.5).

(d) A bond with secured real estate conditions when it is determined that release on an unsecured personal recognizance bond without monetary conditions will not reasonably ensure the appearance of the person in court or the safety of any person or persons or the community. For a bond secured by real estate, the bond shall not be accepted by the clerk of the court unless the record owner of such property presents to the clerk of the court the original deed of trust as set forth in subparagraph (IV) of this paragraph (d) and the applicable recording fee. Upon receipt of the deed of trust and fee, the clerk of the court shall record the deed of trust with the clerk and recorder for the county in which the property is located. For a bond secured by real estate, the amount of the owner's unencumbered equity shall be determined by deducting the amount of all encumbrances listed in the owner and encumbrances certificate from the actual value of such real estate as shown on the current notice of valuation. The owner of the real estate shall file with the bond the following, which shall constitute a material part of the bond:

(I) The current notice of valuation for such real estate prepared by the county assessor pursuant to section 39-5-121, C.R.S.; and

(II) Evidence of title issued by a title insurance company or agent licensed pursuant to article 11 of title 10, C.R.S., within thirty-five days after the date upon which the bond is filed; and

(III) A sworn statement by the owner of the real estate that the real estate is security for the compliance by the accused with the primary condition of the bond; and

(IV) A deed of trust to the public trustee of the county in which the real estate is located that is executed and acknowledged by all record owners of the real estate. The deed of trust shall name the clerk of the court approving the bond as beneficiary. The deed of trust shall secure an amount equal to one and one-half times the amount of the bond.

(2) Unless the district attorney consents or unless the court imposes certain additional individualized conditions of release as described in section 16-4-105, a person must not be released on an unsecured personal recognizance bond pursuant to paragraph (a) of subsection (1) of this section under the following circumstances:

(a) The person is presently free on another bond of any kind in another criminal action involving a felony or a class 1 misdemeanor;

(b) The person has a record of conviction of a class 1 misdemeanor within two years or a felony within five years, prior to the bail hearing; or

(c) The person has willfully failed to appear on bond in any case involving a felony or a class 1 misdemeanor charge in the preceding five years.

(3) A person may not be released on an unsecured personal recognizance bond if, at the time of such application, the person is presently on release under a surety bond for felony or class 1 misdemeanor charges unless the surety thereon is notified and afforded an opportunity to surrender the person into custody on such terms as the court deems just under the provisions of section 16-4-108.

(4) Because of the danger posed to any person and the community, a person who is arrested for an offense under section 42-4-1301 (1) or (2) (a), C.R.S., may not attend a bail hearing until the person is no longer intoxicated or under the influence of drugs. The person shall

be held in custody until the person may safely attend such hearing.

16-4-105. Conditions of release on bond. (1) For each bond, the court shall require that the released person appear to answer the charge against the person at a place and upon a date certain and at any place or upon any date to which the proceeding is transferred or continued. This condition is the only condition for which a breach of surety or security on the bail bond may be subject to forfeiture.

(2) For a person who has been arrested for a felony offense, the court shall require as a condition of a bond that the person execute a waiver of extradition stating the person consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that he or she is arrested in another state while at liberty on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state.

(3) Additional conditions of every bond is that the released person shall not commit any felony while free on such a bail bond, and the court in which the action is pending has the power to revoke the release of the person, to change any bond condition, including the amount of any monetary condition if it is shown that a competent court has found probable cause to believe that the defendant has committed a felony while released, pending the resolution of a prior felony charge.

(4) An additional condition of every bond in cases involving domestic violence as defined in section 18-6-800.3 (1), C.R.S., in cases of stalking under section 18-3-602, C.R.S., or in cases involving unlawful sexual behavior as defined in section 16-22-102 (9), is that the released person acknowledge the protection order as provided in section 18-1-1001 (5), C.R.S.

(5) An additional condition of every bond in a case of an offense under section 42-2-138 (1) (d) (I), C.R.S., of driving while such person's driver's license or privilege to drive, either as a resident or nonresident, is restrained solely or partially because of a conviction of a driving offense pursuant to section 42-4-1301 (1) or (2) (a), C.R.S., is that such person not drive any motor vehicle during the period of such driving restraint.

(6) (a) If a person is arrested for driving under the influence or driving while ability impaired, pursuant to section 42-4-1301, C.R.S., and the person has one or more previous convictions for an offense in section 42-4-1301, C.R.S., or one or more convictions in any other jurisdiction that would constitute a violation of section 42-4-1301, C.R.S., as a condition of any bond, the court shall order that the person abstain from the use of alcohol or illegal drugs, and such abstinence shall be monitored.

(b) A person seeking relief from any of the conditions imposed pursuant to paragraph (a) of this subsection (6) shall file a motion with the court, and the court shall conduct a hearing upon the motion. The court shall consider whether the condition from which the person is seeking relief is in the interest of justice and whether public safety would be endangered if the condition were not enforced. When determining whether to grant relief pursuant to this paragraph (b), the court shall consider whether the person has voluntarily enrolled and is participating in an appropriate substance abuse treatment program.

(7) A person may be released on a bond with monetary condition of bond, when

appropriate, as described in section 16-4-104 (1) (c).

(8) In addition to the conditions specified in this section, the court may impose any additional conditions on the conduct of the person released that will assist in obtaining the appearance of the person in court and the safety of any person or persons and the community. These conditions may include, but are not limited to, supervision by a qualified person or organization or supervision by a pretrial services program established pursuant to section 16-4-106. While under the supervision of a qualified organization or pretrial services program, the conditions of release imposed by the court may include, but are not limited to:

(a) Periodic telephone contact with the program;

(b) Periodic office visits by the person to the pretrial services program or organization;

(c) Periodic visits to the person's home by the program or organization;

(d) Mental health or substance abuse treatment for the person, including residential treatment if the defendant consents to the treatment;

(e) Periodic alcohol or drug testing of the person;

(f) Domestic violence counseling for the defendant if the defendant consents to the counseling;

(g) Electronic or global position monitoring of the person;

(h) Pretrial work release for the person; and

(i) Other supervision techniques shown by research to increase court appearance and public safety rates for persons released on bond.

16-4-106. Pretrial services programs. (1) The chief judge of any judicial district may order a person who is eligible for bond or other pretrial release to be evaluated by a pretrial services program established pursuant to this section, which program may advise the court if the person is bond eligible, may provide information that enables the court to make an appropriate decision on bond and conditions of release, and may recommend conditions of release consistent with this section. The chief judge may make such order in any or all of the counties of the chief judge's judicial district.

(2) The chief judge of any judicial district shall endeavor to consult, on an annual basis, with the county or counties within the judicial district in an effort to support and encourage the development by the county or counties, to the extent practicable and within available resources, of pretrial services programs that support the work of the court and evidence-based decision-making in determining the type of bond and conditions of release.

(3) To reduce barriers to the pretrial release of persons in custody whose release on bond with appropriate conditions reasonably assures court appearance and public safety, all counties and cities and counties are encouraged to develop a pretrial services program in consultation with the chief judge of the judicial district in an effort to establish a pretrial services program that may be utilized by the district court of such county or city and county. Any pretrial services program must be established pursuant to a plan formulated by a community advisory board created for such purpose and appointed by the chief judge of the judicial district. Membership on such community advisory board must include, at a minimum, a representative of a local law enforcement agency, a representative of the district attorney, a representative of the public

defender, and a representative of the citizens at large. The chief judge is encouraged to appoint to the community advisory board at least one representative of the bail bond industry who conducts business in the judicial district, which may include a bail bondsman, a bail surety, or other designated bail industry representative. The plan formulated by such community advisory board must be approved by the chief judge of the judicial district prior to the establishment and utilization of the pretrial services program. The option contained in this section that a pretrial services program be established pursuant to a plan formulated by the community advisory board does not apply to any pretrial services program that existed before May 31, 1991.

(4) Any pretrial services program approved pursuant to this section must meet the following criteria:

(a) The program must establish a procedure for the screening of persons who are detained due to an arrest for the alleged commission of a crime so that such information may be provided to the judge who is setting the bond and conditions of release. The program must provide information that provides the court with the ability to make an appropriate initial bond decision that is based upon facts relating to the person's risk of failure to appear for court and risk of danger to the community.

(b) The program must make all reasonable attempts to provide the court with such information delineated in this section as is appropriate to each individual person seeking release from custody;

(c) The program, in conjunction with the community advisory board, must make all reasonable efforts to implement an empirically developed pretrial risk assessment tool, to be used by the program, the court, and the parties to the case solely for the purpose of assessing pretrial risk, and a structured decision-making design based upon the person's charge and the risk assessment score; and

(d) The program must work with all appropriate agencies and assist with all efforts to comply with sections 24-4.1-302.5 and 24-4.1-303, C.R.S.

(5) Any pretrial services program may also include different methods and levels of community-based supervision as a condition of release, and the program must use established methods for persons who are released prior to trial in order to decrease unnecessary pretrial detention. The program may include, but is not limited to, any of the criteria as outlined in section 16-4-105 (8) as conditions for pretrial release.

(6) Commencing July 1, 2012, each pretrial services program established pursuant to this section shall provide an annual report to the judicial department no later than November 1 of each year, regardless of whether the program existed prior to May 31, 1991. The judicial department shall present an annual combined report to the house and senate judiciary committees of the house of representatives and the senate, or any successor committees, of the general assembly. The report to the judicial department must include, but is not limited to, the following information:

(a) The total number of pretrial assessments performed by the program and submitted to the court;

(b) The total number of closed cases by the program in which the person was released from custody and supervised by the program;

(c) The total number of closed cases in which the person was released from custody, was

supervised by the program, and, while under supervision, appeared for all scheduled court appearances on the case;

(d) The total number of closed cases in which the person was released from custody, was supervised by the program, and was not charged with a new criminal offense that was alleged to have occurred while under supervision and that carried the possibility of a sentence to jail or imprisonment;

(e) The total number of closed cases in which the person was released from custody and was supervised by the program, and the person's bond was not revoked by the court due to a violation of any other terms and conditions of supervision; and

(f) Any additional information the judicial department may request.

(7) For the reports required in subsection (6) of this section, the pretrial services program shall include information detailing the number of persons released on a commercial surety bond in addition to pretrial supervision, the number of persons released on a cash, private surety, or property bond in addition to pretrial supervision, and the number of persons released on any form of a personal recognizance bond in addition to pretrial supervision.

16-4-107. Hearing after setting of monetary conditions of bond. (1) If a person is in custody and the court imposed a monetary condition of bond for release, and the person, after seven days from the setting of the monetary condition of bond, is unable to meet the monetary obligations of the bond, the person may file a written motion for reconsideration of the monetary conditions of the bond. The person may only file the written motion pursuant to this section one time during the pendency of the case and may only file the written motion if he or she believes that, upon presentation of evidence not fully considered by the court, he or she is entitled to a personal recognizance bond or an unsecured bond with conditions of release or a change in the monetary conditions of bond. The court shall promptly conduct a hearing on this motion for reconsideration, but the hearing must be held within fourteen days after the filing of the motion. However, the court may summarily deny the motion if the court finds that there is no additional evidence not fully considered by the court presented in the written motion. In considering the motion, the court shall consider the results of any empirically developed risk assessment instrument.

(2) Nothing in this section shall preclude a person from filing a motion for relief from a monetary condition of bond pursuant to section 16-4-109 at any time during the pendency of the case.

16-4-108. When original bond continued. Once a bond has been executed and the person released from custody thereon, whether a charge is then pending or is thereafter filed or transferred to a court of competent jurisdiction, the original bond shall continue in effect until final disposition of the case in the trial court. If a charge filed in the county court is dismissed and the district attorney states on the record that the charge will be refiled in the district court or that the dismissal by the county court will be appealed to the district court, the county court before entering the dismissal shall fix a return date, not later than sixty-three days thereafter, upon

which the defendant must appear in the district court and continue the bond. Any bond continued pursuant to this section is subject to the provisions of section 16-4-109.

16-4-109. Reduction or increase of monetary conditions of bond - change in type of bond or conditions of bond - definitions. (1) Upon application by the district attorney or the defendant, the court before which the proceeding is pending may increase or decrease the financial conditions of bond, may require additional security for a bond, may dispense with security theretofore provided, or may alter any other condition of the bond.

(2) Reasonable notice of an application for modification of a bond by the defendant shall be given to the district attorney.

(3) Reasonable notice of application for modification of a bond by the district attorney shall be given to the defendant, except as provided in subsection (4) of this section.

(4) (a) Upon verified application by the district attorney or a bonding commissioner stating facts or circumstances constituting a breach or a threatened breach of any of the conditions of the bond, the court may issue a warrant commanding any peace officer to bring the defendant without unnecessary delay before the court for a hearing on the matters set forth in the application. Upon issuance of the warrant, the bonding commissioner shall notify the bail bond agent of record by electronic mail to the agent if available within twenty-four hours or by certified mail not more than fourteen days after the warrant is issued. At the conclusion of the hearing, the court may enter an order authorized by subsection (1) of this section. If a bonding commissioner files an application for a hearing pursuant to this subsection (4), the bonding commissioner shall notify the district attorney, for the jurisdiction in which the application is made, of the application within twenty-four hours following the filing of the application.

(b) As used in this subsection (4), "bonding commissioner" means a person employed by a pretrial services program as described in section 16-4-106 (3), and so designated as a bonding commissioner by the chief or presiding judge of the judicial district.

(5) The district attorney has the right to appear at all hearings seeking modification of the terms and conditions of bond and may advise the court on all pertinent matters during the hearing.

16-4-110. Exoneration from bond liability. (1) Any person executing a bail bond as principal or as surety shall be exonerated as follows:

(a) When the condition of the bond has been satisfied; or

(b) When the amount of the forfeiture has been paid; or

(c) (I) When the surety appears and provides satisfactory evidence to the court that the defendant is unable to appear before the court due to such defendant's death or the detention or incarceration of such defendant in a foreign jurisdiction if the defendant is incarcerated for a period in excess of ninety-one days and the state of Colorado has refused to extradite such defendant; except that, if the state extradites such defendant, all costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(II) For the purposes of this paragraph (c), "costs associated with extradition" shall be

calculated as and limited to the round-trip mileage between the Colorado court of jurisdiction and the location of the defendant's incarceration at the rate allowed for reimbursement pursuant to section 24-9-104, C.R.S., up to the amount of the bond.

(d) Upon surrender of the defendant into custody at any time before a judgment has been entered against the sureties for forfeiture of the bond, upon payment of all costs occasioned thereby. A surety may seize and surrender the defendant to the sheriff of the county wherein the bond is taken, and it is the duty of the sheriff, on such surrender and delivery to him or her of a certified copy of the bond by which the surety is bound, to take the person into custody and, by writing, acknowledge the surrender. If a compensated surety is exonerated by surrendering a defendant prior to the initial appearance date fixed in the bond, the court, after a hearing, may require the surety to refund part or all of the bond premium paid by the defendant if necessary to prevent unjust enrichment.

(e) After three years have elapsed from the posting of the bond, unless a judgment has been entered against the surety or the principal for the forfeiture of the bond, or unless the court grants an extension of the three-year time period for good cause shown, upon motion by the prosecuting attorney and notice to surety of record.

(2) If, within fourteen days after the posting of a bond by a defendant, the terms and conditions of the bond are changed or altered either by order of court or upon the motion of the district attorney or the defendant, the court, after a hearing, may order a compensated surety to refund a portion of the premium paid by the defendant, if necessary and supported by factual findings, to prevent unjust enrichment. If more than fourteen days have elapsed after posting of a bond by a defendant, the court shall not order the refund of any premium.

(3) Upon entry of an order for deferred prosecution as it existed before August 7, 2013, a diversion authorized by section 18-1.3-101, C.R.S., or deferred judgment as authorized in sections 18-1.3-101 and 18-1.3-102, C.R.S., sureties upon any bond given for the appearance of the defendant shall be released from liability on such bond.

16-4-111. Disposition of security deposits upon forfeiture or termination of bond. (1) (a) If a defendant is released upon deposit of cash in any amount or upon deposit of any stocks or bonds and the defendant is later discharged from all liability under the terms of the bond, the clerk of the court shall return the deposit to the person who made the deposit.

(b) (I) Notwithstanding the provisions of paragraph (a) of this subsection (1), if the depositor of the cash bond is the defendant and the defendant owes court costs, fees, fines, restitution, or surcharges at the time the defendant is discharged from all liability under the terms of the bond, the court may apply the deposit toward any amount owed by the defendant in court costs, fees, fines, restitution, or surcharges. If any amount of the deposit remains after paying the defendant's outstanding court costs, fees, fines, restitution, or surcharges, the court shall return the remainder of the deposit to the defendant.

(II) Notwithstanding the provisions of paragraph (a) of this subsection (1), if the depositor of the cash bond is not the defendant, but the defendant owes court costs, fees, fines, restitution, or surcharges at the time the defendant is discharged from all liability under the terms of the bond, the court may apply the deposit toward the amount owed by the defendant in court

costs, fees, fines, restitution, or surcharges if the depositor agrees in writing to the use of the deposit for such purpose. If any amount of the deposit remains after paying the defendant's outstanding court costs, fees, fines, restitution, or surcharges, the court shall return the remainder of the deposit to the depositor.

(2) (a) Upon satisfaction of the terms of the bond, the clerk of the court shall execute, within fourteen days after such satisfaction, a release of any deed of trust given to secure the bond and an affidavit that states that the obligation for which the deed of trust had been recorded has been satisfied, either fully or partially, and that the release of such deed of trust may be recorded at the expense of the record owner of the property described in such deed of trust.

(b) If there is a forfeiture of the bond pursuant to this section, and if the forfeiture is not set aside pursuant to subsection (4) of this section, the deed of trust may be foreclosed as provided by law.

(c) If there is a forfeiture of the bond pursuant to this section, but the forfeiture is set aside pursuant to subsection (3) of this section, the clerk of the court shall execute a release of any deed of trust given to secure the bond and an affidavit that states that the obligation for which the deed of trust had been recorded has been satisfied, either fully or partially, and that the release of such deed of trust may be recorded at the expense of the record owner of the real estate described in such deed of trust.

(3) When the defendant has been released upon deposit of cash or property, upon an unsecured personal recognizance bond with a monetary condition pursuant to section 16-4-104 (1) (a) or (1) (b), or upon a surety bond secured by property, if the defendant fails to appear in accordance with the primary condition of the bond, the court shall declare a forfeiture. Notice of the order of forfeiture shall be mailed by the court to the defendant, all sureties, and all depositors or assignees of any deposits of cash or property if such sureties, depositors, or assignees have direct contact with the court, at their last-known addresses. Such notice shall be sent within fourteen days after the entry of the order of forfeiture. If the defendant does not appear and surrender to the court having jurisdiction within thirty-five days from the date of the forfeiture or within that period satisfy the court that appearance and surrender by the defendant is impossible and without fault by such defendant, the court may enter judgment for the state against the defendant for the amount of the bond and costs of the court proceedings. Any cash deposits made with the clerk of the court shall be applied to the payment of costs. If any amount of such cash deposit remains after the payment of costs, it shall be applied to payment of the judgment.

(4) The court may order that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice so requires.

(5) If, within one year after judgment, the person who executed the forfeited bond as principal or as surety effects the apprehension or surrender of the defendant to the sheriff of the county from which the bond was taken or to the court which granted the bond, the court may vacate the judgment and order a remission less necessary and actual costs of the court.

(6) The provisions of this section shall not apply to appearance bonds written by compensated sureties, as defined in section 16-4-114 (2) (c), which bonds shall be subject to the provisions of section 16-4-114.

(7) On and after July 1, 2008, all moneys collected from payment toward a judgment entered for the state pursuant to paragraph (b) of subsection (1) of this section shall be

transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6), C.R.S.

16-4-112. Enforcement when forfeiture not set aside. By entering into a bond, each obligor, whether he or she is the principal or a surety, submits to the jurisdiction of the court. His or her liability under the bond may be enforced, without the necessity of an independent action, as follows: The court shall order the issuance of a citation directed to the obligor to show cause, if any there be, why judgment should not be entered against him or her forthwith and execution issue thereon. Said citation may be served personally or by certified mail upon the obligor directed to the address given in the bond. Hearing on the citation shall be held not less than twenty-one days after service. The defendant's attorney and the prosecuting attorney shall be given notice of the hearing. At the conclusion of the hearing, the court may enter a judgment for the state and against the obligor, and execution shall issue thereon as on other judgments. The district attorney shall have execution issued forthwith upon the judgment and deliver it to the sheriff to be executed by levy upon the stocks, bond, or real estate which has been accepted as security for the bond.

16-4-113. Type of bond in certain misdemeanor cases. (1) In exercising the discretion mentioned in section 16-4-104, the judge shall release the accused person upon personal recognizance if the charge is a class 3 misdemeanor or a petty offense, or any unclassified offense for a violation of which the maximum penalty does not exceed six months' imprisonment, and he or she shall not be required to supply a surety bond, or give security of any kind for his or her appearance for trial other than his or her personal recognizance, unless one or more of the following facts are found to be present:

(a) The arrested person fails to sufficiently identify himself or herself; or

(b) The arrested person refuses to sign a personal recognizance; or

(c) The continued detention or posting of a surety bond is necessary to prevent imminent bodily harm to the accused or to another; or

(d) The arrested person has no ties to the jurisdiction of the court reasonably sufficient to assure his or her appearance, and there is substantial likelihood that he or she will fail to appear for trial if released upon his or her personal recognizance; or

(e) The arrested person has previously failed to appear for trial for an offense concerning which he or she had given his written promise to appear; or

(f) There is outstanding a warrant for his or her arrest on any other charge or there are pending proceedings against him or her for suspension or revocation of parole or probation.

16-4-114. Enforcement procedures for compensated sureties - definitions. (1) (a) The general assembly hereby finds, determines, and declares that the simplicity, effectiveness, and uniformity of bail forfeiture procedures applicable to compensated sureties who are subject to the regulatory authority of the Colorado division of insurance are

matters of statewide concern.

(b) It is the intent of the general assembly in adopting this section to:

(I) Adopt a board system that will simplify and expedite bail forfeiture procedures by authorizing courts to bar compensated sureties who fail to pay forfeiture judgments from writing further bonds;

(II) Minimize the need for day-to-day involvement of the division of insurance in routine forfeiture enforcement; and

(III) Reduce court administrative workload.

(2) As used in this section, unless the context otherwise requires:

(a) "Bail insurance company" means an insurer as defined in section 10-1-102 (13), C.R.S., engaged in the business of writing appearance bonds through bonding agents, which company is subject to regulation by the division of insurance in the department of regulatory agencies.

(b) "Board system" means any reasonable method established by a court to publicly post or disseminate the name of any compensated surety who is prohibited from posting bail bonds.

(c) "Compensated surety" means any person who is in the business of writing appearance bonds and who is subject to regulation by the division of insurance in the department of regulatory agencies, including bonding agents and bail insurance companies. Nothing in this paragraph (c) authorizes bail insurance companies to write appearance bonds except through bail bonding agents.

(d) "On the board" means that the name of a compensated surety has been publicly posted or disseminated by a court as being ineligible to write bail bonds pursuant to paragraph (e) or (f) of subsection (5) of this section.

(3) Each court of record in this state shall implement a board system for the recording and dissemination of the names of those compensated sureties who are prohibited from posting bail bonds in the state due to an unpaid judgment as set forth in this section.

(4) By entering into a bond, each obligor, including the bond principal and compensated surety, submits to the jurisdiction of the court and acknowledges the applicability of the forfeiture procedures set forth in this section.

(5) Liability of bond obligors on bonds issued by compensated sureties may be enforced, without the necessity of an independent action, as follows:

(a) In the event a defendant does not appear before the court and is in violation of the primary condition of an appearance bond, the court may declare the bond forfeited.

(b) (I) If a bond is declared forfeited by the court, notice of the bail forfeiture order shall be served on the bonding agent by certified mail and on the bail insurance company by regular mail within fourteen days after the entry of said forfeiture. If the compensated surety on the bond is a cash bonding agent, only the cash bonding agent shall be notified of the forfeiture. Service of notice of the bail forfeiture on the defendant is not required.

(II) The notice described in subparagraph (I) of this paragraph (b) shall include, but need not be limited to:

(A) A statement intended to inform the compensated surety of the entry of forfeiture;

(B) An advisement that the compensated surety has the right to request a show cause hearing pursuant to subparagraph (III) of this paragraph (b) within fourteen days after receipt of

notice of forfeiture, by procedures set by the court; and

(C) An advisement that if the compensated surety does not request a show cause hearing pursuant to subparagraph (III) of this paragraph (b), judgment shall be entered upon expiration of thirty-five days following the entry of forfeiture.

(III) A compensated surety, upon whom notice of a bail forfeiture order has been served, shall have fourteen days after receipt of notice of such forfeiture to request a hearing to show cause why judgment on the forfeiture should not be entered for the state against the compensated surety. Such request shall be granted by the court and a hearing shall be set within thirty-five days after entry of forfeiture or at the court's earliest convenience. At the conclusion of the hearing requested by the compensated surety, if any, the court may enter judgment for the state against the compensated surety, or the court may in its discretion order further hearings. Upon expiration of thirty-five days after the entry of forfeiture, the court shall enter judgment for the state against the compensated surety if the compensated surety did not request within fourteen days after receipt of notice of such forfeiture a hearing to show cause.

(IV) If such a show cause hearing was timely set but the hearing did not occur within thirty-five days after the entry of forfeiture, any entry of judgment at the conclusion of the hearing against the compensated surety shall not be vacated on the grounds that the matter was not timely heard. If judgment is entered against a compensated surety upon the conclusion of a requested show cause hearing, and such hearing did not occur within thirty-five days after the entry of forfeiture, execution upon said judgment shall be automatically stayed for no more than one hundred twenty-six days after entry of forfeiture.

(V) (A) If at any time prior to the entry of judgment, the defendant appears in court, either voluntarily or in custody after surrender or arrest, the court shall on its own motion direct that the bail forfeiture be set aside and the bond exonerated at the time the defendant first appears in court; except that, if the state extradites such defendant, all necessary and actual costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(B) If, at a time prior to the entry of judgment, the surety provides proof to the court that the defendant is in custody in any other jurisdiction within the state, the court shall on its own motion direct that the bail forfeiture be set aside and the bond exonerated; except that, if the court extradites the defendant, all necessary and actual costs associated with the extradition shall be borne by the surety up to the amount of the bond. If the court elects to extradite the defendant, any forfeiture will be stayed until such time the defendant appears in the court where the bond returns.

(C) A compensated surety shall be exonerated from liability upon the bond by satisfaction of the bail forfeiture judgment, surrender of the defendant, or order of the court. If the surety provides proof to the court that the defendant is in custody in any other jurisdiction within the state, within ninety-one days after the entry of judgment, the court shall on its own motion direct that the bail forfeiture judgment be vacated and the bond exonerated; except that, if the court extradites the defendant, all necessary and actual costs associated with the extradition shall be borne by the surety up to the amount of the bond. If the court elects to extradite the defendant, any judgment will be stayed until the time the defendant appears in the court where the bond returns.

(c) Execution upon said bail forfeiture judgment shall be automatically stayed for ninety-

one days from the date of entry of judgment; except that, if judgment is entered against a compensated surety upon the conclusion of a requested show cause hearing, and such hearing did not occur within thirty-five days after the entry of forfeiture, the judgment shall be automatically stayed as set forth in subparagraph (IV) of paragraph (b) of this subsection (5).

(d) Upon the expiration of the stay of execution described in paragraph (c) of this subsection (5), the bail forfeiture judgment shall be paid forthwith by the compensated surety, if not previously paid, unless the defendant appears in court, either voluntarily or in custody after surrender or arrest, or the court enters an order granting an additional stay of execution or otherwise vacates the judgment.

(e) If a bail forfeiture judgment is not paid on or before the expiration date of the stay of execution described in paragraph (c) of this subsection (5), the name of the bonding agent shall be placed on the board of the court that entered the judgment. The bonding agent shall be prohibited from executing any further bail bonds in this state until the judgment giving rise to placement on the board is satisfied, vacated, or otherwise discharged by order of the court.

(f) If a bail forfeiture judgment remains unpaid for thirty-five days after the name of the bonding agent is placed on the board, the court shall send notice by certified mail to the bail insurance company for whom the bonding agent has executed the bond that if said judgment is not paid within fourteen days after the date of mailing of said notice, the name of the bail insurance company shall be placed on the board and such company shall be prohibited from executing any further bail bonds in this state until the judgment giving rise to placement on the board is satisfied, vacated, or otherwise discharged by order of the court.

(g) A compensated surety shall be removed forthwith from the board only after every judgment for which the compensated surety was placed on the board is satisfied, vacated, or discharged or stayed by entry of an additional stay of execution. No compensated surety shall be placed on the board in the absence of the notice required by paragraph (b) or (f) of this subsection (5).

(h) The court may order that a bail forfeiture judgment be vacated and set aside or that execution thereon be stayed upon such conditions as the court may impose, if it appears that justice so requires.

(i) A compensated surety shall be exonerated from liability upon the bond by satisfaction of the bail forfeiture judgment, surrender of the defendant, or by order of the court. If the defendant appears in court, either voluntarily or in custody after surrender or arrest, within ninety-one days after the entry of judgment, the court, at the time the defendant first appears in court, shall on its own motion direct that the bail forfeiture judgment be vacated and the bond exonerated; except that, if the state extradites such defendant, all necessary and actual costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(j) If, within one year after payment of the bail forfeiture judgment, the compensated surety effects the apprehension or surrender of the defendant and provides reasonable notice to the court to which the bond returns that the defendant is available for extradition, the court shall vacate the judgment and order a remission of the amount paid on the bond less any necessary and actual costs incurred by the state and the sheriff who has actually extradited the defendant.

(k) Bail bonds shall be deemed valid notwithstanding the fact that a bond may have been written by a compensated surety who has been placed on the board pursuant to paragraph (e) or

(f) of this subsection (5) and is otherwise prohibited from writing bail bonds. The ineligibility of a compensated surety to write bonds because the name of the compensated surety has been placed on the board pursuant to paragraph (e) or (f) of this subsection (5) shall not be a defense to liability on any appearance bond accepted by a court.

(l) The automatic stay of execution upon a bail forfeiture judgment as described in paragraph (c) of this subsection (5) shall expire pursuant to its terms unless the defendant appears and surrenders to the court having jurisdiction or satisfies the court that appearance and surrender by the defendant was impossible and without fault by such defendant. The court may order that a forfeiture be set aside and judgment vacated as set forth in paragraph (h) of this subsection (5).

(6) A bail insurance company shall not write bail bonds unless through a licensed bail bonding agent.

16-4-115. Severability. If any provision of this part 1 or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this part 1 that can be given effect without the invalid provision or application, and to this end the provisions of this part 1 are declared to be severable.

PART 2

BAIL AFTER CONVICTION

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

(b) The district attorney must be present at the time the court passes on a defendant's motion for release on bail after conviction.

(c) Bond shall not be continued in effect following a plea of guilty or of nolo contendere or following conviction unless the written consents of the sureties, if any, are filed with the court. In the initial bond documents filed with the court, a surety shall indicate, in writing and at the time of the posting of bond, if the surety consents to the continuance of the bond through sentencing of the defendant. If the surety does not provide written consent at the time of the initial posting of bond, the surety may provide written consent at the time of the plea of guilty or nolo contendere or within a reasonable time thereafter as determined by the court. A court shall not require the posting of any form of bond that allows for the continuance of said bond after a plea of guilty or of nolo contendere or following conviction without filing with the court the written consents of the sureties, if any.

(d) For a defendant who has been convicted of a felony offense, a condition of bail bond shall be that the court shall require the defendant to execute or subscribe a written prior waiver of extradition stating that the defendant consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that he or she is arrested in another state while released on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state.

(2) After conviction, a defendant who is granted probation pursuant to section 18-1.3-202, C.R.S., may orally, or in writing, move for a stay of probation pending determination of a motion for a new trial or a motion in arrest of judgment or pending review by an appellate court. The trial court, in its discretion, may grant a stay of probation and require the defendant to post an appeal bond under one or more of the alternatives set forth in section 16-4-104. The district attorney shall be present at the time the court passes on a defendant's motion for stay of probation after conviction.

16-4-201.5. Right to bail after a conviction - exceptions. (1) The court may grant bail after a person is convicted, pending sentencing or appeal, only as provided by this part 2; except that no bail is allowed for persons convicted of:

(a) Murder;

(b) Any felony sexual assault involving the use of a deadly weapon;

(c) Any felony sexual assault committed against a child who is under fifteen years of age;

(d) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(e) Any felony during the commission of which the person used a firearm;

(f) A crime of possession of a weapon by a previous offender, as described in section 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), or (5), C.R.S.; or

(g) Child abuse, as described in section 18-6-401 (7) (a) (I), C.R.S.

(2) The court shall not set bail that is otherwise allowed pursuant to subsection (1) of this section unless the court finds that:

(a) The person is unlikely to flee and does not pose a danger to the safety of any person or the community; and

(b) The appeal is not frivolous or is not pursued for the purpose of delay.

(3) The provisions of this section shall apply to offenses committed on or after January 1, 1995.

16-4-202. Appeal bond hearing - factors to be considered. (1) The court shall consider the following factors in deciding whether or not an appeal bond should be granted and determining the type of bond and conditions of release required:

(a) The nature and circumstances of the offense before the court and the sentence imposed for that offense;

(b) The defendant's length of residence in the community;

(c) The defendant's employment, family ties, character, reputation, and mental condition;

(d) The defendant's past criminal record and record of appearance at court proceedings;

(e) Any showing of intimidation or harassment of witnesses or potential witnesses, or likelihood that the defendant will harm or threaten any person having a part in the trial resulting in conviction;

(f) Any other criminal charges pending against the defendant and the potential sentences should the defendant be convicted of those charges;

(g) The circumstances of, and sentences imposed in, any criminal case in which the defendant has been convicted but execution stayed pending appeal;

(h) The likelihood that the defendant will commit additional criminal offenses during the pendency of such defendant's appeal; and

(i) The defendant's likelihood of success on appeal.

16-4-203. Appeal bond hearing - order. (1) After considering the factors set forth in section 16-4-202, the court may enter one of the following orders:

(a) Deny the defendant appeal bond; or

(b) Repealed.

(c) Grant the defendant appeal bond.

(2) If the court determines that an appeal bond should be granted, the court shall set the amount of bail and order either:

(a) An appeal bond in the amount of the bail to be executed and secured by depositing cash or property as provided by statute or by an approved surety or sureties; or

(b) An appeal bond in the amount of the bail to be executed on the personal recognizance of the defendant.

(2.5) If the court determines that an appeal bond should be granted, the court shall provide as an explicit condition of the appeal bond that the defendant not harass, molest, intimidate, retaliate against, or tamper with the victim of or any prosecution witnesses to the crime, unless the court makes written findings that such condition is not necessary.

(3) In addition to the above, the court may:

(a) Place the defendant in the custody of the probation department or a designated person who agrees to supervise him;

(b) Place restrictions on the travel, activities, associations, or place of abode of the defendant during the pendency of the appeal;

(c) Impose any other condition deemed necessary to assure defendant's appearance as required.

(4) Upon written motion of the state or the defendant, the sentencing court may increase or reduce the amount of appeal bond, alter the security for or conditions of the appeal bond, or revoke the appeal bond. Notice of hearing on the motion shall be given in the manner provided in section 16-4-107.

(5) If the defendant has been charged with committing another felony, level 1 drug misdemeanor, or class 1 misdemeanor while he or she is at liberty on an appeal bond, and probable cause has been found with respect to such other felony, level 1 drug misdemeanor, or class 1 misdemeanor or the defendant has waived his or her right to a probable cause determination as to the felony, level 1 drug misdemeanor, or class 1 misdemeanor, the court shall

revoke his or her appeal bond on motion of the attorney general or district attorney.

16-4-204. Appellate review of terms and conditions of bail or appeal bond. (1) After entry of an order pursuant to section 16-4-107 or 16-4-201, the defendant or the state may seek review of said order by filing a petition for review in the appellate court. If an order has been entered pursuant to section 16-4-104, 16-4-107, or 16-4-201, the petition shall be the exclusive method of appellate review.

(2) The petition shall be in writing, shall be served as provided by court rule for service of motions, and shall have appended thereto a transcript of the hearing held pursuant to section 16-4-107 or 16-4-203. The opposing party may file a response thereto within seven days or as provided by court rule.

(3) After review, the appellate court may:

(a) Remand the petition for further hearing if it determines that the record does not disclose the findings upon which the court entered the order; or

(b) Order the trial court to modify the terms and conditions of bail or appeal bond; or

(c) Order the trial court to modify the terms and conditions of bail or appeal bond and remand for further hearing on additional conditions of bail or appeal bond; or

(d) Dismiss the petition.

(4) Nothing contained in this section shall be construed to deny any party the rights secured by section 21 of article II of the Colorado constitution.

16-4-205. When appellate court may fix appeal bond. If a trial court fails or refuses to grant or deny an appeal bond within forty-eight hours following application for such bond, the defendant may move the appellate court for such an order, and that court shall promptly hear and rule upon the motion.

PART 3

UNIFORM RENDITION OF ACCUSED PERSONS ACT

16-4-301. Short title. This part 3 shall be known and may be cited as the "Uniform Rendition of Accused Persons Act", and shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

16-4-302. Arrest of person illegally in state. (1) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his release, and is present in this state, a designated agent of the court, judge, or magistrate who authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing

his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent shall file with the judge of a court of record of this state the following documents:

(a) An affidavit stating the name and whereabouts of the person whose return is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him; and

(b) A certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(c) A certified copy of an order of the demanding judge, court, or magistrate stating the manner in which the terms and conditions of the release have been violated and designating the affiant its agent for seeking the return of the person.

(2) Upon initially determining that the affiant is a designated agent of the demanding judge, court, or magistrate, and that there is probable cause for believing that the person whose return is sought has violated the terms and conditions of his release, the judge of this state shall issue a warrant to a peace officer of this state for the person's arrest.

(3) The judge of this state shall notify the district attorney of his action and shall direct him to investigate the case and to ascertain the validity of the affidavits and documents required by subsection (1) of this section and the identity and authority of the affiant.

16-4-303. Hearing and right to counsel. (1) The person whose return is sought shall be brought before the judge of this state immediately upon arrest pursuant to the warrant; whereupon the judge shall set a time and place for hearing and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.

(2) The person whose return is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judge shall issue an order pursuant to section 16-4-304.

(3) The judge may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose return is sought.

16-4-304. Order of return to demanding court. The district attorney shall appear at the hearing and report to the judge the results of his investigation. If the judge finds that the affiant is a designated agent of the demanding court, judge, or magistrate, and that the person whose return is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the judge shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith.

ARTICLE 5

PART 1

GENERAL PROVISIONS

16-5-101. Commencement of prosecution. (1) Unless otherwise provided by law, a criminal action for violation of any statute may be commenced in one of the following ways:

(a) By the return of an indictment by a grand jury;

(b) By the filing of an information in the district court;

(c) By the filing of a felony complaint in the county court;

(d) Prosecution of a misdemeanor or petty offense may be commenced in the county court by:

(I) The issuance of a summons and complaint;

(II) The issuance of a summons following the filing of a complaint;

(III) The filing of a complaint following an arrest; or

(IV) The filing of a summons and complaint following arrest; or, in the event that the offense is a class 2 petty offense, by the issuance of a notice of penalty assessment pursuant to section 16-2-201.

(2) The procedures governing felony complaints filed in the county court and warrants or summons issued in connection therewith shall be in accordance with and as required by the applicable provisions of the rules of criminal procedure promulgated by the supreme court of Colorado.

(3) Where the offense charged is a misdemeanor or petty offense, the action may be commenced in the county court as provided in subsection (1) (d) of this section, and the issues shall then be tried in the county court. As to misdemeanors or petty offenses thus filed and tried in the county court, the simplified procedures enumerated in part 1 of article 2 of this title shall be applicable.

16-5-102. Summons to corporate defendant. (1) When a corporation is charged with the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(2) The summons for the appearance of a corporation may be served by a peace officer in the manner provided for service of summons upon a corporation in a civil action.

16-5-103. Identity theft victims - definitions. (1) A person whose identifying information has been mistakenly associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction is a victim of identity theft for the

purposes of this section. A victim of identify theft may proceed either through the judicial process in subsection (2) of this section or the Colorado bureau of investigation process in subsection (3) of this section.

(2) (a) If a criminal charge is not pending, a victim of identity theft may, with notice to the prosecutor, petition the court with jurisdiction over the arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction to judicially determine the person's factual innocence. Alternatively, the court, on its own motion, may make such a determination in the case. If a criminal charge is pending, the prosecuting attorney may request the court to make such a determination. A judicial determination of factual innocence made pursuant to this section may be determined, with or without a hearing, upon declarations, affidavits, or police reports or upon any other relevant, material, reliable information submitted by the parties and records of the court.

(b) If the court determines that there is no reasonable cause to believe that a victim of identity theft committed the offense for which the victim's identity has been mistakenly associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After the court has determined that a person is factually innocent, the court shall provide the Colorado bureau of investigation with the order of factual innocence. Upon receipt of the order of factual innocence, the Colorado bureau of investigation shall modify the victim of identity theft's law enforcement-only and public criminal history record accordingly.

(d) A court that issues a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or information submitted in support of the petition, contains material misrepresentation or fraud. If the court vacates a determination of factual innocence, the court shall issue an order rescinding any orders made pursuant to this subsection (2).

(2.5) (a) A person who has had his or her identity stolen or used that is not associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction may petition the district court in the county where the person lives for an order of factual innocence. A judicial determination of factual innocence made pursuant to this section may be determined, with or without a hearing, upon declarations, affidavits, or any other relevant, material, reliable information submitted by the parties and records of the court.

(b) If the court finds that the person's identity was stolen or used by another, the court shall issue an order certifying this determination.

(c) A court that issues a determination of factual innocence pursuant to this subsection (2.5) may at any time vacate that determination if the petition, or information submitted in support of the petition, contains material misrepresentation or fraud. If the court vacates a determination of factual innocence, the court shall issue an order rescinding any orders made pursuant to this subsection (2.5).

(3) (a) A victim of identity theft may contact the Colorado bureau of investigation and submit a records challenge to one or more criminal charges the victim of identity theft is alleged to have committed. The victim of identity theft shall include a copy of his or her fingerprints with the records challenge.

(b) (I) A Colorado bureau of investigation fingerprint examiner shall compare the submitted fingerprints in the records challenge to the fingerprints obtained in each criminal case that the victim of identity theft is making a records challenge.

(II) The fingerprint examiner shall determine either that the fingerprints submitted in the records challenge are not the same as the individual arrested or that they are the same as the individual arrested.

(III) If the fingerprint examiner determines the fingerprints submitted in the fingerprint challenge are not the same as the individual arrested, the Colorado bureau of investigation shall issue a letter of misidentification and shall modify the victim of identity theft's law enforcement-only and public criminal history record accordingly. The letter of misidentification shall state the holder of the letter is a victim of identity theft in each criminal case identified by the letter.

(4) A person who knows or reasonably suspects that his or her identifying information has been unlawfully used by another person may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over the victim's residence or over the place where a crime was committed. Such agency shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the local law enforcement agency where the suspected crime was committed for investigation of the facts.

(5) For the purposes of this section:

(a) "Biometric data" means data, such as fingerprints, voice prints, or retina and iris prints that capture, represent, or enable the reproduction of the unique physical attributes of an individual.

(b) "Identifying information" means information that, alone or in conjunction with other information, identifies an individual, including but not limited to such individual's:

(I) Name;

(II) Address;

(III) Birth date;

(IV) Telephone, social security, taxpayer identification, driver's license, identification card, alien registration, government passport, or checking, savings, or deposit account number;

(V) Biometric data;

(VI) Unique electronic identification device; and

(VII) Telecommunication identifying device.

(c) "Telecommunication identifying device" means a number, code, or magnetic or electronic device that enables the holder to use telecommunications technology to access an account; obtain money, goods, or services; or transfer funds.

PART 2

INDICTMENTS AND INFORMATIONS

16-5-201. Indictments - allegations - form. Every indictment or accusation of the grand

jury shall be deemed sufficient technically and correct which states the offense in the terms and language of the statute defining it, including either conjunctive or disjunctive clauses, or so plainly that the nature of the offense may be easily understood by the jury. Pleading in either the conjunctive or the disjunctive shall place a defendant on notice that the prosecution may rely on any or all of the alternatives alleged. The commencement of the indictment shall be in substance as follows:

STATE OF COLORADO)
) ss.
County of.....)

Of the ..... term of the ..... court, in the year ..... . The grand jurors chosen, selected, and sworn, in and for the county of ....., in the name and by the authority of the people of the state of Colorado, upon their oaths, present. (Here insert the offense, the name of the person charged, and the time and place of committing the same, with reasonable certainty.) Every indictment shall be signed by the foreman of the grand jury returning it and by the prosecuting attorney, his or her assistant, or his or her deputy.

16-5-202. Requisites of information - form. (1) The information is sufficient if it can be understood therefrom:

(a) That it is presented by the person authorized by law to prosecute the offense;

(b) That the defendant is identified therein, either by name or by the defendant's patterned chemical structure of genetic information, or described as a person whose name is unknown to the informant;

(c) That the offense was committed within the jurisdiction of the court or is triable therein;

(d) That the offense charged is set forth with such degree of certainty that the court may pronounce judgment upon a conviction.

(2) The information may be in the following form:

STATE OF COLORADO)
) ss.
County of.....)

In the ..... Court ..... The People of the State of Colorado, against ..... A ..... B ..... C ..... D ....., district attorney within and for the ..... judicial district of the state of Colorado, in the county of ..... in the state aforesaid, in the name and by the authority of the people of the state of Colorado, informs the court that A ..... B ..... on the ..... day of ..... A.D. 20 ...., at the said county of ....., did (here state the offense) against the peace and dignity of the people of the state of Colorado.

C .....

D .....

District Attorney.

or C ..... D ....., District Attorney,

by H ..... M ....., Deputy.

(3) An information may be filed using the language of the statute defining the offense, including either conjunctive or disjunctive clauses. Pleading in either the conjunctive or the disjunctive shall place a defendant on notice that the prosecution may rely on any or all of the alternatives alleged.

(4) A court shall not refuse to accept a complaint or information that contains the requirements of this section.

16-5-203. Furnishing witnesses' names. Whether a prosecution is commenced by indictment, information, or felony complaint, the district attorney shall make available to the defendant not later than twenty-one days after the defendant's first appearance at the time of or following the filing of charges a written list of the names and addresses of the witnesses then known to the district attorney whom he or she intends to call upon at trial. The district attorney shall also furnish the defendant in writing prior to trial the names and addresses of any additional witnesses who have become known to him or her prior to trial and whom he or she intends to call upon at trial, but this shall not preclude the calling of witnesses whose names or the materiality of whose testimony are first learned by the district attorney upon the trial. However, the court may, in its discretion, enter an order that denies the disclosure to the defendant of the names and addresses of witnesses, or that requires the defense counsel not to disclose such information to the defendant, subject to rule 16 part I (d) (2) and part III (d) of the Colorado rules of criminal procedure. The names and addresses of witnesses who are the subject of the order may be withheld pending a ruling of the court, but the prosecution shall notify the defense counsel in writing that a motion to withhold witness information has been filed and that such information will be withheld pending the court's order. Where the defendant has not had or waived a preliminary hearing, there shall be filed with the information the affidavit of some credible person verifying the information upon the personal knowledge of the affiant that the offense was committed.

16-5-204. Witnesses before a grand jury - procedure. (1) (a) Whenever a witness in any proceeding before any grand jury refuses, without just cause shown, to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording, or other material, the prosecuting attorney may submit an application to the court for an order directing the witness to show why the witness should not be held in contempt. After submission of such application and a hearing at which the witness may be represented by

counsel, the court may, if the court finds that such refusal was without just cause, hold the witness in contempt and order the witness to be confined. Such confinement shall continue until such time as the witness is willing to give such testimony or provide such information; however, the court may release the witness from confinement if the court determines that further confinement will not cause the witness to give such testimony or provide such information. No period of such confinement shall exceed the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, and in no event shall such confinement exceed six months.

(b) If a witness has been confined in accordance with paragraph (a) of this subsection (1), he or she may, upon petition filed with the court, request a hearing to be held within fourteen days to review the contempt order at which hearing he or she shall have the right to be represented by counsel. The court, at the hearing, may rescind, modify, or affirm the order.

(c) In any proceeding conducted under this section, counsel may be appointed for a person financially unable to obtain adequate assistance.

(1.5) (a) Upon verified application of the prosecuting attorney stating that a witness was lawfully served with a subpoena to appear and testify before the grand jury and that the witness failed to appear in accordance with such subpoena, the court shall issue a warrant commanding any peace officer to bring the witness without unnecessary delay before the court for a hearing on the matters set forth in the application and to determine whether the witness should be held in contempt pursuant to subsection (1) of this section.

(b) Upon issuance of the warrant, the court may fix an appropriate bond and direct, as a condition of the bond, that the witness appear on a date and at a time certain for the hearing.

(2) No person who has been imprisoned or fined by a court for refusal to testify or provide other information concerning any criminal incident or incidents in any proceeding before a grand jury impaneled before any district court shall again be imprisoned or fined for a subsequent refusal to testify or provide other information concerning the same criminal incident or incidents before any grand jury.

(3) Upon impanelment of each grand jury, the court shall give to such grand jury adequate and reasonable written notice of and shall assure that the grand jury reasonably understands the nature of:

(a) Its duty to inquire into offenses against the criminal laws of the state of Colorado alleged to have been committed;

(b) Its right to call and interrogate witnesses;

(c) Its right to request the production of documents or other evidence;

(d) The subject matter of the investigation and the criminal statutes or other statutes involved, if these are known at the time the grand jury is impaneled;

(e) The duty of the grand jury by an affirmative vote of nine or more members of the grand jury to determine, based on the evidence presented before it, whether or not there is probable cause for finding indictments and to determine the violations to be included in any such indictments; and

(f) The requirement that the grand jury may not find an indictment in cases of perjury unless at least two witnesses to the same fact present evidence establishing probable cause to find

such an indictment.

(4) (a) At the option of the prosecuting attorney, a grand jury subpoena may contain an advisement of rights. If the prosecuting attorney determines that an advisement is necessary, the grand jury subpoena shall contain the following advisement prominently displayed on the front of the subpoena:

NOTICE

(I) You have the right to retain an attorney to represent you and to advise you regarding your grand jury appearance.

(II) Anything you say to the grand jury may be used against you in a court of law.

(III) You have the right to refuse to answer questions if you feel the answers would tend to incriminate you or to implicate you in any illegal activity.

(IV) If you cannot afford or obtain an attorney, you may request the court to appoint an attorney to consult with or represent you.

(b) Any witness who is not advised of his rights pursuant to paragraph (a) of this subsection (4) shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he testifies or any evidence he produces, nor shall any such testimony or evidence be used as evidence in any criminal proceeding, except for perjury, against him in any court.

(c) Repealed.

(d) Any witness subpoenaed to appear and testify before a grand jury or to produce books, papers, documents, or other objects before such grand jury shall be entitled to assistance of counsel during any time that such witness is being questioned in the presence of such grand jury, and counsel may be present in the grand jury room with his client during such questioning. However, counsel for the witness shall be permitted only to counsel with the witness and shall not make objections, arguments, or address the grand jury. Such counsel may be retained by the witness or may, for any person financially unable to obtain adequate assistance, be appointed in the same manner as if that person were eligible for appointed counsel. An attorney present in the grand jury room shall take an oath of secrecy. If the court, at an in camera hearing, determines that counsel was disruptive, then the court may order counsel to remain outside the courtroom when advising his client. No attorney shall be permitted to provide counsel in the grand jury room to more than one witness in the same criminal investigation, except with the permission of the grand jury.

(e) Once a grand jury has returned a no true bill based upon a transaction, set of transactions, event, or events, a grand jury inquiry into the same transaction or events shall not be initiated unless the court finds, upon a proper showing by the prosecuting attorney, that the prosecuting attorney has discovered additional evidence relevant to such inquiry.

(f) An authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. The reporter's notes and any transcripts which may be prepared shall be preserved, sealed, and filed with the

court. No release or destruction of the notes or transcripts shall occur without prior court approval.

(g) Upon application by the prosecutor, or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his own grand jury testimony, or minutes, reports, or exhibits relating to them.

(h) Any witness summoned to testify before a grand jury, or an attorney for such witness with the witness's written approval, shall be entitled, prior to testifying, to examine and copy at the witness's expense any statement in the possession of the prosecuting attorney or the grand jury which such witness has made to any law enforcement or prosecution official or under an oath required by law that relates to the subject matter under inquiry by the grand jury. If a witness is proceeding in forma pauperis, he shall be furnished, upon request, a copy of such transcript and shall not pay a fee.

(i) No person subpoenaed to testify or to produce books, papers, documents, or other objects in any proceeding before any grand jury shall be required to testify or to produce such objects, or be confined as provided in this section, for his failure to so testify or produce such objects if, upon filing a motion and upon an evidentiary hearing before the court which issued such subpoena or a court having jurisdiction under this section, the court finds that:

(I) A primary purpose or effect of requiring such person to so testify or to produce such objects before the grand jury is or will be to secure testimony for trial for which the defendant has already been charged by information, indictment, or criminal complaint;

(II) Compliance with a subpoena would be unreasonable or oppressive;

(III) A primary purpose of the issuance of the subpoena is to harass the witness;

(IV) The witness has already been confined, imprisoned, or fined under this section for his refusal to testify before any grand jury investigating the same transaction, set of transactions, event, or events; or

(V) The witness has not been advised of his rights as specified in paragraph (a) of this subsection (4).

(j) Any grand jury may indict a person for an offense when the evidence before such grand jury provides probable cause to believe that such person committed such offense.

(k) The district court before which the indicted defendant is to be tried shall dismiss any indictment of the grand jury if such district court finds, upon the filing of a motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record.

(l) Any person may approach the prosecuting attorney or the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. The prosecuting attorney or the grand jury shall keep a record of all denials of such requests to that prosecuting attorney or grand jury, including the reasons for not allowing such person to testify or appear. If the person making such request is dissatisfied with the decision of the prosecuting attorney or the grand jury, such person may petition the court for hearing on the denial by the prosecuting attorney or the grand jury. If the court grants the hearing, then the court may permit the person to testify or appear before the grand jury, if the court finds that such testimony or appearance would serve the interests of justice.

(m) The foreman, or acting foreman when designated by the court, of the grand jury may

swear or affirm all witnesses who come before the grand jury.

(n) Any other motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel, unless there is cause shown for the need for additional evidence.

16-5-205. Informations - authority to file - indictments - warrants and summons. (1) The prosecuting attorney may file an information in the court having jurisdiction over the offense charged, alleging that a person committed the criminal offense described therein. The court shall enter an order fixing the amount of bail, if the offense is bailable, and the amount of bail shall be endorsed upon any warrant issued for the arrest of the alleged offender. When a summons is issued instead of a warrant, no bail shall be fixed; except that, when a person is charged with an offense pursuant to section 42-2-138 (1) (d) or 42-4-1301 (1) or (2) (a), C.R.S., the court may enter an order fixing the amount of bail even if a summons is issued.

(2) Upon the return of an indictment by a grand jury, or the filing of an information, or the filing of a felony complaint in the county court, the prosecuting attorney shall request the court to order that a warrant shall issue for the arrest of the defendant, or that a summons shall issue and be served upon the defendant. If a warrant is requested upon an information or a felony complaint, the information or felony complaint must contain, or be accompanied by, a sworn written statement of facts establishing probable cause to believe that the criminal offense was committed as alleged by the person for whom the warrant is sought. In lieu of such sworn statement, the information or felony complaint may be supplemented by sworn testimony of such facts. Such testimony must be transcribed and then signed under oath by the witness giving the testimony.

(3) Except as otherwise provided in this article, any information, indictment, felony complaint, warrant, or summons shall comply with the requirements of applicable rules of criminal procedure adopted by the supreme court of Colorado. Any procedures connected with service of summons, the arrest and detention of an alleged offender upon a warrant, and the duties of the arresting officer relating to the summons or arrest, not specifically set forth in this code, shall be as provided by the applicable rules of criminal procedure adopted by the supreme court of Colorado.

(4) Repealed.

16-5-205.5. Grand jury reports. (1) In any case in which a grand jury does not return an indictment, the grand jury may prepare or ask to be prepared a report of its findings if the grand jury determines that preparation and release of a report would be in the public interest, as described in subsection (5) of this section. The determination to prepare and release a report pursuant to this section must be made by an affirmative vote of at least the number of jurors that would have been required to return an indictment. The report shall be accompanied by certification that the grand jury has determined that release of the report is in the public interest, as described in subsection (5) of this section.

(2) The provisions of this section shall not apply in any instance in which the prosecuting

attorney chooses to file charges against the person or business that was the subject of the grand jury investigation.

(3) Within fourteen days after receiving a report of the grand jury prepared pursuant to subsection (1) of this section, the prosecuting attorney shall notify in writing all persons and businesses named in the grand jury report to give such persons and businesses an opportunity to review the grand jury report and prepare a response to be submitted to the court with the grand jury report. Such notice shall be by personal service or by certified mail return receipt requested. Any responses shall be submitted to the prosecuting attorney within fourteen days after notification.

(4) Upon completion of the time for submitting responses, the prosecuting attorney shall submit the grand jury report to the court, together with the certification of public interest and any responses that may have been submitted. The court shall examine the report and make an order accepting and filing the report, including the certification and any responses that the respondent, by written notice to the prosecuting attorney and the court, has agreed to release, as a public record only if the court is satisfied that:

(a) The grand jury and the prosecuting attorney were acting within the statutory jurisdiction of such persons in convening the grand jury; and

(b) The grand jury foreman and the prosecuting attorney have verified on the record that:

(I) The certification of public interest by the grand jury complies with the provisions of subsection (5) of this section; and

(II) The report is based on facts revealed in the course of the grand jury investigation and is supported by a preponderance of the evidence; and

(III) The report does not contain material the sole effect of which is to ridicule or abuse a person or business or to subject such person or business to public disgrace or embarrassment; and

(IV) The report does not contain material that is personal in nature that does not relate to any lawful inquiry; and

(V) No confidentiality agreement will be violated and the identity of no confidential informant will be disclosed in making such grand jury report public; and

(VI) The filing of such report as a public record does not prejudice the fair consideration of a criminal matter.

(5) Release of a grand jury report pursuant to this section may be deemed to be in the public interest only if the report addresses one or more of the following:

(a) Allegations of the misuse or misapplication of public funds;

(b) Allegations of abuse of authority by a public servant, as defined in section 18-1-901 (3) (o), C.R.S., or a peace officer, as described in section 16-2.5-101;

(c) Allegations of misfeasance or malfeasance with regard to a governmental function, as defined in section 18-1-901 (3) (j), C.R.S.;

(d) Allegations of commission of a class 1, class 2, or class 3 felony.

16-5-206. Summons in lieu of warrant. (1) Except in class 1, class 2, and class 3 felonies, level 1 and level 2 drug felonies, and in unclassified felonies punishable by a maximum penalty of more than ten years, if an indictment is returned or an information, felony complaint,

or complaint has been filed prior to the arrest of the person named as defendant therein, the court has power to issue a summons commanding the appearance of the defendant in lieu of a warrant for his or her arrest unless a law enforcement officer presents in writing a basis to believe there is a significant risk of flight or that the victim or public safety may be compromised.

(2) If a summons is issued in lieu of a warrant under subsection (1) of this section:

(a) It shall be in writing.

(b) It shall state the name of the person summoned and his address.

(c) It shall identify the nature of the offense.

(d) It shall state the date when issued and the county where issued.

(e) It shall be signed by the judge or clerk of the court with the title of his office.

(f) It shall command the person to appear before the court at a certain time and place.

(3) A summons issued under this section may be served in the same manner as the summons in a civil action or by mailing it to the defendant's last-known address by certified mail with return receipt requested not less than fourteen days prior to the time the defendant is requested to appear. Service by mail is complete upon the return of the receipt signed by the defendant.

(4) If any person summoned under this section fails to appear as commanded by the summons, the court shall forthwith issue a warrant for his arrest.

16-5-207. Standards and criteria relating to issuance of summons in lieu of warrant. (1) A summons shall be issued instead of a warrant in all petty offenses, class 3 misdemeanors, and all unclassified offenses which are punishable by a maximum penalty of six months' imprisonment or less, except in those cases where the court finds that:

(a) The defendant has previously failed to respond to a summons for an offense; or

(b) There is a substantial likelihood that the defendant will not respond to a summons; or

(c) The whereabouts of the defendant is unknown and the issuance of an arrest warrant is necessary in order to subject him to the jurisdiction of the court.

(2) Except in class 1, class 2, and class 3 felonies or level 1 or level 2 drug felonies, the general policy shall favor issuance of a summons instead of a warrant for the arrest of the defendant except where there is reasonable ground to believe that, unless taken into custody, the defendant will flee to avoid prosecution or will fail to respond to a summons. The court shall issue a summons instead of an arrest warrant when the prosecuting attorney so requests. When an application is made to a court for issuance of an arrest warrant or summons, the court may require the applicant to provide such information as reasonably is available concerning the following:

(a) The defendant's residence;

(b) The defendant's employment;

(c) The defendant's family relationships;

(d) The defendant's past history of response to legal process; and

(e) The defendant's past criminal record.

16-5-208. Information not filed - reasons. In all cases where on preliminary hearing in the county court concerning the commission of a felony the accused is bound over and is committed to jail, or recognized and held to bail, it is the duty of the district attorney to file an information in the district court. If the district attorney determines in any such case that an information ought not to be filed, he or she shall file with the clerk of the district court having jurisdiction of the supposed offense a written statement containing his or her reasons, in fact and in law, for not filing an information in the case, and such statement shall be filed within sixty-three days following the date upon which the offender was held for appearance.

16-5-209. Judge may require prosecution. The judge of a court having jurisdiction of the alleged offense, upon affidavit filed with the judge alleging the commission of a crime and the unjustified refusal of the prosecuting attorney to prosecute any person for the crime, may require the prosecuting attorney to appear before the judge and explain the refusal. If after that proceeding, based on the competent evidence in the affidavit, the explanation of the prosecuting attorney, and any argument of the parties, the judge finds that the refusal of the prosecuting attorney to prosecute was arbitrary or capricious and without reasonable excuse, the judge may order the prosecuting attorney to file an information and prosecute the case or may appoint a special prosecutor to do so. The judge shall appoint the special prosecutor from among the full-time district attorneys, assistant district attorneys, or deputy district attorneys who serve in judicial districts other than where the appointment is made; except that, upon the written approval of the chief justice of the supreme court, the judge may appoint any disinterested private attorney who is licensed to practice law in the state of Colorado to serve as the special prosecutor. Any special prosecutor appointed pursuant to this section shall be compensated as provided in section 20-1-308, C.R.S.

PART 3

PRELIMINARY HEARING

16-5-301. Preliminary hearing or waiver - dispositional hearing. (1) (a) Every person accused of a class 1, 2, or 3 felony or level 1 or level 2 drug felony by direct information or felony complaint has the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged in the information or felony complaint was committed by the defendant. In addition, only those persons accused of a class 4, 5, or 6 felony by direct information or felony complaint which felony requires mandatory sentencing or is a crime of violence as defined in section 18-1.3-406, C.R.S., or is a sexual offense under part 4 of article 3 of title 18, C.R.S., shall have the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged in the information or felony complaint was committed by the defendant. The procedure to be followed in asserting the right to a preliminary hearing and

the time within which demand therefor must be made, as well as the time within which the hearing, if demanded, shall be had, shall be as provided by applicable rule of the supreme court of Colorado. A failure to observe and substantially comply with such rule shall be deemed a waiver of this right to a preliminary hearing.

(b) (I) No person accused of a class 4, 5, or 6 felony or level 3 or level 4 drug felony by direct information or felony complaint, except those which require mandatory sentencing or which are crimes of violence as defined in section 18-1.3-406, C.R.S., or which are sexual offenses under part 4 of article 3 of title 18, C.R.S., shall have the right to demand or receive a preliminary hearing; except that such person shall participate in a dispositional hearing for the purposes of case evaluation and potential resolution.

(II) Any defendant accused of a class 4, 5, or 6 felony or level 3 or level 4 drug felony who is not otherwise entitled to a preliminary hearing pursuant to subparagraph (I) of this paragraph (b), may demand and shall receive a preliminary hearing within a reasonable time pursuant to paragraph (a) of this subsection (1), if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing.

(III) The chief justice of the Colorado supreme court is encouraged to promulgate rules defining the term "dispositional hearing" for purposes of this paragraph (b), section 18-1-404 (2), C.R.S., and section 19-2-705 (1.5), C.R.S.

(2) If a person is accused of an unlawful sexual offense classified as a felony, upon the request of any party to the proceeding, the court may exclude from the preliminary hearing any member of the general public. In making a ruling for exclusion, the court shall:

(a) Set forth sufficient findings of fact and conclusions of law to support the order; and

(b) Make its order sufficiently narrow to protect the requesting party's compelling interest considering any reasonable alternative to exclusion for the entire hearing of all members of the general public.

(3) The court may exempt a victim's advocate from any order entered pursuant to subsection (2) of this section. For the purposes of this section, "victim's advocate" means any person whose regular or volunteer duties include the support of an alleged victim of physical or sexual abuse or assault.

PART 4

STATUTE OF LIMITATIONS

16-5-401. Limitation for commencing criminal proceedings and juvenile delinquency proceedings. (1) (a) Except as otherwise provided by statute applicable to specific offenses, delinquent acts, or circumstances, no adult person or juvenile shall be prosecuted, tried, or punished for any offense or delinquent act unless the indictment, information, complaint, or petition in delinquency is filed in a court of competent jurisdiction or a summons and complaint or penalty assessment notice is served upon the defendant or juvenile within the period of time

after the commission of the offense or delinquent act as specified below:

Murder, kidnapping, treason, any sex offense against a child, and any forgery regardless of the penalty provided:

No limit

Attempt, conspiracy, or solicitation to commit murder; attempt, conspiracy, or solicitation to commit kidnapping; attempt, conspiracy, or solicitation to commit treason; attempt, conspiracy, or solicitation to commit any sex offense against a child; and attempt, conspiracy, or solicitation to commit any forgery regardless of the penalty provided:

No limit

Vehicular homicide, except as described in paragraph (a.5) of this subsection (1); leaving the scene of an accident that resulted in the death of a person:

Five years

Other felonies:

Three years

Misdemeanors:

Eighteen months

Class 1 and 2 misdemeanor traffic offenses:

One year

Petty offenses:

Six months

(a.5) The period of time during which an adult person or juvenile may be prosecuted for the offense of vehicular homicide, as described in section 18-3-106, C.R.S., and leaving the scene of an accident that resulted in the death of a person, as described in section 42-4-1601 (2) (c), C.R.S., when both offenses are alleged to have occurred as part of the same criminal episode in the same indictment, information, complaint, or petition in delinquency filed in a court of competent jurisdiction is ten years.

(b) Repealed.

(c) For purposes of this section:

(I) "Delinquent act" has the same meaning as defined in section 19-1-103 (36), C.R.S.

(II) "Juvenile" means a child as defined in section 19-1-103 (18), C.R.S.

(III) "Petition in delinquency" means any petition filed by a district attorney pursuant to section 19-2-512, C.R.S.

(IV) "Sex offense against a child" means any "unlawful sexual offense", as defined in section 18-3-411 (1), C.R.S., that is a felony.

(1.5) (a) Except as otherwise provided in paragraph (b) of this subsection (1.5), the provisions of paragraph (a) of subsection (1) of this section concerning sex offenses against children shall apply to offenses and delinquent acts committed on or after July 1, 1996.

(b) The provisions of paragraph (a) of subsection (1) of this section concerning sex offenses against children shall apply to an offense or delinquent act committed before July 1,

1996, if the applicable statute of limitations, as it existed prior to July 1, 2006, has not yet run on July 1, 2006.

(c) It is the intent of the general assembly in enacting the provisions of paragraph (a) of subsection (1) of this section concerning sex offenses against children to apply an unlimited statute of limitations to sex offenses against children committed on or after July 1, 1996, and to sex offenses against children committed before July 1, 1996, for which the applicable statute of limitations in effect prior to July 1, 2006, has not yet run on July 1, 2006.

(2) The time limitations imposed by this section shall be tolled if the adult offender or juvenile is absent from the state of Colorado, and the duration of such absence, not to exceed five years, shall be excluded from the computation of the time within which any complaint, information, indictment, or petition in delinquency must otherwise be filed or returned.

(3) (a) The period within which a prosecution must be commenced does not include any period in which a prosecution is pending against the adult defendant or juvenile for the same conduct, even if the indictment, information, complaint, or petition in delinquency which commences the prosecution is quashed or the proceedings thereon are set aside or are reversed on appeal.

(b) The period within which a prosecution must be commenced does not include any period in which a prosecution is pending against the adult defendant or juvenile for the same conduct, even if filed in a court without jurisdiction, when based on a reasonable belief the court possesses jurisdiction.

(4) When an offense or delinquent act is based on a series of acts performed at different times, the period of limitation prescribed by this code or by the "Colorado Securities Act", article 51 of title 11, C.R.S., starts at the time when the last act in the series of acts is committed.

(4.5) The period within which a prosecution must be commenced begins to run upon discovery of the criminal act or the delinquent act for:

(a) Offenses relating to the "Uniform Commercial Code", pursuant to part 5 of article 5 of title 18, C.R.S.;

(b) Computer crime, pursuant to article 5.5 of title 18, C.R.S.;

(c) Theft, pursuant to section 18-4-401, C.R.S.;

(d) Theft of trade secrets, pursuant to section 18-4-408, C.R.S.;

(e) Defacing or destruction of written instruments, pursuant to section 18-4-507, C.R.S.;

(f) Criminal simulation, pursuant to section 18-5-110, C.R.S.;

(g) Obtaining signature by deception, pursuant to section 18-5-112, C.R.S.;

(h) Criminal impersonation, pursuant to section 18-5-113, C.R.S.;

(i) Offering a false instrument for recording, pursuant to section 18-5-114, C.R.S.;

(j) Dual contracts to induce loan, pursuant to section 18-5-208, C.R.S.;

(k) Issuing a false financial statement or obtaining a financial transaction device by false statements, pursuant to section 18-5-209, C.R.S.;

(l) Unlawful activity concerning the selling of land, pursuant to section 18-5-302, C.R.S.;

(m) Offenses relating to equity skimming, pursuant to part 8 of article 5 of title 18, C.R.S.;

(m.5) Offenses relating to identity theft, pursuant to part 9 of article 5 of title 18, C.R.S.;

(n) Offenses relating to bribery and corrupt influences, pursuant to part 3 of article 8 of title 18, C.R.S.;

(o) Offenses relating to abuse of public office, pursuant to part 4 of article 8 of title 18, C.R.S.;

(p) Offenses relating to perjury, pursuant to part 5 of article 8 of title 18, C.R.S.;

(q) Offenses relating to the "Colorado Organized Crime Control Act", pursuant to article 17 of title 18, C.R.S.;

(r) Unlawful concealment of transactions, pursuant to section 11-107-105, C.R.S.;

(s) Embezzlement or misapplication of funds, pursuant to section 11-107-107, C.R.S.;

(t) Unlawful acts or omissions relating to financial institutions, pursuant to section 11-107-108, C.R.S.;

(u) Repealed.

(v) Criminal offenses relating to savings and loan associations, pursuant to section 11-41-127, C.R.S.; and

(w) Criminal offenses relating to securities fraud, pursuant to part 5 of article 51 of title 11, C.R.S.

(5) The period of time during which an adult person or juvenile may be prosecuted shall be extended for an additional three years as to any offense or delinquent act charged under sections 18-8-302, 18-8-303, 18-8-306, 18-8-307, 18-8-402, 18-8-406, 18-8-407, 39-21-118, and 39-22-621 (3), C.R.S.

(6) Except as otherwise provided in paragraph (a) of subsection (1) of this section pertaining to sex offenses against children, the period of time during which an adult person or juvenile may be prosecuted shall be extended for an additional seven years as to any offense or delinquent act charged under section 18-3-402 or 18-6-403, C.R.S., or charged as criminal attempt, conspiracy, or solicitation to commit any of the acts specified in said sections.

(7) When the victim at the time of the commission of the offense or delinquent act is a child under fifteen years of age, the period of time during which an adult person or juvenile may be prosecuted shall be extended for an additional three years and six months as to a misdemeanor charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a misdemeanor.

(8) (a) Except as otherwise provided in paragraph (a) of subsection (1) of this section pertaining to sex offenses against children and except as otherwise provided in paragraphs (a.3) and (a.5) of this subsection (8), the period of time during which an adult person or juvenile may be prosecuted shall be ten years after the commission of the offense or delinquent act as to any offense or delinquent act:

(I) Charged under section 18-3-402, C.R.S., section 18-3-403, C.R.S., as said section existed prior to July 1, 2000, or section 18-6-403, C.R.S.;

(II) Charged as a felony under section 18-3-404, C.R.S.; or

(III) Charged as criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in subparagraphs (I) and (II) of this paragraph (a).

(a.3) Except as otherwise provided in paragraph (a) of subsection (1) of this section

concerning sex offenses against children, if the victim at the time of the commission of an offense or delinquent act is a child under eighteen years of age, the period of time during which an adult person or juvenile may be prosecuted shall be ten years after such victim reaches the age of eighteen years as to any offense or delinquent act:

(I) Charged as a felony under section 18-3-402, C.R.S., section 18-3-403, C.R.S., as said section existed prior to July 1, 2000, or section 18-3-404, C.R.S.; or

(II) Charged as criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in subparagraph (I) of this paragraph (a.3).

(a.5) Except as otherwise provided in paragraph (a) of subsection (1) of this section concerning sex offenses against children, in any case in which the identity of the defendant or juvenile is determined, in whole or in part, by patterned chemical structure of genetic information, and in which the offense has been reported to a law enforcement agency, as defined in section 26-1-114 (3) (a) (III) (B), C.R.S., within ten years after the commission of the offense, there shall be no limit on the period of time during which a person may be prosecuted after the commission of the offense as to any offense or delinquent act charged:

(I) Under section 18-3-402, C.R.S.;

(II) Under section 18-3-403, C.R.S., as said section existed prior to July 1, 2000;

(III) Under any other criminal statute if the offense is a felony or would be a felony if committed by an adult and is based on the same act or series of acts arising from the same criminal episode as the offense or delinquent act charged in subparagraph (I) of this paragraph (a.5); except that this subparagraph (III) does not apply if the court finds that there is no probable cause for the offense or delinquent act charged in subparagraph (I) of this paragraph (a.5); or

(IV) As criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in subparagraph (I), (II), or (III) of this paragraph (a.5).

(b) This subsection (8) shall apply to offenses and delinquent acts committed on or after July 1, 1984; except that subparagraph (III) of paragraph (a.5) of this subsection (8) applies to offenses and delinquent acts committed on or after July 1, 2011.

(9) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which an adult person or juvenile may be prosecuted shall be five years after the commission of the offense or delinquent act as to a misdemeanor charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a misdemeanor. This subsection (9) shall apply to offenses and delinquent acts committed on or after January 1, 1986.

(10) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which an adult person or juvenile may be prosecuted shall be three years after the date of the affected election as to a charge of any violation of any provision of the "Fair Campaign Practices Act", article 45 of title 1, C.R.S., or any criminal attempt, conspiracy, or solicitation to violate any provision of the "Fair Campaign Practices Act". This subsection (10) shall apply to offenses and delinquent acts committed on or after July 1, 1991.

(11) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which an adult person or juvenile may be prosecuted shall be three years after the discovery of the offense or delinquent act as to any offense or delinquent act charged under section 18-4-408, C.R.S. This subsection (11) shall apply to offenses and delinquent acts

committed on or after July 1, 1998.

(12) The applicable period of limitations specified in subsection (1) of this section shall not apply to charges of offenses or delinquent acts brought to facilitate the disposition of a case, or to lesser included or non-included charges of offenses or delinquent acts given to the court or a jury at a trial on the merits, by the accused.

16-5-401.1. Legislative intent in enacting section 16-5-401 (6) and (7). (1) The intent of the general assembly in enacting section 16-5-401 (6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses and delinquent acts specified in said subsections committed on or after July 1, 1979.

(2) (Deleted by amendment, L. 94, p. 1050, § 4, effective July 1, 1994.)

16-5-402. Limitation for collateral attack upon trial judgment. (1) Except as otherwise provided in subsection (2) of this section, no person who has been convicted as an adult or who has been adjudicated as a juvenile under a criminal statute of this or any other state of the United States shall collaterally attack the validity of that conviction or adjudication unless such attack is commenced within the applicable time period, as provided in this subsection (1), following the date of said conviction, or for purposes of juvenile adjudication the applicable time period will begin at the time of the juvenile's eighteenth birthday:

All class 1 felonies:	No limit
All other felonies:	Three years
Misdemeanors:	Eighteen months
Petty offenses:	Six months

(1.5) If an appellate court can determine on the face of the motion, files, and record in a case that a collateral attack is outside the time limits specified in subsection (1) of this section, the appellate court may deny relief on that basis, regardless of whether the issue of timeliness was raised in the trial court.

(2) In recognition of the difficulties attending the litigation of stale claims and the potential for frustrating various statutory provisions directed at repeat offenders, former offenders, and habitual offenders, the only exceptions to the time limitations specified in subsection (1) of this section shall be:

(a) A case in which the court entering judgment of conviction or entering adjudication did not have jurisdiction over the subject matter of the alleged offense;

(b) A case in which the court entering judgment of conviction or entering adjudication did not have jurisdiction over the person of the defendant or juvenile;

(c) Where the court hearing the collateral attack finds by a preponderance of the evidence that the failure to seek relief within the applicable time period was caused by an adjudication of incompetence or by commitment of the defendant or juvenile to an institution for treatment as a person with a mental illness; or

(d) Where the court hearing the collateral attack finds that the failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.

(3) Repealed.

(4) For purposes of this section:

(a) "Adjudication", except as used in paragraph (c) of subsection (2) of this section, includes "adjudicated" and has the same meaning as defined in section 19-1-103 (2), C.R.S.

(b) "Juvenile" means a child as defined in section 19-1-103 (18), C.R.S.

PART 5

INCARCERATION

16-5-501. Prosecuting attorney - incarceration - legal representation and supporting services at state expense. (Repealed)

ARTICLE 6

Change of Venue and
Disqualification of Judge

PART 1

CHANGE OF VENUE

16-6-101. Grounds for change of venue. (1) The place of trial may be changed:

(a) When a fair trial cannot take place in the county or district in which the trial is pending; or

(b) When a more expeditious trial may be had by a change in the place of trial from one county to another; or

(c) When the parties stipulate to a change in the place of trial to another county in the same judicial district or to a county in an adjoining judicial district.

16-6-102. Motion for change of venue. (1) A motion for change of venue must be accompanied by one or more affidavits setting forth the facts upon which the defendant relies or by a stipulation of the parties.

(2) Whether circumstances exist requiring, in the interest of justice, a change in the place of trial is a question to be determined by the court in its sound discretion.

16-6-103. Change of venue where offense committed in two or more counties. Where a prosecution has been commenced in one county, the court, for good cause shown, may transfer the proceeding to another county within the same judicial district if it is shown that the offense was committed in more than one county within the same judicial district and if the court is satisfied that the interests of justice would be served by transferring the action to the other county.

16-6-103.5. Plea of guilty to offenses committed in two or more counties. (1) Any person charged with crimes in more than one county of this state may apply to the district attorney of one of said counties to be charged with all crimes so that he may enter into a disposition and be sentenced for them in that single county. The application shall contain a description of all charged crimes and the name of the county in which each was committed.

(2) Upon receipt of the application, the district attorney shall prepare an information charging all the charged crimes and naming in each count the county where each was committed. He shall send a copy of the information to the district attorney of each other county in which the defendant stands charged, together with a statement that the defendant has applied to enter into a disposition in the county of application. Upon receipt of the information and statement, the district attorney of the other county may execute a consent in writing allowing the defendant to enter a plea of guilty in the county to which application has been made to the crime charged in the information and committed in the other county and send it to the district attorney who prepared the information.

(3) If necessary, the district attorney shall amend the information so that it includes only the offenses for which he has received written consent from the district attorney of other counties, and he shall file the information in any court of his county having jurisdiction to try or accept a plea of guilty to the most serious crime alleged therein. The defendant then may enter a plea of guilty to all offenses alleged to have been committed in the county where the court is located and to all offenses alleged to have been committed in other counties as to which consents have been executed pursuant to subsection (2) of this section. Before entering his plea of guilty, the defendant shall waive in writing any right to be tried in the county where the crime was committed. The district attorney of the county where the crime was committed need not be present when the plea is made, but his written consent shall be filed with the court.

(4) Thereupon the court shall enter such judgment, the same as if all the crimes charged were alleged to have been committed in the county where the court is located, whether or not the court has jurisdiction to try all those crimes to which the defendant has pleaded guilty under this section.

(5) The clerk of the court in the county where the plea is made shall file a copy of the judgment of conviction with the clerk in each county where a crime covered by the plea was committed. The district attorney in each of said counties shall then move to dismiss any charges

covered by the plea of guilty which are pending against the defendant in his county, and the same shall thereupon be dismissed.

16-6-104. Application of rules of criminal procedure. Except as otherwise provided by sections 16-6-101 to 16-6-103, the filing of an application for change of venue and all proceedings relating thereto are governed by the provisions of applicable rules of criminal procedure adopted by the supreme court of Colorado.

PART 2

DISQUALIFICATION OF JUDGE

16-6-201. Disqualification of judge. (1) A judge of a court of record shall be disqualified to hear or try a case if:

(a) He is related to the defendant or to any attorney of record or attorney otherwise engaged in the case; or

(b) The offense charged is alleged to have been committed against the person or property of the judge or of some person related to him; or

(c) He has been of counsel in the case; or

(d) He is in any way interested or prejudiced with respect to the case, the parties, or counsel.

(2) Any judge who knows of circumstances which disqualify him in a case shall, on his own motion, disqualify himself.

(3) A motion for change of judge on any ground must be verified and supported by the affidavits of at least two credible persons not related to the defendant, stating facts showing the existence of grounds for disqualification. If the verified motion and supporting affidavits state facts showing grounds for disqualification, the judge must enter an order disqualifying himself. After disqualifying himself, the judge may require a full hearing upon the issues raised by the affidavits and shall request that another judge conduct the hearing. The other judge shall make findings of fact with regard thereto, and such findings shall be included as a part of the trial court record.

(4) The disqualified judge shall certify the need for a judge to the chief justice of the Colorado supreme court, who shall assign a judge to the case.

(5) The term "related", when used in this section, means related within the third degree by blood, adoption, or marriage.

ARTICLE 7

Separate Trial - Arraignment - Plea Agreements -
Deferred Prosecution and Deferred Sentencing

PART 1

SEPARATE TRIAL - ALIBI NOTICE

16-7-101. Separate trial of joint defendants. When two or more defendants are jointly indicted or informed against for any offense and there is material evidence, not relating to reputation, which is admissible against one or some of them but which is not admissible against all of them if they are tried separately and which is prejudicial to those against whom it is not admissible, those against whom such evidence is admissible shall be tried separately upon motion of any of those against whom the evidence is not admissible. In all other cases, defendants jointly prosecuted shall be tried separately or jointly in the discretion of the court.

16-7-102. Required notice of defense of alibi. If the defendant intends to introduce evidence that the defendant was at a place other than the location of the offense, the defendant shall serve upon the prosecuting attorney as soon as practicable, but not later than thirty-five days before trial, a statement in writing specifying the place where the defendant claims to have been and the names and addresses of the witnesses the defendant will call to support the defense of alibi. Upon receiving the defendant's statement, the prosecuting attorney shall advise the defendant of the names and addresses of any additional witnesses who may be called to refute such alibi as soon as practicable after the names of such witnesses become known. Neither the prosecuting attorney nor the defendant shall be permitted at the trial to introduce evidence inconsistent with the specification statement unless the court for good cause and upon just terms permits the specification statement to be amended. If the defendant fails to make the specification required by this section, the court shall exclude evidence offered in support of the defense of alibi unless the court finds upon good cause shown that such evidence should be admitted in the interest of justice.

PART 2

ARRAIGNMENT

16-7-201. Place of arraignment. The defendant shall be arraigned in the court having trial jurisdiction in which the indictment, information, or complaint is filed, unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

16-7-202. Presence of defendant. (1) If the offense charged is a felony, a level 1 drug misdemeanor, or a class 1 misdemeanor or if the maximum penalty for the offense charged is more than one year's imprisonment, the defendant must be personally present for arraignment; except that the court, for good cause shown, may accept a plea of not guilty made by an attorney representing the defendant without requiring the defendant to be personally present. In all prosecutions for lesser offenses, the defendant may appear by his or her attorney who may enter a plea on his or her behalf. If the defendant appears personally for a charge that is not in title 42, C.R.S., the court may advise the defendant of the possibility that restorative justice practices may be part of a sentence, if available in the jurisdiction and requested by the victim who has been informed about the restorative justice practices pursuant to section 24-4.1-303 (11) (g), C.R.S.

(2) If a plea of guilty or nolo contendere (no contest) is entered by counsel in the absence of the defendant, the court may command the appearance of the defendant in person for the imposition of sentence.

16-7-203. Irregularity of arraignment. No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to the irregularity.

16-7-204. Procedures on arraignment. The procedure to be followed upon arraignment shall be in compliance with the provisions of applicable rules of criminal procedure adopted by the supreme court of Colorado.

16-7-205. Pleas authorized on arraignment. (1) A defendant personally, or, where permissible, by counsel may orally enter:

(a) A plea of guilty; or

(b) A plea of not guilty; or

(c) A plea of nolo contendere (no contest) with the consent of the court; or

(d) A plea of not guilty by reason of insanity, in which event a not guilty plea may also be entered.

16-7-206. Guilty pleas - procedure and effect. (1) Every person charged with an offense shall be permitted to tender a plea of guilty to that offense if the following conditions have been satisfied:

(a) The court shall have advised the defendant that if the plea is accepted the defendant shall be determined to have waived his right to trial by jury on all issues including the determination of the penalty to be assessed, and the court shall also have advised the defendant as to the maximum and minimum penalties that the court may impose.

(b) In class 1 felonies or where the plea of guilty is to a lesser included offense, a written

consent has been filed with the court by the district attorney.

(c) In all felony, level 1 drug misdemeanor, and class 1 misdemeanor cases, the defendant shall be represented by counsel or waive his right thereto in open court, and the guilty plea shall be tendered in open court by the defendant in the presence of counsel, if any.

(2) The refusal or consent of the district attorney or the court to accept a plea of guilty to the charge shall not be a basis for assignment of error, and such refusal or acceptance by the district attorney or court is final.

(3) The acceptance by the court of a plea of guilty acts as a waiver by the defendant of the right to trial by jury on all issues including the determination of the penalty to be assessed, and the acceptance of such plea also acts as a conviction for the offense.

16-7-207. Court's duty to inform on first appearance in court and on pleas of guilty. (1) At the first appearance of the defendant in court or upon arraignment, whichever is first in time, it is the duty of the judge to inform the defendant and make certain that the defendant understands the following:

(a) The defendant need make no statement, and any statement made can and may be used against him or her.

(b) The defendant has a right to counsel.

(c) If the defendant is an indigent person, he or she may make application for a court-appointed attorney, and, upon payment of the application fee, he or she will be assigned counsel as provided by law or applicable rule of criminal procedure.

(d) Any plea the defendant makes must be voluntary on his or her part and not the result of undue influence or coercion on the part of anyone.

(e) The defendant has a right to bail, if the offense is bailable, and the amount of bail that has been set by the court.

(f) The defendant has a right to a jury trial.

(g) The nature of the charges against the defendant.

(2) The court shall not accept a plea of guilty or nolo contendere (no contest) without first determining that the defendant is advised of all the matters set forth in subsection (1) of this section and also determining:

(a) That the defendant understands the nature of the charge and the elements of the offense to which he is pleading and the effect of his plea;

(b) That the plea is voluntary on defendant's part and is not the result of undue influence or coercion on the part of anyone;

(c) That he understands the right to trial by jury;

(d) That he understands the possible penalty or penalties and the possible places of incarceration;

(e) That the defendant understands that the court will not be bound by any representations made to the defendant by anyone concerning the penalty to be imposed or the granting or the denial of probation, unless the representations are included in a formal plea agreement approved by the court and supported by the findings of the presentence report, if any; and

(f) That there is a factual basis for the plea. If the plea is entered as a result of a plea agreement, the court shall explain to the defendant and satisfy itself that the defendant understands the basis for the plea agreement, and the defendant may then waive the establishment of a factual basis for the particular charge to which he pleads guilty.

16-7-208. Failure or refusal to plead. If a defendant refuses to plead, or if the court refuses to accept a plea of guilty or a plea of nolo contendere (no contest), or if a corporation fails to appear, the court shall enter a plea of not guilty. If for any reason a plea has not been entered, the case shall for all purposes be considered as one in which a plea of not guilty has been entered.

PART 3

PLEA DISCUSSIONS AND PLEA AGREEMENTS

16-7-301. Propriety of plea discussions and plea agreements. (1) Where it appears that the effective administration of criminal justice will thereby be served, the district attorney may engage in plea discussions for the purpose of reaching a plea agreement. The district attorney should engage in plea discussions or reach plea agreements with the defendant only through or in the presence of defense counsel except where the defendant is not eligible for appointment of counsel because the defendant is not indigent or the charged offense does not include a possible sentence of incarceration or because the defendant refuses appointment of counsel and has not retained counsel.

(2) The district attorney may agree to one or more of the following, depending upon the circumstances of the individual case:

(a) To make or not to oppose favorable recommendations concerning the sentence to be imposed if the defendant enters a plea of guilty or nolo contendere (no contest);

(b) To seek or not to oppose the dismissal of an offense charged if the defendant enters a plea of guilty or nolo contendere (no contest) to another offense reasonably related to the defendant's conduct;

(c) To seek or not to oppose the dismissal of other charges or not to prosecute other potential charges against the defendant if the defendant enters a plea of guilty or nolo contendere (no contest);

(d) To consent to diversion, as provided in section 18-1.3-101, C.R.S.;

(e) To consent to deferred sentencing, as provided in section 18-1.3-102, C.R.S.

(3) Defendants whose situations are similar should be afforded similar opportunities for plea agreement.

(4) Repealed.

(5) Any plea agreement in a case involving a plea to a violation of article 18 of title 18, C.R.S., may not require a waiver by the defendant of the right to petition to have the defendant's criminal conviction records sealed pursuant to part 3 of article 72 of title 24, C.R.S.

16-7-302. Responsibilities of the trial judge with respect to plea discussions and agreements. (1) The trial judge shall not participate in plea discussions.

(2) If a tentative plea agreement has been reached which contemplates entry of a plea of guilty or nolo contendere (no contest) in the expectation that other charges before that court will be dismissed or that sentence concessions will be granted, the trial judge may, upon request of the parties, permit the disclosure to him of the tentative agreement and the reasons therefor in advance of the time for tender of the plea. He may then indicate to the district attorney and defense counsel or defendant whether he will concur in the proposed disposition if the information in the presentence report is consistent with the representations made to him. If the trial judge concurs but later decides that the final disposition should not include the charge or sentence concessions contemplated by the plea agreement, he shall so advise the defendant and then call upon the defendant to either affirm or withdraw his plea of guilty or nolo contendere (no contest).

(3) Notwithstanding the reaching of a plea agreement between the district attorney and defense counsel or defendant, the judge in every case should exercise an independent judgment in deciding whether to grant charge and sentence concessions.

16-7-303. Fact of discussion and agreement not admissible. Except as to proceedings resulting from a plea of guilty or nolo contendere (no contest) which is not withdrawn, the fact that the defendant or his defense counsel and the district attorney engaged in plea discussions or made a plea agreement shall not be received in evidence against or in favor of the defendant in any criminal or civil action or administrative proceeding.

16-7-304. Charges for bad checks. The department or agency supervising the collection of restitution agreed to as a condition of a plea agreement, including dismissal of a charge, may assess a charge of fifteen dollars to a defendant for collection of each bad check or each bad check received as a restitution payment. For the purposes of this section, "bad check" means a check or similar sight order for the payment of money which is dishonored by the bank or other drawee because the issuer does not have sufficient funds upon deposit with the bank or other drawee to pay the check or order upon presentation within thirty days after issue.

PART 4

DEFERRED PROSECUTION AND DEFERRED SENTENCING

16-7-401. Deferred prosecution. (Repealed)

16-7-402. Counseling or treatment for alcohol or drug abuse. (Repealed)

16-7-403. Deferred sentencing of defendant. (Repealed)

16-7-403.5. Deferred sentencing - mentally ill defendants charged with certain misdemeanors - demonstration program - repeal. (Repealed)

16-7-403.7. Deferred sentencing - drug offenders - legislative declaration - demonstration program - repeal. (Repealed)

16-7-404. Charges for bad checks. The department or agency supervising the collection of restitution ordered as a condition of a deferred prosecution or deferred sentence pursuant to this part 4 may assess a charge of fifteen dollars to a defendant for collection of each bad check or each bad check received as a restitution payment. For the purposes of this section, "bad check" means a check or similar sight order for the payment of money which is dishonored by the bank or other drawee because the issuer does not have sufficient funds upon deposit with the bank or other drawee to pay the check or order upon presentation within thirty days after issue.

ARTICLE 8

Insanity - Release

PART 1

GENERAL PROVISIONS

16-8-101. Insanity defined - offenses committed before July 1, 1995. (1) The applicable test of insanity shall be, and the jury shall be so instructed: "A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable. But care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives, and kindred evil conditions, for when the act is induced by any of these causes the person is accountable to the law.".

(2) The term "diseased or defective in mind", as used in subsection (1) of this section, does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial

conduct.

(3) This section shall apply to offenses committed before July 1, 1995.

16-8-101.3. Legislative intent in enacting section 16-8-101.5 and in making conforming amendments. The intent of the general assembly in enacting section 16-8-101.5 and making conforming amendments to sections 16-8-101 to 16-8-104, 16-8-106, 16-8-110, 16-8-114, 16-8-115, and 16-8-120 in 1995, and in enacting clarifying provisions in this section and sections 16-8-104.5 and 16-8-105.5 and making conforming amendments to sections 16-8-105 and 16-8-107 and sections 18-1-802 and 18-1-803, C.R.S., in 1996, was to combine the defense of not guilty by reason of insanity and the affirmative defense of impaired mental condition into the affirmative defense of not guilty by reason of insanity and to create a unitary process for hearing the issues raised by said affirmative defense to apply to offenses committed on or after July 1, 1995.

16-8-101.5. Insanity defined - offenses committed on and after July 1, 1995. (1) The applicable test of insanity shall be:

(a) A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable; except that care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions, for, when the act is induced by any of these causes, the person is accountable to the law; or

(b) A person who suffered from a condition of mind caused by mental disease or defect that prevented the person from forming a culpable mental state that is an essential element of a crime charged, but care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions because, when the act is induced by any of these causes, the person is accountable to the law.

(2) As used in subsection (1) of this section:

(a) "Diseased or defective in mind" does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(b) "Mental disease or defect" includes only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance but does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) This section shall apply to offenses committed on or after July 1, 1995.

16-8-102. Other definitions. As used in this article, unless the context otherwise requires:

(1) and (2) Repealed.

(2.5) "Forensic psychologist" means a licensed psychologist who is board certified in forensic psychology by the American board of professional psychology or who has completed a fellowship in forensic psychology meeting criteria established by the American board of forensic psychology.

(2.7) (a) "Impaired mental condition" means a condition of mind, caused by mental disease or defect that prevents the person from forming the culpable mental state that is an essential element of any crime charged. For the purposes of this subsection (2.7), "mental disease or defect" includes only those severely abnormal mental conditions which grossly and demonstrably impair a person's perception or understanding of reality and which are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(b) This subsection (2.7) shall apply only to offenses committed before July 1, 1995.

(3) Repealed.

(4) "Ineligible for release" means the defendant is suffering from a mental disease or defect which is likely to cause him to be dangerous to himself, to others, or to the community, in the reasonably foreseeable future, if he is permitted to remain at liberty.

(4.5) "Ineligible to remain on conditional release" means the defendant has violated one or more conditions in his release, or the defendant is suffering from a mental disease or defect which is likely to cause him to be dangerous to himself, to others, or to the community in the reasonably foreseeable future, if he is permitted to remain on conditional release.

(4.7) "Mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(5) "Release examination" means a court-ordered examination of a defendant directed to developing evidence relevant to determining whether he is eligible for release.

(6) "Release hearing" means a hearing for the purpose of determining whether a defendant previously committed to the department of human services, following a verdict of not guilty by reason of insanity, has become eligible for release.

(7) Repealed.

(8) "Sanity examination" means a court-ordered examination of a defendant who has entered a plea of not guilty by reason of insanity, directed to developing information relevant to determining the sanity or insanity of the defendant at the time of the commission of the act with which he is charged and also his competency to proceed.

16-8-103. Pleading insanity as a defense. (1) (a) The defense of insanity may only be raised by a specific plea entered at the time of arraignment; except that the court, for good cause shown, may permit the plea to be entered at any time prior to trial. The form of the plea shall be:

"Not guilty by reason of insanity"; and it must be pleaded orally either by the defendant or by the defendant's counsel. A defendant who does not raise the defense as provided in this section shall not be permitted to rely upon insanity as a defense to the crime charged but, when charged with a crime requiring a specific intent as an element thereof, may introduce evidence of the defendant's mental condition as bearing upon his or her capacity to form the required specific intent. The plea of not guilty by reason of insanity includes the plea of not guilty.

(b) This subsection (1) shall apply only to offenses committed before July 1, 1995.

(1.5) (a) The defense of insanity may only be raised by a specific plea entered at the time of arraignment; except that the court, for good cause shown, may permit the plea to be entered at any time prior to trial. The form of the plea shall be: "Not guilty by reason of insanity"; and it must be pleaded orally either by the defendant or by the defendant's counsel. The plea of not guilty by reason of insanity includes the plea of not guilty.

(b) This subsection (1.5) shall apply to offenses committed on or after July 1, 1995.

(2) If counsel for the defendant believes that a plea of not guilty by reason of insanity should be entered on behalf of the defendant but the defendant refuses to permit the entry of the plea, counsel may so inform the court. The court shall then conduct such investigation as it deems proper, which may include the appointment of psychiatrists or forensic psychologists to assist in examining the defendant and advising the court. After its investigation the court shall conduct a hearing to determine whether the plea should be entered. If the court finds that the entry of a plea of not guilty by reason of insanity is necessary for a just determination of the charge against the defendant, it shall enter the plea on behalf of the defendant, and the plea so entered shall have the same effect as though it had been voluntarily entered by the defendant himself or herself.

(3) If there has been no grand jury indictment or preliminary hearing prior to the entry of the plea of not guilty by reason of insanity, the court shall hold a preliminary hearing prior to the trial of the insanity issue. If probable cause is not established, the case shall be dismissed, but the court may order the district attorney to institute civil proceedings pursuant to article 65 of title 27, C.R.S., if it appears that the protection of the public or the accused requires it.

(4) Before accepting a plea of not guilty by reason of insanity, the court shall advise the defendant of the effect and consequences of the plea.

16-8-103.5. Impaired mental condition - when raised - procedure - legislative intent. (1) If the defendant intends to assert the affirmative defense of impaired mental condition, he shall indicate that intention to the court and to the prosecution at the time of arraignment; except that the court, for good cause shown, shall permit the defendant to inform the court and the prosecution of his intention to assert the affirmative defense of impaired mental condition at any time prior to trial.

(2) If counsel for the defendant believes that an assertion of the affirmative defense of impaired mental condition should be entered on behalf of the defendant but the defendant refuses to permit counsel to offer such evidence, counsel may so inform the court. The court shall then conduct such investigation as it deems proper, which may include the appointment of psychiatrists or forensic psychologists to assist in examining the defendant and advising the

court. After its investigation, the court shall conduct a hearing to determine whether evidence of impaired mental condition should be offered at trial. If the court finds that such a defense is necessary for a just determination of the charge against the defendant, it shall inform the prosecution that such defense shall be asserted at trial by the defendant and shall order the defendant's counsel to present evidence at trial on the defense of impaired mental condition.

(3) At the time at which the defendant announces his intention to assert the affirmative defense of impaired mental condition, the court shall advise the defendant of the effect and consequences of asserting the defense.

(4) When the defendant indicates his intention to assert the defense of impaired mental condition, the court shall order an examination of the defendant pursuant to section 16-8-106. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of persons, other than medical experts subject to the provisions of section 16-8-103.6, whom the parties intend to call as witnesses with regard to the affirmative defense of impaired mental condition.

(5) If the trier of fact finds the defendant not guilty by reason of impaired mental condition, pursuant to section 18-1-803 (3), C.R.S., the court shall commit the defendant to the custody of the department of human services until such time as he is found eligible for release, pursuant to the standards set forth in sections 16-8-115 and 16-8-120. The executive director of the department of human services shall designate the state facility at which the defendant shall be held for care and psychiatric treatment and may transfer the defendant from one institution to another if in the opinion of the director it is desirable to do so in the interest of the proper care, custody, and treatment of the defendant or the protection of the public or the personnel of the facilities in question.

(6) It is the intent of the general assembly that the assertion of the affirmative defense of impaired mental condition not be made in such a fashion that it is used to circumvent the requirements of disclosure specified in rule 16 of the Colorado rules of criminal procedure.

(7) A defendant may raise impaired mental condition only through an assertion of affirmative defense.

(8) This section shall apply only to offenses committed before July 1, 1995.

16-8-103.6. Waiver of privilege. (1) (a) A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, asserting the affirmative defense of impaired mental condition pursuant to section 16-8-103.5, or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S., waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for such 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 or 18-1.3-1302, C.R.S. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for such mental condition.

(b) This subsection (1) shall apply only to offenses committed before July 1, 1995.

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

(b) This subsection (2) shall apply to offenses committed on or after July 1, 1995.

16-8-103.7. Examination after entry of defenses of insanity and impaired mental condition. (1) (a) When, at the time of arraignment, the defense of insanity is raised, pursuant to section 16-8-103, and the defendant asserts his or her intention to raise the affirmative defense of impaired mental condition, pursuant to section 16-8-103.5, the court shall order one examination of the defendant with regard to both defenses pursuant to section 16-8-106.

(b) This subsection (1) shall apply only to offenses committed before July 1, 1995.

(2) (a) When, at the time of arraignment, the defense of insanity is raised pursuant to section 16-8-103, the court shall order an examination of the defendant with regard to the insanity defense pursuant to section 16-8-106.

(b) This subsection (2) shall apply to offenses committed on or after July 1, 1995.

(3) (a) When the defendant gives notice pursuant to section 16-8-107 (3) that he or she intends to introduce evidence in the nature of expert opinion concerning his or her mental condition, the court shall order an examination of the defendant pursuant to section 16-8-106.

(b) The provisions of this subsection (3) shall apply to offenses committed on or after July 1, 1999.

16-8-104. Separate trial of issues. The issues raised by the plea of not guilty by reason of insanity shall be tried separately to different juries, and the sanity of the defendant shall be tried first. This section shall apply only to offenses committed before July 1, 1995.

16-8-104.5. Single trial of issues. (1) The issues raised by the plea of not guilty by reason of insanity shall be treated as an affirmative defense and shall be tried at the same proceeding and before the same trier of fact as the charges to which not guilty by reason of insanity is offered as a defense.

(2) This section shall apply to offenses committed on or after July 1, 1995.

16-8-105. Procedure after plea for offenses committed before July 1, 1995. (1) When a plea of not guilty by reason of insanity is accepted, the court shall forthwith commit the defendant for a sanity examination, specifying the place and period of commitment.

(2) Upon receiving the report of the sanity examination, the court shall immediately set the case for trial to a jury on the issue raised by the plea of not guilty by reason of insanity. In all cases except class 1, class 2, and class 3 felonies, the defendant may waive jury trial by an express written instrument or announcement in open court appearing of record. If the court and the district attorney consent, jury trial may be waived in a class 1, class 2, or class 3 felony case. Every person is presumed to be sane; but, once any evidence of insanity is introduced, the people have the burden of proving sanity beyond a reasonable doubt.

(3) If the trier of fact finds the defendant was sane at the time of commission of the offense, the court, unless it has reason to believe that the defendant is incompetent to proceed or the question is otherwise raised as provided in section 16-8.5-102, shall immediately set the case for trial on the issues raised by the plea of not guilty. If the question of whether the defendant is incompetent to proceed is raised, the court shall follow the procedure set forth in section 16-8.5-103.

(4) If the trier of fact finds the defendant not guilty by reason of insanity, the court shall commit the defendant to the custody of the department of human services until such time as he is found eligible for release. The executive director of the department of human services shall designate the state facility at which the defendant shall be held for care and psychiatric treatment and may transfer the defendant from one institution to another if in the opinion of the director it is desirable to do so in the interest of the proper care, custody, and treatment of the defendant or the protection of the public or the personnel of the facilities in question.

(5) This section shall apply to offenses committed before July 1, 1995.

16-8-105.5. Procedure after plea for offenses committed on or after July 1, 1995. (1) When a plea of not guilty by reason of insanity is accepted, the court shall forthwith commit the defendant for a sanity examination, specifying the place and period of commitment.

(2) Upon receiving the report of the sanity examination, the court shall immediately set the case for trial. Every person is presumed to be sane; but, once any evidence of insanity is introduced, the people have the burden of proving sanity beyond a reasonable doubt.

(3) When the affirmative defense of not guilty by reason of insanity has been raised, the jury shall be given special verdict forms containing interrogatories. The trier of fact shall decide first the question of guilt as to felony charges that are before the court. If the trier of fact concludes that guilt has been proven beyond a reasonable doubt as to one or more of the felony charges submitted for consideration, the special interrogatories shall not be answered. Upon completion of its deliberations on the felony charges as previously set forth in this subsection (3), the trier of fact shall consider any other charges before the court in a similar manner; except that it shall not answer the special interrogatories regarding such charges if it has previously found

guilt beyond a reasonable doubt with respect to one or more felony charges. The interrogatories shall provide for specific findings of the jury with respect to the affirmative defense of not guilty by reason of insanity. When the court sits as the trier of fact, it shall enter appropriate specific findings with respect to the affirmative defense of not guilty by reason of insanity.

(4) If the trier of fact finds the defendant not guilty by reason of insanity, the court shall commit the defendant to the custody of the department of human services until such time as the defendant is found eligible for release. The executive director of the department of human services shall designate the state facility at which the defendant shall be held for care and psychiatric treatment and may transfer the defendant from one facility to another if in the opinion of the director it is desirable to do so in the interest of the proper care, custody, and treatment of the defendant or the protection of the public or the personnel of the facilities in question.

(5) This section shall apply to offenses committed on or after July 1, 1995.

16-8-106. Examinations and report. (1) All examinations ordered by the court in criminal cases shall be accomplished by the entry of an order of the court specifying the place where such examination is to be conducted and the period of time allocated for such examination. The defendant may be committed for such examination to the Colorado psychiatric hospital in Denver, the Colorado mental health institute at Pueblo, the place where he or she is in custody, or such other public institution designated by the court. In determining the place where such examination is to be conducted, the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the examination require designation of a different facility. The defendant shall be observed and examined by one or more psychiatrists or forensic psychologists during such period as the court directs. For good cause shown, upon motion of the prosecution or defendant, or upon the court's own motion, the court may order such further or other examination as is advisable under the circumstances. Nothing in this section shall abridge the right of the defendant to procure an examination as provided in section 16-8-108.

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

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

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

(3) (a) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists, forensic psychologists, and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists, forensic psychologists, or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity, eligibility for release, or impaired mental condition, and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

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

subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity or eligibility for release and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

(c) For offenses committed on or after July 1, 1999, when a defendant undergoes an examination pursuant to the provisions of paragraph (b) of this subsection (3) because the defendant has given notice pursuant to section 16-8-107 (3) that he or she intends to introduce expert opinion evidence concerning his or her mental condition, the physicians, forensic psychologists, 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 such statements and reactions entered into the formation of their opinions as to the mental condition of the defendant.

(4) A written report of the examination shall be prepared in triplicate and delivered to the clerk of the court which ordered it. The clerk shall furnish a copy of the report both to the prosecuting attorney and the counsel for the defendant.

(5) With respect to offenses committed before July 1, 1995, the report of examination shall include, but is not limited to:

(a) The name of each physician, forensic psychologist, or other expert who examined the defendant; and

(b) A description of the nature, content, extent, and results of the examination and any tests conducted; and

(c) A diagnosis and prognosis of the defendant's physical and mental condition; and

(d) (I) An opinion as to whether the defendant suffers from a mental disease or defect; and, if so,

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

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

(a) An opinion as to whether the defendant suffered from a mental disease or defect or from a condition of mind caused by mental disease or defect that prevented the person from forming the culpable mental state that is an essential element of any crime charged; and, if so,

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

(7) With respect to offenses committed on or after July 1, 1999, when a defendant has

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

(a) An opinion as to whether the defendant suffered from a mental disease or defect or from a condition of mind caused by mental disease or defect that affected the defendant's mental condition; and, if so,

(b) Separate opinions as to the defendant's mental condition including, but not limited to, whether the defendant was insane or is ineligible for release, as those terms are defined in this article, and, in any class 1 felony case, an opinion as to how the mental disease or defect or the condition of mind caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the court.

16-8-106.5. Competency evaluation advisory board - creation - membership - duties - rules - repeal. (Repealed)

16-8-107. Evidence. (1) (a) Except as provided in this subsection (1), no 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 against the defendant on the issues raised by a plea of not guilty, if the defendant is put to trial on those issues, except to rebut evidence of his or her mental condition introduced by the defendant to show incapacity to form a culpable mental state; and, in such case, that evidence may be considered by the trier of fact only as bearing upon the question of capacity to form a culpable mental state, and the jury, at the request of either party, shall be so instructed.

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

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

(1.5) (a) Except as otherwise provided in this subsection (1.5), 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 pursuant to section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible only as to the issues raised by the defendant's plea of not guilty by reason of insanity, and the jury, at the request of either party, shall be so instructed; except that, for offenses committed on or after July 1, 1999, such evidence shall also be admissible as to the defendant's mental condition if the defendant undergoes the

examination because the defendant has given notice pursuant to subsection (3) of this section that he or she intends to introduce expert opinion evidence concerning his or her mental condition.

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

(c) If the defendant testifies in his or her own behalf, the provisions of this section shall not bar any evidence used to impeach or rebut the defendant's testimony. This subsection (1.5) shall apply to offenses committed on or after July 1, 1995.

(2) In any trial or hearing concerning the defendant's mental condition, physicians, forensic psychologists, and other experts may testify as to their conclusions reached from their examination of hospital records, laboratory reports, X rays, electroencephalograms, and psychological test results if the material which they examined in reaching their conclusions is produced at the time of the trial or hearing.

(3) (a) In no event shall a court permit a defendant to introduce evidence relevant to the issue of insanity, as described in section 16-8-101.5, unless the defendant enters a plea of not guilty by reason of insanity, pursuant to section 16-8-103.

(b) Regardless of whether a defendant enters a plea of not guilty by reason of insanity pursuant to section 16-8-103, the defendant shall not be permitted to introduce evidence in the nature of expert opinion concerning his or her mental condition without having first given notice to the court and the prosecution of his or her intent to introduce such evidence and without having undergone a court-ordered examination pursuant to section 16-8-106. A defendant who places his or her mental condition at issue by giving such notice waives any claim of confidentiality or privilege as provided in section 16-8-103.6. Such notice shall be given at the time of arraignment; except that the court, for good cause shown, shall permit the defendant to inform the court and prosecution of the intent to introduce such evidence at any time prior to trial. Any period of delay caused by the examination and report provided for in section 16-8-106 shall be excluded, as provided in section 18-1-405 (6) (a), C.R.S., from the time within which the defendant must be brought to trial.

(c) The provisions of this subsection (3) shall apply to offenses committed on or after July 1, 1999.

16-8-108. Examination at instance of defendant. (1) If the defendant wishes to be examined by a psychiatrist, psychologist, or other expert of his own choice in connection with any proceeding under this article, the court, upon timely motion, shall order that the examiner chosen by the defendant be given reasonable opportunity to conduct the examination.

(2) A copy of any report of examination of the defendant made at the instance of the defense shall be furnished to the prosecution a reasonable time in advance of trial.

16-8-109. Testimony of lay witnesses. In any trial or hearing in which the mental

condition of the defendant is an issue, witnesses not specially trained in psychiatry or psychology may testify as to their observation of the defendant's actions and conduct, and as to conversations which they have had with him bearing upon his mental condition, and they shall be permitted to give their opinions or conclusions concerning the mental condition of the defendant.

16-8-110. Mental incompetency to proceed - effect - how and when raised. (Repealed)

16-8-111. Determination of incompetency to proceed. (Repealed)

16-8-112. Procedure after determination of competency or incompetency. (Repealed)

16-8-113. Restoration to competency. (Repealed)

16-8-114. Evidence concerning competency - inadmissibility.

(1) and (2) (Deleted by amendment, L. 2008, p. 1857, § 11, effective July 1, 2008.)

(3) (a) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity or the affirmative defense of impaired mental condition. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

16-8-114.5. Commitment - termination of proceedings. (Repealed)

16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition. (1) The court may order a release hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant. The court shall order a release hearing upon receipt of the report of the chief officer of the institution in which the defendant is committed that the defendant no longer requires hospitalization, as provided in section 16-8-116, or upon motion of the defendant made after one hundred eighty-two days following the date of the initial commitment order. Except for the first hearing following the initial commitment order, unless the court for good cause shown permits, the defendant is not entitled to a hearing within one year subsequent to a previous hearing.

(1.5) (a) Any victim of any crime or any member of such victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity or not guilty by reason of impaired mental condition, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if such victim or family member can reasonably be located. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) Any victim of any crime or any member of such victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if such victim or family member can reasonably be located. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

(2) (a) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different institution or by different experts. The court may order any additional or supplemental examination, investigation, or study which it deems necessary to a proper consideration and determination of the question of eligibility for release. The court shall set the matter for release hearing after it has received all of the reports which it has ordered under this section. When none of said reports indicates that the defendant is eligible for release, the defendant's request for release hearing shall be denied by the court if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that the defendant is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed under the provisions of article 36 of title 12, C.R.S., a psychologist licensed under the provisions of article 43 of title 12, C.R.S., a psychiatric technician licensed under the provisions of article 42 of title 12, C.R.S., a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker licensed under the provisions of part 4 of article 43 of title 12, C.R.S. The release hearing shall be to the court or, on demand by the defendant, to a jury of not to exceed six persons. At the release hearing, if any evidence of insanity is introduced, the defendant has the \pard softlineburden of proving restoration of sanity by a preponderance of the evidence; if any evidence of ineligibility for release by reason of impaired mental condition is introduced, the defendant has the burden of proving, by a preponderance of the evidence, that the defendant is eligible for release by no longer having an impaired mental condition. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different institution or by different experts. The court may order any additional or supplemental examination, investigation, or study that it deems necessary to a proper consideration and determination of the question of eligibility for release. The court shall set the matter for release hearing after it has received all of the reports that it has ordered under this section. When none of the reports indicates that the defendant is eligible for release, the

defendant's request for release hearing shall be denied by the court if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that the defendant is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed under the provisions of article 36 of title 12, C.R.S., a psychologist licensed under the provisions of article 43 of title 12, C.R.S., a psychiatric technician licensed under the provisions of article 42 of title 12, C.R.S., a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker licensed under the provisions of part 4 of article 43 of title 12, C.R.S. The release hearing shall be to the court or, on demand by the defendant, to a jury composed of not more than six persons. At the release hearing, if any evidence that the defendant does not meet the release criteria is introduced, the defendant has the burden of proving by a preponderance of the evidence that the defendant has no abnormal mental condition which would be likely to cause him or her to be dangerous either to himself or herself or to others or to the community in the reasonably foreseeable future. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

(3) (a) If the court or jury finds the defendant eligible for release, the court may impose such terms and conditions as the court determines are in the best interests of the defendant and the community, and the jury shall be so instructed. If the court or jury finds the defendant ineligible for release, the court shall recommit the defendant. The court's order placing the defendant on conditional release shall include notice that the defendant's conditional release may be revoked pursuant to the provisions of section 16-8-115.5.

(b) When a defendant is conditionally released, the chief officer of the institution in which the defendant is committed shall forthwith give written notice of the terms and conditions of such release to the executive director of the department of human services and to the director of any community mental health center which may be charged with continued treatment of the defendant. The director of such mental health center shall make written reports every three months to the executive director of the department of human services and to the district attorney for the judicial district where the defendant was committed and to the district attorney for any judicial district where the defendant may be required to receive treatment concerning the treatment and status of the defendant. Such reports shall include all known violations of the terms and conditions of the defendant's release and any changes in the defendant's mental status which would indicate that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5).

(c) A defendant who has been conditionally released remains under the supervision of the department of human services until the committing court enters a final order of unconditional release. When a defendant fails to comply with any conditions of his release requiring him to establish, maintain, and reside at a specific residence and his whereabouts have therefore become unknown to the authorities charged with his supervision or when the defendant leaves the state of Colorado without the consent of the committing court, the defendant's absence from supervision shall constitute escape, as defined in section 18-8-208, C.R.S. Such offense occurs in the county in which the defendant is authorized to reside.

(d) Any terms and conditions imposed by the court on the defendant's release and the

defendant's mental status shall be reviewed at least every twelve months unless the court sooner holds a release hearing as provided in this section.

(e) As long as the defendant is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all information, including clinical information regarding the defendant, among the department of human services, the appropriate community mental health centers, and appropriate district attorneys, law enforcement, and court personnel.

(4) (a) In addition to any terms and conditions of release imposed pursuant to subsection (3) of this section, a court shall order a defendant, as a condition of release, to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that:

(I) The defendant was found not guilty by reason of insanity on a charge of an offense involving unlawful sexual behavior; or

(II) The defendant was found not guilty by reason of insanity on a charge of any other offense, the underlying factual basis of which includes an offense involving unlawful sexual behavior.

(a.5) In addition to any terms and conditions of release imposed pursuant to subsection (3) of this section, a court may order a defendant, as a condition of release, to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that the chief officer of the institution in which the defendant has been committed recommends registration based on information obtained from the defendant during the course of treatment that indicates the defendant has committed an offense involving unlawful sexual behavior.

(b) The court's order placing the defendant on conditional release shall include notice of the requirement to register. The court's order, at a minimum, shall specify:

(I) The time period following release within which the defendant shall register with the local law enforcement agency;

(II) The time period following a change of residence within which the defendant shall reregister with the local law enforcement agency of the jurisdiction in which the defendant resides;

(III) The frequency with which the defendant must reregister with the local law enforcement agency of the jurisdiction in which the defendant resides to provide a periodic verification of the defendant's location;

(IV) Any other circumstances under which the defendant must reregister with the local law enforcement agency of the jurisdiction in which the defendant resides.

(c) Prior to release of any defendant who is required to register as a condition of release pursuant to this subsection (4), the department of human services shall obtain from the defendant the address at which the defendant plans to reside upon release. At least two days prior to release of the defendant, the department of human services shall notify the local law enforcement agency of the jurisdiction in which the defendant plans to reside upon release and the Colorado bureau of investigation of the anticipated release of the defendant and shall provide to the local law enforcement agency and the Colorado bureau of investigation the address at which the defendant plans to reside, a copy of the court order establishing the condition to register pursuant to this section, and any other pertinent information concerning the defendant.

(d) If the defendant plans to reside within the corporate limits of any city, town, or city

and county, the defendant shall register at the office of the chief law enforcement officer of the city, town, or city and county. If the defendant plans to reside outside of such corporate limits, the defendant shall register at the office of the county sheriff of the county in which the defendant plans to reside.

(e) A defendant who registers with a local law enforcement agency as a condition of release pursuant to this subsection (4) shall register using forms provided by the local law enforcement agency and shall provide the information requested by the local law enforcement agency, including at a minimum a photograph and a complete set of fingerprints.

(f) The local law enforcement agency shall transmit any registrations received pursuant to paragraph (e) of this subsection (4) to the Colorado bureau of investigation within three business days following receipt. The Colorado bureau of investigation shall include any registration information received pursuant to this section in the central registry established pursuant to section 16-22-110, and shall specify that the information applies to a defendant required to register as a condition of release pursuant to this section. The forms completed by defendants required to register as a condition of release pursuant to this subsection (4) shall be confidential and shall not be open to inspection except as provided in paragraph (e) of subsection (3) of this section and except as provided for release of information to the public pursuant to sections 16-22-110 (6) and 16-22-112.

(g) As used in this subsection (4), "an offense involving unlawful sexual behavior" means any of the following offenses:

(I) (A) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(B) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(II) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(III) (A) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(B) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(IV) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(V) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(VI) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(VII) Enticement of a child, in violation of section 18-3-305, C.R.S.;

(VIII) Incest, in violation of section 18-6-301, C.R.S.;

(IX) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(X) Human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2), C.R.S.;

(XI) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(XII) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;

(XIII) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(XIV) Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.;

(XV) Pandering of a child, in violation of section 18-7-403, C.R.S.;
(XVI) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;
(XVII) Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.;
(XVIII) Pimping of a child, in violation of section 18-7-405, C.R.S.;
(XIX) Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.;

(XX) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.; or
(XXI) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in this paragraph (g).

(h) Any condition imposed pursuant to this subsection (4) shall be in addition to any conditions that may be imposed pursuant to subsection (3) of this section and shall be subject to monitoring, review, and enforcement in the same manner as any condition imposed pursuant to subsection (3) of this section.

(i) (I) Any defendant required to register as a condition of release pursuant to this subsection (4), upon completion of a period of not less than twenty years from the date the defendant is placed on conditional release, may petition the district court for an order that discontinues the requirement for such registration and removes the defendant's name from the central registry established pursuant to section 16-22-110. The court may issue such order only if the court makes written findings of fact that the defendant has neither been convicted nor found not guilty by reason of insanity of an offense involving unlawful sexual behavior subsequent to his or her conditional release and that the defendant would not pose an undue threat to the community if allowed to live in the community without registration.

(II) Upon the filing of a petition pursuant to this paragraph (i), the court shall set a date for a hearing on the petition. The defendant shall notify the local law enforcement agency with which the defendant is required to register and the prosecuting attorney for the jurisdiction in which the local law enforcement agency is located of the filing of the petition and the hearing date. Upon the victim's request, the court shall notify the victim of the filing of the petition and the hearing date. At the hearing, the court shall give opportunity to the victim to provide written or oral testimony. If the court enters an order discontinuing the defendant's duty to register, the defendant shall send a copy of the order to the local law enforcement agency and the Colorado bureau of investigation.

16-8-115.5. Enforcement and revocation of conditional release from commitment. (1) The terms and conditions imposed upon a defendant's release pursuant to section 16-8-115 (3) or (4) may be enforced as are any other orders of court.

(2) (Deleted by amendment, L. 94, p. 1423, §2, effective July 1, 1994.)

(3) Whenever the superintendent of the Colorado mental health institute at Pueblo has probable cause to believe that such defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), said superintendent shall notify the district attorney for the judicial district where the defendant was committed. The superintendent or the district attorney shall apply for a warrant to be directed to the sheriff or a peace officer in the jurisdiction in which the defendant resides or may be found commanding such sheriff or peace officer to take

custody of the defendant. The application shall include the order conditionally releasing the defendant pursuant to section 16-8-115 (3) and supporting documentation showing that defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5). The committing court and the district court for the tenth judicial district are authorized to issue such a warrant pursuant to the provisions of section 16-1-106. The superintendent shall mail a copy of the application to the committing court and the district attorney in the committing jurisdiction.

(4) The sheriff or peace officer to whom the warrant is directed pursuant to subsection (3) of this section shall take all necessary legal action to take custody of the defendant. A sheriff shall deliver the defendant immediately to the Colorado mental health institute at Pueblo which shall provide care and security for the defendant. If any other peace officer takes custody of the defendant, such peace officer shall deliver the defendant to the custody of the sheriff of the jurisdiction in which the defendant was found, and such sheriff shall comply with the provisions of this subsection (4).

(5) The Colorado mental health institute at Pueblo shall examine the defendant to evaluate the defendant's ability to remain on conditional release. The examination shall be consistent with the procedure provided in section 16-8-106. If the defendant refuses to submit to and cooperate with the examination, the committing court shall revoke the conditional release. The examination shall be completed within twenty-one days after the defendant has been delivered to the institute as a result of the defendant's arrest. The institute shall mail or deliver a written report of the examination to the committing court and the district attorney in the committing jurisdiction promptly after the examination is completed. The defendant may request an examination as provided in section 16-8-108.

(6) (a) The district attorney for the judicial district where the defendant was committed may file in the committing court a petition for the revocation of the defendant's conditional release. The petition shall set forth the name of the defendant, an allegation that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), and the substance of the evidence sustaining the allegation.

(b) If the district attorney for the committing judicial district does not file a petition for revocation, as provided in paragraph (a) of this subsection (6), within ten days after the defendant is delivered to the Colorado mental health institute at Pueblo, the defendant shall be immediately released from custody; except that, upon a showing of good cause by the district attorney, the court may grant a reasonable extension of time to file the petition for revocation.

(c) The court may dismiss revocation proceedings at any time upon receipt of a written request for dismissal from the district attorney who filed the petition for revocation.

(d) The district attorney for the committing judicial district shall ensure that the defendant receives a copy of the petition for revocation prior to any appearance by the defendant before the court.

(7) (Deleted by amendment, L. 97, p. 1554, § 9, effective July 1, 1997.)

(8) Within thirty-five days after the defendant is delivered to the Colorado mental health institute in Pueblo pursuant to subsection (4) of this section, and if the defendant is not released from custody pursuant to paragraph (b) of subsection (6) of this section, the committing court shall hold a hearing on the petition for revocation of conditional release. At such hearing, any

evidence having probative value shall be admissible, but the defendant shall be permitted to offer testimony and to call, confront, and cross-examine witnesses. If the court finds by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), it shall enter an order revoking the defendant's conditional release and recommitting the defendant. At any time thereafter, the defendant may be afforded a release hearing as provided in section 16-8-115. If the court does not find by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), it shall dismiss the petition and reinstate or modify the original order of conditional release.

16-8-116. Release by hospital authority. (1) When the chief officer of the institution in which a defendant has been committed after a finding of not guilty by reason of insanity determines that the defendant no longer requires hospitalization because he no longer suffers from a mental disease or defect which is likely to cause him to be dangerous to himself, to others, or to the community in the reasonably foreseeable future, such chief officer shall report this determination to the court that committed the defendant and the prosecuting attorney, including in the report a report of examination equivalent to a release examination. The clerk of the court shall forthwith furnish a copy of the report to counsel for the defendant.

(2) Within thirty-five days after receiving the report of the chief officer of the institution having custody of the defendant, the court shall set a hearing on the discharge of the defendant in accordance with section 16-8-115, whether or not such report is contested.

(3) Repealed.

16-8-117. Advisement on matters to be determined. When a determination is to be made as to a defendant's eligibility for release, the court shall explain to the defendant the nature and consequences of the proceeding and the rights of the defendant under this section, including his or her right to a jury trial upon the question of eligibility for release. The defendant, if he or she wishes to contest the question, may request a hearing which shall then be granted as a matter of right. At the hearing, the defendant and the prosecuting attorney are entitled to be present in person, to examine any reports of examination or other matter to be considered by the court as bearing upon the determination, to introduce evidence, summon witnesses, cross-examine witnesses for the other side or the court, and to make opening and closing statements and argument. The court may examine or cross-examine any witness called by the defendant or prosecuting attorney and may summon and examine witnesses on its own motion.

16-8-118. Temporary removal for treatment and rehabilitation. (1) The chief officer of the institution in which a defendant has been committed under this article or article 8.5 of this title may authorize treatment and rehabilitation activities involving temporary physical removal of such person from the institution in which the defendant has been placed, if prior to such authorization the following procedures are carried out:

(a) Such chief officer shall give written notice by certified mail, with return receipt requested, to the committing court and the district attorney that on or after thirty-five days from the date of mailing such notice he or she will authorize treatment and rehabilitation activities involving temporary physical removal of the defendant from the institution, unless written objections to such authorization are received by him or her within thirty-five days from the date of mailing such notice.

(b) The clerk of the committing court shall deliver a copy of the notice mentioned in paragraph (a) of this subsection (1) to the attorney of record for the defendant. The district attorney or the attorney of record for the defendant may file objections with the clerk of the committing court to the proposed action of the chief officer of the institution in which such defendant is held. A copy of any such objections shall be delivered by the party making such objections, either by mail or by personal service, to such chief officer prior to the expiration of thirty-five days from the mailing of the notice by the chief officer of the institution.

(c) In the event that objections are filed and served as provided in paragraphs (a) and (b) of this subsection (1), the committing court shall fix a time for a hearing upon the objections, and no removal of the defendant from the institution in which he is held shall be authorized unless and until approval thereof is given by the committing court following such hearing.

(1.5) The chief officer of the institution is authorized to allow a defendant, without court authorization as set forth in subsection (1) of this section, to leave the physical premises of the treatment or habilitation facility for needed medical treatment at a hospital, clinic, or other health care facility, so long as the defendant is accompanied by staff from the facility.

(2) (a) A court shall order any defendant who receives treatment and rehabilitation activities involving temporary physical removal of the defendant from the institution to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that:

(I) The defendant was found not guilty by reason of insanity on a charge of an offense involving unlawful sexual behavior; or

(II) The defendant was found not guilty by reason of insanity on a charge of any other offense, the underlying factual basis of which includes an offense involving unlawful sexual behavior.

(a.5) A court may order any defendant who receives treatment and rehabilitation activities involving temporary physical removal of the defendant from the institution to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that the chief officer of the institution in which the defendant has been committed recommends registration based on information obtained from the defendant during the course of treatment that indicates the defendant has committed an offense involving unlawful sexual behavior.

(b) Prior to temporary physical removal from the institution of any defendant who is required to register pursuant to this subsection (2), the department of human services shall obtain from the defendant the address at which the defendant plans to reside and shall notify the local law enforcement agency of the jurisdiction in which the defendant plans to reside and the Colorado bureau of investigation as provided in section 16-8-115 (4) (c).

(c) Any defendant required to register pursuant to this subsection (2) shall register as

provided in section 16-8-115 (4). The local law enforcement agency shall transmit any registrations received pursuant to this subsection (2) to the Colorado bureau of investigation within three business days following receipt. The Colorado bureau of investigation shall include any registration information received pursuant to this section in the central registry established pursuant to section 16-22-110, and shall specify that the information applies to a defendant required to register as a condition of temporary physical removal from an institution. The forms completed by defendants required to register pursuant to this subsection (2) shall be confidential and shall not be open to inspection except as otherwise provided in section 16-8-115 (3) (e) for information pertaining to persons granted conditional release and except as provided for release of information to the public pursuant to sections 16-22-110 (6) and 16-22-112.

(d) (I) Any defendant required to register pursuant to this subsection (2), upon completion of a period of not less than twenty years from the date the defendant begins receiving treatment and rehabilitation activities involving temporary physical removal of the defendant from the institution, may petition the district court for an order that discontinues the requirement for such registration and removes the defendant's name from the central registry established pursuant to section 16-22-110. The court may issue such order only if the court makes written findings of fact that the defendant has neither been convicted nor found not guilty by reason of insanity of an offense involving unlawful sexual behavior subsequent to such temporary removal and that the defendant would not pose an undue threat to the community if allowed to live in the community without registration.

(II) Upon the filing of a petition pursuant to this paragraph (d), the court shall set a date for a hearing on the petition. The defendant shall notify the local law enforcement agency with which the defendant is required to register and the prosecuting attorney for the jurisdiction in which the local law enforcement agency is located of the filing of the petition and the hearing date. Upon the victim's request, the court shall notify the victim of the filing of the petition and the hearing date. At the hearing, the court shall give opportunity to the victim to provide written or oral testimony. If the court enters an order discontinuing the defendant's duty to register, the defendant shall send a copy of the order to the local law enforcement agency and the Colorado bureau of investigation.

16-8-119. Counsel and physicians for indigent defendants. In all proceedings under this article, upon motion of the defendant and proof that he is indigent and without funds to employ physicians, psychologists, or attorneys to which he is entitled under this article, the court shall appoint such physicians, psychologists, or attorneys for him at state expense.

16-8-120. Applicable tests for release. (1) As to any person charged with any crime allegedly committed on or after June 2, 1965, the test for determination of a defendant's sanity for release from commitment, or his eligibility for conditional release, shall be: "That the defendant has no abnormal mental condition which would be likely to cause him to be dangerous either to himself or to others or to the community in the reasonably foreseeable future".

(2) As to any person charged with any crime allegedly committed prior to June 2, 1965,

the test for determination of a defendant's sanity for release from commitment, or his eligibility for conditional release, shall be the test provided by law at the time of the alleged crime to determine the sanity or insanity of such defendant.

(3) As to any person charged with any crime allegedly committed on or after July 1, 1983, the test for determination of a defendant's sanity for release from commitment, or his eligibility for conditional release, shall be: "That the defendant has no abnormal mental condition which would be likely to cause him to be dangerous either to himself or others or to the community in the reasonably foreseeable future, and is capable of distinguishing right from wrong and has substantial capacity to conform his conduct to requirements of law".

(4) As to any person charged with any crime allegedly committed on or after July 1, 1983, but before July 1, 1995, resulting in commitment by reason of impaired mental condition, the test for determination of a defendant's mental condition for release from commitment, or a defendant's eligibility for conditional release, shall be: "That the defendant has no abnormal mental condition which would be likely to cause the defendant to be dangerous either to himself or herself or to others or to the community in the reasonably foreseeable future".

16-8-121. Escape - return to institution. (1) If any defendant, confined in an institution for the care and treatment of persons with mental illness or developmental disabilities under the supervision of the executive director of the department of human services, escapes from such institution, it is the duty of the chief officer thereof to apply forthwith to the district court for the county in which the hospital or institution is located for a warrant of arrest directed to the sheriff of the county, commanding him or her forthwith to take all necessary legal action to effect the arrest of such defendant and to return him or her promptly to the institution; and the fact of an escape becomes a part of the official record of a defendant and shall be certified to the committing court as part of the record in any proceeding to determine whether the defendant is eligible for release from commitment or eligible for conditional release.

(2) If any defendant committed to the custody of the executive director of the department of human services and placed in an institution under his supervision has escaped from an asylum or other institution for insane persons or users of drugs or narcotics of another state, the chief officer thereof is authorized to return such defendant to the institution from which he escaped. The chief officer is further authorized to effect the return at the expense of the state of Colorado and under such terms and conditions as the chief officer deems suitable.

16-8-122. Commitment and observation. Upon the termination of the period of observation of a defendant committed under section 16-8-106, the authorities shall present to the court their account, evidenced by a statement thereof based upon the established per diem rate of the place of confinement. If approved by the court, the account shall be paid by the state pursuant to section 13-3-104, C.R.S.

PART 2

INTENSIVE TREATMENT MANAGEMENT
FOR PERSONS WITH MENTAL ILLNESS

16-8-201 to 16-8-206. (Repealed)

PART 3

COMPETENCY OF PERSONS TO BE EXECUTED

16-8-301 to 16-8-307. (Repealed)

ARTICLE 8.5

Competency to Proceed

16-8.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Competency evaluation" includes both court-ordered competency evaluations and second evaluations.

(2) "Competency evaluator" means a licensed physician who is a psychiatrist or a licensed psychologist, each of whom is trained in forensic competency assessments, or a psychiatrist who is in forensic training and practicing under the supervision of a psychiatrist with expertise in forensic psychiatry, or a psychologist who is in forensic training and is practicing under the supervision of a licensed psychologist with expertise in forensic psychology.

(3) "Competency hearing" means a hearing to determine whether a defendant is competent to proceed.

(4) "Competent to proceed" means that the defendant does not have a mental disability or developmental disability that prevents the defendant from having sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding in order to assist in the defense or prevents the defendant from having a rational and factual understanding of the criminal proceedings.

(5) "Court-ordered competency evaluation" means a court-ordered examination of a defendant either before, during, or after trial, directed to developing information relevant to a determination of the defendant's competency to proceed at a particular stage of the criminal proceeding, that is performed by a competency evaluator and includes evaluations concerning restoration to competency.

(6) "Court-ordered report" means a report of an evaluation, conducted by or under the

direction of the department, that is the statutory obligation of the department to prepare when requested to do so by the court.

(7) "Criminal proceedings" means trial, sentencing, execution, and any pretrial matter that is not susceptible of fair determination without the personal participation of the defendant.

(8) "Department" means the department of human services.

(9) "Developmental disability" means a disability that has manifested before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected individual, and is attributable to mental retardation or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation. Unless otherwise specifically stated, the federal definition of "developmental disability", 42 U.S.C. sec. 15001 et seq., shall not apply.

(10) "Executive director" means the executive director of the department of human services.

(11) "Incompetent to proceed" means that, as a result of a mental disability or developmental disability, the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding in order to assist in the defense, or that, as a result of a mental disability or developmental disability, the defendant does not have a rational and factual understanding of the criminal proceedings.

(12) "Mental disability" means a substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability, significantly interfering with adaptive behavior. "Mental disability" does not include acute intoxication from alcohol or other substances, or any condition manifested only by antisocial behavior, or any substance abuse impairment resulting from recent use or withdrawal. However, substance abuse that results in a long-term, substantial disorder of thought, mood, or cognitive ability may constitute a mental disability.

(13) "Restoration hearing" means a hearing to determine whether a defendant who has previously been determined to be incompetent to proceed has become competent to proceed.

(14) "Second evaluation" means an evaluation requested by the court, the district attorney, or the defendant that is performed by a competency evaluator and that is not performed by or under the direction of, or paid for by, the department.

16-8.5-102. Mental incompetency to proceed - how and when raised. (1) While a defendant is incompetent to proceed, the defendant shall not be tried or sentenced, nor shall the court consider or decide pretrial matters that are not susceptible of fair determination without the personal participation of the defendant. However, a determination that a defendant is incompetent to proceed shall not preclude the furtherance of the proceedings by the court to consider and decide matters, including a preliminary hearing and motions, that are susceptible of fair determination prior to trial and without the personal participation of the defendant. Those proceedings may be later reopened if, in the discretion of the court, substantial new evidence is discovered after and as a result of the restoration to competency of the defendant.

(2) The question of a defendant's competency to proceed shall be raised in the following manner:

(a) If the judge has reason to believe that the defendant is incompetent to proceed, it is the judge's duty to suspend the proceeding and determine the competency or incompetency of the defendant pursuant to section 16-8.5-103.

(b) If either the defense or the prosecution has reason to believe that the defendant is incompetent to proceed, either party may file a motion in advance of the commencement of the particular proceeding. A motion to determine competency shall be in writing and contain a certificate of counsel stating that the motion is based on a good faith doubt that the defendant is competent to proceed. The motion shall set forth the specific facts that have formed the basis for the motion. The motion shall be sealed by the court. If the motion is made by the prosecution, the prosecution shall provide to the defense a copy of the motion. If the motion is made by the defense, the defense shall provide to the prosecution notice of the filing of the motion at the time of filing, and if the defense requests a hearing, the defense shall provide the motion to the prosecution at the time the hearing is requested. The motion may be filed after the commencement of the proceeding if, for good cause shown, the mental disability or developmental disability of the defendant was not known or apparent before the commencement of the proceeding.

(c) By the affidavit of any chief officer of an institution having custody of a defendant awaiting execution.

(3) Notwithstanding any provision of this article to the contrary, the question of whether a convicted person is mentally incompetent to be executed shall be raised and determined as provided in part 14 of article 1.3 of title 18, C.R.S.

16-8.5-103. Determination of competency to proceed. (1) Whenever the question of a defendant's competency to proceed is raised, by either party or on the court's own motion, the court may make a preliminary finding of competency or incompetency, which shall be a final determination unless a party to the case objects within fourteen days after the court's preliminary finding.

(2) If either party objects to the court's preliminary finding, or if the court determines that it has insufficient information to make a preliminary finding, the court shall order that the defendant be evaluated for competency by the department and that the department prepare a court-ordered report.

(3) Within fourteen days after receipt of the court-ordered report, either party may request a hearing or a second evaluation.

(4) If a party requests a second evaluation, any pending requests for a hearing shall be continued until the receipt of the second evaluation report. The report of the expert conducting the second evaluation shall be completed and filed with the court within sixty-three days after the court order allowing the second evaluation, unless the time period is extended by the court for good cause. If the second evaluation is requested by the court, it shall be paid for by the court.

(5) If neither party requests a hearing or a second evaluation within the applicable time frame, the court shall enter a final determination, based on the information then available to the court, whether the defendant is or is not competent to proceed.

(6) If a party makes a timely request for a hearing, the hearing shall be held within thirty-

five days after the request for a hearing or, if applicable, within thirty-five days after the filing of the second evaluation report, unless the time is extended by the court after a finding of good cause.

(7) At any hearing held pursuant to this section, the party asserting the incompetency of the defendant shall have the burden of submitting evidence and the burden of proof by a preponderance of the evidence.

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

16-8.5-104. Waiver of privilege. (1) When a defendant raises the issue of competency to proceed, or when the court determines that the defendant is incompetent to proceed and orders that the defendant undergo restoration treatment, any claim by the defendant to confidentiality or privilege is deemed waived, and the district attorney, the defense attorney, and the court are granted access, without written consent of the defendant or further order of the court, to:

(a) Reports of competency evaluations, including second evaluations;

(b) Information and documents relating to the competency evaluation that are created by, obtained by, reviewed by, or relied on by an evaluator performing a court-ordered evaluation; and

(c) The evaluator, for the purpose of discussing the competency evaluation.

(2) Upon a request by either party or the court for the information described in subsection (1) of this section, the evaluator or treatment provider shall provide the information for use in preparing for a hearing on competency or restoration and for use during such a hearing.

(3) An evaluator or a facility providing competency evaluation or restoration treatment services pursuant to a court order issued pursuant to this article is authorized to provide, and shall provide, procedural information to the court, district attorney, or defense counsel, concerning the defendant's location, the defendant's hospital or facility admission status, the status of evaluation procedures, and other procedural information relevant to the case.

(4) Nothing in this section limits the court's ability to order that information in addition to that set forth in subsections (1) and (3) of this section be provided to the evaluator, or to either party to the case, nor does it limit the information that is available after the written consent of the defendant.

(5) The court shall order both the prosecutor and the defendant or the defendant's counsel to exchange the names, addresses, reports, and statements of each physician or psychologist who has examined or treated the defendant for competency.

(6) Statements made by the defendant in the course of any evaluation shall be protected as provided in section 16-8.5-108.

16-8.5-105. Evaluations and report. (1) (a) The location for competency evaluations

shall be determined by the court. The defendant may be released on bond, if otherwise eligible for bond, or referred or committed for a court-ordered competency evaluation to the department, or the court may direct that the evaluation be done at the place where the defendant is residing or is in custody. In determining the place where the evaluation is to be conducted, the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the evaluation require designation of a different facility.

(b) Nothing in this section shall restrict the right of the defendant to procure an evaluation as provided in section 16-8.5-107.

(2) The defendant shall cooperate with the competency evaluator and with other personnel providing ancillary services, such as testing and radiological services. Statements made by the defendant in the course of the evaluation shall be protected as provided in section 16-8.5-108. If the defendant does not cooperate with the competency evaluator and other personnel providing ancillary services and the lack of cooperation is not the result of a developmental disability or a mental disability, the fact of the defendant's noncooperation with the competency evaluator and other personnel providing ancillary services may be admissible in the defendant's competency or restoration hearing to rebut any evidence introduced by the defendant with regard to the defendant's competency.

(3) To aid in forming an opinion as to the competency of the defendant, it is permissible in the course of an evaluation 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 the competency evaluator or personnel providing ancillary services, an opinion of the competency of the defendant may be rendered by the competency evaluator based upon 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 the opinion may be admissible into evidence at the defendant's competency or restoration hearing.

(4) A written report of the evaluation shall be prepared in triplicate and delivered to the clerk of the court that ordered it. The clerk shall provide a copy of the report both to the prosecuting attorney and the counsel for the defendant.

(5) The report of evaluation shall include but need not be limited to:

(a) The name of each physician, psychologist, or other expert who examined the defendant; and

(b) A description of the nature, content, extent, and results of the evaluation and any tests conducted; and

(c) A diagnosis and prognosis of the defendant's mental disability or developmental disability; and

(d) An opinion as to whether the defendant suffers from a mental disability or developmental disability; and

(e) An opinion as to whether the defendant is competent to proceed.

16-8.5-106. Evaluation at request of defendant. (1) If a defendant wishes to be

examined by a competency evaluator of his or her own choice in connection with any proceeding under this article, the court, upon timely motion, shall order that the competency evaluator chosen by the defendant be given reasonable opportunity to conduct the second evaluation, in accordance with sections 16-8.5-103 and 16-8.5-111.

(2) A copy of the second evaluation shall be furnished to the prosecution in a reasonable amount of time in advance of the competency or restoration hearing.

16-8.5-107. Counsel and evaluators for indigent defendants. In all proceedings under this article, the court shall appoint competency evaluators or attorneys for a defendant at state expense upon motion of the defendant with proof that he or she is indigent and without funds to employ competency evaluators or attorneys to which he or she is entitled under this article. If a second evaluation is requested by an indigent defendant, it shall be paid for by the court.

16-8.5-108. Evidence. (1) (a) Except as otherwise provided in this subsection (1), evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a competency evaluation or involuntary medication proceeding is not admissible against the defendant on the issues raised by a plea of not guilty, or, if the offense occurred before July 1, 1995, a plea of not guilty by reason of impaired mental condition. Such evidence may be admissible at trial to rebut evidence introduced by the defendant of the defendant's mental condition to show incapacity of the defendant to form a culpable mental state; and, in such case, the evidence may only be considered by the trier of fact as bearing upon the question of capacity to form a culpable mental state, and the jury shall be so instructed at the request of either party.

(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 competency evaluation or involuntary medication proceeding is admissible at any sentencing hearing held pursuant to section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, C.R.S., only to prove the existence or absence of any mitigating factor.

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

(2) In any hearing concerning competency to proceed or restoration to competency, competency evaluators and other experts may testify as to their conclusions reached from their examination of hospital records, laboratory reports, X rays, electroencephalograms, and psychological test results if the material that they examined in reaching their conclusions is produced at the time of the hearing. Nothing in this section prevents the parties from obtaining the information authorized by section 16-8.5-104 prior to the hearing.

16-8.5-109. Advisement on matters to be determined. (1) When a determination is to be made as to a defendant's competency to proceed, the court shall explain to the defendant the nature and consequences of the proceeding and the rights of the defendant under this section. The defendant, if he or she wishes to contest the question, may request a competency hearing that shall then be granted as a matter of right.

(2) At a competency hearing, the defendant and the prosecuting attorney are entitled:

(a) To be present in person;

(b) To examine any reports of the evaluation or other matter to be considered by the court as bearing upon the determination;

(c) To introduce evidence, summon witnesses, cross-examine opposing witnesses or witnesses called by the court; and

(d) To make opening and closing statements and arguments.

(3) The court may examine or cross-examine any witness called by the defendant or prosecuting attorney at a competency hearing and may summon and examine witnesses on its own motion.

16-8.5-110. Testimony of lay witnesses. In any hearing at which the competency of the defendant is an issue, witnesses not specially trained in psychiatry or psychology and not testifying as expert witnesses may testify as to their observation of the defendant's actions and conduct and as to conversations that they have had with the defendant bearing upon the defendant's mental condition. Any such witnesses, as part of their testimony, shall be permitted to give their opinions or conclusions concerning the competency of the defendant.

16-8.5-111. Procedure after determination of competency or incompetency. (1) If the final determination made pursuant to section 16-8.5-103 is that the defendant is competent to proceed, the judge shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.

(2) If the final determination made pursuant to section 16-8.5-103 is that the defendant is incompetent to proceed, the court has the following options:

(a) If the defendant is in custody, the court may release the defendant on bond upon compliance with the standards and procedures for such release prescribed by statute and by the Colorado rules of criminal procedure. As a condition of bond, the court may require the defendant to obtain any treatment or habilitation services that are available to the defendant, such as inpatient or outpatient treatment at a community mental health center or in any other appropriate treatment setting, as determined by the court. Nothing in this section authorizes the court to order community mental health centers or other providers to provide treatment for persons not otherwise eligible for these services. At any hearing to determine eligibility for release on bond, the court shall consider any effect the defendant's incompetency may have on the court's ability to ensure the defendant's presence for hearing or trial. There shall be a presumption that the incompetency of the defendant will inhibit the ability of the defendant to ensure his or her presence for trial.

(b) If the court finds that the defendant is not eligible for release from custody, the court may commit the defendant to the custody of the department, in which case the executive director has the same powers with respect to commitment as the executive director has following a commitment under section 16-8-105.5 (4). At such time as the department recommends to the court that the defendant is restored to competency, the defendant may be returned to custody of the county jail or to previous bond status.

16-8.5-112. Venue for collateral hearings. (1) If a defendant committed to the custody of the department for evaluation or for restoration treatment meets the constitutional requirements for the administration of involuntary medication, the defendant's treating physician may petition the court for an order requiring that the defendant accept the treatment or, alternatively, that the medication be forcibly administered to the defendant. The department shall, prior to the hearing on the petition, deliver a copy of the petition to the court that committed the defendant to the custody of the department, the prosecuting attorney, and the defendant's legal representation in the criminal case, if such representation exists, and to the defendant directly if he or she does not have legal representation. A physician shall assess and document the defendant's mental status prior to the administration of medication.

(2) A petition for involuntary treatment shall be heard in the court of the jurisdiction where the defendant is located. The department shall promptly deliver a copy of the order granting or denying the petition to the court that committed the defendant to the custody of the department, the prosecuting attorney, and the defendant's legal representation in the criminal case, if such representation exists, and to the defendant directly if he or she does not have legal representation.

(3) If the committing court elects to transfer venue for medication hearings to the court of the jurisdiction in which the defendant is located, the committing county shall reimburse the county in which the proceeding is heard for the reasonable costs incurred in conducting the proceeding. Alternatively, the district attorney for the committing county, or in any county or any city and county having a population exceeding fifty thousand persons the county attorney for the committing county, may prosecute the proceeding as the proponent of the physician's petition.

(4) If a defendant committed to the custody of the department for evaluation or for restoration treatment is ordered by a court to accept treatment as set forth in subsection (1) of this section and is subsequently returned to jail for pending court proceedings, the county jail may require the defendant to continue to receive the same court-ordered treatment that was administered by the department before the defendant was discharged from inpatient care, or, alternatively, appropriate medical personnel provided by the jail may forcibly administer such court-ordered medication to the defendant.

16-8.5-113. Restoration to competency. (1) The court may order a restoration hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant.

(2) Within fourteen days after receipt of a report from the department or other court-

approved provider of restoration services certifying that the defendant is competent to proceed, either party may request a hearing or a second evaluation. The court shall determine whether to allow the second evaluation or proceed to a hearing on competency. If the second evaluation is requested by the court or by an indigent defendant, it shall be paid for by the court.

(3) If a second evaluation is allowed, any pending requests for a hearing shall be continued until receipt of the second evaluation report. The report of the expert conducting the second evaluation report shall be completed and filed with the court within sixty-three days after the court order allowing the second evaluation, unless the time period is extended by the court after a finding of good cause.

(4) If neither party requests a hearing or second evaluation within the time frame set forth in subsection (2) of this section, the court shall enter a final determination, based on the information then available to the court, whether the defendant is or is not competent to proceed.

(5) If a party makes a timely request for a hearing, the hearing shall be held within thirty-five days after the request for a hearing or, if applicable, within thirty-five days after the filing of the second evaluation report, unless the time is extended by the court after a finding of good cause.

(6) At the hearing, the burden of submitting evidence and the burden of proof by a preponderance of the evidence shall be upon the party asserting that the defendant is competent. At the hearing, the court shall determine whether the defendant is restored to competency.

16-8.5-114. Procedure after hearing concerning restoration to competency. (1) If a defendant is found to be restored to competency after the hearing held pursuant to section 16-8.5-113, the court shall resume the criminal proceedings or order the sentence carried out. The court shall credit any time the defendant spent in confinement while committed pursuant to section 16-8.5-111 against any term of imprisonment imposed after restoration to competency.

(2) If, after the hearing held pursuant to section 16-8.5-113, the court determines that the defendant remains incompetent to proceed, the court may continue or modify any orders entered at the time of the original determination of incompetency and may commit or recommit the defendant or enter any new order necessary to facilitate the defendant's restoration to mental competency.

(3) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by a plea of not guilty, not guilty by reason of insanity, or, for offenses that occurred before July 1, 1995, the affirmative defense of impaired mental condition.

16-8.5-115. Commitment and observation. Upon the termination of the period of observation of a defendant committed under section 16-8.5-105, the authorities shall present to the court an accounting of the cost, evidenced by a statement thereof based upon the established per diem rate of the place of confinement. If approved by the court, the account shall be paid by the state pursuant to section 13-3-104, C.R.S.

16-8.5-116. Commitment - termination of proceedings. (1) A defendant committed to the department or otherwise confined as a result of a determination of incompetency to proceed shall not remain confined for a period in excess of the maximum term of confinement that could be imposed for the offenses with which the defendant is charged, less any earned time to which the defendant would be entitled under article 22.5 of title 17, C.R.S.

(2) The court shall review the case of a defendant committed or confined as incompetent to proceed at least every three months with regard to the probability that the defendant will eventually be restored to competency and with regard to the justification for continued commitment or confinement. The review may be held in conjunction with a restoration hearing under section 16-8.5-113. Prior to each review, the institution treating the defendant shall provide the court with a report regarding the competency of the defendant. If, on the basis of the available evidence, not including evidence resulting from a refusal by the defendant to accept treatment, there is a substantial probability that the defendant will not be restored to competency within the foreseeable future, the court may order the release of the defendant from commitment under this article through one or more of the following means:

(a) Upon motion of the district attorney or the defendant, the court may terminate the criminal proceeding and terminate the commitment or treatment order;

(b) The court may order the release of the defendant on bond, with such conditions as the court deems advisable;

(c) The court or a party may commence civil proceedings under the provisions of article 65 of title 27, C.R.S., if the defendant meets the requirements for commitment pursuant to said article 65; or

(d) In the case of a defendant who has been found eligible for services under article 10.5 of title 27, C.R.S., due to a developmental disability, the court or a party may initiate an action to restrict the rights of the defendant under article 10.5 of title 27, C.R.S.

(3) In each case, the court shall enter a written decision outlining why the court terminated the criminal proceeding or did not terminate the criminal proceeding.

16-8.5-117. Escape - return to institution. If a defendant committed to the custody of the executive director for a competency evaluation or for restoration to competency escapes from the institution or hospital, it is the duty of the chief officer of the institution or hospital to apply to the district court for the county in which the institution or hospital is located for a warrant of arrest directed to the sheriff of the county, commanding him or her to take all necessary legal action to effect the arrest of the defendant and to return the defendant promptly to the institution or hospital. The fact of an escape becomes a part of the official record of the defendant and shall be certified to the committing court as part of the record in any proceeding to determine whether the defendant is eligible for release on bond or from custody.

16-8.5-118. Temporary removal for treatment and rehabilitation. The chief officer of an institution in which a defendant has been committed under this article may authorize treatment

and rehabilitation activities involving temporary physical removal of the person from the institution in which the defendant has been placed, according to the procedures and requirements of section 16-8-118.

16-8.5-119. Competency evaluation advisory board - creation - membership - duties - rules - repeal. (Repealed)

ARTICLE 9

Preparation for Trial

PART 1

SUBPOENAS

16-9-101. Right to compel attendance of witnesses. (1) In every criminal case, the prosecuting attorney and the defendant have the right to compel the attendance of witnesses and the production of tangible evidence by service upon them of a subpoena to appear for examination as a witness at any proceeding before the court. Service of a subpoena upon a parent or legal guardian who has physical care of an unemancipated minor that contains wording commanding said parent or legal guardian to produce the unemancipated minor for the purpose of testifying before the court shall be valid service compelling the attendance of both said parent or legal guardian and the unemancipated minor for examination as witnesses. In addition, service of a subpoena as described in this subsection (1) shall compel said parent or legal guardian either to make all necessary arrangements to ensure that the unemancipated minor is available before the court to testify or to appear in court and show good cause for the unemancipated minor's failure to appear.

(2) The issuance and service of subpoenas and all procedures related thereto shall be in conformity with and as required by applicable rule of criminal procedure adopted by the Colorado supreme court.

PART 2

WITNESSES FROM OUTSIDE THE STATE

16-9-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "State" includes any territory of the United States and the District of Columbia.

(2) "Summons" includes a subpoena, order, or other notice requiring the appearance of a witness.

(3) "Witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

16-9-202. Summoning witness to testify in another state. (1) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of the court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of the certificate to any judge of a court of record in the county in which such person is, the judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process in connection with matters which arose before his entering into that state under the summons, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing, the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be forthwith brought before him for the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, in lieu of issuing subpoena or summons, shall order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(4) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and twenty dollars for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

16-9-203. Witness from another state. (1) If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal

prosecutions or grand jury investigations commenced or about to commence in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the witness is summoned to attend and testify in this state, or if the witness appears voluntarily at the request of the prosecution or the defense and the court would have otherwise approved a certificate for such witness pursuant to subsection (1) of this section, he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending or, in the alternative and at the discretion of the court, an airplane ticket and twenty dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If a witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

16-9-204. Exemption from arrest. (1) If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, while so passing through this state, he shall not be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

16-9-205. Production of tangible evidence. The procedures set forth in this part 2 shall apply to both the compulsory attendance of witnesses and the production of tangible evidence by witnesses located in this state whose presence is required in an action in another state and to witnesses from another state whose presence is required in an action in this state.

PART 3

COMPELLING ATTENDANCE OF MATERIAL WITNESSES WITHIN THE STATE

16-9-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Summons" includes a subpoena, order, or other notice requiring the appearance of a witness.

(2) "Witness" includes a person whose testimony is desired or who is desired to produce tangible evidence in any proceeding or investigation by a grand jury or a criminal action or proceeding in this state.

16-9-302. Summoning witness to testify or produce tangible evidence in another county. (1) In order to secure the attendance of a material witness who either the prosecution or the defense has reasonable grounds to believe will absent himself from the jurisdiction of the requesting court, a judge of a court of record in any county in this state upon such showing may certify that there is a criminal action pending in such court or that a grand jury investigation has commenced or is about to commence, that a person located within any county or city and county in this state is a material witness in such action or grand jury investigation, and that his presence will be required for a specified number of days. When a court of record in the county in which such person is located receives the certificate, it shall fix a time and place for a hearing and shall make an order directing the witness to appear at the hearing at the time and place specified in the order.

(2) If at the hearing held pursuant to subsection (1) of this section the court determines that the witness is material and necessary and that it will not cause undue hardship to the witness to be compelled to attend and testify in the criminal action or grand jury investigation in the requesting county, the court shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the requesting court at the time and place specified in the summons. In any such hearing, the certificate shall be prima facie evidence of all the facts stated therein.

(3) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting county to assure his attendance in the requesting county, the receiving court may, in lieu of notification of the hearing, direct that the witness be brought before the court for the hearing. If the court is satisfied at the hearing that the requested custody and delivery is desirable, the court shall order that the witness be taken into custody and delivered to an officer of the requesting county for said hearing, if said hearing is to commence within forty-eight hours of the issuance of the certificate, or for the purpose of the taking of a criminal deposition pursuant to rule 15, Colorado rules of criminal procedure. The certificate shall be prima facie evidence that the requested custody and delivery is desirable. If said witness can post reasonable security, he shall be discharged.

(4) If the witness who is summoned pursuant to subsection (2) of this section, after being paid or tendered the appropriate witness fees, fails without good cause to attend and testify or produce evidence as directed in the summons, he shall be subject to any sanctions available to the requesting court.

16-9-303. Protection from arrest or service of process. When a person enters into or

passes through any county in this state in obedience to a summons issued pursuant to section 16-9-302 (2) or when returning from testifying under the summons, he shall not be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into said county in response to the summons.

PART 4

PRETRIAL MOTIONS IN CLASS 1 FELONY CASES ALLEGING THAT A DEFENDANT IS A MENTALLY RETARDED DEFENDANT

16-9-401 to 16-9-405. (Repealed)

PART 5

MOTIONS ALLEGING AN UNCONSTITUTIONAL LAW

16-9-501. Notice to the attorney general when a defendant alleges a law is unconstitutional. If a defendant in a criminal proceeding files a motion or other pleading that includes a claim alleging a state statute or municipal ordinance is unconstitutional, the defendant shall serve the attorney general with a copy of the motion or pleading. The attorney general shall be entitled to be heard on the matter. Failure to comply with this section shall not constitute a waiver of a defendant's constitutional rights or a defendant's right to raise a constitutional challenge.

PART 6

PROHIBITION ON REPRODUCTION OF SEXUALLY EXPLOITATIVE MATERIAL

16-9-601. Prohibition on reproduction of sexually exploitative material. (1) For purposes of this part 6, "sexually exploitative material" shall have the same meaning as provided in section 18-6-403 (2) (j), C.R.S.

(2) For the reasons stated in section 18-6-403 (1) and (1.5), C.R.S., regarding the harm and victimization related to sexually exploitative material, in a criminal proceeding, all sexually exploitative material shall remain in the care, custody, and control of either the prosecution, a law enforcement agency, or the court.

(3) (a) Notwithstanding any provision of the Colorado rules of criminal procedure, a court shall deny a request by the defendant in a criminal proceeding to copy, photograph,

duplicate, or otherwise reproduce sexually exploitative material, so long as the prosecuting attorney makes the material reasonably available to the defendant; except that if, after a hearing, the defendant shows that for reasons specific to the case, the access provided by the prosecuting attorney does not provide ample opportunity for inspection, viewing, and examination by a defense expert, the court may order reproduction of the material with an appropriate protective order.

(b) For purposes of paragraph (a) of this subsection (3), sexually exploitative material shall be deemed to be reasonably available to the defendant if the prosecuting attorney provides ample opportunity for inspection, viewing, and examination, at the prosecutor's office or a law enforcement facility, of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

PART 7

DISCOVERY PROJECT STEERING COMMITTEE

16-9-701. Discovery project steering committee. (1) (a) There shall be a discovery project steering committee convened to assist in developing a request for proposal application and selection process to choose a vendor to develop a statewide discovery sharing system. The steering committee consists of:

(I) The attorney general or his or her designee, who shall serve as the chair of the steering committee;

(II) The state court administrator or his or her designee, who shall serve as the vice-chair of the steering committee;

(III) The state public defender or his or her designee;

(IV) A representative of the criminal defense bar appointed by the chief justice;

(V) Three district attorneys appointed by the governor, one representing an urban judicial district, one representing a mid-sized district, and one representing a rural district;

(VI) A county sheriff appointed by the governor;

(VII) The alternate defense counsel or his or her designee;

(VIII) A chief of police appointed by the governor; and

(IX) A district court judge appointed by the chief justice.

(b) The project steering committee must also have a nonvoting member appointed by the governor from the office of information technology who serves only as a technology advisor to assist the steering committee.

(2) The chair of the discovery project steering committee shall convene the first meeting of the steering committee by June 30, 2014.

(3) The discovery project steering committee shall develop a request for proposal application and recommend a selection process to choose a vendor to develop a statewide discovery sharing system. The application process must be developed in a timely manner so the selection can be made by November 1, 2014, at the latest. The steering committee shall make a vendor recommendation to the Colorado district attorneys' council after the application process is

completed. The Colorado district attorneys' council shall select a vendor after the application and selection process is complete and after considering the recommendation of the steering committee.

(4) (a) The discovery project steering committee shall develop benchmarks and contractual requirements for the statewide discovery sharing system.

(b) The Colorado district attorneys' council shall enter into a contract with the selected vendor to complete the system by October 31, 2016. The contract must include the benchmarks and requirements developed pursuant to paragraph (a) of this subsection (4). The executive director of the Colorado district attorneys' council shall provide periodic reports to the steering committee and the joint budget committee regarding benchmarks and requirements and the progress of the development of the system. It is not necessary for the steering committee to meet to receive the periodic reports.

(5) The discovery project steering committee may meet as necessary to provide practical and technical support for the maintenance and enhancement of the system and to ensure that the system is meeting the needs of the criminal justice system.

(6) Once the statewide discovery sharing system is operational, a district attorney or the Colorado district attorneys' council, who, after making a good-faith effort to redact all information from a discovery document provided to a defendant or defense counsel, provides a document that contains information that is legally required to be redacted, is not liable for civil damages as a result of acts or omissions related to providing discovery documents that contain information required to be redacted that is not redacted.

16-9-702. Statewide discovery sharing system. (1) The Colorado district attorneys' council shall develop and maintain a statewide discovery sharing system integrated with its ACTION system. The statewide discovery sharing system must be operational by November 1, 2016. The Colorado district attorneys' council shall maintain and operate the system with the assistance of the discovery project steering committee created in section 16-9-701.

(2) The general assembly shall appropriate the necessary moneys from the general fund and the statewide discovery sharing system surcharge fund created in section 18-26-102 (2), C.R.S., to fund the development, continuing enhancement, and maintenance of the statewide discovery sharing system and maintenance and continuing enhancement of the existing ACTION system operated by the Colorado district attorneys' council. The judicial department shall allocate the appropriated moneys to the Colorado district attorneys' council for the development, continuing enhancement, and maintenance of the statewide discovery sharing system and the existing ACTION system.

(3) The Colorado district attorneys' council shall provide the judicial department financial reports regarding the statewide discovery sharing system. The judicial department shall use the reports in preparing its annual budget request. The reports must include the following:

(a) Actual expenditures of the moneys appropriated for the maintenance of the ACTION system and for the development, enhancement, implementation, and maintenance of the discovery sharing system so that the judicial department can include the expenditure data in its annual budget request. The judicial department shall require the Colorado district attorneys'

council to provide the information in a format that is consistent with actual expenditures reported for other line item appropriations.

(b) The amount of state funding requested for the next fiscal year for such purpose, including a breakdown and justification for the amount requested.

ARTICLE 10

Jury Trials

PART 1

COMPOSITION AND SELECTION OF THE JURY

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.

16-10-102. When jury panel exhausted. In all criminal cases where the panel of jurors is exhausted by challenge or otherwise, and whether any juror has been selected and sworn or not, the court may order the issuance of a venire for any number of jurors not exceeding twenty-four, returnable forthwith, out of which persons so ordered to be summoned it is lawful to impanel a jury for the trial of any criminal case. Should the jurors thus summoned be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may make further orders for additional jurors, returnable forthwith, until a full jury is obtained.

16-10-103. Challenge of jurors for cause. (1) The court shall sustain a challenge for cause on one or more of the following grounds:

(a) Absence of any qualification prescribed by statute to render a person competent as a juror;

(b) Relationship within the third degree, by blood, adoption, or marriage, to a defendant or to any attorney of record or attorney engaged in the trial of the case;

(c) Standing in the relation of guardian and ward, employer and employee, landlord and tenant, debtor and creditor, or principal and agent to, or being a member of the household of, or a

partner in business with, or surety on any bond or obligation for any defendant;

(d) The juror is or has been a party adverse to the defendant in a civil action or has complained against or been accused by him in a criminal prosecution;

(e) The juror has served on the grand jury which returned the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information, or on any other investigatory body which inquired into the facts of the crime charged;

(f) The juror was a juror at a former trial arising out of the same factual situation or involving the same defendant;

(g) The juror was a juror in a civil action against the defendant arising out of the act charged as a crime;

(h) The juror was a witness to any matter related to the crime or its prosecution;

(i) The juror occupies a fiduciary relationship to the defendant or a person alleged to have been injured by the crime or the person on whose complaint the prosecution was instituted;

(j) The existence of a state of mind in the juror evincing enmity or bias toward the defendant or the state; however, no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that he will render an impartial verdict according to the law and the evidence submitted to the jury at the trial;

(k) The juror is a compensated employee of a public law enforcement agency or a public defender's office.

(2) If any juror knows of anything which would disqualify him as a juror or be a ground for challenge to him for cause, it is his duty to inform the court concerning it whether or not he is specifically asked about it. The jury panel shall be advised of this duty and of the grounds for challenge for cause before any prospective jurors are called to the jury box.

(3) If either party desires to introduce evidence of the incompetency, disqualification, or prejudice of any prospective juror who upon the voir dire examination appears to be qualified, competent, and unprejudiced, such evidence shall be heard, and the competency of the juror shall be determined, by the court, out of the presence of the other jurors, but this action cannot be taken after the jury has been sworn to try the case except upon a motion for mistrial.

16-10-104. Peremptory challenges. (1) In capital cases, the state and the defendant, when there is one defendant, shall each be entitled to ten peremptory challenges. In all other cases, where there is one defendant and the punishment may be by imprisonment in the correctional facilities operated by the department of corrections, the state and the defendant shall each be entitled to five peremptory challenges, and in all other cases to three peremptory challenges. If there is more than one defendant, each side shall be entitled to an additional three peremptory challenges for every defendant after the first in capital cases, but not exceeding twenty peremptory challenges to each side; in all other cases, where the punishment may be by imprisonment in the correctional facilities operated by the department of corrections, to two

additional peremptory challenges for every defendant after the first, not exceeding fifteen peremptory challenges to each side; and in all other cases, to one additional peremptory challenge for every defendant after the first, not exceeding ten peremptory challenges to each side. In any case where there are multiple defendants, every peremptory challenge shall be made and considered as the joint peremptory challenge of all defendants. In case of the consolidation of any indictments, informations, complaints, or summonses and complaints for trial, such consolidated cases shall be considered, for all purposes concerning peremptory challenges, as though the defendants had been joined in the same indictment, information, complaint, or summons and complaint. When trial is held on a plea of not guilty by reason of insanity, the number of peremptory challenges shall be the same as if trial were on the issue of substantive guilt.

(2) Peremptory challenges shall be exercised as provided by applicable rule of criminal procedure.

16-10-105. Alternate jurors. The court may direct that a sufficient number of jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror shall be discharged when the jury retires to consider its verdict or at such time as determined by the court. When alternate jurors are impaneled, each side is entitled to one peremptory challenge in addition to those otherwise allowed by law. In a case in which a class 1, 2, or 3 felony, as described in section 18-1.3-401 (1) (a) (IV) and (1) (a) (V), C.R.S., is charged, and in a case in which a level 1 or level 2 drug felony as described in section 18-1.3-401.5, C.R.S., is charged, and in any case in which a felony listed in section 24-4.1-302 (1), C.R.S., is charged, the court shall impanel at least one juror to sit as an alternate if requested by any party.

16-10-106. Incapacity of juror. Where a jury of twelve has been sworn to try the case, and any juror by reason of illness or other cause becomes unable to continue until a verdict is reached, the court may excuse such juror. If no alternate juror is available to replace the juror, the parties at any time before verdict may stipulate in writing with court approval that the jury shall consist of any number less than twelve, and the jurors thus remaining shall proceed to try the case and determine the issues unless discharged by the court for inability to reach a verdict.

16-10-107. Challenge to entire jury panel. A challenge to the panel is an objection to the entire panel of prospective trial jurors made by the defendant or by the prosecuting attorney. No challenge to the panel shall be made, except as provided by section 13-71-139, C.R.S.

16-10-108. Verdict. The verdict of the jury shall be unanimous. The jury shall return its verdict in open court, but a sealed verdict may be received as provided by rule of the supreme court of Colorado.

16-10-109. Trial by jury for petty offenses. (1) For the purposes of this section, "petty offense" means any crime or offense classified as a petty offense or, if not so classified, which is punishable by imprisonment other than in a correctional facility for not more than six months, or by a fine of not more than five hundred dollars, or by both such imprisonment and fine, and includes any violation of a municipal ordinance or offense which was not considered a crime at common law; except that violation of a municipal traffic ordinance which does not constitute a criminal offense or any other municipal charter, municipal ordinance, or county ordinance offense which is neither criminal nor punishable by imprisonment under any counterpart state statute shall not constitute a petty offense. No child under the age of eighteen years shall be entitled to a trial by jury for a violation of a municipal ordinance or a county ordinance for which imprisonment in jail is not a possible penalty. Nothing in this subsection (1) shall prohibit a municipality or county from granting a right to trial by jury for ordinance violations.

(2) A defendant charged with a petty offense shall be entitled to a jury trial if, within twenty-one days after entry of a plea, the defendant makes a request to the court for a jury trial, in writing, and tenders to the court a jury fee of twenty-five dollars unless the fee is waived by the judge because of the indigence of the defendant. The jury shall consist of three jurors unless a greater number, not to exceed six, is requested by the defendant in said jury demand. If the charge is dismissed or the defendant is acquitted of the charge or if the defendant, having paid the jury fee, files with the court at least seven days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded.

(3) At the time of arraignment for any petty offense in this state, the judge shall advise any defendant not represented by counsel of the defendant's right to trial by jury, of the requirement that the defendant, if he or she desires to invoke his or her right to trial by jury, request such trial by jury within twenty-one days after entry of a plea, in writing, of the number of jurors allowed by law, and of the requirement that the defendant, if he or she desires to invoke his or her right to trial by jury, tender to the court within twenty-one days after entry of a plea a jury fee of twenty-five dollars unless the fee is waived by the judge because of the indigence of the defendant.

16-10-110. Jury instructions - cases involving the possibility of the death penalty. At the trial of any felony in which the prosecution is not seeking the death penalty, upon the request of the prosecution or the defendant, the court shall instruct the jury during voir dire that the prosecution is not seeking the death penalty.

PART 2

EVIDENCE OF INCONSISTENT STATEMENTS - VARIANCE

16-10-201. Inconsistent statement of witness - competency of evidence. (1) Where a witness in a criminal trial has made a previous statement inconsistent with his testimony at the trial, the previous inconsistent statement may be shown by any otherwise competent evidence and is admissible not only for the purpose of impeaching the testimony of the witness, but also for the purpose of establishing a fact to which his testimony and the inconsistent statement relate, if:

(a) The witness, while testifying, was given an opportunity to explain or deny the statement or the witness is still available to give further testimony in the trial; and

(b) The previous inconsistent statement purports to relate to a matter within the witness's own knowledge.

16-10-202. Variance - allegations and proof. When on the trial of any indictment, information, felony complaint, or complaint for any offense there appears to be any variance between the statements in the indictment, complaint, or information and the evidence offered in proof thereof, of any given name or surname, or both given name and surname, or other description whatever of any person who is therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance is not grounds for the acquittal of the defendant, unless the court before which such trial be had finds such variance is material to the merits of the case or may be prejudicial to the defendant. No indictment, information, felony complaint, or complaint shall be deemed insufficient nor shall the trial, judgment, or other proceedings thereon be reversed or affected by any defect which does not tend to prejudice the substantial rights of the defendant on the merits.

PART 3

EVIDENCE OF SIMILAR TRANSACTIONS

16-10-301. Evidence of similar transactions - legislative declaration. (1) The general assembly hereby finds and declares that sexual offenses are a matter of grave statewide concern. These frequently occurring offenses are aggressive and assaultive violations of the well-being, privacy, and security of the victims, are severely contrary to common notions of proper behavior between people, and result in serious and long-lasting harm to individuals and society. These offenses often are not reported or are reported long after the offense for many reasons, including: The frequency with which the victims are vulnerable, such as young children who may be related to the perpetrator; the personal indignity, humiliation, and embarrassment involved in the offenses themselves; and the fear of further personal indignity, humiliation, and embarrassment in connection with investigation and prosecution. These offenses usually occur under circumstances in which there are no witnesses except for the accused and the victim, and, because of this and the frequent delays in reporting, there is often no evidence except for the

conflicting testimony. Moreover, there is frequently a reluctance on the part of others to believe that the offenses occurred because of the inequality between the victim and the perpetrator, such as between the child victim and the adult accused, or because of the deviant and distasteful nature of the charges. In addition, it is recognized that some sex offenders cannot or will not respond to treatment or otherwise resist the impulses which motivate such conduct and that sex offenders are extremely habituated. As a result, such offenders often commit numerous offenses involving sexual deviance over many years, with the same or different victims, and often, but not necessarily, through similar methods or by common design. The general assembly reaffirms and reemphasizes that, in the prosecution of sexual offenses, including in proving the corpus delicti of such offenses, there is a greater need and propriety for consideration by the fact finder of evidence of other relevant acts of the accused, including any actions, crimes, wrongs, or transactions, whether isolated acts or ongoing actions and whether occurring prior to or after the charged offense. The general assembly finds that such evidence of other sexual acts is typically relevant and highly probative, and it is expected that normally the probative value of such evidence will outweigh any danger of unfair prejudice, even when incidents are remote from one another in time.

(2) This section applies to prosecution for any offense involving unlawful sexual behavior as defined in section 16-22-102 (9), or first degree murder, as defined in section 18-3-102 (1) (d), C.R.S., in which the underlying felony on which the first degree murder charge is based is the commission or attempted commission of sexual assault, as described in section 18-3-402, C.R.S., sexual assault in the first or second degree as those offenses were described in sections 18-3-402 and 18-3-403, C.R.S., as they existed prior to July 1, 2000, or the commission of a class 3 felony for sexual assault on a child as defined in section 18-3-405 (2), C.R.S.

(3) The prosecution may introduce evidence of other acts of the defendant to prove the commission of the offense as charged for any purpose other than propensity, including: Refuting defenses, such as consent or recent fabrication; showing a common plan, scheme, design, or modus operandi, regardless of whether identity is at issue and regardless of whether the charged offense has a close nexus as part of a unified transaction to the other act; showing motive, opportunity, intent, preparation, including grooming of a victim, knowledge, identity, or absence of mistake or accident; or for any other matter for which it is relevant. The prosecution may use such evidence either as proof in its case in chief or in rebuttal, including in response to evidence of the defendant's good character.

(4) If the prosecution intends to introduce evidence of other acts of the defendant pursuant to this section, the following procedures shall apply:

(a) The prosecution shall advise the trial court and the defendant in advance of trial of the other act or acts and the purpose or purposes for which the evidence is offered.

(b) The trial court shall determine by a preponderance of the evidence whether the other act occurred and whether the purpose is proper under the broad inclusionary expectations of this section.

(c) The trial court may determine the admissibility of other acts by an offer of proof.

(d) The trial court shall, at the time of the reception into evidence of other acts and again in the general charge to the jury, direct the jury as to the limited purpose or purposes for which the evidence is admitted and for which the jury may consider it.

(e) The court in instructing the jury, and the parties when making statements in the presence of the jury, shall use the words "other act or transaction" and at no time shall refer to "other offense", "other crime", or other terms with a similar connotation.

(5) The procedural requirements of this section shall not apply when the other acts are presented to prove that the offense was committed as part of a pattern of sexual abuse under section 18-3-405 (2) (d), C.R.S.

PART 4

TRIAL PROCEEDINGS

16-10-401. Trials - authority to exclude victim's advocate from sequestration orders. Notwithstanding any sequestration order entered by the court that excludes members of the general public from a jury trial or a trial before the court, the court may allow a victim's advocate to remain in the courtroom during such trial. For the purposes of this section, "victim's advocate" means any person whose regular or volunteer duties include the support of an alleged victim of physical or sexual abuse or assault.

16-10-402. Use of closed-circuit television - child or witness with intellectual and developmental disabilities. (1) (a) When a witness at the time of a trial is a child less than twelve years of age, or is a person who has an intellectual and developmental disability as defined in section 25.5-10-202, C.R.S., the court may, upon motion of a party or upon its own motion, order that the witness's testimony be taken in a room other than the courtroom and be televised by closed-circuit television in the courtroom if:

(I) The testimony is taken during the proceeding;

(II) The judge determines that testimony by the witness in the courtroom and in the presence of the defendant would result in the witness suffering serious emotional distress or trauma such that the witness would not be able to reasonably communicate; and

(III) Closed-circuit television equipment is available for such use.

(b) To obtain an order authorizing the use of closed-circuit television for testimony by a child or developmentally disabled witness, the party shall file a written motion with the court no less than fourteen days prior to the trial.

(c) Only the prosecuting attorney, the attorney for the defendant, the guardian ad litem, if any, and the judge may question the witness when he or she testifies by closed-circuit television.

(d) The operators of the closed-circuit television equipment shall make every effort to be unobtrusive while the witness is testifying.

(2) (a) Only the following persons may be in the room with the witness when the child or developmentally disabled person testifies by closed-circuit television:

(I) The prosecuting attorney;

(II) The attorney for the defendant;

(III) The guardian ad litem, if any;

(IV) The operators of the closed-circuit television equipment;

(V) A person whose presence, in the opinion of the court, contributes to the welfare and well-being of the witness, including a person who has dealt with the witness in a therapeutic setting; and

(VI) The jury.

(b) During the witness's testimony by closed-circuit television, the judge and the defendant, if present, shall remain in the courtroom.

(c) The judge and the defendant shall be allowed to communicate with the persons in the room where the witness is testifying by an appropriate electronic method.

(3) The provisions of this section shall not apply if the defendant is appearing pro se.

(4) This section shall not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the witness and the defendant in the courtroom at the same time.

(5) Nothing in this section shall be interpreted to preclude the removal of the defendant, rather than the witness, from the courtroom upon the stipulation of both parties and the approval of the court.

16-10-403. Option to close court. The court may, if it determines that the best interest of a child in a closed proceeding overrides the public interest in an open criminal proceeding and the defendant's right to a public trial, close the court to the public when images of sexually exploitative materials or forensic interviews directly related to said child are being presented as evidence in court and the child or the forensic interviewer is on the witness stand.

ARTICLE 11

Imposition of Sentence

PART 1

ALTERNATIVES - INVESTIGATION

16-11-101. Alternatives in sentencing - repeal. (Repealed)

16-11-101.5. Collection of restitution - repeal. (Repealed)

16-11-101.6. Collection of fines and fees - methods - charges - judicial collection enhancement fund. (1) If the defendant is assessed any fines, fees, costs, surcharges, or other

monetary assessments with regard to the sentencing, disposition, or adjudication of a felony, misdemeanor, juvenile delinquency petition, petty offense, traffic offense, or traffic infraction and does not pay all amounts assessed in full on the date of the assessment, the defendant shall pay to the clerk of the court an additional time payment fee of twenty-five dollars. The time payment fee may be assessed once per case; except that, if amounts owed in the case have still not been paid in full one year after the date of the assessment, said fee shall be assessed annually until the defendant has fully satisfied his or her financial obligation in the case. In addition, there may be assessed against a defendant a late penalty fee of ten dollars each time a payment toward the fines, fees, costs, surcharges, or other amounts owed is not received on or before the date due. If the court determines that the defendant does not have the financial resources to pay a time payment fee or a late penalty fee, the court may waive or suspend a time payment fee or a late penalty fee. Amounts collected shall be credited first against the time payment and any late penalty fees assessed under this subsection (1), then against any fines, and finally against any costs.

(2) All time payment fees and late penalty fees collected shall be credited to the judicial collection enhancement fund, which fund is hereby created in the state treasury. In addition, reasonable costs incurred and collected by the state shall be credited to the fund. The general assembly shall make annual appropriations from the fund to the judicial department for administrative and personnel costs incurred in collecting restitution, fines, costs, fees, and other monetary assessments. At the end of any fiscal year, all unexpended and unencumbered moneys and any interest shall remain in the fund for appropriation to the judicial department for ongoing enforcement and collection of restitution, fines, fees, costs, surcharges, and other monetary assessments.

(3) To collect on past due orders of fines or fees, the state may employ any method available to collect state receivables, including assigning such accounts to private counsel or private collection agencies under section 24-30-202.4 (2), C.R.S. Any fees or costs of the private counsel or collection agency shall also be added to the amount due, but such fees and costs shall not exceed twenty-five percent of the amount collected.

(4) (a) On past due orders, the court may, on its own motion or through the use of a collections investigator, direct that a certain portion of a defendant's earnings, not to exceed fifty percent, be withheld and applied to any unpaid fines or fees, if such an order does not adversely impact the defendant's ability to comply with other orders of the court. An attachment of earnings under this section may be modified to a lesser or greater amount based upon changes in a defendant's circumstances as long as the amount withheld does not exceed fifty percent and may be suspended or cancelled at the court's discretion. For purposes of this section, "earnings" shall have the same meaning as set forth in section 13-54.5-101 (2), C.R.S., and shall include profits.

(b) An attachment of earnings or a writ of garnishment to collect judgments from a garnishee's earnings for court assessments, including fines, fees, costs, restitution, and surcharges pursuant to this section or section 16-18.5-105:

(I) Has priority over any other garnishment, lien, or income assignment except for a writ for arrearages for child support, for maintenance when combined with child support, for child support debts, or for maintenance or a writ previously served on the same garnishee pursuant to this section; and

(II) Shall require the garnishee to withhold, pursuant to section 13-54-104 (3), C.R.S., the portion of earnings subject to garnishment at each succeeding earnings disbursement interval until the judgment is satisfied or the garnishment is released by the court or in writing by the judgment creditor.

(5) During any period of time that a defendant is a state inmate as defined in section 17-1-102 (8), C.R.S., the superintendent of the correctional facility to which such defendant is assigned, or his or her designee, may fix the manner and time of payment of fines and fees and may direct that a portion of the wages of such defendant under section 17-24-122 (3), C.R.S., or compensation under section 17-24-114, C.R.S., be applied to any unpaid fines or fees.

(6) (a) The judicial department may enter into a memorandum of understanding with the state treasurer, acting as the administrator of unclaimed property under the "Unclaimed Property Act", article 13 of title 38, C.R.S., for the purpose of offsetting against a claim for unclaimed property the amount of outstanding fines, fees, costs, or surcharges owed pursuant to law or an order entered by a court of this state by the person claiming unclaimed property. When an offset is to be made, the judicial department or the court to which the fines, fees, costs, or surcharges are owed shall notify the defendant in writing that the state intends to offset the defendant's outstanding fines, fees, costs, or surcharges against his or her claim for unclaimed property.

(b) The state court administrator may adopt rules establishing the process by which an unclaimed property claimant may object to an offset and request an administrative review. The sole issues to be determined at the administrative review shall be whether the person is required to pay the fines, fees, costs, or surcharges pursuant to law or an order entered by a court of this state and the amount of the outstanding fines, fees, costs, or surcharges.

(c) For purposes of this subsection (6), "claim for unclaimed property" means a cash claim filed in accordance with section 38-13-117, C.R.S.

16-11-101.7. Repayment of crime stopper reward - crime stopper reward reimbursement fund - created. (1) In addition to any other penalty authorized by law, after a defendant has been convicted of or entered a plea of guilty or nolo contendere to a felony offense, or enters into a plea bargain agreement concerning a felony offense which is reduced to a misdemeanor pursuant to such agreement, the court may order such defendant to repay all or part of any reward paid by a crime stopper organization that led to the defendant's arrest and conviction. The amount of such repayment may not exceed the actual reward paid by any crime stopper organization and shall be used solely for paying rewards.

(2) (a) Upon an order to repay all or part of a crime stopper reward, the court shall assess such repayment against the defendant in the same manner as other costs of prosecution are assessed against a defendant. The court shall order the defendant to:

(I) Pay the entire amount when sentence is pronounced; or

(II) Pay the entire amount on such later date as may be specified by the court.

(b) Any order for the repayment of all or part of a crime stopper reward shall be prioritized in accordance with the provisions of section 18-1.3-204 (2.5), C.R.S.

(3) All moneys collected by the court pursuant to this section, together with transmittal information which includes the court's docket number, the defendant's name, and the crime

stopper organization which is designated to receive the repayment of reward, shall be promptly forwarded to the division of criminal justice created by section 24-33.5-502, C.R.S. Upon receipt, the division of criminal justice shall promptly transmit the moneys to the state treasurer who shall deposit them in the crime stopper reward reimbursement fund which is hereby created. Moneys in the fund shall be continuously appropriated to the division of criminal justice for the purposes of this section. The disbursement of any such moneys to the designated crime stopper organization shall be made by the division of criminal justice within thirty-five days after the date of deposit in the crime stopper reward reimbursement fund.

(4) As used in this section, "crime stopper organization" has the same meaning as provided in section 16-15.7-102 (1).

16-11-101.8. State income tax refund offsets - fines, fees, costs, or surcharges - definitions. (1) In any case in which a defendant has an unsatisfied fine, fee, cost, or surcharge obligation imposed pursuant to law or a court order, the judicial department is authorized to transmit data concerning the obligation to the department of revenue for the purpose of conducting a data match and offsetting the obligation against a state income tax refund pursuant to section 39-21-108 (3), C.R.S. For any obligation identified by the judicial department for offset, the state court administrator shall:

(a) On at least an annual basis, certify to the department of revenue the social security number of the defendant who is obligated to pay the obligation and the amount of the outstanding obligation. The department of revenue may request additional identifying information from the judicial department that is necessary to obtain an accurate data match.

(b) Upon notification by the department of revenue of a data match, notify the appropriate court that a match has occurred and that an offset is pending and provide to the court the identifying information received from the department concerning the defendant whose state income tax refund is subject to the offset;

(c) Provide or require the appropriate court to provide written notice to the defendant that the state intends to offset the defendant's obligation against his or her state income tax refund and that the defendant has the right to object to the offset and request an administrative review; and

(d) Upon receipt of funds for offset from the department of revenue, transmit the funds to the appropriate court.

(2) The clerk of court shall apply funds received pursuant to this section to the defendant's outstanding fines, fees, costs, or surcharges. If the moneys received exceed the defendant's current obligation, the excess may be applied to other financial obligations the defendant owes the court or the judicial department. If no other financial obligations are owed, the clerk of court shall refund any excess moneys to the defendant.

(3) The state court administrator may adopt rules establishing the process by which a defendant may object to an offset and request an administrative review. The sole issues to be determined at the administrative review shall be whether the person is required to pay the fines, fees, costs, or surcharges pursuant to law or an order entered by a court of this state and the amount of the outstanding fines, fees, costs, or surcharges.

(4) The department of revenue is authorized to receive data from the judicial department

and execute offsets of state income tax refunds in accordance with this section and section 39-21-108 (3), C.R.S.

(5) As used in this section, "defendant" means any person who has been assessed a fine, fee, cost, or surcharge as an adult or juvenile pursuant to law or a court order.

16-11-102. Presentence or probation investigation. (1) (a) (I) Following the return of a verdict of guilty of a felony, other than a class 1 felony, or following a finding of guilt on such charge where the issues were tried to the court, or on a plea of guilty or nolo contendere to such a charge, or upon order of the court in any misdemeanor conviction, the probation officer shall make an investigation and written report to the court before the imposition of sentence. Each presentence report must include a substance abuse assessment or evaluation made pursuant to article 11.5 of this title and, unless waived by the court, must include, but not be limited to, information as to the defendant's family background, educational history, employment record, and past criminal record, including the defendant's past juvenile delinquency record, if any; information indicating whether the defendant has been convicted of unlawful sexual behavior as defined in section 16-22-102 (9); an evaluation of the alternative dispositions available for the defendant; the information required by the court pursuant to article 18.5 of this title; a victim impact statement; and such other information as the court may require.

(II) Except as described in subparagraph (VI) of this paragraph (a), if the defendant is convicted of a felony that occurred after July 1, 2004, and he or she is eligible to receive a sentence to the department of corrections, the report described in subparagraph (I) of this paragraph (a) must include the following statement:

> "If the defendant is sentenced to the Department of Corrections, he or she may not serve his or her entire sentence in prison but may be released to community corrections or parole. The defendant's Parole Eligibility Date (PED) occurs after he or she has served fifty or seventy-five percent of his or her sentence, as provided in section 17-22.5-403, Colorado Revised Statutes, less any authorized earned time.
>
> If the defendant is sentenced to the Department of Corrections, he or she may be eligible for a reduction in the length of his or her sentence by earned time. Regular earned time is up to ten or twelve days per month, not to exceed thirty percent of the defendant's sentence; however, the defendant may be eligible for further limited reductions through the application of various types of earned time provided in statute and administered pursuant to the policy of the Department of Corrections.
>
> If the defendant is sentenced to the Department of Corrections, he or she may be eligible for release, to await parole in a community corrections facility, if

such release is approved by the local community corrections board. If the defendant was not convicted of a crime of violence, as defined in section 18-1.3-406 (2), Colorado Revised Statutes, he or she may be moved to a community corrections placement as early as sixteen months prior to his or her PED. If the defendant was convicted of a crime of violence, he or she cannot be moved to a community corrections placement earlier than one hundred eighty days prior to his or her PED.

A defendant's eligibility for community corrections or parole does not necessarily mean that community corrections or parole will be granted. The inmate locator on the internet web site of the Department of Corrections can provide additional information regarding the sentence of an individual defendant.

The provisions of this statement do not apply to a defendant who has been sentenced to the youthful offender system within the Department of Corrections."

(III) The district attorney's office shall prepare a victim impact statement. The department of human services shall provide the district attorney's office with the information necessary for the preparation of a victim impact statement. In addition, the court, in cases that it deems appropriate, may require the presentence report to include the findings and results of a professionally conducted psychiatric examination of the defendant.

(IV) No less than seventy-two hours prior to the sentencing hearing, the probation department shall provide copies of the presentence report, including any recommendations as to probation, to the prosecuting attorney and defense counsel or to the defendant if he or she is unrepresented. Upon request of either the defense or the district attorney, the probation department shall provide the presentence report at least seven days prior to the sentencing hearing. If the probation department informs the court it cannot provide the report at least seven days prior to the sentencing hearing, the court shall grant the probation department additional time to complete the report and shall reset the sentencing hearing so that the hearing is held at least seven days after the probation department provides the report.

(V) The probation department shall transmit a copy of the presentence report, and the court shall transmit the mittimus to the department of corrections.

(VI) The report described in subparagraph (I) of this paragraph (a) need not include the statement described in subparagraph (II) of this paragraph (a) if:

(A) The defendant is a sex offender for whom the sex offender management board has established separate and distinct release guidelines pursuant to section 18-1.3-1009, C.R.S.;

(B) The defendant has at least one previous conviction for a crime of violence and must be referred by the department to the state board of parole pursuant to section 17-22.5-403 (3.5), C.R.S.;

(C) The defendant is convicted of a class 1 felony or is a juvenile convicted as an adult of a class 1 felony; or

(D) The probation department has reasonable grounds to believe that the language of the statement is inapplicable to the defendant. If the probation department elects to omit the

statement pursuant to this sub-subparagraph (D), the probation department shall document in the report its grounds for doing so.

(b) (I) Each presentence report prepared regarding a sex offender, as defined in section 16-11.7-102 (2), with respect to any offense committed on or after January 1, 1996, shall contain the results of an evaluation and identification conducted pursuant to article 11.7 of this title; except that:

(A) If the offense is a misdemeanor pursuant to the provisions of section 18-3-412.6, C.R.S., an evaluation and identification conducted pursuant to article 11.7 of this title shall not be ordered by the court;

(B) If the offense is a misdemeanor pursuant to title 42, C.R.S., or the history of sex-offending behavior was a misdemeanor sex offense committed when the defendant was a juvenile, an evaluation and identification conducted pursuant to article 11.7 of this title is not required but may be ordered by the court; and

(C) If the court accepts a stipulation that the defendant will not be sentenced to probation or if the defendant is already serving a sentence in the department of corrections, an evaluation and identification conducted pursuant to article 11.7 of this title is not required but may be ordered by the court.

(II) In addition, the presentence report shall include, when appropriate as provided in section 18-3-414.5, C.R.S., the results of the risk assessment screening instrument developed pursuant to section 16-11.7-103 (4) (d). Notwithstanding the provisions of subsection (4) of this section, a presentence report shall be prepared for each person convicted as a sex offender, and the court may not dispense with the presentence evaluation, risk assessment, and report unless an evaluation and risk assessment has been completed within the last two years and there has been no material change that would affect the evaluation and risk assessment in the past two years.

(c) (I) The state court administrator may implement a mental illness screening program to screen defendants for which the court has ordered an investigation pursuant to this section. If the state court administrator chooses to implement a mental illness screening program, the state court administrator shall use the standardized mental illness screening instrument developed pursuant to section 16-11.9-102 and conduct the screening in accordance with the procedures established pursuant to said section. The findings and results of any standardized mental illness screening conducted pursuant to this paragraph (c) shall be included in the written report to the court prepared and submitted pursuant to this subsection (1).

(II) Prior to implementation of a mental illness screening program pursuant to this paragraph (c), if implementation of the program would require an increase in appropriations, the state court administrator shall submit to the joint budget committee a request for funding in the amount necessary to implement the mental illness screening program. If implementation of the program would require an increase in appropriations, implementation of the mental illness screening program shall be conditional upon approval of the funding request.

(1.1) Repealed.

(1.5) A victim impact statement may include the following:

(a) An identification of the victim of the offense;

(b) An itemization of any economic loss suffered by the victim as a result of the offense, including any loss incurred after the offense and after criminal charges were filed formally

against the defendant. The victim impact statement shall be prepared by the district attorney's office at the time the offense is filed and shall be updated to include any loss incurred by the victim after criminal charges were filed.

(c) An identification of any physical injury suffered by the victim as a result of the offense, including information on its seriousness and permanence;

(d) A description of any change in the victim's personal welfare or familial relationships as a result of the offense;

(e) An identification of any request for psychological services initiated by the victim or the victim's family as a result of the offense;

(e.5) An evaluation of the victim's and the victim's children's safety if probation is granted;

(f) Any other information related to the impact of the offense upon the victim that the court requires.

(1.7) Each presentence report shall also include information from the offender and any other source available to the probation officer regarding the offender's estate, as defined in section 18-1.3-701 (5) (b), C.R.S., and other pertinent financial information, for the purpose of determining whether such offender or juvenile has sufficient assets to pay all or part of such offender's or juvenile's cost of care, as defined in section 18-1.3-701 (5) (a), C.R.S. The financial information obtained from the offender shall be submitted in writing and under oath.

(1.8) Upon the request of either the prosecution or the defense, each presentence report prepared regarding a youthful offender, as defined in section 18-1.3-407, C.R.S., who is eligible for sentencing to the youthful offender system pursuant to section 18-1.3-407.5, 19-2-517 (6), or 19-2-518 (1) (d) (II), C.R.S., shall include a determination by the warden of the youthful offender system whether the youthful offender is acceptable for sentencing to the youthful offender system. When making a determination, the warden shall consider the nature and circumstances of the crime, the circumstances and criminal history of the youthful offender, the available bed space in the youthful offender system, and any other appropriate considerations.

(1.9) Each presentence report shall also:

(a) Include the results of an actuarial assessment of the offender's criminological risks and needs;

(b) Provide sufficient information to allow the court to consider:

(I) Whether the offender is a suitable candidate for a sentencing option that does not involve incarceration or a combination of sentencing options that does not involve incarceration; and

(II) The appropriate conditions to impose if a defendant is sentenced to probation;

(c) Describe the projected costs, if known, that are associated with each sentencing option that is available to the court; and

(d) Set forth the purposes of title 18, C.R.S., with respect to sentencing, as such purposes are described in section 18-1-102.5, C.R.S.

(2) The report of the probation officer and the procedures to be followed at the time sentence is imposed and final judgment is entered shall be as required by the Colorado rules of criminal procedure. In addition to the requirements of such rules, the report shall include a

statement showing the amount of time during which the defendant was imprisoned awaiting trial upon the charge resulting in conviction.

(3) The court, upon its own motion or upon the petition of the probation officer, may order any defendant who is subject to presentence investigation or who has made application for probation to submit to a mental and physical examination.

(4) The court, with the concurrence of the defendant and the prosecuting attorney, may dispense with the presentence examination and report; except that the information required by section 18-1.3-603 (2), C.R.S., and a victim impact statement shall be made in every case. The amount of restitution shall be ordered pursuant to section 18-1.3-603, C.R.S., and article 18.5 of this title and endorsed upon the mittimus.

(5) After receiving the presentence report and before imposing sentence, the court shall afford the defendant an opportunity to make a statement in his or her own behalf and to present any information in mitigation of punishment. The prosecution also shall be given an opportunity to be heard on any matter material to the imposition of sentence. The court shall then sentence the defendant pursuant to the provisions of this article and section 18-1.3-401, C.R.S.

(6) Following the return of a verdict of guilty of a felony, or a finding of guilt on such charge where the issues were tried to the court, or on a plea of guilty or nolo contendere to such a charge, the district attorney may file with the court identification photographs and fingerprints of the defendant or defendants, and such identification photographs and fingerprints shall become part of the court record. Such identification photographs and fingerprints of the defendant or defendants shall constitute prima facie evidence of identity under section 18-1.3-802, C.R.S.

16-11-102.3. Genetic testing of convicted offenders - repeal. (Repealed)

16-11-102.4. Genetic testing of convicted offenders. (1) Beginning July 1, 2007, each of the following convicted offenders shall submit to and pay for collection and a chemical testing of the offender's biological substance sample to determine the genetic markers thereof, unless the offender has already provided a biological substance sample for such testing pursuant to a statute of this state:

(a) Every offender who, on or after July 1, 2007, is in the custody of the department of corrections based on a sentence imposed before that date, including an offender on parole. The department shall collect the sample at least thirty-five days prior to the offender's discharge or release from custody, release on parole, or transfer to community corrections placement.

(b) (I) Every offender who, on or after July 1, 2007, is on probation under a sentence imposed before that date for a conviction of:

(A) An offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, committed on or after July 1, 1996;

(B) An offense involving unlawful sexual behavior, or for which the factual basis involved an offense involving unlawful sexual behavior, committed before July 1, 1996, if the offender was on probation for the offense as of July 1, 2000;

(C) An offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S.,

committed on or after July 1, 1999;

(D) An offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S., committed before July 1, 1999, if the offender was on probation for the offense as of July 1, 2000;

(E) Second degree murder in violation of section 18-3-103 (1), C.R.S., committed on or after July 1, 1999;

(F) Second degree murder in violation of section 18-3-103 (1), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(G) First degree assault in violation of section 18-3-202 (1), C.R.S., committed on or after July 1, 1999;

(H) First degree assault in violation of section 18-3-202 (1), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(I) Second degree assault in violation of section 18-3-203 (1) (b), (1) (c), (1) (d), (1) (g), or (2) (b.5), C.R.S., committed on or after July 1, 1999;

(J) Second degree assault in violation of section 18-3-203 (1) (b), (1) (c), (1) (d), (1) (g), or (2) (b.5), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(K) Second degree kidnapping in violation of section 18-3-302 (4), C.R.S., committed on or after July 1, 1999;

(L) Second degree kidnapping in violation of section 18-3-302 (4), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(M) First degree arson in violation of section 18-4-102 (3), C.R.S., committed on or after July 1, 1999;

(N) First degree arson in violation of section 18-4-102 (3), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(O) First degree burglary in violation of section 18-4-202, C.R.S., committed on or after July 1, 1999;

(P) First degree burglary in violation of section 18-4-202, C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(Q) Second degree burglary in violation of section 18-4-203, C.R.S., committed on or after July 1, 2000;

(R) Third degree burglary in violation of section 18-4-204, C.R.S., committed on or after July 1, 2000;

(S) Aggravated robbery in violation of section 18-4-302 (4), C.R.S., committed on or after July 1, 1999;

(T) Aggravated robbery in violation of section 18-4-302 (4), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000; or

(U) Any other felony, if the offender was on probation for the conviction as of July 1, 2000, and had been previously convicted of an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, an offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S., second degree murder in violation of section 18-3-103 (1), C.R.S., first degree assault in violation of section 18-3-202 (1), C.R.S., second degree assault in violation of section 18-3-203 (1) (b), (1) (c), (1) (d), (1) (g), or (2) (b.5),

C.R.S., second degree kidnapping in violation of section 18-3-302 (4), C.R.S., first degree arson in violation of section 18-4-102 (3), C.R.S., first degree burglary in violation of section 18-4-202, C.R.S., or aggravated robbery in violation of section 18-4-302 (4), C.R.S.

(II) The judicial department or a probation department shall collect the sample required by this subsection (1) at least thirty days prior to the offender's scheduled termination of probation, but, in any event, by December 31, 2007.

(c) Every offender who, on or after July 1, 2007, is on a deferred judgment and sentence as authorized in section 18-1.3-102, C.R.S., that was granted on or after July 1, 1999, but before July 1, 2007, for an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The judicial department or a probation department shall collect the sample required by this subsection (1) at least thirty days prior to the offender's scheduled termination of the deferred judgment, but, in any event, by October 1, 2007.

(d) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility pursuant to article 27 of title 17, C.R.S., based on a sentence imposed before that date for a felony conviction. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(e) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility based on a sentence imposed before that date for conviction of a misdemeanor offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(f) Every offender who, on or after July 1, 2007, is in the custody of the youthful offender system based on a sentence imposed before that date, including an offender on community supervision. The department of corrections shall collect the sample at least thirty-five days prior to the offender's discharge or release from custody or release to community supervision.

(g) Every offender sentenced on or after July 1, 2007, for a felony conviction; except that this paragraph (g) shall not apply to an offender granted a deferred judgment and sentencing as authorized in section 18-1.3-102, C.R.S., unless otherwise required to submit to a sample pursuant to this section, or unless the deferred judgment and sentencing is revoked and a sentence is imposed. The sample shall be collected:

(I) From an offender sentenced to the department of corrections, by the department during the intake process but in any event within thirty-five days after the offender is received by the department;

(II) From an offender sentenced to county jail or community corrections, by the sheriff or by the community corrections program within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty-five days after the offender is placed on probation;

(IV) From an offender sentenced to the youthful offender system, by the department of

corrections within thirty-five days after the offender is received at the youthful offender system; and

(V) From an offender who receives any other sentence or who receives a suspended sentence, by the judicial department within thirty-five days after the offender is sentenced or the sentence is suspended.

(h) Every offender who, on or after July 1, 2007, is sentenced for a conviction of, or who receives a deferred judgment and sentence for, an offense involving unlawful sexual behavior or for which the underlying factual basis involves unlawful sexual behavior. The sample shall be collected:

(I) From an offender sentenced to county jail or community corrections, by the sheriff or by the community corrections program within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(II) From an offender sentenced to probation, by the judicial department or a probation department within thirty-five days after the offender is placed on probation;

(III) From an offender who receives a deferred judgment and sentence, by the judicial department or a probation department within thirty-five days after the offender receives the deferred judgment and sentence; and

(IV) From an offender who receives any other sentence or who receives a suspended sentence, by the judicial department or a probation department within thirty-five days after the offender is sentenced or the sentence is suspended.

(2) For purposes of this section:

(a) "Convicted" means having received a verdict of guilty by a judge or jury or having pled guilty or nolo contendere. Except where otherwise indicated, "convicted" does not include deferred judgment and sentencing pursuant to section 18-1.3-102, C.R.S., unless the deferred judgment and sentence is revoked and a sentence is imposed.

(b) "Unlawful sexual behavior" shall have the same meaning as provided in section 16-22-102 (9).

(3) The judicial department, the department of corrections, a probation department, a sheriff, or a contractor may:

(a) Use reasonable force to obtain biological substance samples in accordance with this section using medically recognized procedures. In addition, an offender's refusal to comply with this section may be grounds for revocation or denial of parole, probation, suspension of sentence, or deferred judgment and sentence. Failure to pay for collection and a chemical testing of a biological substance sample shall be considered a refusal to comply if the offender has the present ability to pay.

(b) Collect biological substance samples notwithstanding that collection was not accomplished within an applicable deadline set forth in this section.

(4) Any moneys received from an offender pursuant to this section shall be deposited in the offender identification fund created in section 24-33.5-415.6, C.R.S.

(5) The Colorado bureau of investigation shall conduct the chemical testing of the biological substance samples obtained pursuant to this section. The Colorado bureau of investigation shall file and maintain the results thereof and shall furnish the results to a law enforcement agency upon request. The Colorado bureau of investigation shall store and preserve

all biological substance samples obtained pursuant to this section.

(6) This section shall not apply to juvenile adjudications under title 19, C.R.S.

16-11-102.5. Drug testing of offenders by judicial department - pilot program. (Repealed)

16-11-103. Imposition of sentence in class 1 felonies - appellate review. (Repealed)

16-11-104. Genetic testing - repeal. (Repealed)

16-11-105. Local initiative committee pilot program for the management of community-based programs for adults with mental illness who come into contact with the criminal justice system - legislative declaration - creation - duties - report - repeal. (Repealed)

PART 2

PROBATION

16-11-201. Application for probation. (Repealed)

16-11-202. Probationary power of court. (Repealed)

16-11-203. Criteria for granting probation. (Repealed)

16-11-204. Conditions of probation - repeal. (Repealed)

16-11-204.3. Genetic testing as a condition of probation - repeal. (Repealed)

16-11-204.5. Restitution as a condition of probation. (Repealed)

16-11-204.6. Repayment of crime stopper reward as a condition of probation.

(Repealed)

16-11-205. Arrest of probationer - revocation. (1) A probation officer may arrest any probationer when:

(a) He has a warrant commanding that the probationer be arrested; or

(b) He has probable cause to believe that a warrant for the probationer's arrest has been issued in this state or another state for any criminal offense or for violation of the conditions of probation; or

(c) Any offense under the laws of this state has been or is being committed by the probationer in his presence; or

(d) He has probable cause to believe that a crime has been committed and the probationer has committed such crime; or

(e) He has probable cause to believe that the conditions of probation have been violated and probable cause to believe that the probationer is leaving or about to leave the state, or that the probationer will fail or refuse to appear before the court to answer charges of violation of the conditions of probation, or that the arrest of the probationer is necessary to prevent physical harm to the probationer or another person or the commission of a crime; or

(f) The probationer, who is on probation as a result of a conviction of any felony except a class 1 felony, has been tested for the illegal or unauthorized use of a controlled substance and the result of such test is positive.

(2) If a probation officer has reason to believe that the conditions of probation have been violated by any probationer, he may issue a summons requiring the probationer to appear before the court at a specified time and place to answer charges of violation of the conditions of probation. The summons, unless accompanied by a copy of a complaint, shall contain a brief statement of the violation and the date and place thereof. Failure of the probationer to appear before the court as required by the summons shall be deemed a violation of the conditions of probation.

(3) If, rather than issuing a summons, a probation officer makes an arrest, without warrant, of a probationer, the probationer shall be taken without unnecessary delay before the nearest available judge of a court of record. Any probationer so arrested shall have all of the rights afforded by the provisions of this code to persons incarcerated before trial of criminal charges and may be admitted to bail pending probation revocation hearing.

(4) Within seven days after the arrest of any probationer as provided in this section, or within a reasonable time after the issuance of a summons under this section, the probation officer shall complete his or her investigation and either:

(a) File a complaint in the court having jurisdiction of the violation of probation; or

(b) Order the release of the probationer, if imprisoned, and notify the probationer that he is relieved of obligation to appear before the court. In such event, the probation officer shall give written notification to the court of his action.

(5) A complaint alleging the violation of a condition of probation may be filed either by the probation officer pursuant to subsection (4) of this section or by the district attorney. Such

complaint shall contain the name of the probationer, shall identify the violation charged and the condition of probation alleged to have been violated, including the date and approximate location thereof, and shall be signed by the probation officer or the district attorney. A copy thereof shall be given to the probationer a reasonable length of time before he appears before the court.

(6) A warrant for the arrest of any probationer for violation of the conditions of probation may be issued by any judge of a court of record upon the report of a probation officer or upon the verified complaint of any person, establishing to the satisfaction of the judge probable cause to believe that a condition of probation has been violated and that the arrest of the probationer is reasonably necessary. The warrant may be executed by any probation officer or by a peace officer authorized to execute warrants in the county in which the probationer is found.

16-11-206. Revocation hearing. (1) At the first appearance of the probationer in court or at the commencement of the hearing, whichever is first in time, the court shall advise the probationer as provided in section 16-7-206 insofar as such matters are applicable; except that there shall be no right to a trial by jury in proceedings for revocation of probation.

(2) At or prior to the commencement of the hearing, the court shall advise the probationer of the charges against him and the possible penalties therefor and shall require the probationer to plead guilty or not guilty.

(3) At the hearing, the prosecution has the burden of establishing by a preponderance of the evidence the violation of a condition of probation; except that the commission of a criminal offense must be established beyond a reasonable doubt unless the probationer has been convicted thereof in a criminal proceeding. When, in a revocation hearing, the alleged violation of a condition is the probationer's failure to pay court-ordered compensation to appointed counsel, probation fees, court costs, restitution, or reparations, evidence of the failure to pay shall constitute prima facie evidence of a violation. The court may, when it appears that the alleged violation of conditions of probation consists of an offense with which the probationer is charged in a criminal proceeding then pending, continue the probation revocation hearing until the termination of the criminal proceeding. Any evidence having probative value shall be received regardless of its admissibility under the exclusionary rules of evidence if the defendant is accorded a fair opportunity to rebut hearsay evidence.

(4) If the probationer is in custody, the hearing shall be held within fourteen days after the filing of the complaint, unless delay or continuance is granted by the court at the instance or request of the probationer or for other good cause found by the court justifying further delay.

(5) If the court determines that a violation of a condition of probation has been committed, it shall, within seven days after the said hearing, either revoke or continue the probation. If probation is revoked, the court may then impose any sentence or grant any probation pursuant to the provisions of this part 2 which might originally have been imposed or granted.

16-11-207. Absent violator - arrest and return. When there is reason to believe that a condition of probation has been violated and the alleged violator is not in the state or cannot be apprehended in the state, the probation officer shall report these facts to the court which granted

probation, and the court may forthwith order the issuance of a warrant for the arrest and return of the probationer.

16-11-208. Officer's appointment - salary - oath. (1) Probation officers shall be appointed pursuant to the provisions of section 13-3-105, C.R.S., and shall not be removed except for cause.

(2) Before entering upon the duties of his office, each probation officer shall take an oath of office as an officer of the court, as prescribed by law.

16-11-209. Duties of probation officers. (1) It is the duty of a probation officer to investigate and report upon any case referred to him or her by the court for investigation. The probation officer shall furnish to each person released on probation under his or her supervision a written statement of the conditions of probation and shall instruct the person regarding the same. The officer shall keep informed concerning the conduct and condition of each person on probation under his or her supervision and shall report thereon to the court at such times as it directs. Such officers shall use all suitable methods, not inconsistent with the conditions imposed by the court, to aid persons on probation and to bring about improvement in their conduct and condition. Each officer shall keep records of his or her work; shall make such reports to the court as are required; and shall perform such other duties as the court may direct.

(2) Any probationer, on probation as a result of a conviction, who is under the supervision of a probation officer pursuant to this part 2 and who is initially tested for the illegal or unauthorized use of a controlled substance and the result of such test is positive shall be subject to any or all of the following actions:

(a) An immediate warrantless arrest;

(b) An immediate increase in the level of supervision;

(c) Random screenings for the detection of the illegal or unauthorized use of a controlled substance, which use may serve as the basis for additional punishment or any other community placement;

(d) Referral to a substance abuse treatment program.

(3) If any probationer described in subsection (2) of this section is subjected to a second or subsequent test for the illegal or unauthorized use of a controlled substance and the result of such test is positive, the probation officer shall take one or more of the following actions:

(a) Make an immediate warrantless arrest;

(b) Seek a probation revocation in accordance with sections 16-11-205 and 16-11-206;

(c) Immediately increase the level of supervision;

(d) Increase the number of drug screenings for the illegal or unauthorized use of controlled substances;

(e) Refer the probationer to a substance abuse treatment program.

(4) (a) Prior to an offender being released from probation, the probation officer releasing the individual shall provide the notice described in paragraph (b) of this subsection (4) at the last meeting the officer has with the person.

(b) The notice shall contain the following information:

(I) That a person convicted of certain crimes has the right to seek to have his or her criminal record sealed;

(II) That there are collateral consequences associated with a criminal conviction that a sealing order can alleviate;

(III) The list of crimes that are eligible for sealing and the associated time period that a person must wait prior to seeking sealing;

(IV) That the state public defender has compiled a list of laws that impose collateral consequences related to a criminal conviction and that the list is available on the state public defender's web site; and

(V) That the person should seek legal counsel if he or she has any questions regarding record sealing.

16-11-210. County and juvenile courts. Any county court or juvenile court in this state may exercise the powers provided for and granted to district courts in this part 2, and the probation officers provided for in this part 2 shall also serve such courts in the same capacity as required by this part 2 for district courts.

16-11-211. Interdistrict probation department - personnel. (1) Any two or more contiguous judicial districts may, by the election of the district judges or a majority of the judges of each district, combine in the formation of an interdistrict probation department; except that such formation shall be approved by the chief justice of the supreme court.

(2) This department, if created, shall have an administrative head who shall be appointed by the judges or the majority of the judges of the districts which comprise the interdistrict probation department, subject to section 13-3-105, C.R.S., and such administrative head shall be the chief probation officer of the department. The department shall consist of such other probation officers as may be appointed, together with such administrative and clerical employees as may be required, as provided pursuant to section 13-3-105, C.R.S.

(3) The chief probation officer shall be charged with the duty of administering the affairs of the department and supervising the probation officers and personnel of the department and conducting the department in accordance with the laws pertaining to probation and the rules of the district courts of the said districts.

(4) Any district which participates in an interdistrict probation department may withdraw from such department by the election of the judges or a majority of the judges of the district and the approval of the chief justice of the supreme court, by giving written notice to the presiding judges of all other judicial districts affected. However, the withdrawal shall not be effective until January 1 of the year following the written notification.

16-11-212. Work and education release programs. (Repealed)

16-11-213. Intensive supervision probation programs - legislative declaration. (Repealed)

16-11-214. Fund created - probation services. (1) (a) There is hereby created in the state treasury the offender services fund to which shall be credited one hundred percent of any cost of care payments or probation supervision fees paid to the state pursuant to section 18-1.3-204 (2) (a) (V) or 19-2-114 (1), C.R.S., and from which the general assembly shall make annual appropriations for administrative and personnel costs for adult and juvenile probation services as well as for adjunct adult and juvenile probation services in the judicial department, including treatment services, contract services, drug and alcohol treatment services, and program development, and for associated administrative and personnel costs. Any moneys remaining in said fund at the end of any fiscal year shall not revert to the general fund.

(b) Repealed.

(c) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on April 20, 2009, the state treasurer shall deduct two hundred fifty thousand dollars from the offender services fund and transfer such sum to the general fund.

(d) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on July 1, 2009, the state treasurer shall deduct two million four hundred ninety-eight thousand four hundred thirty-nine dollars from the offender services fund and transfer such sum to the general fund.

(2) (Deleted by amendment, L. 2000, p. 997, § 2, effective May 26, 2000.)

PART 3

SENTENCES TO IMPRISONMENT

16-11-301. Sentences - commitments - correctional facilities - county jail - age limit. (1) As a general rule, imprisonment for the conviction of a felony by an adult offender shall be served by confinement in an appropriate facility as determined by the executive director of the department of corrections. In such cases, the court will sentence the offender to the custody of the executive director of the department of corrections.

(2) Unless otherwise provided in the "Colorado Children's Code", title 19, C.R.S., a defendant convicted of a crime which may be punished by imprisonment in a county jail may be sentenced to a correctional facility other than state correctional facilities if at the time of sentencing the defendant is sixteen years of age or older but under the age of twenty-one years, and if, in the opinion of the court, rehabilitation of the person convicted can best be obtained by such a sentence, and if it also appears to the court that the best interests of the person and of the public and the ends of justice would thereby be served.

(3) Repealed.

(4) With regard to any juvenile sentenced to the department of corrections, the executive

director shall consider the juvenile's safety and well-being in determining the facility in which to house the juvenile, the persons with whom the juvenile has contact, and the activities in which the juvenile engages.

16-11-302. Duration of sentences for felonies. (Repealed)

16-11-302.5. Duration of sentences for misdemeanors. (Repealed)

16-11-303. Definite sentence not void. (Repealed)

16-11-304. Determinate sentence of imprisonment imposed by court. (Repealed)

16-11-305. Sentence not void if for definite period. (Repealed)

16-11-306. Credit for presentence confinement. (Repealed)

16-11-307. Credit for confinement pending appeal. (1) (a) A defendant whose sentence was stayed pending appeal prior to July 1, 1972, but who was confined pending disposition of the appeal, is entitled to credit against the maximum and minimum terms of his sentence for the entire period of confinement served while the stay of execution was in effect.

(b) A defendant whose sentence is stayed pending appeal after July 1, 1972, but who is confined pending disposition of the appeal, is entitled to credit against the term of his sentence for the entire period of such confinement, and this is so even though the defendant could have elected to commence serving his sentence before disposition of his appeal.

(2) The sheriff or other officer having charge of the defendant during such confinement shall endorse the length of such confinement on the mittimus and deliver it to the prison authorities when the defendant is delivered for commitment.

(3) The credit shall be computed by the prison authorities to the date of commitment. The computation shall be made as soon as practicable and the credit automatically awarded. The defendant shall be advised of the credit as soon as it is computed.

16-11-308. Custody of department of corrections - procedure. (1) When any person is sentenced to any correctional facility, that person shall be deemed to be in the custody of the executive director of the department of corrections or his designee.

(2) Any person sentenced pursuant to subsection (1) of this section shall initially be

confined in the diagnostic center, as defined in section 17-40-101 (1.5), C.R.S., unless otherwise authorized by the executive director or the executive director's designee, to undergo evaluation and diagnosis to determine whether such person should be confined in a correctional facility or any other state institution, or whether such person should participate in a rehabilitation program as provided by law; except that no person subject to the provisions of section 16-11-301 (2) shall serve such person's sentence in any state correctional facility.

(3) When such evaluation and diagnosis is completed, a recommendation shall be made to the executive director of the department of corrections or his designee as to the place of confinement or rehabilitation program as provided by law which may result in the maximum rehabilitation of the offender.

(4) Copies of the evaluation and diagnosis and the recommendation shall be shown and explained to the offender upon request; except that the executive director of the department of corrections or his designee may withhold any information he deems to be detrimental to the rehabilitation of the offender.

(4.5) Repealed.

(5) The executive director of the department of corrections or his designee is further authorized to transfer said person to any state institution or treatment facility under the jurisdiction of or approved by the department of corrections if he deems it to be in the best interests of said person and the public. Insofar as is practicable, said transfer shall be consistent with the evaluation and diagnosis and recommendation.

16-11-308.5. Authority to contract with a county or a city and county for placement of prisoners in custody of executive director. (1) The general assembly hereby finds and declares that the department of corrections needs to reduce the backlog of state prisoners in local jails and that such reduction may occur by means of contracting with local jails for jail space in an amount equal to the number of inmates backlogged in local jails. The general assembly also finds and declares that it is the general assembly's intent that the department of corrections cooperate with each contracting county or city and county to select inmates for placement who will eventually be released in that county, city and county, or geographic area, or who have special protective needs, or who have occupational skills or plans that are compatible with the county's or city and county's needs.

(1.5) For the purposes of this section, "local jail" means a jail or an adult detention center of a county or city and county.

(2) (a) The executive director of the department of corrections may enter into a contract with any county or city and county for the placement in a local jail of any person who is in the custody of the executive director. Subject to appropriations, the executive director may provide an incentive to any county or city and county to encourage such county or city and county to so contract. The incentive shall not exceed ten percent of the daily rate as determined pursuant to section 17-1-112, C.R.S., multiplied by the number of days of confinement of any such person in such local jail.

(b) In any such placement in a local jail, the executive director shall be governed by the provisions of section 16-11-308 and shall retain jurisdiction over any person so placed for the

purpose of any transfer to a state institution or treatment facility pursuant to section 16-11-308 (5).

(3) Except for contracts executed in the fiscal year beginning July 1, 1988, the board of county commissioners in each county or city council of each city and county desiring to contract with the department of corrections shall notify said department, on or before September 1 of each year, of the jail space available for contract on July 1 of the following year.

(4) Commencing with the fiscal year beginning July 1, 1988, the department of corrections shall execute contracts with counties or city and counties indicating a willingness to contract for available jail space as soon as is practicable after July 1, 1988.

(5) Beginning with budget requests required to be submitted by November 1, 1988, the executive director of the department of corrections shall include the costs of contracting for jail space in the department's annual budget request to be submitted to the joint budget committee.

16-11-309. Mandatory sentences for violent crimes. (Repealed)

16-11-310. Release from incarceration. (Repealed)

16-11-311. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - repeal. (Repealed)

16-11-312. Intensive family preservation program - juveniles sentenced to the youthful offender system - legislative declaration - development of a plan for a pilot program - duty of department - report. (Repealed)

PART 4

DEATH PENALTY - EXECUTION

16-11-401 to 16-11-405. (Repealed)

PART 5

SENTENCES TO PAYMENT OF FINES - COSTS

16-11-501 and 16-11-502. (Repealed)

PART 6

RIGHT TO ATTEND SENTENCING

16-11-601. Right to attend sentencing. The victim of any crime or a relative of the victim, if the victim has died, has the right to attend all sentencing proceedings resulting from a conviction of said crime under any laws of this state. Said person has the right to appear, personally or with counsel, at the sentencing proceeding and to adequately and reasonably express his or her views concerning the crime, the defendant, the need for restitution, and the type of sentence which should be imposed by the court. The court, in imposing sentence, shall consider the statements of such person and shall make a finding, on the record, as to whether or not the defendant would pose a threat to public safety if granted probation.

PART 7

COMMUNITY OR USEFUL PUBLIC SERVICE

16-11-701. (Repealed)

PART 8

APPLICABILITY OF PROCEDURE IN CLASS 1 FELONY CASES
FOR CRIMES COMMITTED ON OR AFTER JULY 1, 1988,
AND PRIOR TO SEPTEMBER 20, 1991

16-11-801 and 16-11-802. (Repealed)

ARTICLE 11.3

Colorado Commission on
Criminal and Juvenile Justice

16-11.3-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) Ensuring public safety and respecting the rights of victims are paramount concerns of the citizens of Colorado;

(b) Improving the effective administration of justice involves a comprehensive

examination of, and recommendations regarding, the criminal and juvenile justice systems;

(c) Current commitments to the department of corrections require expending a significant percentage of the state budget for incarceration of offenders;

(d) The number of offenders projected to be sentenced in the future will require that an even greater percentage of the state budget be dedicated to incarceration;

(e) The rate of recidivism is high, resulting in the return of many offenders to the justice system with additional significant expense;

(f) It is in the interest of the people of the state of Colorado to maintain public safety through the most cost-effective use of limited criminal justice resources;

(g) Many factors may contribute to an offender's criminal behavior, including but not limited to substance abuse, mental illness, poverty, child abuse, domestic violence, and educational deficiencies. Often times, factors contributing to criminal conduct and re-victimization are not addressed adequately within the justice system.

(h) Appropriate intervention in a child's life through the juvenile justice system or prevention programs may limit or prevent future criminal conduct;

(i) It is in the best interest of the public to engage in a comprehensive, evidence-based analysis of the circumstances and characteristics of the offenders being sentenced to the department of corrections, the alternatives to incarceration, the effectiveness of prevention programs, and the effectiveness of the criminal code and sentencing laws in securing public safety.

(2) Therefore, the general assembly declares that a commission comprised of experts in criminal justice, corrections, mental health, drug abuse, victims' rights, higher education, juvenile justice, local government, and other pertinent disciplines shall be formed to engage in an evidence-based analysis of the criminal justice system in Colorado and annually report to the governor, the speaker of the house of representatives, the president of the senate, and the chief justice of the Colorado supreme court.

16-11.3-102. Colorado commission on criminal and juvenile justice - creation - membership - operation. (1) (a) There is hereby created in the department of public safety the Colorado commission on criminal and juvenile justice, referred to in this article as the "commission". The commission shall have the powers and duties specified in this article.

(b) The commission shall exercise its powers and perform its duties and functions as if the same were transferred to the department of public safety by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) (a) The commission shall consist of twenty-six voting members, as follows:

(I) The executive director of the department of public safety, or his or her designee;

(II) The executive director of the department of corrections, or his or her designee;

(III) The executive director of the department of human services, or his or her designee;

(IV) The executive director of the department of higher education, or his or her designee;

(V) The attorney general, or his or her designee;

(VI) The state public defender, or his or her designee;

(VII) The chairperson of the state board of parole, or his or her designee;

(VIII) The chairperson of the juvenile parole board, or his or her designee;

(IX) Two members appointed by the chief justice of the Colorado supreme court from the judicial branch, at least one of whom shall be a current or retired judge;

(X) Four members of the general assembly appointed as follows:

(A) One member appointed by the speaker of the house of representatives;

(B) One member appointed by the minority leader of the house of representatives;

(C) One member appointed by the president of the senate; and

(D) One member appointed by the minority leader of the senate; and

(XI) Twelve members appointed by the governor as follows:

(A) A representative of a police department;

(B) A representative of a sheriff's department;

(C) An expert in juvenile justice issues;

(D) Two elected district attorneys;

(E) A county commissioner;

(F) A criminal defense attorney;

(G) A representative of a victims' rights organization;

(H) One member who shall be a representative of a community corrections provider, a community corrections board member, or a mental health or substance abuse treatment provider; and

(I) Three members who shall be appointed at-large.

(b) The director of the division of criminal justice in the department of public safety shall serve as a nonvoting member of the commission.

(3) (a) The appointed members of the commission shall serve terms of three years; except that the members first appointed pursuant to sub-subparagraphs (D) to (I) of subparagraph (XI) of paragraph (a) of subsection (2) of this section shall each serve a two-year term. The members appointed after the initial two-year terms shall serve three-year terms.

(b) Each appointing authority shall appoint the initial appointed members of the commission within sixty days after May 23, 2007. An appointed member shall not serve more than two consecutive full terms, in addition to any partial term. In the event of a vacancy in an appointed position by death, resignation, removal for misconduct, incompetence, neglect of duty, or otherwise, the appointing authority shall appoint a member to fill the position for the remainder of the unexpired term.

(4) (a) The governor shall select the chairperson and vice-chairperson of the commission from among its members.

(b) The members of the commission shall serve without compensation except as otherwise provided in section 2-2-326, C.R.S., and except that the members of the commission may be reimbursed for any actual and necessary travel expenses incurred in the performance of their duties under this article.

(5) The commission may establish by-laws as appropriate for its effective operation.

(6) The commission shall meet at least once per month or on a schedule determined by the chairperson to review information necessary for making recommendations.

(7) Members of the commission, employees, and consultants shall be immune from suit in any civil action based upon any official act performed in good faith pursuant to this article.

16-11.3-103. Duties of the commission - mission - staffing. (1) The mission of the commission is to enhance public safety, to ensure justice, and to ensure protection of the rights of victims through the cost-effective use of public resources. The work of the commission will focus on evidence-based recidivism reduction initiatives and the cost-effective expenditure of limited criminal justice funds.

(2) The commission shall have the following duties:

(a) To conduct an empirical analysis of and collect evidence-based data on sentencing policies and practices, including but not limited to the effectiveness of the sentences imposed in meeting the purposes of sentencing and the need to prevent recidivism and revictimization;

(b) To investigate effective alternatives to incarceration, the factors contributing to recidivism, evidence-based recidivism reduction initiatives, and cost-effective crime prevention programs;

(c) To make an annual report of findings and recommendations, including evidence-based analysis and data;

(d) To study and evaluate the outcomes of commission recommendations as implemented;

(e) To conduct and review studies, including but not limited to work and resources compiled by other states, and make recommendations concerning policies and practices in the criminal and juvenile justice systems. The areas of study shall include, but are not limited to, the reduction of racial and ethnic disparities within the criminal and juvenile justice systems. The commission shall prioritize areas of study based on the potential impact on crime and corrections and the resources available for conducting the work.

(f) To work with other state-established boards, task forces, or commissions that study or address criminal justice issues.

(2.5) (a) Using empirical analysis and evidence-based data, the commission shall study sentences in Colorado.

(b) to (d) Repealed.

(2.7) and (2.8) Repealed.

(3) The commission shall establish advisory committees that focus on specific subject matters and make recommendations to the full commission. The chairperson of the commission shall select the chairpersons for the advisory committees as well as the commission members to serve on the advisory committees. The chairperson of an advisory committee may select noncommission members from interested members of the community to serve on the advisory committee. Each advisory committee shall make findings and recommendations for consideration by the commission. Noncommission members of an advisory committee shall serve without compensation and without reimbursement for expenses.

(4) The commission, at its discretion, may respond to inquiries referred by members of the general assembly, the governor, and the chief justice of the Colorado supreme court, as resources allow.

(5) (a) The division of criminal justice in the department of public safety, in consultation with the department of corrections, shall provide resources for data collection, research, analysis, and publication of the commission's findings and reports.

(b) Upon the request of the commission, the office of legislative legal services created pursuant to section 2-3-501, C.R.S., shall provide a staff member to attend meetings of the commission.

(6) The commission is encouraged to create and make publicly available a document describing the provisions of section 18-1-711, C.R.S.

16-11.3-103.5. Study of enhanced penalties for offenses against emergency service providers - repeal. (Repealed)

16-11.3-104. Colorado commission on criminal and juvenile justice cash fund - created - donations. (1) The department of public safety and the commission are authorized to accept gifts, grants, or donations, including in-kind donations from private or public sources, for the purposes of this article. All private and public funds received through gifts, grants, or donations by the department of public safety or by the commission shall be transmitted to the state treasurer, who shall credit the same to the Colorado commission on criminal and juvenile justice cash fund, which fund is hereby created and referred to in this article as the "cash fund". Any moneys in the cash fund not expended for the purposes of this article shall be invested by the state treasurer as provided in section 24-36-113, C.R.S. All interest and income derived from the investment and deposit of moneys in the cash fund shall be credited to the cash fund. Any unexpended and unencumbered moneys remaining in the cash fund at the end of any fiscal year shall remain in the cash fund and shall not be credited or transferred to the general fund or any other fund.

(2) The department of public safety shall not be required to solicit gifts, grants, or donations from any source for the purposes of this article.

16-11.3-105. Repeal of article. This article is repealed effective July 1, 2018.

ARTICLE 11.5

Substance Abuse in the
Criminal Justice System

16-11.5-101. Legislative declaration. The general assembly hereby declares that

substance abuse, specifically the abuse of alcohol and controlled substances, is a major problem in the criminal justice system of the state of Colorado and in the entire nation. Substance abuse is a significant factor in the commission of crimes and it is a significant factor in impeding the rehabilitation of persons convicted of crimes which results in an increased rate of recidivism. Therefore, the general assembly hereby resolves to curtail the disastrous effects of substance abuse in the criminal justice system by providing for consistency in the response to substance abuse throughout the criminal justice system and to improve and standardize substance abuse treatment for offenders at each stage of the criminal justice system and to provide punitive measures for offenders who refuse to cooperate with and respond to substance abuse treatment while such offenders are involved with the criminal justice system.

16-11.5-102. Substance abuse assessment - standardized procedure. (1) The judicial department, the department of corrections, the state board of parole, the division of criminal justice of the department of public safety, and the department of public health and environment shall cooperate to develop and implement the following:

(a) A standardized procedure for the assessment of the use of controlled substances by offenders, which procedure shall include the administration of a chemical test of such offender for the presence of controlled substances or alcohol, or such other test of the offender for the presence of controlled substances or alcohol as deemed appropriate by the supervising agency. The assessment procedure developed pursuant to this paragraph (a) shall provide an evaluation of the extent of an offender's abuse of substances, if any, and recommend treatment which is appropriate to the needs of the particular offender.

(b) A system of programs for education and treatment of abuse of substances which can be utilized by offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. The programs developed pursuant to this paragraph (b) shall be as flexible as possible so that such programs may be utilized by each particular offender to the extent appropriate to that offender. The programs developed pursuant to this paragraph (b) shall be structured in such a manner that the programs provide a continuum of education and treatment programs for each offender as he proceeds through the criminal justice system and may include, but shall not be limited to, attendance at self-help groups, group counseling, individual counseling, outpatient treatment, inpatient treatment, day care, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. Any programs developed pursuant to this paragraph (b) shall include a system of periodic or random chemical testing for the presence of controlled substances or alcohol, or such other testing as provided in paragraph (a) of this subsection (1). The frequency of such testing shall be that which is appropriate to the particular offender in accordance with the offender's assessment performed pursuant to paragraph (a) of this subsection (1).

(c) A system of punitive sanctions for offenders who test positive for the use of substances subsequent to the initial test and after being placed in an education or treatment program. The sanctions developed pursuant to this paragraph (c) should allow for appropriate

responses by the criminal justice system to each occurrence of a positive test by an offender, each of which shall become a permanent part of the offender's record.

(2) to (9) Repealed.

16-11.5-103. Substance abuse assessment required - convicted felons - controlled substance offenders. (Repealed)

16-11.5-104. Sentencing of felons - parole of felons - treatment and testing based upon assessment required. (Repealed)

16-11.5-105. Departments shall develop testing programs - punitive sanctions. (1) The judicial department, the department of public health and environment, the department of corrections, the state board of parole, and the division of criminal justice of the department of public safety shall cooperate to develop programs for the periodic testing of offenders under the jurisdiction of each agency and programs for the periodic reassessment of appropriate offenders under the jurisdiction of each agency. Any such periodic testing or treatment of an offender shall be based upon recommendations of appropriate treatment and testing made in the initial substance abuse assessment required by section 18-1.3-209, C.R.S., or any subsequent reassessment.

(2) Any offender who tests positive for the use of alcohol or controlled substances subsequent to the initial test required by section 18-1.3-209, C.R.S., shall be subjected to a punitive sanction. The judicial department, the department of corrections, the state board of parole, and the division of criminal justice of the department of public safety shall cooperate to develop and make public a range of punitive sanctions for those offenders under the jurisdiction of each agency which are appropriate to the offenders supervised by each particular agency. Such punitive sanctions shall be formulated in such a way as to promote fairness and consistency in the treatment of offenders and may include, but shall not be limited to, increases in the level of an offender's supervision, increases in the use of electronic monitoring of an offender, loss of earned time granted pursuant to section 17-22.5-405, C.R.S., and referral of the offender to the court or the state board of parole for resentencing or revocation of probation or parole. It is the intent of the general assembly that any offender's test which is positive for the use of controlled substances or alcohol shall result in an intensified level of testing, treatment, supervision, or other sanctions designed to control abuse of substances for such offender.

(3) The judicial department, the department of corrections, the state board of parole, and the division of criminal justice of the department of public safety shall cooperate to develop a range of incentives for offenders under the jurisdiction of each particular agency to discontinue abuse of alcohol or controlled substances.

(4) On or before July 1, 1992, the state board of parole shall develop and make public guidelines for the revocation of parole due to the abuse of alcohol or controlled substances in violation of this article.

16-11.5-106. Samples for testing of offenders - collected by probation or community parole officers or contract providers of testing services. Any type of sample for the chemical testing of any offender for the presence of controlled substances or alcohol pursuant to this article may be collected from the offender by his or her probation officer, community parole officer, case manager within the department of corrections, or any contract provider of testing services.

16-11.5-107. Report to the general assembly. (Repealed)

ARTICLE 11.7

Standardized Treatment Program
for Sex Offenders

16-11.7-101. Legislative declaration. (1) The general assembly finds that, to protect the public and to work toward the elimination of sexual offenses, it is necessary to comprehensively evaluate, identify, treat, manage, and monitor adult sex offenders who are subject to the supervision of the criminal justice system and juveniles who have committed sexual offenses who are subject to the supervision of the juvenile justice system.

(2) Therefore, the general assembly declares that it is necessary to create a program that establishes evidence-based standards for the evaluation, identification, treatment, management, and monitoring of adult sex offenders and juveniles who have committed sexual offenses at each stage of the criminal or juvenile justice system to prevent offenders from reoffending and enhance the protection of victims and potential victims. The general assembly does not intend to imply that all offenders can or will positively respond to treatment.

16-11.7-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Adult sex offender" means a person who has been convicted, as described in subparagraphs (I) to (III) of paragraph (a) of subsection (2) of this section, of a sex offense.

(1.3) "Board" means the sex offender management board created in section 16-11.7-103.

(1.5) "Juvenile who has committed a sexual offense" means a juvenile who has been adjudicated as a juvenile or who receives a deferred adjudication on or after July 1, 2002, for an offense that would constitute a sex offense, as defined in subsection (3) of this section, if committed as an adult, or a juvenile who has committed any offense, the underlying factual basis of which involves a sex offense.

(2) (a) "Sex offender" means any person who is:

(I) Convicted in the state of Colorado, on or after January 1, 1994, of any sex offense as defined in subsection (3) of this section; or

(II) Convicted in the state of Colorado on or after January 1, 1994, of any criminal offense, if such person has previously been convicted of a sex offense as described in subsection (3) of this section in the state of Colorado, or if such person has previously been convicted in any other jurisdiction of any offense that would constitute a sex offense as defined in subsection (3) of this section, or if such person has a history of any sex offenses as defined in subsection (3) of this section; or

(III) Convicted in the state of Colorado on or after July 1, 2000, of any criminal offense, the underlying factual basis of which involves a sex offense; or

(IV) A juvenile who has committed a sexual offense.

(b) For purposes of this subsection (2), any person who receives a deferred judgment or deferred sentence for the offenses specified in this subsection (2) is deemed convicted.

(3) "Sex offense" means any felony or misdemeanor offense described in this subsection (3) as follows:

(a) (I) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(b) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(c) (I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(d) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(e) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(f) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(g) Enticement of a child, in violation of section 18-3-305, C.R.S.;

(h) Incest, in violation of section 18-6-301, C.R.S.;

(i) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(j) Human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2), C.R.S.;

(k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(l) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;

(m) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(n) Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.;

(o) Pandering of a child, in violation of section 18-7-403, C.R.S.;

(p) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;

(q) Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.;

(r) Pimping of a child, in violation of section 18-7-405, C.R.S.;

(s) Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.;

(t) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.;

(u) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in this subsection (3);

(v) Class 4 felony internet luring of a child, in violation of section 18-3-306 (3), C.R.S.;

(w) Internet sexual exploitation of a child in violation of section 18-3-405.4, C.R.S.;

(x) Public indecency, committed in violation of section 18-7-301 (2) (b), C.R.S., if a second offense is committed within five years of the previous offense or a third or subsequent offense is committed; or

(y) Invasion of privacy for sexual gratification, as described in section 18-3-405.6, C.R.S.

(4) "Treatment" means therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the board pursuant to section 16-11.7-103.

16-11.7-103. Sex offender management board - creation - duties - repeal. (1) There is hereby created in the department of public safety a sex offender management board that shall consist of twenty-five members. The membership of the board shall reflect, to the extent possible, representation of urban and rural areas of the state and a balance of expertise in adult and juvenile issues relating to persons who commit sex offenses. The membership of the board shall consist of the following persons who shall be appointed as follows:

(a) The chief justice of the supreme court shall appoint three members as follows:

(I) One member who represents the judicial department;

(II) One member who is a district court judge; and

(III) One member who is a juvenile court judge or juvenile court magistrate;

(b) The executive director of the department of corrections shall appoint one member who represents the department of corrections;

(c) The executive director of the department of human services shall appoint three members as follows:

(I) One member who represents the department of human services and who has recognizable expertise in child welfare and case management;

(II) One member who represents the division of youth corrections in the department of human services; and

(III) One member who is a provider of out-of-home placement services with recognizable expertise in providing services to juveniles who have committed sexual offenses;

(d) The executive director of the department of public safety shall appoint sixteen members as follows:

(I) One member who represents the division of criminal justice in the department of public safety;

(II) Two members who are licensed mental health professionals with recognizable expertise in the treatment of adult sex offenders;

(III) Two members who are licensed mental health professionals with recognizable expertise in the treatment of juveniles who have committed sexual offenses;

(IV) One member who is a member of a community corrections board;

(V) One member who is a public defender with recognizable expertise related to sexual offenses;

(VI) One member who represents law enforcement with recognizable expertise in addressing sexual offenses and victimization;

(VII) Three members who are recognized experts in the field of sexual abuse and who can represent sexual abuse victims and victims' rights organizations;

(VIII) One member who is a clinical polygraph examiner;

(IX) One member who is a private criminal defense attorney with recognizable expertise related to sexual offenses;

(X) One member who is a county director of social services, appointed after consultation with a statewide group representing counties; and

(XI) Two members who are county commissioners or members of the governing council for a jurisdiction that is a contiguous city and county, one of whom shall represent an urban or suburban county and one of whom shall represent a rural county, appointed after consultation with a statewide group representing counties;

(e) The executive director of the Colorado district attorneys' council shall appoint one member who represents the interests of prosecuting attorneys and who has recognizable expertise in prosecuting sexual offenses; and

(f) The commissioner of education shall appoint one member who has experience with juveniles who have committed sexual offenses and who are in the public school system.

(2) The members of the board shall elect presiding officers for the board, including a chair and vice-chair, from among the board members appointed pursuant to subsection (1) of this section, which presiding officers shall serve terms of two years. Board members may re-elect a presiding officer.

(3) Members of the board shall serve at the pleasure of the appointing authority for terms of four years; except that the member appointed pursuant to subparagraph (IX) of paragraph (d) of subsection (1) of this section prior to July 1, 2011, shall serve the term of years in effect at the time of his or her appointment. The appointing authority may reappoint a member for an additional term or terms. Members of the board shall serve without compensation.

(4) **Duties of the board.** The board shall carry out the following duties:

(a) **Standards for identification and evaluation of adult sex offenders.** The board shall develop, prescribe, and revise, as appropriate, a standard procedure to evaluate and identify adult sex offenders, including adult sex offenders with developmental disabilities. The procedures shall provide for an evaluation and identification of the adult sex offender and recommend management, monitoring, and treatment based upon existing research demonstrating that sexually offending behavior is often repetitive and that there is currently no way to ensure that adult sex offenders with the propensity to commit sexual offenses will not reoffend. Because there are adult sex offenders who can learn to manage unhealthy patterns and learn behaviors that can lessen their risk to society in the course of ongoing treatment, management, and monitoring, the board shall develop a procedure for evaluating and identifying, on a case-by-case basis,

reliably lower-risk sex offenders. The board shall develop and implement methods of intervention for adult sex offenders, which methods have as a priority the physical and psychological safety of victims and potential victims and which are appropriate to the assessed needs of the particular offender, so long as there is no reduction in the safety of victims and potential victims.

(b) **Guidelines and standards for treatment of adult offenders.** The board shall develop, implement, and revise, as appropriate, guidelines and standards to treat adult sex offenders, including adult sex offenders with developmental disabilities, which guidelines and standards can be used in the treatment of offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. Programs implemented pursuant to the guidelines and standards developed pursuant to this paragraph (b) shall be as flexible as possible so that the programs may be accessed by each adult sex offender to prevent the offender from harming victims and potential victims. Programs shall include a continuing monitoring process and a continuum of treatment options available to an adult sex offender as he or she proceeds through the criminal justice system. Treatment options shall be determined by a current risk assessment and evaluation and may include, but need not be limited to, group counseling, individual counseling, family counseling, outpatient treatment, inpatient treatment, shared living arrangements, or treatment in a therapeutic community. Programs implemented pursuant to the guidelines and standards developed pursuant to this paragraph (b) shall, to the extent possible, be accessible to all adult sex offenders in the criminal justice system, including those offenders with mental illness and co-occurring disorders. The procedures for evaluation, identification, treatment, and monitoring developed pursuant to this subsection (4) shall be implemented only to the extent that moneys are available in the sex offender surcharge fund created in section 18-21-103 (3), C.R.S.

(c) **Allocation of moneys in sex offender surcharge fund.** The board shall develop an annual plan for the allocation of moneys deposited in the sex offender surcharge fund created pursuant to section 18-21-103 (3), C.R.S., among the judicial department, the department of corrections, the division of criminal justice in the department of public safety, and the department of human services. In addition, the board shall coordinate the expenditure of moneys from the sex offender surcharge fund with any moneys expended by any of the departments described in this paragraph (c) to identify, evaluate, and treat adult sex offenders and juveniles who have committed sexual offenses. The general assembly may appropriate moneys from the sex offender surcharge fund in accordance with the plan.

(d) **Risk assessment screening instrument.** The board shall consult on, approve, and revise, as necessary, the risk assessment screening instrument developed by the division of criminal justice to assist the sentencing court in determining the likelihood that an adult sex offender will commit one or more of the offenses specified in section 18-3-414.5 (1) (a) (II), C.R.S., under the circumstances described in section 18-3-414.5 (1) (a) (III), C.R.S. In carrying out this duty, the board shall consider research on adult sex offender risk assessment and shall consider as one element the risk posed by an adult sex offender who suffers from psychopathy or a personality disorder that makes the person more likely to engage in sexually violent predatory offenses. If a defendant is found to be a sexually violent predator, the defendant shall be required to register pursuant to article 22 of this title and shall be subject to community notification

pursuant to part 9 of article 13 of this title.

(e) **Evaluation of policies and procedures - report.** (I) The board shall research, either through direct evaluation or through a review of relevant research articles and sex offender treatment empirical data, and analyze, through a comprehensive review of evidence-based practices, the effectiveness of the evaluation, identification, and treatment policies and procedures for adult sex offenders developed pursuant to this article. This research shall specifically include, but need not be limited to, reviewing and researching reoffense and factors that contribute to reoffense for sex offenders as defined in this article, the effective use of cognitive behavioral therapy to prevent reoffense, the use of polygraphs in treatment, and the containment model for adult sex offender management and treatment and its effective application. The board shall revise the guidelines and standards for evaluation, identification, and treatment, as appropriate, based upon the results of the board's research and analysis. The board shall also develop and prescribe a system to implement the guidelines and standards developed pursuant to paragraph (b) of this subsection (4).

(II) Repealed.

(f) **Criteria for measuring progress in treatment.** (I) Pursuant to section 18-1.3-1009, C.R.S., concerning the criteria for release from incarceration, reduction in supervision, and discharge for certain adult sex offenders, the board, in collaboration with the department of corrections, the judicial department, and the state board of parole, shall develop and revise, as appropriate, criteria for measuring an adult sex offender's progress in treatment. The criteria shall assist the court and the state board of parole in determining whether an adult sex offender may appropriately be released from incarceration pursuant to section 18-1.3-1006 (1), C.R.S., or whether the adult sex offender's level of supervision may be reduced pursuant to section 18-1.3-1006 (2) (a) or 18-1.3-1008, C.R.S., or whether the adult sex offender may appropriately be discharged from probation or parole pursuant to section 18-1.3-1006 or 18-1.3-1008, C.R.S. At a minimum, the criteria shall be designed to assist the court and the state board of parole in determining whether the adult sex offender could be appropriately supervised in the community if he or she were released from incarceration, released to a reduced level of supervision, or discharged from probation or parole. The criteria shall not limit the decision-making authority of the court or the state board of parole.

(II) The board, in collaboration with the department of corrections, the judicial department, and the state board of parole, shall establish standards for community entities that provide supervision and treatment specifically designed for adult sex offenders who have developmental disabilities. At a minimum, the standards shall determine whether an entity would provide adequate support and supervision to minimize any threat that the adult sex offender may pose to the community.

(g) **Living arrangements for adult sex offenders - recommendations.** The board shall research, analyze, and make recommendations that reflect best practices for living arrangements for and the location of adult sex offenders within the community, including but not limited to shared living arrangements. At a minimum, the board shall consider the safety issues raised by the location of sex offender residences, especially in proximity to public or private schools and child care facilities, and public notification of the location of sex offender residences. The board shall adopt and revise as appropriate such guidelines as it may deem appropriate regarding the

living arrangements and location of adult sex offenders and adult sex offender housing. The board shall accomplish the requirements specified in this paragraph (g) within existing appropriations.

(h) **Data collection from treatment providers.** If the department of public safety acquires sufficient funding, the board may request that individuals or entities providing sex-offender-specific evaluation, treatment, or polygraph services that conform with standards developed by the board pursuant to paragraph (b) of this subsection (4) submit to the board data and information as determined by the board at the time that funding becomes available. This data and information may be used by the board to evaluate the effectiveness of the guidelines and standards developed pursuant to this article to evaluate the effectiveness of individuals or entities providing sex-offender-specific evaluation, treatment, or polygraph services, or for any other purposes consistent with the provisions of this article.

(i) **Standards for identification and evaluation of juvenile offenders.** The board shall develop, prescribe, and revise, as appropriate, a standard procedure to evaluate and identify juveniles who have committed sexual offenses, including juveniles with developmental disabilities. The procedure shall provide for an evaluation and identification of the juvenile offender and recommend behavior management, monitoring, treatment, and compliance based upon the knowledge that all unlawful sexual behavior poses a risk to the community and that certain juveniles may have the capacity to change their behavior with appropriate intervention and treatment. The board shall develop and implement methods of intervention for juveniles who have committed sexual offenses, which methods have as a priority the physical and psychological safety of victims and potential victims and that are appropriate to the needs of the particular juvenile offender, so long as there is no reduction in the safety of victims and potential victims.

(j) **Guidelines and standards for treatment of juvenile offenders.** The board shall develop, implement, and revise, as appropriate, guidelines and standards to treat juveniles who have committed sexual offenses, including juveniles with developmental disabilities, which guidelines and standards may be used for juvenile offenders who are placed on probation, committed to the department of human services, placed on parole, or placed in out-of-home placement. Programs implemented pursuant to the guidelines and standards developed pursuant to this paragraph (j) shall be as flexible as possible so that the programs may be accessed by each juvenile offender to prevent him or her from harming victims and potential victims. Programs shall provide a continuing monitoring process and a continuum of treatment options available to a juvenile offender as he or she proceeds through the juvenile justice system. Treatment options may include, but need not be limited to, group counseling, individual counseling, family counseling, outpatient treatment, inpatient treatment, shared living arrangements, and treatment in a therapeutic community. Programs implemented pursuant to the guidelines and standards developed pursuant to this paragraph (j) shall be, to the extent possible, accessible to all juveniles who have committed sexual offenses and who are in the juvenile justice system, including juveniles with mental illness or co-occurring disorders.

(k) **Evaluation of policies and procedures for juvenile offenders.** The board shall research and analyze the effectiveness of the evaluation, identification, and treatment procedures developed pursuant to this article for juveniles who have committed sexual offenses. The board shall revise the guidelines and standards for evaluation, identification, and treatment, as

appropriate, based upon the results of the board's research and analysis. The board shall also develop and prescribe a system to implement the guidelines and standards developed pursuant to paragraph (j) of this subsection (4).

(l) **Educational materials.** The board, in collaboration with law enforcement agencies, victim advocacy organizations, the department of education, and the department of public safety, shall develop and revise, as appropriate, for use by schools, the statement identified in section 22-1-124, C.R.S., and educational materials regarding general information about adult sex offenders and juveniles who have committed sexual offenses, safety concerns related to such offenders, and other relevant materials. The board shall provide the statement and materials to the department of education, and the department of education shall make the statement and materials available to schools in the state.

(5) **Immunity.** The board and the individual board members shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the board.

(6) **Repeal.** (a) This section is repealed, effective September 1, 2016.

(b) Prior to said repeal, the sex offender management board appointed pursuant to this section shall be reviewed as provided for in section 24-34-104, C.R.S.

16-11.7-104. Sex offenders - evaluation and identification required. (1) On and after January 1, 1994, each convicted adult sex offender and juvenile who has committed a sexual offense who is to be considered for probation shall be required, as a part of the presentence or probation investigation required pursuant to section 16-11-102, to submit to an evaluation for treatment, an evaluation for risk, procedures required for monitoring of behavior to protect victims and potential victims, and an identification developed pursuant to section 16-11.7-103 (4).

(2) The evaluation and identification required by subsection (1) of this section shall be at the expense of the person evaluated, based upon such person's ability to pay for such treatment.

16-11.7-105. Sentencing of sex offenders - treatment based upon evaluation and identification required. Each adult sex offender and juvenile who has committed a sexual offense sentenced by the court for an offense committed on or after January 1, 1994, shall be required, as a part of any sentence to probation, commitment to the department of human services, sentence to community corrections, incarceration with the department of corrections, placement on parole, or out-of-home placement to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification made pursuant to section 16-11.7-104 or based upon any subsequent recommendations by the department of corrections, the judicial department, the department of human services, or the division of criminal justice in the department of public safety, whichever is appropriate. The treatment and monitoring shall be provided by an approved provider pursuant to section 16-11.7-106, and the offender shall pay for the treatment to the extent the offender is financially able to do so.

16-11.7-106. Sex offender evaluation, treatment, and polygraph services - contracts with providers - placement on provider list - grievances - fund created. (1) The department of corrections, the judicial department, the division of criminal justice in the department of public safety, or the department of human services shall not employ or contract with, and shall not allow an adult sex offender or a juvenile who has committed a sexual offense to employ or contract with, an individual or entity to provide sex-offender-specific evaluation, treatment, or polygraph services pursuant to this article unless the sex-offender-specific evaluation, treatment, or polygraph services to be provided by the individual or entity conform with the guidelines and standards developed pursuant to section 16-11.7-103, and the name of the individual providing services is on the list created pursuant to paragraph (b) of subsection (2) of this section of persons who may provide sex-offender-specific services.

(2) (a) The board shall develop an application and review process for treatment providers, evaluators, and polygraph examiners who provide services pursuant to this article to adult sex offenders and to juveniles who have committed sexual offenses. The application and review process shall allow providers to demonstrate that they are in compliance with the standards adopted pursuant to this article. The application and review process shall consist of the following three parts:

(I) The board shall develop separate application and review processes for standards that apply to the criminal justice component, such as criminal history record checks, for evaluators, individual treatment providers, and polygraph examiners. Applications for the criminal justice components, including fingerprints, shall be submitted to the board. The board shall forward the fingerprints to the Colorado bureau of investigation for use in conducting a state criminal history record check and for transmittal to the federal bureau of investigation for a national criminal history record check. The board may use information obtained from the state and national criminal history record checks to determine an applicant's eligibility for placement on the approved provider list. The board shall be responsible for the implementation of the provisions of this subparagraph (I).

(II) The board shall develop an application and review process for the verification of the qualifications and credentials of evaluators, treatment providers, and polygraph examiners.

(III) The board shall require a person who applies for placement, including a person who applies for continued placement, on the list of persons who may provide sex-offender-specific evaluation, treatment, and polygraph services pursuant to this article to submit to a current background investigation that goes beyond the scope of the criminal history record check described in subparagraph (I) of this paragraph (a). In conducting the current background investigation required by this subparagraph (III), the board shall obtain reference and criminal history information and recommendations that may be relevant to the applicant's fitness to provide sex-offender-specific evaluation, treatment, and polygraph services pursuant to this article.

(b) After the process developed pursuant to paragraph (a) of this subsection (2) is established and providers have met all the criteria of the application and review process, the board may approve the provider. The board and the department of regulatory agencies shall jointly publish at least annually a list of approved providers. The board shall forward the list to

the office of the state court administrator, the department of public safety, the department of human services, and the department of corrections. The board shall update and forward the list of approved providers as necessary.

(3) The board shall use the information obtained from the state and national criminal history record checks and the current background investigation in determining whether to place or continue the placement of a person on the approved provider list.

(4) The board may determine the requirements for an evaluator's, treatment provider's, or polygraph examiner's name to be placed on the approved provider list after his or her name has been removed from the list for any reason.

(5) The board shall develop a renewal process for the continued placement of a person on the approved provider list published pursuant to paragraph (b) of subsection (2) of this section.

(6) The board may assess a fee to an applicant for placement on the approved provider list. The fee shall not exceed one hundred twenty-five dollars per application to cover the costs of conducting a current background investigation required by subsection (2) of this section. All moneys collected pursuant to this subsection (6) shall be transmitted to the state treasurer, who shall credit the same to the sex offender treatment provider fund, which fund is hereby created and referred to in this subsection (6) as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the division of criminal justice in the department of public safety for the direct and indirect costs associated with the current background investigation required by subsection (2) of this section. Any moneys in the fund not expended for the purpose of subsection (2) of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(7) (a) (I) Except as provided in subparagraph (IV) of this paragraph (a), the board shall refer to the department of regulatory agencies for investigation any complaints or grievances against individuals who provide sex-offender-specific treatment or evaluation services pursuant to this article. The department of regulatory agencies shall notify the board of the receipt of any complaint or grievance against a provider if the complaint or grievance was not referred by the board.

(II) The appropriate board, pursuant to article 43 of title 12, C.R.S., and referred to in this subsection (7) as the "DORA board", shall review and investigate all complaints and grievances received by the department of regulatory agencies or referred by the board to the department of regulatory agencies. The DORA board shall investigate any allegations that may constitute a violation of the professional licensing act and the relevant treatment and evaluation standards adopted by the board. The DORA board shall provide the board with the results of the investigation and advise the board of any disciplinary action the DORA board takes against the individual pursuant to any professional licensing act.

(III) Nothing in this subsection (7) shall limit the rights or responsibilities of the department of regulatory agencies with respect to the investigation and resolution of complaints pursuant to article 43 of title 12, C.R.S.

(IV) Complaints or grievances against individuals who provide polygraph services

pursuant to this article shall be reviewed and investigated by the board.

(b) (I) Notwithstanding any action taken by the department of regulatory agencies or the DORA board, the board may take appropriate disciplinary action, as permitted by law, against an individual who provides sex offender evaluation, treatment, or polygraph services pursuant to this article, which disciplinary action may include, but need not be limited to, the removal of the individual's name from the list of persons who may provide sex offender evaluation, treatment, or polygraph services pursuant to this article.

(II) Nothing in this subsection (7) shall limit the rights or responsibilities of the board with respect to the approval or removal of an individual's name from the list of persons who may provide sex offender evaluation, treatment, or polygraph services pursuant to this article.

16-11.7-107. Report to the general assembly. (Repealed)

16-11.7-108. Operation and construction of juvenile sex offender treatment facilities and new treatment modalities - repeal. (Repealed)

16-11.7-109. Reporting requirements - legislative declaration. (1) (a) The general assembly finds and declares that:

(I) As a body, the board is one of Colorado's most important resources on the treatment and management of adult sex offenders and juveniles who have committed sexual offenses;

(II) The board's research and analysis of treatment standards and programs, as well as empirical evidence collected and compiled by the board with respect to the treatment outcomes of adult sex offenders and juveniles who have committed sexual offenses, is vital to inform the decisions of policymakers.

(b) The general assembly therefore finds that it is appropriate for the board to report to the general assembly on an annual basis concerning the status of the treatment and management of adult sex offenders and juveniles who have committed sexual offenses in Colorado.

(2) On or before January 31, 2012, and on or before January 31 each year thereafter, the board shall prepare and present to the judiciary committees of the senate and the house of representatives, or any successor committees, a written report concerning best practices for the treatment and management of adult sex offenders and juveniles who have committed sexual offenses, including any evidence-based analysis of treatment standards and programs as well as information concerning any new federal legislation relating to the treatment and management of adult sex offenders and juveniles who have committed sexual offenses. The report may include the board's recommendations for legislation to carry out the purpose and duties of the board to protect the community.

ARTICLE 11.8

16-11.8-101. Legislative declaration. The general assembly hereby declares that the consistent and comprehensive evaluation, treatment, and continued monitoring of domestic violence offenders who have been convicted of, pled guilty to, or received a deferred judgment or prosecution for any crime the underlying factual basis of which includes an act of domestic violence as defined in section 18-6-800.3 (1), C.R.S., and who are subject to the supervision of the criminal justice system is necessary in order to work toward the elimination of recidivism by such offenders. Therefore, the general assembly hereby creates a program that standardizes the evaluation, treatment, and continued monitoring of domestic violence offenders at each stage of the criminal justice system so that such offenders will be less likely to offend again and the protection of victims and potential victims will be enhanced.

16-11.8-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the domestic violence offender management board created in section 16-11.8-103.

(2) "Domestic violence offender" means any person who on or after January 1, 2001, has been convicted of, pled guilty to, or received a deferred judgment and sentence for any domestic violence offense as defined in subsection (3) of this section.

(3) "Domestic violence offense" means any crime the underlying factual basis of which includes an act of domestic violence as defined in section 18-6-800.3 (1), C.R.S.

(4) "Treatment" means counseling, monitoring, and supervision of any domestic violence offender that conforms to the standards created by the board pursuant to section 16-11.8-103.

(5) "Treatment evaluation" means a determination of treatment amenability as recommended by a domestic violence evaluator approved by the domestic violence offender management board.

16-11.8-103. Domestic violence offender management board - creation - duties - repeal. (1) There is hereby created, in the department of public safety, the domestic violence offender management board that shall consist of nineteen members with recognizable expertise in the field of domestic violence offenders. The membership of the board shall consist of the following persons:

(a) One member representing the judicial department appointed by the chief justice of the supreme court;

(b) One member representing the department of corrections appointed by the executive director of such department;

(c) One member representing the department of human services appointed by the executive director of such department;

(d) One member representing the department of public safety, division of criminal justice, appointed by the executive director of such department;

(e) One member representing the department of regulatory agencies who is appointed by the executive director of such department;

(f) One member appointed by the chief justice of the supreme court who is a judge;

(g) (I) Five members appointed by the executive director of the department of regulatory agencies.

(II) Of the five members appointed pursuant to this paragraph (g), one shall be a social worker licensed pursuant to part 4 of article 43 of title 12, C.R.S., one shall be a psychologist licensed pursuant to part 3 of article 43 of title 12, C.R.S., one shall be a marriage and family therapist licensed pursuant to part 5 of article 43 of title 12, C.R.S., one shall be a professional counselor licensed pursuant to part 6 of article 43 of title 12, C.R.S., and one shall be an unlicensed mental health professional.

(III) Of the five members appointed pursuant to this paragraph (g), two shall be providers on the approved list pursuant to sub-subparagraph (C) of subparagraph (III) of paragraph (a) of subsection (4) of this section.

(IV) Interested parties shall submit nominations for persons to serve as members appointed pursuant to this paragraph (g). The executive director shall appoint members under this paragraph (g) from the nominees submitted by the interested parties.

(h) One member appointed by the executive director of the Colorado district attorney's council who represents the interests of prosecuting attorneys;

(i) One member appointed by the Colorado state public defender who is a public defender;

(j) One member appointed by the executive director of the department of public safety who is a representative of law enforcement;

(k) Two members appointed by the executive director of the department of public safety who can represent domestic violence victims and victim organizations;

(l) One member appointed by the executive director of the department of public safety who is from a rural area and is active in the local coordination of criminal justice and victim services advocacy for domestic violence;

(m) One member appointed by the executive director of the department of public safety who is from an urban area and is active in the local coordination of criminal justice and victim services advocacy for domestic violence; and

(n) One member appointed by the executive director of the department of public safety who is a private criminal defense attorney. The member shall serve a term of three years and shall serve without compensation.

(2) The executive director of the department of public safety shall appoint a presiding officer for the board from among the board members appointed pursuant to subsection (1) of this section, which presiding officer shall serve at the pleasure of such director.

(3) (a) Any member of the board created in subsection (1) of this section who is appointed pursuant to paragraphs (a) to (f) of subsection (1) of this section shall serve at the

pleasure of the official who appointed such member. The initial terms for persons appointed pursuant to paragraphs (a) and (d) of subsection (1) of this section shall be two years. The initial terms for persons appointed pursuant to paragraphs (b) and (e) of subsection (1) of this section shall be three years. All other terms including terms after the initial terms shall be four years. Such members shall serve without additional compensation.

(b) Any member of the board created in subsection (1) of this section who is appointed pursuant to paragraphs (g) to (m) of subsection (1) of this section shall serve for a term of four years; except that, the initial term of two of the persons appointed pursuant to paragraph (g) of subsection (1) of this section and the persons appointed pursuant to paragraph (k) of subsection (1) of this section shall be two years and the initial terms of persons appointed pursuant to paragraphs (h), (i), and (j) of subsection (1) of this section shall be three years. Such members shall serve without compensation.

(c) No member shall serve more than eight consecutive years.

(4) (a) The board shall carry out the following duties:

(I) Adopt and implement a standardized procedure for the treatment evaluation of domestic violence offenders. Such procedure shall provide for the evaluation and recommend behavior management, monitoring, and treatment. The board shall develop and implement methods of intervention for domestic violence offenders that have as a priority the physical and psychological safety of victims and potential victims and that are appropriate to the needs of the particular offender, so long as there is no reduction in the level of safety of victims and potential victims.

(II) Adopt and implement guidelines and standards for a system of programs for the treatment of domestic violence offenders that shall be utilized by offenders who have committed a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, and who are placed on probation, placed on parole, or placed in community corrections or who receive a deferred judgment and sentence. The programs developed pursuant to this subparagraph (II) shall be as flexible as possible so that the programs may be utilized by each offender to prevent the offender from harming victims and potential victims. The programs shall be structured in such a manner that they provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and may include, but shall not be limited to, group counseling, individual counseling, outpatient treatment, or treatment in a therapeutic community. Also, the programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system.

(III) Develop an application and review process for treatment providers who provide services to domestic violence offenders pursuant to subparagraph (I) or (II) of this paragraph (a). Such standards shall allow providers to demonstrate that they are in compliance with the standards adopted pursuant to subparagraphs (I) and (II) of this paragraph (a). The application and review process shall consist of the following three parts:

(A) The board shall develop separate application and review processes for standards that apply to the criminal justice component, such as criminal history record checks, for individual treatment providers and treatment programs. Applications for the criminal justice components, including fingerprints, shall be submitted to the board. The board shall forward the fingerprints to

the Colorado bureau of investigation for use in conducting a state criminal history record check and for transmittal to the federal bureau of investigation for a national criminal history record check. The information obtained from the state and national criminal history record check may be used by the board to determine an applicant's eligibility for placement on the approved provider list. The board shall be responsible for the implementation of this sub-subparagraph (A) of the application and review process.

(B) The board shall develop an application and review process for the verification of the qualifications and credentials of the treatment providers. The applications shall be submitted to the department of regulatory agencies and forwarded to the appropriate board pursuant to part 2 of article 43 of title 12, C.R.S. The department of regulatory agencies shall be responsible for the implementation of this sub-subparagraph (B) of the application and review process. The board shall require that treatment providers complete mandatory continuing education courses in areas related to domestic violence.

(C) After the process to be developed pursuant to sub-subparagraphs (A) and (B) of this subparagraph (III) is established and providers have met the criteria of both parts of the application and review process, the department of regulatory agencies and the board shall jointly publish at least annually a list of approved providers. The list shall be forwarded to the office of the state court administrator, the department of public safety, the department of human services, and the department of corrections. The list of approved providers shall be jointly updated and forwarded as changes are made.

(D) Notwithstanding any action taken by the department of regulatory agencies against a treatment provider, the board may take action against a treatment provider including, but not limited to, removing a treatment provider from the approved provider list. The board may determine the requirements for a treatment provider's name to be placed on the list after his or her name has been removed from the list pursuant to this subparagraph (III).

(III.5) Develop a treatment provider renewal process for the continued placement of a person on the approved provider list published pursuant to sub-subparagraph (C) of subparagraph (III) of this paragraph (a).

(IV) Research and analyze the effectiveness of the treatment evaluation and treatment procedures and programs developed pursuant to this article. The board shall also develop and prescribe a system for implementation of the guidelines and standards developed pursuant to subparagraphs (I) and (II) of this paragraph (a) and for tracking offenders who have been evaluated and treated pursuant to this article. In addition, the board shall develop a system for monitoring offender behaviors and offender adherence to prescribed behavioral changes. The results of such tracking and behavioral monitoring shall be a part of any analysis made pursuant to this subparagraph (IV).

(b) After the guidelines and standards required pursuant to subparagraphs (I) and (II) of paragraph (a) of this subsection (4) are adopted, the board shall refer any complaints or grievances against domestic violence offender treatment providers to the department of regulatory agencies for resolution. Notwithstanding any other law or administrative rule, the resolution of any complaint or grievance referred by the board pursuant to this paragraph (b) shall be based on such standards. All complaints and grievances shall be reviewed by the appropriate board pursuant to part 2 of article 43 of title 12, C.R.S., whose decision shall be based on

accepted community standards as described in subparagraphs (I) and (II) of paragraph (a) of this subsection (4) and the prohibited activities as defined in section 12-43-222 (1), C.R.S. The department of regulatory agencies shall provide notice of the disciplinary action to the board.

(5) The board and the individual members thereof shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the board as specified in this section.

(6) Repealed.

(7) (a) This section is repealed, effective September 1, 2017.

(b) Prior to said repeal, the domestic violence offender management board appointed pursuant to this section shall be reviewed as provided in section 24-34-104, C.R.S.

16-11.8-104. Domestic violence offender treatment - contracts with providers - fund created. (1) On and after January 1, 2001, the department of corrections, the judicial department, the division of criminal justice within the department of public safety, or the department of human services shall not employ or contract with and shall not allow a domestic violence offender to employ or contract with any individual or entity to provide domestic violence offender treatment evaluation or treatment services pursuant to this article unless the individual or entity appears on the approved list developed pursuant to section 16-11.8-103 (4).

(2) (a) The board shall require any person who applies for placement, including any person who applies for continued placement, on the approved provider list developed pursuant to section 16-11.8-103 (4) to submit to a current background investigation that goes beyond the scope of the criminal history record check described in section 16-11.8-103 (4) (a) (III) (A). In conducting the current background investigation, the board shall obtain reference and criminal history information and recommendations that may be relevant to the applicant's fitness to provide domestic violence offender treatment evaluation or treatment services pursuant to this article.

(b) The board may assess a fee to a person who applies for initial placement or renewed placement on the approved provider list not to exceed three hundred dollars per application to cover the costs of conducting the current background investigation required by this subsection (2) and the costs associated with the initial application review and the renewal process pursuant to section 16-11.8-103 (4) (a) (III) and other costs associated with administering the program. All moneys collected pursuant to this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the domestic violence offender treatment provider fund, which fund is hereby created and referred to in this paragraph (b) as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the current background investigation required by this subsection (2) and the application review and renewal process and other costs associated with administering the program. Any moneys in the fund not expended for the purpose of this subsection (2) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

ARTICLE 11.9

Standardized Screening Process
for Mentally Ill Offenders

16-11.9-101. Legislative declaration. The general assembly hereby finds and declares that, based upon the findings and recommendations of the 1999 interim committee to study the treatment of persons with mental illness in the Colorado criminal justice system, detecting mental illness in persons in the criminal justice system is a difficult process with no current statewide standards or requirements. The lack of a standardized screening process to detect persons with mental illness in the criminal justice system is a significant impediment to consistent identification, diagnosis, treatment, and rehabilitation of all mentally ill offenders, ultimately resulting in an increased rate of recidivism. Therefore, the general assembly hereby resolves to create a standardized screening process to be utilized at each stage of the criminal justice system to identify persons with mental illness.

16-11.9-102. Mental illness screening - standardized process - development. (1) The director of the division of criminal justice within the department of public safety shall be responsible for ensuring that the head of the department of psychiatry at the university of Colorado health sciences center, the judicial department, the department of corrections, the state board of parole, the division of criminal justice within the department of public safety, and the unit within the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse meet and cooperate to develop a standardized screening procedure for the assessment of mental illness in persons who are involved in the adult criminal justice system. The standardized screening procedure shall include, but is not limited to:

(a) Development or identification of one or more standardized instruments for screening persons who are involved in the adult criminal justice system;

(b) Development of criteria for potential use of such standardized instruments, including consideration of methods of addressing confidential communications by those persons who will be screened for mental illness;

(c) Identification of those persons who will be utilizing the standardized screening instruments, and consideration of training requirements for such persons;

(d) Identification of those persons who will be screened for mental illness;

(e) The stages within the adult criminal justice system at which a person shall be screened for mental illness, including consideration of methods of addressing confidential communications by a person screened for mental illness;

(f) Consideration of a standard definition of mental illness, including serious mental illness; and

(g) Development of procedures for referral for further assessment based on the results of the screening.

(2) In conjunction with the development of a standardized mental illness screening procedure for the adult criminal justice system as specified in subsection (1) of this section, the judicial department, the division of youth corrections within the department of human services, the unit responsible for child welfare services within the department of human services, the unit within the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, the division of criminal justice within the department of public safety, and the department of corrections shall cooperate to develop a standardized screening procedure for the assessment of mental illness in juveniles who are involved in the juvenile justice system. The standardized screening procedure shall include, but is not limited to:

(a) Development or identification of one or more standardized instruments for screening persons who are involved in the juvenile justice system;

(b) Development of criteria for potential use of such standardized instruments, including consideration of methods of addressing confidential communications by those persons who will be screened for mental illness;

(c) Identification of those persons who will be utilizing the standardized screening instruments, and consideration of training requirements for such persons;

(d) Identification of those persons who will be screened for mental illness;

(e) The stages within the juvenile justice system at which a person shall be screened for mental illness, including consideration of methods of addressing confidential communications by a person screened for mental illness;

(f) Consideration of a standard definition of mental illness, including serious mental illness; and

(g) Development of procedures for referral for further assessment based on the results of the screening.

16-11.9-103. Report to the general assembly. On or before March 1, 2002, the judicial department, the department of corrections, the state board of parole, the division of criminal justice within the department of public safety, and the department of human services shall jointly make a report to a joint meeting of the judiciary committees of the senate and the house of representatives regarding the standardized screening procedures developed pursuant to this article and the need for and utility of further legislation to implement the standardized screening procedures developed pursuant to this article.

16-11.9-104. Repeal of article. (Repealed)

16-11.9-105. Periodic review. On or before October 1, 2004, and on or before October 1 every two years thereafter, the judicial department, the department of corrections, the state board of parole, the division of criminal justice within the department of public safety, and the department of human services shall jointly review the implementation of the standardized procedures and the use of the standardized screening instruments developed pursuant to this article.

ARTICLE 12

Review of Judgments in Criminal Cases

PART 1

REVIEW

16-12-101. Review of proceedings resulting in conviction. Every person convicted of an offense under the statutes of this state has the right of appeal to review the proceedings resulting in conviction. The procedures to be followed in any such appeal shall be as provided by applicable rule of the supreme court of Colorado.

16-12-101.5. Review of proceedings regarding class 1 felony convictions - legislative intent. (1) The general assembly urges the Colorado supreme court to adopt an expedited process to review class 1 felony convictions where the death penalty has been imposed and any order by the district court granting or denying postconviction relief in such cases. It is the general assembly's intent that the Colorado supreme court give priority to cases in which a sentence of death has been imposed over other cases before the court, except to the extent of any conflict with the requirement that the court give the highest priority to enforcement actions brought in accordance with section 20 (1) of article X of the state constitution.

(2) In any direct appeal of any class 1 felony case in which a conviction is entered and in which a sentence of death is imposed prior to the date upon which the Colorado supreme court adopts rules implementing the unitary system of review established by part 2 of this article, all challenges to any such conviction or sentence, with the exception of any newly discovered evidence or any claim of ineffective assistance of counsel, shall be included in the brief of the person challenging such conviction or sentence, as such brief is defined by rule 28 of the Colorado appellate rules, at the time such brief is filed with the supreme court of the state of Colorado. Any issue which is not raised in the manner prescribed in this section shall be deemed to be irrevocably waived by the person challenging such conviction or sentence. The failure of such person to file a brief within any time limits ordered by the supreme court of the state of

Colorado shall constitute an irrevocable waiver of all issues which could have been raised in such brief.

16-12-102. Appeals by the prosecution. (1) The prosecution may appeal any decision of a court in a criminal case upon any question of law. Any order of a court that either dismisses one or more counts of a charging document prior to trial or grants a new trial after the entry of a verdict or judgment shall constitute a final order that shall be immediately appealable pursuant to this subsection (1). If any act of the general assembly is adjudged inoperative or unconstitutional in any criminal case, it is the duty of the district attorney of the judicial district in which the court making such decision is situated to appeal on behalf of the people of the state of Colorado, unless the same issue of constitutionality is already pending before a reviewing court in another case. Nothing in this section shall authorize placing the defendant in jeopardy a second time for the same offense. No docket fee shall be required of the people upon an appeal under this section. The procedure to be followed in filing and prosecuting appeals under this section shall be as provided by applicable rule of the supreme court of Colorado. However, if a statute providing for the imposition of the death penalty is adjudged inoperative or inapplicable for any reason, such adjudication shall constitute a final order that shall be immediately appealable to the supreme court of Colorado, notwithstanding any statute or court rule to the contrary.

(2) The prosecution may file an interlocutory appeal in the supreme court from a ruling of the trial court granting a motion made in advance of trial by the defendant for the return of property and to suppress evidence or granting a motion to suppress an extrajudicial confession or admission if the prosecution certifies to the judge who granted such motion and to the supreme court that the appeal is not taken for the purposes of delay and the evidence is a substantial part of the proof of the charge pending against the defendant. The prosecution may also file an interlocutory appeal in the supreme court from a ruling of the trial court granting a motion in limine pertaining to the matters described in this subsection (2), or from a ruling on a motion made pursuant to section 18-1-202 (11), C.R.S., challenging the place of trial or from a ruling on a motion to disqualify a district attorney pursuant to section 20-1-107, C.R.S.

16-12-103. Stays of execution. When a person has been convicted of an offense and a notice of appeal is filed, he shall be entitled to a stay of execution by compliance with the provisions and requirements of the applicable rules of the supreme court of Colorado.

PART 2

UNITARY REVIEW IN DEATH PENALTY CASES

16-12-201. Legislative declaration. (1) The general assembly hereby declares that the purpose of this part 2 is to establish an expedited system of unitary review of class 1 felony cases

in which a death sentence is imposed.

(2) The general assembly finds that enactment of this part 2 will accomplish the following goals:

(a) Ensuring compliance with the requirements of the federal "Antiterrorism and Effective Death Penalty Act of 1996", 28 U.S.C. sec. 2261 et seq.;

(b) Improving the accuracy, completeness, and justice of review proceedings by requiring that postconviction review commence immediately after the imposition of a sentence of death;

(c) Allowing for the full and fair examination of all legally cognizable postconviction and appellate issues by the trial court and the Colorado supreme court; and

(d) Eliminating, to the fullest extent possible, unreasonable and unjust delays in the resolution of postconviction issues by combining and reducing the number of proceedings in class 1 felony cases.

16-12-202. Unitary procedure for appeals - scope and applicability. (1) Notwithstanding any state statute or rule of the Colorado supreme court to the contrary, this part 2 and the supreme court rules adopted pursuant to this part 2 establish the only procedure for challenging a sentence of death or the conviction that resulted in the sentence of death.

(2) This part 2 does not apply to class 1 felony cases in which a sentence of death is not sought or to class 1 felony convictions for which the death penalty is not imposed.

(3) This part 2 shall apply to any class 1 felony conviction for which the death penalty is imposed as punishment, regardless of whether the sentence is imposed pursuant to section 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.

(4) For cases in which a death sentence is imposed prior to the date upon which the Colorado supreme court adopts rules implementing the unitary system of review established by this part 2, appellate review and postconviction review shall be as otherwise provided by law.

16-12-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Direct appeal" means the appeal to the Colorado supreme court of any issues raised at the entry of a guilty plea, before trial, at trial, at the penalty phase hearing, or in a motion for new trial.

(2) "Direct appeal counsel" means the attorney retained by the defendant, or appointed by the trial court to represent an indigent defendant, as the successor to trial counsel for purposes of representing the defendant in direct appeal proceedings.

(3) "New postconviction counsel" means the attorney retained by the defendant, or appointed by the trial court to represent an indigent defendant, for the purposes of representing the defendant in postconviction review and postconviction review appeal proceedings. New postconviction counsel cannot have previously represented the defendant with regard to the class 1 felony charge.

(4) "Postconviction review" means review as provided in this part 2 by the trial court that occurs after conviction in a class 1 felony case in which the death penalty is imposed as punishment.

(5) "Postconviction review appeal" means the appeal to the Colorado supreme court of any issues raised in postconviction review proceedings.

(6) "Trial counsel" means the attorney who represents the defendant with regard to the class 1 felony charge: For the purposes of any guilty plea; before trial; at trial; at the penalty phase hearing; for the purposes of a motion for new trial; for the purposes of postconviction review if the defendant chooses to continue with trial counsel for purposes of postconviction review; and for the purposes of direct appeal if the defendant chooses to continue with trial counsel for purposes of direct appeal. "Trial counsel" does not include new postconviction counsel appointed pursuant to section 16-12-205 or direct appeal counsel.

16-12-204. Stay of execution - postconviction review. (1) The trial court, 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 immediately a copy of the judgment, sentence, and mittimus.

(2) The trial court shall order the defendant, trial counsel, and the prosecution to attend a hearing to be held after the date upon which the sentence of death is imposed. At the hearing, the trial court shall:

(a) Advise the defendant of the nature of review as provided in this part 2;

(b) Advise the defendant of the right to direct appeal counsel;

(c) Advise the defendant that the issue of ineffective assistance of trial counsel before trial, at trial, or during the penalty phase hearing may only be raised on postconviction review and on postconviction review appeal;

(d) Advise the defendant that the issue of ineffective assistance of counsel during direct appeal by trial counsel or direct appeal counsel may only be raised by way of a petition for rehearing filed in the Colorado supreme court by new postconviction counsel or the defendant pursuant to the rules adopted by the Colorado supreme court to implement this part 2;

(e) Determine whether the defendant intends to pursue postconviction review; and

(f) If the defendant intends to pursue postconviction review, determine whether the defendant intends to proceed with or without counsel.

(3) After a full discussion on the record, if the defendant knowingly, voluntarily, and intelligently waives the right to pursue postconviction review, trial counsel or direct appeal counsel, if appointed or retained, or the defendant, if proceeding without counsel, may file any notice of appeal with the Colorado supreme court, as provided by Colorado supreme court rule.

16-12-205. Postconviction review - appointment of new postconviction counsel - qualifications - compensation. (1) At the hearing held pursuant to section 16-12-204 (2), if the

defendant chooses to pursue postconviction review, the trial court shall enter an order appointing new postconviction counsel for the defendant if the trial court finds that the defendant is indigent and either the defendant requests and accepts such appointment or the trial court finds that the defendant is unable to competently decide whether to accept or reject the appointment. However, the trial court shall not appoint new postconviction counsel if:

(a) The defendant has retained new postconviction counsel; or

(b) The defendant has elected to proceed without counsel and the trial court finds, after a full discussion on the record, that the defendant's election to proceed without counsel is knowing, intelligent, and voluntary; or

(c) The defendant elects to have trial counsel continue representing the defendant for purposes of postconviction review and the trial court finds, after a full discussion on the record, that:

(I) The defendant understands that new postconviction counsel can be retained by the defendant for purposes of postconviction review or appointed by the trial court for the defendant if the defendant is indigent;

(II) The defendant understands that, by electing to have trial counsel continue to represent the defendant for purposes of postconviction review, the defendant waives the right to challenge the effectiveness of trial counsel's representation at any stage of the proceedings;

(III) The defendant's election to have trial counsel continue to represent the defendant for purposes of postconviction review is knowing, intelligent, and voluntary; and

(IV) Trial counsel agrees to continue representing the defendant for purposes of postconviction review.

(2) In appointing new postconviction counsel to represent an indigent defendant, the trial court shall appoint one or more attorneys who, alone or in combination, meet all of the following minimum qualifications:

(a) Each appointed attorney shall be licensed to practice law in Colorado or be admitted to practice in Colorado solely for the purpose of representing the defendant;

(b) At least one of the appointed attorneys shall have a minimum of five years' experience in criminal law litigation, including work on trials and postconviction proceedings;

(c) At least one of the appointed attorneys shall have a minimum of three years' experience in trying felony cases, including having tried at least five felony cases to verdict in the preceding five years or having tried a minimum total of twenty-five felony cases; and

(d) At least one of the appointed attorneys shall have a minimum of three years' experience in handling appeals of felony cases, having served as counsel in at least five appeals in felony cases.

(3) In appointing new postconviction counsel, the trial court may also consider the following factors:

(a) Whether the attorney under consideration has previously appeared as counsel in a class 1 felony case in which the death penalty was sought;

(b) Whether the attorney under consideration has tried at least one first degree murder case to verdict;

(c) Whether, within the preceding five years, the attorney under consideration has taught or attended a continuing legal education course that dealt in substantial part with the trial, appeal,

and postconviction review of class 1 felony cases in which the death penalty is sought;

(d) The workload of the attorney under consideration and how that workload would affect the attorney's representation of the defendant;

(e) The diligence and ability of the attorney under consideration; and

(f) Any other factor that may be relevant to a determination of whether the attorney under consideration will fairly, efficiently, and effectively represent the defendant for purposes of postconviction review.

(4) In any case in which the trial court appoints new postconviction counsel or new postconviction counsel is retained, said new postconviction counsel shall not be retained or appointed to act as co-counsel with trial counsel and shall not be associated or affiliated with trial counsel. New postconviction counsel shall exercise independent judgment and act independently from trial counsel.

(5) The ineffectiveness of counsel during postconviction review shall not be a basis for relief.

(6) The office of the public defender or the office of alternate defense counsel, created in section 21-2-101, C.R.S., whichever is appropriate, shall pay the compensation and reasonable litigation expenses of defendant's counsel incurred during the unitary review proceeding.

16-12-206. Postconviction review - motion. (1) (a) In any case in which a defendant has been convicted of a class 1 felony and been sentenced to death, all motions for postconviction review and all postconviction review proceedings are governed by this part 2 and by the supreme court rules adopted to implement this part 2.

(b) Any motion for postconviction review shall state with particularity the grounds upon which the defendant intends to rely, including a statement of the facts and citations of law. A motion for postconviction review may include only those issues specified in paragraph (c) of this subsection (1) and shall not include any issues that were raised at the entry of any guilty plea, before trial, at trial, at the penalty phase hearing, or in the motion for new trial.

(c) A motion for postconviction review may raise only the following issues:

(I) Whether there exists evidence of material facts, not previously presented and heard, which by the exercise of reasonable diligence could not have been known or learned by the defendant or trial counsel prior to the imposition of the sentence and which require that the conviction or the death sentence be vacated in the interests of justice; or

(II) Whether the conviction was obtained or the sentence was imposed in violation of the constitution or laws of the United States or Colorado; or

(III) Whether the defendant was convicted under a statute that violates the constitution of the United States or Colorado or whether the conduct for which the defendant was prosecuted was constitutionally protected; or

(IV) Whether the judgment was rendered without jurisdiction over the defendant or the subject matter; or

(V) Any other grounds that are properly the basis for collateral attack upon a criminal judgment; or

(VI) Whether trial counsel rendered ineffective assistance.

(2) By alleging that trial counsel rendered ineffective assistance, the defendant automatically waives confidentiality pursuant to the provisions of section 18-1-417, C.R.S., between the defendant and trial counsel but only with respect to the information that is related to the defendant's claim of ineffective assistance.

(3) Neither the defendant nor the prosecution may file a motion for reconsideration or rehearing of the trial court's ruling on the motion for postconviction review. The granting or denying of a motion for postconviction review under this section is a final order reviewable on appeal by the Colorado supreme court.

16-12-207. Supreme court - appeal - filing of notice. (1) (a) If the defendant waives his or her right to postconviction review as provided in section 16-12-204, but intends to proceed with direct appeal, trial counsel, direct appeal counsel, if appointed or retained, or the defendant, if proceeding on direct appeal without counsel, shall file any notice of appeal for purposes of direct appeal in the Colorado supreme court.

(b) If the trial court conducts postconviction review and the defendant intends to seek direct appeal or postconviction review appeal, the notices of appeal, including both direct appeal and postconviction review appeal issues, shall be filed in the Colorado supreme court.

(2) Any appeal to the Colorado supreme court filed by the defendant pursuant to this part 2 shall consolidate and resolve, in one proceeding, all direct appeal and postconviction review appeal issues.

(3) The prosecution may appeal any final ruling by the trial court in the course of proceedings pursuant to this part 2, including but not limited to:

(a) A ruling granting a motion for new trial or other relief; and

(b) A ruling by the trial court granting postconviction relief; and

(c) A ruling by the trial court that any statute, including but not limited to a statute providing for the imposition of the death penalty, is adjudged inoperative or unconstitutional for any reason.

(4) Any appeal filed by the defendant or by the prosecution pursuant to this part 2 shall be taken directly to the Colorado supreme court.

16-12-208. Supreme court - rules. (1) No later than January 1, 1998, the Colorado supreme court shall adopt rules to establish procedures, including time limits, for the postconviction review and unitary appeal process created by this part 2.

(2) The rules adopted by the Colorado supreme court pursuant to subsection (1) of this section shall address, but are not limited to:

(a) Filing and resolution of motions for new trial;

(b) The timing of the advisement hearing described in section 16-12-204 (2);

(c) The preparation of transcripts for postconviction review and unitary appeal;

(d) Filing and resolution of motions for postconviction review, including but not limited to provisions for determining whether evidentiary hearings are necessary to resolve such motions;

(e) Reciprocal discovery for the defendant and the prosecution during the postconviction review process;

(f) Prompt access by new postconviction counsel to trial counsel's files and materials;

(g) Waiver of a defendant's right to postconviction review and appeal of a conviction and sentence of death;

(h) Resolution of claims of ineffective assistance of counsel on direct appeal by way of a petition for rehearing;

(i) Filing of notices of appeal in the supreme court;

(j) Certification of the appellate record to the supreme court;

(k) Filing of briefs in the supreme court;

(l) Establishment of expedited procedures for resolving second or subsequent requests for relief filed by a defendant after conclusion of the process established by this part 2, including but not limited to motions filed under section 16-12-209;

(m) Creation of meaningful sanctions for violations of the rules promulgated by the supreme court; and

(n) Issuance and dissolution of stays of execution.

(3) The supreme court rules adopted pursuant to subsection (1) of this section shall ensure that all proceedings for postconviction review, the certification of the record, and all appellate briefing shall be completed within two years after the date upon which the sentence of death is imposed. There shall be no extensions of time of any kind beyond the two-year period.

(4) Unless otherwise provided in this part 2, the Colorado appellate rules govern the procedures to be followed in appeals to the Colorado supreme court of trial court rulings under this part 2.

(5) The general assembly urges the Colorado supreme court to render its decisions expeditiously in review of class 1 felony convictions where the death penalty has been imposed and any order by the trial court granting or denying postconviction relief in such cases. It is the general assembly's intent that the Colorado supreme court give priority to cases in which a sentence of death has been imposed over all other cases before the court, except to the extent of any conflict with the requirement that the court give the highest priority to enforcement actions brought in accordance with section 20 (1) of article X of the state constitution.

16-12-209. Limitation on postconviction review. (1) No further postconviction review is available to the defendant after the time specified by supreme court rule for filing a petition for postconviction review has expired. Any claim or petition filed thereafter shall be deemed waived and shall be dismissed summarily unless the defendant establishes that:

(a) The failure to raise the claim within the time limit was the direct result of interference by government officials with the presentation of the claim in a manner which violated the constitution or laws of the United States or Colorado; or

(b) The facts upon which the claim are based were unknown to the defendant and could not have been ascertained by the exercise of due diligence; or

(c) The right asserted by the defendant is a constitutional right that was recognized by the supreme court of either the United States or Colorado after the time limits specified by supreme

court rule for the filing of the petition for postconviction review had expired and the constitutional right applies retroactively.

(2) If the defendant files a motion for postconviction review raising any of the grounds specified in subsection (1) of this section, the motion shall be filed with the trial court within thirty-five days after the date upon which the grounds are discovered.

16-12-210. Severability. If any provision of this part 2 or the application of this part 2 to any person or circumstance is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this part 2 that can be given effect without the invalid or unconstitutional provision or application. Therefore, to this end, the provisions of this part 2 are declared to be severable.

ARTICLE 13

Special Proceedings

PART 1

SENTENCING OF HABITUAL CRIMINALS

16-13-101 to 16-13-103. (Repealed)

PART 2

SENTENCING OF SEX OFFENDERS

16-13-201. Short title. (Repealed)

16-13-201.5. Applicability of part. (Repealed)

16-13-202. Definitions. (Repealed)

16-13-203. Indeterminate commitment. (Repealed)

16-13-204. Requirements before acceptance of a plea of guilty. (Repealed)

16-13-205. Commencement of proceedings. (Repealed)

16-13-206. Defendant to be advised of rights. (Repealed)

16-13-207. Psychiatric examination and report. (Repealed)

16-13-208. Report of probation department. (Repealed)

16-13-209. Termination of proceedings. (Repealed)

16-13-210. Evidentiary hearing. (Repealed)

16-13-211. Findings of fact and conclusions of law. (Repealed)

16-13-212. Appeal. (Repealed)

16-13-213. Time allowed on sentence. (Repealed)

16-13-214. Costs. (Repealed)

16-13-215. Diagnostic center as receiving center. (Repealed)

16-13-216. Powers and duties of the board. (1) (a) Within six months after a person is committed pursuant to section 18-1.3-904, C.R.S., and at least once during each twelve months thereafter, the board shall review all reports, records, and information concerning said person, for the purpose of determining whether said person shall be paroled.

(b) The board shall, in each instance, make a written ruling and shall serve a copy of the ruling upon the said person.

(2) The board is authorized and it is its duty to order the transfer of any person committed pursuant to section 18-1.3-904, C.R.S., if the board deems it to be in the best interests of said person and the public, to any facility under the jurisdiction of the department or to the department of human services subject to the availability of staff and housing.

(3) The board is granted exclusive control over the parole and reparole of all persons committed pursuant to section 18-1.3-904, C.R.S., regardless of the facility in which those persons are confined.

(4) The board is authorized to parole and reparole, and to commit and recommit for violation of parole, any person committed pursuant to section 18-1.3-904, C.R.S.

(5) The board is authorized to issue an absolute release to any person committed pursuant to section 18-1.3-904, C.R.S., if the board deems it in the best interests of that person and the public and that the person, if at large, would not constitute a threat of bodily harm to members of the public.

(6) Except as otherwise provided in this part 2, the board has all the powers conferred and duties imposed upon it with respect to the parole of prisoners generally, in the parole and supervision of persons committed pursuant to section 18-1.3-904, C.R.S.

PART 3

ABATEMENT OF PUBLIC NUISANCE

16-13-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Action to abate a public nuisance" means any action authorized by this part 3 to restrain, remove, terminate, prevent, abate, or perpetually enjoin a public nuisance.

(2) "Building" means a structure which has the capacity to contain, and is designed for the shelter of, man, animals, or property, including any house, office building, store, warehouse, or structure of any kind, whether or not such building is permanently affixed to the ground upon which it is situate, and any trailer, semitrailer, trailer coach, mobile home, or other vehicle designed or used for occupancy by persons for any purpose.

(2.1) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or adjudication for an offense that would constitute a criminal offense if committed by an adult.

(2.2) "Drive-by crime" means a first degree assault as defined in section 18-3-202, C.R.S., second degree assault as defined in section 18-3-203, C.R.S., attempted first degree or second degree assault, felony menacing as defined in section 18-3-206, C.R.S., or illegal discharge of a firearm as defined in section 18-12-107.5, C.R.S., any of which is committed while utilizing a vehicle for means of concealment or transportation.

(2.3) "Instrumental" means a substantial connection exists between the property and the public nuisance act.

(2.4) "Proceeds traceable" or "traceable proceeds" means all property, real and personal, corporeal and incorporeal, which is proceeds attributable to, derived from, or realized through, directly or indirectly, a public nuisance act, whether proved by direct, circumstantial, or

documentary evidence. There shall be no requirement of showing a trail of documentary evidence to trace proceeds provided that the standard of proof by clear and convincing evidence is met.

(2.5) "Public nuisance act" means any of the crimes, offenses, or violations set forth in section 16-13-303 (1) (a) to (1) (n), regardless of the location where the act occurred.

(2.6) "Real property" means all lands and franchises and interests in land located within this state, including water rights, mineral rights, oil and gas rights, space rights, condominium rights, and air rights, and any and all other things usually included within said term. "Real property" includes any and all interests in such property less than full title, such as easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable.

(2.7) "Seizing agency" means any agency that is charged with the enforcement of the laws of this state, of any other state, or of the United States and that has participated in a seizure or has been substantially involved in effecting a forfeiture through the development of evidence underlying the claim for forfeiture or through legal representation pursuant to this part 3. The department of corrections, the division of parks and wildlife in the department of natural resources, and a multijurisdictional law enforcement task force shall be deemed to be included under this definition.

(3) "Vehicle" means any device of conveyance capable of moving itself or of being moved from place to place upon wheels or track or by water or air, whether or not intended for the transport of persons or property, and includes any place therein adapted for overnight accommodation of persons or animals or for the carrying on of business.

16-13-302. Public nuisances - policy. (1) It is the policy of the general assembly that every public nuisance shall be restrained, prevented, abated, and perpetually enjoined. It is the duty of the district attorney in each judicial district of this state to bring and maintain an action, pursuant to the provisions of this part 3, to restrain, prevent, abate, and perpetually enjoin any such public nuisance and to seek the forfeiture of property as provided in this part 3. The general assembly intends that proceedings under this part 3 be remedial and equitable in nature. Nothing contained in this part 3 shall be construed as an amendment or repeal of any of the criminal laws of this state, but the provisions of this part 3, insofar as they relate to those laws, shall be considered a cumulative right of the people in the enforcement of such laws. The provisions of this part 3 shall not be construed to limit or preempt the powers of any court or political subdivision to abate or control nuisances.

(2) It is also the policy of the general assembly that asset forfeiture pursuant to this part 3 shall be carried out pursuant to the following:

(a) Generation of revenue shall not be the primary purpose of asset forfeiture.

(b) No prosecutor's or law enforcement officer's employment or level of salary shall depend upon the frequency of seizures or forfeitures which such person achieves.

(c) All seizures of real property pursuant to this part 3 shall be made pursuant to a temporary restraining order or injunction based upon a judicial finding of probable cause.

(d) Each seizing agency shall have policies and procedures for the expeditious release of seized property which is not subject to forfeiture pursuant to this part 3, when such release is appropriate.

(e) Each seizing agency retaining forfeited property for official law enforcement use shall ensure that the property is subject to controls consistent with controls which are applicable to property acquired through the normal appropriations process.

(f) Each seizing agency which receives forfeiture proceeds shall conform with reporting, audit, and disposition procedures enumerated in this article.

(g) Each seizing agency shall prohibit its employees from purchasing forfeited property.

16-13-303. Class 1 public nuisance. (1) Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

(a) Used as a public or private place of prostitution or used as a place where the commission of soliciting for prostitution, as defined in section 18-7-202, C.R.S.; pandering, as defined in section 18-7-203, C.R.S.; keeping a place of prostitution, as defined in section 18-7-204, C.R.S.; pimping, as defined in section 18-7-206, C.R.S.; or human trafficking, as described in section 18-3-503 or 18-3-504, C.R.S., occurs;

(b) (I) Used, or designed and intended to be used, as gambling premises, as defined in section 18-10-102 (5), C.R.S., or as a place where any gambling device or gambling record, as such terms are defined in section 18-10-102 (3) and (7), C.R.S., is kept;

(II) Used for transporting gambling proceeds, records, or devices as defined in section 18-10-102 (3), (6), and (7), C.R.S.;

(c) (I) Used for unlawful manufacture, cultivation, growth, production, processing, sale, or distribution or for storage or possession for any unlawful manufacture, sale, or distribution of any controlled substance, as defined in section 18-18-102 (5), C.R.S., or any other drug the possession of which is an offense under the laws of this state, or any imitation controlled substance, as defined in section 18-18-420 (3), C.R.S.;

(II) Used for unlawful possession of any controlled substance, as defined in section 18-18-102 (5), C.R.S., except for possession of less than sixteen ounces of marijuana;

(d) Used for a purpose declared by a statute of this state to be a class 1 public nuisance;

(e) (I) Used as a place where the commission of theft, as specified in section 18-4-401, C.R.S., occurs;

(II) Used for transporting property which is the subject of theft, as specified in section 18-4-401, C.R.S.;

(f) Used for the unlawful manufacture, sale, or distribution of drug paraphernalia, as defined in section 18-18-426, C.R.S.;

(g) Used for prostitution of a child, as defined in section 18-7-401, C.R.S., or used as a place where the commission of soliciting for child prostitution, as defined in section 18-7-402, C.R.S., pandering of a child, as defined in section 18-7-403, C.R.S., keeping a place of child prostitution, as defined in section 18-7-404, C.R.S., pimping of a child, as defined in section 18-7-405, C.R.S., or inducement of child prostitution, as defined in section 18-7-405.5, C.R.S., occurs;

(h) Used for the sexual exploitation of children pursuant to part 4 of article 6 of title 18, C.R.S.;

(h.5) Repealed.

(h.6) Used in violation of section 43-10-114, C.R.S.;

(i) Used in the commission of any felony not otherwise included in this section;

(j) Used in the commission of felony vehicular eluding pursuant to section 18-9-116.5, C.R.S.;

(k) Used in the commission of hit and run with serious bodily injury or death pursuant to section 42-4-1601 (1), (2) (b), and (2) (c), C.R.S.;

(l) Used in committing a drive-by crime, as defined in section 16-13-301 (2.2);

(m) (I) Used, or designed and intended to be used, as gaming premises, or as a place where any gaming device, as such term is defined in section 12-47.1-103 (10), C.R.S., or gaming record is kept, in violation of article 47.1 of title 12, C.R.S., or in violation of article 20 of title 18, C.R.S.;

(II) Used for transporting adjusted gross proceeds or gaming devices as such terms are defined in section 12-47.1-103 (1) and (10), C.R.S., or records in violation of the provisions of article 47.1 of title 12, C.R.S., or in violation of article 20 of title 18, C.R.S.;

(III) Used for the unlawful manufacture, production, sale, distribution, or for storage or possession for any unlawful manufacture, sale, or distribution of any gaming device, as defined in section 12-47.1-103 (10), C.R.S., or any other gaming device, equipment, key, electronic or mechanical device, slot machine, bogus chips, counterfeit chips, cards, coins, gaming billets, cheating device, thieving device, tools, drills, or wires used in violation of article 47.1 of title 12, C.R.S., or in violation of article 20 of title 18, C.R.S.; or

(n) Used in committing, attempting to commit, or conspiring to commit against an elderly person any felony set forth in part 4 of article 4 of title 18, C.R.S., in part 1, 2, 3, or 5 of article 5 of title 18, C.R.S., article 5.5 of title 18, C.R.S., or section 11-51-603, C.R.S. For purposes of this paragraph (n), an "elderly person" means a person sixty years of age or older.

(1.5) All equipment, mechanical systems, or machinery, or parts thereof, shall be deemed to be a class 1 public nuisance at the location of the automatic dialing system when used for soliciting with an automatic dialing system containing a prerecorded message in violation of section 18-9-311 (1), C.R.S.

(2) All fixtures and contents of any building, structure, vehicle, or real property which is a class 1 public nuisance under subsection (1) of this section and all property which is a class 1 public nuisance under subsection (1.5) of this section are subject to seizure, confiscation, and forfeiture as provided in this part 3. In addition, the personal property of every kind and description, including currency and other negotiable instruments and vehicles, used in conducting, maintaining, aiding, or abetting any class 1 public nuisance is subject to seizure, confiscation, and forfeiture, as provided in this part 3.

(3) The following shall be deemed class 1 public nuisances and be subject to forfeiture and distributed as provided in section 16-13-311 (3), and no property rights shall exist in them:

(a) All currency, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any public nuisance act; or

(b) All proceeds traceable to any public nuisance act; or

(c) All currency, negotiable instruments, and securities used or intended to be used to facilitate any public nuisance act; or

(d) All equipment of any kind, including but not limited to computers and any type of computer hardware, software, or other equipment, used in committing sexual exploitation of a child, as described in section 18-6-403, C.R.S., or computer crime, as described in section 18-5.5-102, C.R.S.

(4) Whenever it is established, in an action brought pursuant to this part 3, that a person has received proceeds derived from any public nuisance act, the court shall award to the plaintiff a money judgment of forfeiture for the amount of said proceeds shown to have been derived from any public nuisance act or for an amount shown to have been derived from a series of similar acts which fall within a pattern of public nuisance acts. The person subjected to such a money judgment may claim a setoff equal to the fair market value of the property forfeited if he shows that said property is traceable to the public nuisance act upon which the money judgment is predicated.

(5) (a) In any action seeking forfeiture of property pursuant to this part 3, any person contesting the forfeiture shall establish by a preponderance of the evidence such person's standing as a true owner of the property or a true owner with an interest in the property.

(b) To establish standing, the person shall first prove that the person had a recorded or registered interest in the property, or a bona fide marital interest in the property, prior to title-vesting in the state, if the property is of the type for which interests can be, and customarily are, recorded or registered in a public office.

(c) The person shall also prove that he or she is a true owner of the property or a true owner of an interest in the property. The factors to be considered by the court in determining whether a person is a true owner shall include, but need not be limited to:

(I) Whether the person had the primary use, benefit, possession, or control of the property;

(II) How much of the consideration for the purchase or ownership of the property was furnished by the person, and whether the person furnished reasonably equivalent value in exchange for the property or interest;

(III) Whether the transaction by which the person acquired the property or interest was secret, concealed, undisclosed, hurried, or not in the usual mode of doing business;

(IV) Whether the transaction by which the person acquired the property or interest was conducted through the use of a shell, alter ego, nominee, or fictitious party;

(V) Whether the person is a relative, a co-conspirator, complicitor, or an accessory in the public nuisance act or acts or other criminal activity, a business associate in a legal or illegal business, one who maintains a special or close relationship with, or an insider with respect to the perpetrator of the alleged public nuisance act or acts;

(VI) Whether the person is silent or fails to call parties to testify or to produce available evidence explaining the acquisition of the property or factors which may be badges of fraud or deceit, or show lack of true ownership;

(VII) Whether the timing of the transaction by which the person acquired the property was during the pendency or threat of litigation, or during any time when the person knew, should have known, or had notice of the public nuisance act or acts or the threat of a forfeiture action;

(VIII) Whether the placing of the title in the name of, or the putative ownership in, or transfer to, the person was done with intent to delay, hinder, or avoid a forfeiture, or for some

purpose other than ownership of the property;

(IX) Whether the perpetrator of the alleged public nuisance act or acts has absconded or is a fugitive from justice and the conveyance occurred after the flight, or before the flight, in any of the circumstances set forth in subparagraph (III) of this paragraph (c);

(X) Whether the subject matter property is of a kind in which property or ownership rights can legally exist;

(XI) Any other badge or indicia of fraud under article 8 of title 38, C.R.S., or the general law of fraudulent transfers or conveyances.

(d) The court shall consider the totality of the circumstances in determining whether a person is a true owner. A person contesting the forfeiture does not necessarily have to show that all of the factors enumerated in paragraph (c) of this subsection (5) support the claim of true ownership, nor does the person necessarily establish true ownership by showing the absence of fraudulent intent or badges of fraud.

(e) No private sale or conveyance of a used motor vehicle shall be deemed to make a party eligible to assert standing to contest the forfeiture thereof, unless the title to the motor vehicle, with transfer duly executed to the party, has been filed with the division of motor vehicles in the department of revenue prior to the physical seizure of the vehicle and the recording of a notice of seizure, or the party attempting to assert standing has exclusive possession of the vehicle at the time of seizure. A party eligible to assert standing under this paragraph (e) must nevertheless establish that the party is a true owner of the vehicle or has an interest therein pursuant to paragraph (c) of this subsection (5).

(f) Unless the standing of a particular party is conceded in the complaint initiating the public nuisance action, a party must assert standing in the answer and fully describe the party's interest in the property which is the subject matter of the action, and submit a verified statement, supported by any available documentation, of the party's ownership of or interest in the property.

(5.1) (a) In any action to forfeit property pursuant to this part 3, the plaintiff, in addition to any other matter which must be proven in the plaintiff's case in chief, shall prove by clear and convincing evidence that possession of the property is unlawful or that the owner of the property was a party to the creation of the public nuisance. The plaintiff shall also prove by clear and convincing evidence that the property was instrumental in the commission or facilitation of a crime creating a public nuisance or the property constitutes traceable proceeds of the crime or related criminal activity.

(a.5) (I) The defendant in an action brought pursuant to this part 3 may petition the court to determine whether a forfeiture was constitutionally excessive. Upon the conclusion of a trial resulting in a judgment of forfeiture in an action brought pursuant to this part 3, if the evidence presented raises an issue of proportionality under this paragraph (a.5), the defendant may petition the court to set a hearing, or the court may on its own motion set a hearing, to determine whether a forfeiture was constitutionally excessive. This determination shall be made prior to any sale or distribution of forfeited property.

(II) In making this determination, the court shall compare the forfeiture to the gravity of the public nuisance act giving rise to the forfeiture and related criminal activity.

(III) The defendant shall have the burden of establishing by a preponderance of the

evidence that the forfeiture is grossly disproportional.

(IV) If the court finds that the forfeiture is grossly disproportional to the public nuisance act and related criminal activity, it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the excessive fines clause of the eighth amendment of the United States constitution or article II, section 20, of the Colorado constitution.

(V) and (VI) (Deleted by amendment, L. 2003, p. 889, § 1, effective July 1, 2003.)

(b) As used in paragraph (a) of this subsection (5.1), an owner was a "party to the creation of the public nuisance" if it is established that:

(I) The owner was involved in the public nuisance act; or

(II) (A) The owner knew of the public nuisance act or had notice of the acts creating the public nuisance or prior similar conduct.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (II), if the plaintiff proves by clear and convincing evidence the owner knew or had notice of the public nuisance, the owner must prove by a preponderance of the evidence that the owner took reasonable steps to prohibit or abate the unlawful use of the property for the court to find the owner was not a party to the creation of the public nuisance.

(5.2) (a) With respect to a partial or whole ownership interest in existence at the time the conduct constituting a public nuisance took place, "innocent owner" means any owner who:

(I) Did not have actual knowledge of the conduct constituting a public nuisance, or notice of an act or circumstance creating the public nuisance or prior similar conduct, notice being satisfied by, but not limited to, sending notice of an act or circumstance creating the public nuisance by certified mail; or

(II) Upon learning of the conduct constituting a public nuisance, took reasonable action to prohibit such use of the property. An owner may demonstrate that he or she took reasonable action to prohibit the conduct constituting a public nuisance if the owner:

(A) Timely revoked or attempted to revoke permission for the persons engaging in such conduct to use the property; or

(B) Took reasonable action to discourage or prevent the use of the property in conduct constituting a public nuisance.

(b) With respect to a partial or whole ownership interest acquired after the conduct constituting a public nuisance has occurred, "innocent owner" means a person who, at the time he or she acquired the interest in the property, had no knowledge or notice that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:

(I) Acquired an interest in the property in a bona fide transaction for value; or

(II) Acquired an interest in the property through probate or inheritance; or

(III) Acquired an interest in the property through dissolution of marriage or by operation of law.

(c) An innocent owner's interest in property shall not be forfeited under any provision of state law. An innocent owner has the burden of proving by a preponderance of the evidence that he or she has an ownership interest in the subject property. Otherwise, the burden of proof under this subsection (5.2) shall be as provided in subsection (5.1) of this section.

(d) A person who is convicted of a criminal offense arising from the same activity giving rise to the forfeiture proceedings in accordance with section 16-13-307 (1.5) shall not be eligible to assert an innocent owner defense.

(6) Whenever clear and convincing evidence adduced in an action pursuant to this part 3 shows a substantial connection between currency and the acts specified in subparagraph (I) of paragraph (c) of subsection (1) of this section, a rebuttable presumption shall arise that said currency is property subject to forfeiture. A substantial connection exists if:

(a) Currency in the aggregate amount of one thousand dollars or more was seized at or close to the time that evidence of the acts specified in subparagraph (I) of paragraph (c) of subsection (1) of this section was developed or recovered; and

(b) (I) Said amount of currency was seized on the same premises or in the same vehicle where evidence of said acts was developed or recovered; or

(II) Said amount of currency was seized from the possession or control of a person engaged in said acts; or

(III) Traces of a controlled substance were discovered on the currency or an animal trained in the olfactory detection of controlled substances indicated the presence of the odor of a controlled substance on the currency as testified to by an expert witness.

(6.5) Notwithstanding any other provision of this part 3 to the contrary, the plaintiff shall have the burden of proving, by clear and convincing evidence, only the facts that give rise to the presumption that currency is property subject to forfeiture pursuant to subsection (6) of this section. However, when a preponderance of credible evidence is adduced to rebut a presumption that has arisen pursuant to subsection (6) of this section, the burden of proof shall revert to the plaintiff to prove, by clear and convincing evidence, the elements of the plaintiff's case with respect to the currency.

(7) Currency seized pursuant to this part 3 may be placed in an interest-bearing account during the proceedings pursuant to this part 3 if so ordered by the court upon the motion of any party. Photocopies of portions of the bills shall serve as evidence at all hearings. The account and all interest accrued shall be forfeited or returned to the prevailing party in lieu of the currency.

(8) The provisions of subsection (6) of this section shall not be construed so as to limit the introduction of any other competent evidence offered to prove that seized currency is a public nuisance.

16-13-304. Class 2 public nuisance. (1) The following are deemed to be a class 2 public nuisance:

(a) Any place where people congregate, which encourages a disturbance of the peace, or where the conduct of persons in or about that place is such as to annoy or disturb the peace of the occupants of or persons attending such place, or the residents in the vicinity, or the passersby on the public street or highway; or

(b) Any public or private place or premises which encourages professional gambling, unlawful use, sale, or distribution of imitation controlled substances, as defined in section 18-18-420 (3), C.R.S., drugs, controlled substances, as defined in section 18-18-102 (5), C.R.S., or

other drugs the possession of which is an offense under the laws of this state, furnishing or selling intoxicating liquor to minors, furnishing or selling fermented malt beverages to persons under the age of twenty-one, solicitation for prostitution, or traffic in stolen property; or

(b.5) Any public or private place or premises used for soliciting by means of a prerecorded message in violation of section 18-9-311 (1), C.R.S.; or

(c) Any public or private place used for a purpose declared to be a class 2 public nuisance by any other statute of this state.

16-13-305. Class 3 public nuisance. (1) The following are a class 3 public nuisance:

(a) The conducting or maintaining of any business, occupation, operation, or activity prohibited by a statute of this state; or

(b) The continuous or repeated conducting or maintaining of any business, occupation, operation, activity, building, land, or premises in violation of a statute of this state; or

(c) Any building, structure, or land open to or used by the general public, the condition of which presents a substantial danger or hazard to public health or safety; or

(d) Any dilapidated building of whatever kind which is unused by the owner, or uninhabited because of deterioration or decay, which condition constitutes a fire hazard, or subjects adjoining property to danger of damage by storm, soil erosion, or rodent infestation, or which becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter; or

(e) Any unlawful pollution or contamination of any surface or subsurface waters in this state, or of the air, or any water, substance, or material intended for human consumption, but no action shall be brought under this paragraph (e) if the state department of public health and environment or any other agencies of state or local government charged by and acting pursuant to statute or duly adopted regulation have assumed jurisdiction by the institution of proceedings on that pollution or contamination. Nothing in this paragraph (e) shall abridge the right of any person to institute a private nuisance action or of any district attorney to institute a public nuisance action under the common law or other statutory law of this state.

(f) Any activity, operation, or condition which, after being ordered abated, corrected, or discontinued by a lawful order of an agency or officer of the state of Colorado, continues to be conducted or continues to exist in violation of:

(I) Any statute of this state;

(II) Any regulation enacted pursuant to the authority of a statute of this state; or

(g) Any condition declared by a statute of this state to be a class 3 public nuisance.

16-13-306. Class 4 public nuisance. If any person carries on or practices any profession or calling or operates any business required to be licensed by the laws of the state of Colorado without first procuring a license therefor, or carries on or practices such profession or calling or operates such business after the license therefor required by the laws of the state of Colorado has been lawfully cancelled or revoked, the carrying on or practicing of such profession or calling, or the operation of such business without a license is a class 4 public nuisance and may be

restrained and abated.

16-13-307. Jurisdiction - venue - parties - process. (1) The several district courts of this state shall have original jurisdiction of proceedings under this part 3.

(1.5) No judgment of forfeiture of property in any forfeiture proceeding shall be entered unless and until an owner of the property is convicted of an offense listed in section 16-13-301 or 16-13-303, or a lesser included offense of an eligible offense if the conviction is the result of a negotiated guilty plea. Nothing in this section shall be construed to require the conviction to be obtained in the same jurisdiction as the jurisdiction in which the forfeiture action is brought. In the event criminal charges arising from the same activity giving rise to the forfeiture proceedings are filed against any individual claiming an interest in the property subject to the forfeiture proceeding, the trial and discovery phases of the forfeiture proceeding shall be stayed by the court until the disposition of the criminal charges. A stay shall not be maintained during an appeal or post-conviction proceeding challenging a criminal conviction. Nothing in this section shall be construed to prohibit or prevent the parties from contemporaneously resolving criminal charges and a forfeiture proceeding arising from the same activity.

(1.6) Upon acquittal or dismissal of a criminal action against a person named in a forfeiture action related to the criminal action, unless the forfeiture action was brought pursuant to one or more of paragraphs (a) to (f) of subsection (1.7) of this section, the forfeiture claim shall be dismissed and the seized property shall be returned as respects the subject matter property or interest therein of that person, if the case has been adjudicated as to all other claims, interests, and owners, unless possession of the property is illegal. If the forfeiture action is dismissed or judgment is entered in favor of the claimant, the claimant shall not be subject to any monetary charges by the state for storage of the property or expenses incurred in the preservation of the property, unless at the time of dismissal the plaintiff shows that those expenses would have been incurred to prevent waste of the property even if it had not been seized.

(1.7) Notwithstanding the provisions of subsection (1.5) of this section:

(a) (I) A person shall lack standing for and shall be disallowed from pursuit of a claim or defense in a civil forfeiture action upon a finding that a warrant or other process has been issued for the apprehension of the person, and, in order to avoid criminal prosecution, the person:

(A) Purposely leaves the state; or

(B) Declines to enter or reenter the state to submit to its jurisdiction; or

(C) Otherwise evades the jurisdiction of the court in which a criminal case is pending against the person or from which a warrant has been issued, by failing to appear in court or surrender on a warrant; and

(D) Is not known to be confined or held in custody in any other jurisdiction within the United States for commission of criminal conduct in that jurisdiction.

(II) If a person lacks standing pursuant to this paragraph (a), the forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of an owner, upon motion and notice as provided in the rules of civil procedure.

(b) If, following notice to all persons known to have an interest, or who have asserted an interest in the property subject to forfeiture, an owner fails to file an answer or other appropriate

pleading with the court claiming an interest in the subject matter property, or no person establishes standing to contest the forfeiture action pursuant to section 16-13-303 (5), a forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of an owner.

(c) If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-303 (1) or that the property is traceable proceeds of the offense or related criminal activity by a nonowner and the plaintiff proves by clear and convincing evidence that an owner is not an innocent owner pursuant to section 16-13-303 (5.2) (a), a judgment of forfeiture may be entered without a criminal conviction of an owner.

(d) If an owner of the property who was involved in the public nuisance act or conduct giving rise to the claim of forfeiture subsequently dies, and was not an innocent owner pursuant to section 16-13-303 (5.2) (a), a judgment of forfeiture may be entered without a criminal conviction of an owner.

(e) If an owner received a deferred judgment, deferred sentence, or participated in a diversion program, or in the case of a juvenile a deferred adjudication or deferred sentence or participated in a diversion program for the offense, a judgment of forfeiture may be entered without a criminal conviction.

(f) A defendant or claimant shall be permitted to waive the requirement of a criminal conviction in order to settle a forfeiture action.

(1.8) Nothing in this section shall be construed to limit the temporary seizure of property for evidentiary, investigatory, or protective purposes.

(2) An action to abate a public nuisance shall be brought in the county in which the subject matter of the action, or some part thereof, is located or found or in the county where the public nuisance act, or any portion thereof, was committed.

(2.5) All forfeiture actions shall proceed in state district court if the property was seized by a local or state law enforcement agency as a result of an ongoing state criminal investigation and the owner is being prosecuted in state court. Unless directed by an authorized agent of the federal government, no state or local law enforcement agency may transfer any property seized by the state or local agency to a federal agency for forfeiture under federal law unless an owner of the property is being prosecuted in federal court.

(3) Except as otherwise provided in this part 3, the practice and procedure in an action to abate a public nuisance shall be governed by the Colorado rules of civil procedure.

(3.5) An action brought pursuant to this part 3 regarding a class 1 public nuisance shall be filed within sixty-three days following the seizure of the property pursuant to section 16-13-315. The plaintiff may file the complaint after the expiration of sixty-three days from the date of seizure only if the complaint is accompanied by a written petition for late filing. Such petition for late filing shall demonstrate good cause for the late filing of the complaint. The sixty-three-day time limitation established by this subsection (3.5) shall not apply where the seizure of the property occurred pursuant to a warrant authorizing such seizure or otherwise under any statute or rule of criminal procedure, if the property is held as evidence in a pending criminal investigation or in a pending criminal case.

(4) An action to abate a public nuisance may be brought by the district attorney, or the attorney general with the consent of the district attorney, in the name of the people of the state of Colorado or in the name of any officer, agency, county, or municipality of this state whose duties or functions include or relate to the subject matter of the action. Any action to abate a class 3 public nuisance as defined by section 16-13-305 (1) (f) may be brought only upon the request of the agency or officer issuing the order or under whose authority the order was issued when such order relates to unlawful pollution or contamination.

(5) An action to abate a public nuisance, other than a class 4 public nuisance, and any action in which a temporary restraining order, temporary writ of injunction, or preliminary injunction is requested, shall be commenced by the filing of a complaint, which shall be verified or supported by affidavit. Summons shall be issued and served as in civil cases; except that a copy of the complaint and copies of any orders issued by the court at the time of filing shall be served with the summons.

(6) During all discovery procedures in actions brought pursuant to this part 3, a witness or party may refuse to answer any question if said witness or party makes a good faith assertion that the disclosure would tend to identify, directly or indirectly, a confidential informant for a law enforcement agency, unless the district attorney intends to call said informant as a witness at any adversarial hearing. On a motion to compel discovery, no witness or party shall be sanctioned in any manner for withholding information pursuant to this subsection (6).

(7) Actions to abate a public nuisance shall be heard by the court, without a jury, at all stages of the proceedings.

(8) Repealed.

(9) Part 2 of article 41 of title 38, C.R.S., shall not apply to any action under this part 3.

(10) (a) Continuance of the trial of a public nuisance action shall be granted upon stipulation of the parties or upon good cause shown.

(b) (Deleted by amendment, L. 2003, p. 897, § 8, effective July 1, 2003.)

(c) Public nuisance actions shall be included in the category of "expedited proceedings" specified in rules 16 and 26 of the Colorado rules of civil procedure; except that each party may conduct limited discovery as provided for in rule 26 (b) (2) of the Colorado rules of civil procedure. In addition, each party may move the court to authorize additional discovery upon good cause shown.

(11) No claim for relief shall be asserted by any party other than the plaintiff in a public nuisance action; except that the defendant may make a request for the return of property seized pursuant to this part 3.

(12) If a public nuisance trial pursuant to this part 3 results in an order to return subject personal property and the prosecution states an intent to appeal and proceeds to appeal that judgment or order, the court shall stay the judgment or order pending appeal, unless the court finds that the appeal was taken in bad faith or for the purpose of delay. No appeal bond shall be required, but the court may make appropriate orders to preserve the value of the property pending appeal.

(13) Unknown persons who may claim an interest in the property, persons whose whereabouts are unknown despite a diligent good faith search, and persons upon whom the

plaintiff has been unable to effect service as otherwise provided in the Colorado rules of civil procedure despite diligent good faith efforts may be served pursuant to a court order by publishing a copy of a summons twice in a newspaper of general circulation. The summons shall describe the property and state where the complaint and attendant documents may be obtained, and a party shall have thirty-five days after the last publication date to respond.

16-13-308. Temporary restraining order - preliminary injunction - when to issue. (1) (a) If probable cause for the existence of a class 1 public nuisance is shown to the court by means of a complaint supported by an affidavit, the court shall issue a temporary restraining order to abate and prevent the continuance or recurrence of the nuisance or to secure property subject to forfeiture pursuant to this part 3. Such temporary restraining order shall:

(I) Direct the sheriff or a peace officer to seize and, where applicable, close the public nuisance and keep the same effectually closed against its use for any purpose until further order of the court;

(II) Direct the seizure or holding, if previously seized, of all personal property subject to the provisions of this part 3; and

(III) Restrain and enjoin persons from selling, transferring, encumbering, damaging, destroying, or using as security for a bond any property subject to this part 3.

(b) The temporary restraining order may make such provisions as the court finds reasonable for the maintenance, utilities, insurance, and security with respect to real property subject to a public nuisance temporary restraining order, including imposing those responsibilities on the owner or defendant, if said owner or defendant is allowed reasonable access to the property consistent with those limited purposes.

(c) The court may order that all fixtures and contents of a public nuisance be stored on the premises of such public nuisance while an action under this part 3 is pending.

(d) The court may require that documents evidencing title or registration or that keys to property subject to this part 3 be deposited with a sheriff or peace officer, to be kept in the constructive custody of the court, while an action under this part 3 is pending.

(e) The court may require the sheriff or peace officer executing the order to post a copy of the order on property subject to the order.

(f) Any person with an ownership interest adversely affected by a temporary restraining order issued pursuant to this subsection (1) may file a motion to vacate the temporary restraining order. Such motion shall be filed within fourteen days of the time said person is served with or otherwise has notice of the temporary restraining order. The motion shall be set for hearing within fourteen days after its filing. At said hearing, the court shall determine whether the various provisions of the temporary restraining order should remain in effect pending final determination of the action. No part of the temporary restraining order shall be vacated unless the proponent of the motion demonstrates that there is no probable cause to believe that a public nuisance exists or that the public nuisance acts underlying the action occurred, or that the proponent has a reasonable likelihood of prevailing on the merits of the case with respect to the temporary seizure or closure of the property. No issue regarding the forfeiture of the property shall be raised at the hearing on the motion, except the court may consider an innocent owner defense pursuant to

section 16-13-303 (5.2) by a proponent who has not been charged in a parallel criminal action arising from the same activity giving rise to the forfeiture proceedings. When the innocent owner defense is raised as grounds for vacating the order, the issues at the hearing shall be limited to modifying the order to provide for the use of the property during the pendency of the action by an innocent owner, but only if such use is consistent with preserving it for forfeiture as to any other interest. Such a modifying order may include, without limitation, reasonable provisions for the continued occupancy of a residence, or the operation of a business and the sale or disposition of business inventory. However, no such modifying order shall include the release of currency. The determination of the facts by the court at the hearing is independent of and shall not be considered in the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrences. Any motion to vacate a temporary restraining order shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing. Until vacated, the temporary restraining order shall remain in full force and effect.

(2) In an action to abate a class 2 public nuisance, the court may, as a part of a preliminary injunction, direct the sheriff to seize and close such public nuisance and to keep the same effectually closed against its use for any purpose, until further order of the court. While the preliminary injunction remains in effect, the building or place seized and closed, and all personal property seized thereunder, shall be subject to the orders of the court.

(3) Temporary restraining orders and preliminary injunctions for public nuisances other than class 1 public nuisances may be issued as provided by the Colorado rules of civil procedure. No bond or security shall be required of the district attorney or the people of the state in any action to abate a public nuisance.

16-13-309. Judgment - relief. (1) The judgment in an action to abate a public nuisance may include a permanent injunction to restrain, abate, and prevent the continuance or recurrence of the nuisance and an order directing the confiscation and forfeiture of property. The court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction or order and enforce the same, and the court may retain jurisdiction of the case for the purpose of enforcing its orders.

(2) If the existence of a class 1 public nuisance is established in an action authorized by this part 3, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building, place, vehicle, or real property and the forfeiture of all fixtures and contents thereof and the confiscation and forfeiture of all personal property, including vehicles, seized or subject to seizure as provided in section 16-13-303 and shall direct the sale of the personal property, including vehicles, as provided in this part 3. If the building, place, or real property is not forfeited pursuant to this part 3, the order shall direct the effectual closing of such property against its use for any purpose for a period of one year, unless sooner released by the court pursuant to the provisions of this part 3. While the order remains in effect as to closing, such building, place, or real property shall remain in the custody of the court. The court shall cause a copy of the order of abatement to be recorded in the office of the county clerk and recorder of the county in which the property is located.

(3) The judgment in an action to abate a class 2 public nuisance may include an order directing the sheriff to seize and close the public nuisance, and to keep the same effectually closed until further order of the court, not to exceed one year.

(4) The judgment in an action to abate a class 3 public nuisance may include, in addition to or in the alternative to other injunctive relief, an order requiring the removal, correction, or other abatement of a public nuisance, in whole or in part, by the sheriff, at the expense of the owner or operator of the public nuisance.

(5) The judgment in an action to abate a public nuisance may include, in addition to or in the alternative to any other relief authorized by the provisions of this part 3, the imposition of a fine, within the limits provided in section 16-13-312, conditioned upon failure or refusal of compliance with the orders of the court within any time limits therein fixed.

16-13-310. Redelivery of seized premises. (1) If the owner of a building, a place, or any real property seized and closed as a class 1 public nuisance has not been guilty of any contempt of court in the proceedings, and appears and pays all costs, fees, and allowances which are declared by this section to be a lien on the building, place, or real property, and files a bond in the amount fixed by the court not to exceed the full value of said property, with sureties to be approved by the court, conditioned that he will immediately abate any such nuisance that exists at the building, place, or real property and prevent the same from being established or kept thereat within a period of one year thereafter, the court, if satisfied of his good faith and satisfied that such owner had not conducted, used, maintained, or knowingly permitted the conducting, using, or maintaining of such public nuisance, may order the building, place, or real property to be delivered to said owner and the order of abatement cancelled so far as the same relates to said property. If any property is found not to be a public nuisance pursuant to this part 3 or if said property fits the description of property specified in section 16-13-303 (2) and (3) and the property is not subject to forfeiture or an affirmative defense has been proven, said property shall be released to the owner without conditions. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it is subject by law.

(2) If the owner or operator of a building or place seized and closed as a class 2 public nuisance has not been guilty of any contempt of court in the proceedings, and demonstrates by evidence satisfactory to the court that the public nuisance has been abated and will not recur, the court may order the premises delivered to the owner or operator. As a condition of such order, the court may require the posting of bond, in an amount fixed by the court, for the faithful performance of the obligation of the owner or operator thereunder to prevent recurrence or continuance of the public nuisance.

(3) If the tenant or occupant, other than the owner, of a building, a place, or any real property is involved in conducting or maintaining a public nuisance, the owner need not be made a party to the action until the tenant or occupant is evicted or the district attorney seeks to enforce the remedies of this part 3 against the owner. However, the owner may intervene in the action at any time.

16-13-311. Disposition of seized personal property. (1) Any personal property subject to seizure, confiscation, forfeiture, or destruction under the provisions of this part 3, and which is seized as a part of or incident to proceedings under this part 3 for which disposition is not provided by another statute of this state, shall be disposed of as provided in this section.

(2) Any such property which is required by law to be destroyed, or the possession of which is illegal, or which in the opinion of the court is not properly the subject of a sale may be destroyed pursuant to a warrant for the destruction of personal property issued by the court and directed to the sheriff of the proper county or any peace officer and returned by the sheriff or peace officer after execution thereof. The court shall stay the execution of any such warrant during the period in which the property is used as evidence in any pending criminal or civil proceeding.

(3) (a) If the prosecution prevails in the forfeiture action, the court shall order the property forfeited. Such order shall perfect the state's right and interest in and title to such property and shall relate back to the date when title to the property vested in the state pursuant to section 16-13-316. Except as otherwise provided in paragraph (c) of this subsection (3), the court shall also order such property to be sold at a public sale by the law enforcement agency in possession of the property in the manner provided for sales on execution, or in another commercially reasonable manner. Property forfeited under this section or proceeds therefrom shall be distributed or applied in the following order:

(I) To payment of the balances due on any liens perfected on or before the date of seizure preserved by the court in the forfeiture proceedings, in the order of their priority;

(II) To compensate an innocent partial owner for the fair market value of his or her interest in the property;

(III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture;

(IV) To the law enforcement agency in possession of the property for reasonable fees and costs of sale, maintenance, and storage of the property;

(V) To the district attorney for actual and reasonable expenses related to the costs of prosecuting the forfeiture proceeding and title transfer not to exceed ten percent of the value of the property;

(VI) One percent of the value of the property to the clerk of the court for administrative costs associated with compliance with this section;

(VII) The balance shall be delivered, upon order of the court, as follows:

(A) Fifty percent to the general fund of the governmental body or bodies with budgetary authority over the seizing agency for public safety purposes or, if the seizing agency was a multijurisdictional task force, fifty percent to be distributed in accordance with the appropriate intergovernmental agreement; and

(B) The remaining amount to the managed service organization contracting with the unit within the department of human services that administers behavioral health programs and

services, including those related to mental health and substance abuse, serving the judicial district where the forfeiture proceeding was prosecuted to fund detoxification and substance abuse treatment. Moneys appropriated to the managed service organization shall be in addition to, and shall not be used to supplant, other funding appropriated to such unit.

(b) (Deleted by amendment, L. 2002, p. 921, § 5, effective July 1, 2002.)

(c) If, in a forfeiture proceeding, a partial owner is determined to be an innocent owner under law, at the option of the innocent partial owner, in lieu of a public sale, the innocent partial owner may purchase the forfeited items from the state at a private sale for fair market value. Proceeds received by the state shall be disposed of pursuant to this section.

(d) After a judgment of forfeiture has been entered, any seizing agency in possession of any money forfeited shall deposit the money in the registry of the court where the forfeiture order was entered. Upon the sale of forfeited real or personal property, the seizing agency responsible for overseeing the sale shall ensure that any lienholders are compensated from the proceeds of the sale pursuant to the priorities specified in paragraph (a) of this subsection (3) for their interests in the forfeited property. The seizing agency shall deposit all remaining proceeds from the sale in the registry of the court immediately upon completion of the sale. The seizing agency shall notify the court and the district attorney when all property subject to the forfeiture order has been sold and all proceeds and money have been deposited in the registry of the court where the forfeiture order was entered.

(e) Within thirty-five days after the date the order of forfeiture is entered, the district attorney may submit a motion, an affidavit, and any supporting documentation to the court to request compensation consistent with this section. Within thirty-five days after the date the order of forfeiture is entered, any victim of the criminal act giving rise to the forfeiture may submit a request for compensation, an affidavit, and supporting documentation to the district attorney to request compensation from the forfeiture proceeds.

(f) Within fourteen days after the date a seizing agency notifies the court that all property forfeited has been sold and all proceeds and money have been deposited in the registry of the court where the forfeiture order was entered, the seizing agency may submit a motion, an affidavit, and supporting documentation to the court for reimbursement of expenses consistent with this section. In its motion, the seizing agency shall identify any other seizing agencies that participated in the seizure and specify the details of any intergovernmental agreement regarding sharing of proceeds. The seizing agency shall send a copy of this motion to the district attorney.

(g) The district attorney shall prepare a motion and proposed order for distribution based upon the motions and requests submitted by the parties. The order shall include allocation of one percent of the value of the property to the clerk of the court for the direct and indirect costs incurred by the clerk in implementing the provisions of this subsection (3). The district attorney shall send copies to all remaining interested parties.

(h) Any party shall have fourteen days after filing of the proposed order to file any objections to the proposed order filed by the district attorney.

(3.5) Instead of liens and encumbrances on real property being satisfied from the proceeds of sale, real property may be sold subject to all liens or encumbrances on record. The purchase of the property by the successful bidder under this subsection (3.5) shall be conditioned

on the bidder satisfying and obtaining the release of the first and second priority liens within sixty-three days after the sale, or obtaining written authorization from those lien holders for the bidder to receive the sheriff's deed which shall be issued after such satisfaction or authorization. The purchaser of the property shall take title free of any lien, encumbrance, or cloud on the title recorded after title vests in the state pursuant to section 16-13-316.

(4) It is the intent of the general assembly that moneys allocated to a seizing agency pursuant to subsection (3) of this section shall not be considered a source of revenue to meet normal operating needs.

(5) If more than one seizing agency was substantially involved in effecting the forfeiture, the agencies shall enter into a stipulation with regard to costs incurred by the agencies and the percentage of any remaining proceeds to be deposited for the benefit of the agencies or any property to be directly forfeited for use of such agencies. Upon the filing by such agencies of such stipulation with the court, the court shall order the proceeds or property so distributed. If the agencies are unable to reach an agreement, the court shall take testimony and equitably distribute the proceeds.

(6) The state shall issue a certificate of title for a vehicle to the purchaser or seizing agency if said vehicle is acquired pursuant to this part 3.

16-13-312. Violation of injunction. Any violation or disobedience of any injunction or order issued by the court in an action to abate a public nuisance shall be punished as a contempt of court by a fine of not less than two hundred dollars nor more than two thousand dollars; but the court may treat each day on which the violation or disobedience of an injunction or order continues or recurs as a separate contempt and may impose a fine, in addition to the fine provided in this section, in an amount not to exceed five hundred dollars per day.

16-13-313. Fees - costs and fines - lien and collection. (1) For removing and selling personal property as provided in this part 3, the sheriff shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution.

(2) For seizing and closing any building, premises, or vehicle as provided in this part 3, or for performing other duties pursuant to the direction of the court pursuant to the provisions of this part 3, the sheriff shall be entitled to a reasonable sum fixed by the court, in addition to the actual costs incurred or expended.

(3) All fees and costs allowed by the provisions of this section, the costs of court action to abate any public nuisance, and all fines levied by the court in contempt proceedings incident to an action to abate a public nuisance shall be a first and prior lien upon any real or personal property seized under the provisions of this part 3, and the same shall be enforceable and collectible by execution issued by order of the court, from the property of any person liable therefor.

16-13-314. Disposition of forfeited real property. (1) In an action to abate a class 1

public nuisance, if the court finds that such class 1 public nuisance exists and that the same has been conducted, used, or maintained by the owner of a building, place, or any real property seized and closed as a class 1 public nuisance, or that the nuisance has been conducted, used, or maintained by any person with the actual knowledge and consent of the owner, a permanent order of abatement shall be entered as a part of the judgment in the case. The order of abatement shall direct the sheriff to sell such building or place and the ground upon which such building or place is situate or any other real property, to the extent of the interest of such owner therein, at public sale in the manner provided for sales of property upon execution. In no event shall real property that is neither proceeds of nor part of the same lot or tract of land used for the public nuisance act that was the underlying subject matter of the public nuisance action, be subject to seizure and forfeiture, excepting access and egress routes.

(2) The proceeds of such sale shall be applied in the same manner and priority as enumerated in section 16-13-311 (3).

(3) It is the intent of the general assembly that moneys allocated to a seizing agency pursuant to subsection (2) of this section shall not be considered a source of revenue to meet normal operating needs.

(4) If more than one seizing agency was substantially involved in effecting the forfeiture, the agencies shall enter into a stipulation with regard to costs incurred by the agencies and the percentage of any remaining proceeds to be deposited for the benefit of the agencies. Upon the filing by such agencies of such stipulation with the court, the court shall order the proceeds so distributed. If the agencies are unable to reach an agreement, the court shall take testimony and equitably distribute the proceeds.

16-13-315. Seizure of personal property. (1) Any personal property subject to seizure, confiscation, or forfeiture under the provisions of this part 3 may be seized:

(a) Pursuant to any writ, order, or injunction issued under the provisions of this part 3; or

(b) Under the authority of a search warrant; or

(c) By any peace officer or agent of a seizing agency with probable cause to believe that such property is a public nuisance or otherwise subject to confiscation and forfeiture under this part 3 if the seizure is incident to a lawful search or arrest.

(2) The provisions of this section shall not be construed to limit or forbid the seizure of any such personal property in any manner now or hereafter required, authorized, or permitted by law.

(3) If a rental motor vehicle is seized pursuant to this part 3, the seizing agency shall notify the motor vehicle rental company of the seizure if the motor vehicle is identified as a rental motor vehicle. The motor vehicle rental company may appear at the seizing agency and request the return of the rental motor vehicle. The rental motor vehicle shall be returned to the motor vehicle rental company unless the motor vehicle must be maintained in the custody of the seizing agency for evidentiary purposes or if the seizing agency has probable cause to believe the motor vehicle rental company, at the time of rental, had knowledge or notice of the criminal activity for which the rental car was used.

16-13-316. Prior liens not subject to forfeiture - vesting of title. (1) Nothing in this part 3 shall be construed in such manner as to destroy the validity of a bona fide lien upon real or personal property appearing of record prior to the seizure of personal property, prior to the filing of a notice of seizure, as provided in subsection (3) of this section, prior to the filing of a notice of lis pendens on real property, or prior to actual or constructive notice to the lienholder of the state's potential claim of public nuisance.

(2) Title to real or personal property subject to forfeiture pursuant to the provisions of this section shall vest in the state and the seizing agency at the earliest of: For currency, the time of the commission of the public nuisance act; the time of the physical seizure of said property, except for real property; the time of filing of a notice of seizure, as provided in subsection (3) of this section; the time of the filing of a notice of lis pendens on real property; or the time of the issuance of court process for seizure of property, as against anyone with prior actual notice thereof.

(3) Before or after the commencement of litigation regarding a vehicle or real property for which seizure or forfeiture is sought, the prosecuting attorney or seizing agency shall file a notice of seizure with the office of the clerk and recorder in the county where the property is located. A notice of seizure for real property shall expire within seventy days after filing unless an action is filed in court for abatement or forfeiture, under this part 3 or other applicable law. A notice of seizure shall contain: A description of the property for which seizure or forfeiture is being sought, including the street address and legal description for real property and the make, model, year, license number, and vehicle identification number for a vehicle; the date and location of the seizure if the property has already been seized; the identity of the seizing agency and prosecuting attorney; and the name of any person who is an owner of record or registered owner of the property or who is known to have, or who has asserted an interest in, the property. The notice of seizure shall also contain a statement giving notice that seizure or forfeiture of the property may be sought pursuant to this part 3, or other applicable law, and that any interest acquired in the property after the filing of the notice of the seizure will be subject to the forfeiture action in the event the property is forfeited.

16-13-317. Reporting of proceeds. (Repealed)

PART 4

PRESERVATION OF THE PEACE

16-13-401. (Repealed)

PART 5

COLORADO CONTRABAND FORFEITURE ACT

16-13-501. Short title. This part 5 shall be known and may be cited as the "Colorado Contraband Forfeiture Act".

16-13-501.5. Legislative declaration. (1) It is the intent of the general assembly that proceedings under this part 5 be remedial in nature and designed to benefit the public good by appropriating contraband property for use by law enforcement.

(2) It is also the policy of the general assembly that asset forfeiture pursuant to this part 5 shall be carried out pursuant to the following:

(a) Generation of revenue shall not be the primary purpose of asset forfeiture.

(b) No prosecutor's or law enforcement officer's employment or level of salary shall depend upon the frequency of seizures or forfeitures which such person achieves.

(c) Each seizing agency shall have policies and procedures for the expeditious release of seized property which is not subject to forfeiture pursuant to this part 5, when such release is appropriate.

(d) Each seizing agency retaining forfeited property for official law enforcement use shall ensure that the property is subject to controls consistent with controls which are applicable to property acquired through the normal appropriations process.

(e) Each seizing agency which receives forfeiture proceeds shall conform with reporting, audit, and disposition procedures enumerated in this article.

(f) Each seizing agency shall prohibit its employees from purchasing forfeited property.

16-13-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Contraband article" means any controlled substance, as defined in section 18-18-102 (5), C.R.S., any other drug the possession of which is an offense under the laws of this state, any imitation controlled substance, as defined in section 18-18-420 (3), C.R.S., or any drug paraphernalia, as defined in section 18-18-426, C.R.S.

(1.5) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or adjudication for an offense that would constitute a criminal offense if committed by an adult.

(1.7) "Instrumental" means a substantial connection exists between the property and the unlawful use of the property.

(1.8) "Proceeds traceable" or "traceable proceeds" means all property, real and personal, corporeal and incorporeal, which is proceeds attributable to, derived from, or realized through, directly or indirectly, a subject act described in section 16-13-503, whether proved by direct, circumstantial, or documentary evidence. There shall be no requirement of showing of a trail of documentary evidence to trace proceeds if the standard of proof by clear and convincing evidence is met.

(2) "Seizing agency" means any agency that is charged with the enforcement of the laws of this state, of any other state, or of the United States relating to controlled substances and that

has participated in a seizure or has been substantially involved in effecting a forfeiture through legal representation pursuant to this part 5; except that the filing of any lien against property forfeited under this part 5 by the governing body or agency thereof of any seizing agency after the date of seizure shall preclude such agency from participating pursuant to this part 5 as a seizing agency and shall deny any such agency from receiving any proceeds under this part 5. The department of corrections and a multijurisdictional task force shall be deemed to be included under this definition.

(3) "Vehicle" means any device of conveyance capable of moving itself or of being moved from place to place upon wheels, tracks, or water or through the air, whether or not intended for the transport of persons or property, and includes any place therein adapted for overnight accommodation of persons or animals or for the carrying on of business.

16-13-503. Subject acts. (1) The following acts are subject to this part 5:

(a) Engaging in the unlawful manufacture, cultivation, growth, production, processing, or distribution for sale of, or sale of, or storing or possessing for any unlawful manufacture or distribution for sale of, or for sale of, any controlled substance, as defined in section 18-18-102 (5), C.R.S., any other drug the possession of which is an offense under the laws of this state, or any imitation controlled substance, as defined in section 18-18-420 (3), C.R.S.;

(b) Engaging in the unlawful manufacture, sale, or distribution of drug paraphernalia, as defined in section 18-18-426, C.R.S.;

(c) Transporting, carrying, or conveying any contraband article in, upon, or by means of any vehicle for the purpose of sale, storage, or possession of such contraband article;

(d) Concealing or possessing any contraband article in or upon any vehicle for the purpose of sale of such contraband article;

(e) Using any vehicle to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, or purchase for sale of any contraband article, or the sale, barter, exchange, or giving away of any contraband article; and

(f) Concealing or possessing any contraband article for the purpose of sale.

(2) Mere possession of less than sixteen ounces of marijuana shall not be an act subject to the provisions of this part 5.

16-13-504. Forfeiture of vehicle, fixtures and contents of building, personal property, or contraband article - exceptions. (1) Any vehicle or personal property, including fixtures and contents of a structure or building, as defined in section 16-13-301 (2), currency, securities, or negotiable instruments, which has been or is being used in any of the acts specified in section 16-13-503 or in, upon, or by means of which any act under said section has taken or is taking place; or any currency, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any of the acts listed in section 16-13-503; or any proceeds traceable to the acts listed in section 16-13-503; or any currency, negotiable instruments, or securities used or intended to be used to facilitate any of the acts listed in section 16-13-503 are contraband property and shall be seized, as well as any

contraband article. Any peace officer or agent of a seizing agency may seize and hold such property or articles if there is probable cause to believe that such property or articles are contraband and the seizure is incident to a lawful search. All rights and interest in and title to contraband property shall immediately vest in the state upon seizure by a seizing agency, subject only to perfection of title, rights, and interests in accordance with this part 5. Neither replevin nor any other action to recover any interest in such property shall be maintained in any court except as provided in this part 5.

(1.5) If a rental motor vehicle is seized pursuant to this part 5, the seizing agency shall notify the motor vehicle rental company of the seizure if the motor vehicle is identified as a rental motor vehicle. The motor vehicle rental company may appear at the seizing agency and request the return of the rental motor vehicle. The rental motor vehicle shall be returned to the motor vehicle rental company unless the motor vehicle must be maintained in the custody of the seizing agency for evidentiary purposes or if the seizing agency has probable cause to believe the motor vehicle rental company, at the time of rental, had knowledge or notice of the criminal activity for which the rental car was used.

(2) (a) In any action seeking forfeiture of property pursuant to this part 5, any person, including a lienholder, who seeks to contest the forfeiture shall establish by a preponderance of the evidence such person's standing as a true owner of the property or a true owner with an interest in the property.

(b) To establish standing, the person shall first prove that the person has a recorded or registered interest in the property, or a bona fide marital interest in the property, if the property is of a type for which interests can be, and customarily are, recorded or registered in a public office.

(c) The person shall also prove that the person is a true owner of the property or a true owner of an interest in the property. The factors to be considered by the court in determining whether a person is a true owner shall include, but need not be limited to:

(I) Whether the person had the primary use, benefit, possession, or control of the property;

(II) How much of the consideration for the purchase or ownership of the property was furnished by the person, and whether the person furnished reasonably equivalent value in exchange for the property or interest;

(III) Whether the transaction by which the person acquired the property or interest was secret, concealed, undisclosed, hurried, or not in the usual mode of doing business;

(IV) Whether the transaction by which the person acquired the property or interest was conducted through the use of a shell, alter ego, nominee, or fictitious party;

(V) Whether the person is a relative, a co-conspirator, complicitor, or an accessory in the public nuisance act or acts or other criminal activity, a business associate in a legal or illegal business, one who maintains a special or close relationship with, or an insider with respect to the perpetrator of the alleged public nuisance act or acts;

(VI) Whether the person is silent or fails to call parties to testify or to produce available evidence explaining the acquisition of the property or factors which may be badges of fraud or deceit, or show lack of true ownership;

(VII) Whether the timing of the transaction by which the person acquired the property was during the pendency or threat of litigation, or during any time when the person knew, should

have known, or had notice of the public nuisance act or acts or the threat of a forfeiture action;

(VIII) Whether the placing of the title in the name of, or the putative ownership in, or transfer to, the person was done with intent to delay, hinder, or avoid a forfeiture, or for some purpose other than ownership of the property;

(IX) Whether the perpetrator of the alleged public nuisance act or acts has absconded or is a fugitive from justice and the conveyance occurred after the flight, or before the flight, in any of the circumstances set forth in subparagraph (III) of this paragraph (c);

(X) Whether the subject matter property is of a kind in which property or ownership rights can legally exist;

(XI) Any other badge or indicia of fraud under article 8 of title 38, C.R.S., or the general law of fraudulent transfers or conveyances.

(d) The court shall consider the totality of the circumstances in determining whether a person is a true owner. A person contesting the forfeiture does not necessarily have to show that all of the factors enumerated in paragraph (c) of this subsection (2) support the claim of true ownership, nor does the person necessarily establish true ownership by showing the absence of fraudulent intent or badges of fraud.

(e) No private sale or conveyance of a used motor vehicle shall be deemed to make a party eligible to assert standing to contest the forfeiture thereof, unless the title to the motor vehicle, with transfer duly executed to the party, has been filed with the division of motor vehicles in the department of revenue prior to the physical seizure of the vehicle and the recording of a notice of seizure, or the party attempting to assert standing has exclusive possession of the vehicle at the time of seizure. A party eligible to assert standing under this paragraph (e) must nevertheless establish that the party is a true owner of the vehicle or has an interest therein pursuant to paragraph (c) of this subsection (2).

(f) Unless the standing of a particular party is conceded in the complaint initiating the public nuisance action, a party must assert standing in the answer and fully describe the party's interest in the property which is the subject matter of the action, and submit a verified statement, supported by any available documentation, of the party's ownership of or interest in the property.

(2.1) (a) In any action to forfeit property pursuant to this part 5, the plaintiff, in addition to any other matter which must be proven in the plaintiff's case in chief, shall prove by clear and convincing evidence that possession of the property is unlawful, or that the owner of the property or interest therein was involved in or knew of the subject act. The plaintiff shall also prove by clear and convincing evidence that the property was instrumental in the commission or facilitation of the crime or the property constitutes traceable proceeds of the crime or related criminal activity.

(a.5) (I) The claimant in an action brought pursuant to this part 5 may petition the court to determine whether a forfeiture was constitutionally excessive. Upon the conclusion of a trial resulting in a judgment of forfeiture in an action brought pursuant to this part 5, if the evidence presented raises an issue of proportionality under this paragraph (a.5), the defendant may petition the court to set a hearing, or the court may on its own motion set a hearing to determine whether a forfeiture was constitutionally excessive. This determination shall be made prior to any sale or distribution of forfeited property.

(II) In making this determination, the court shall compare the forfeiture to the gravity of the public nuisance act giving rise to the forfeiture and related criminal activity.

(III) The defendant shall have the burden of establishing by a preponderance of the evidence that the forfeiture is grossly disproportional.

(IV) If the court finds that the forfeiture is grossly disproportional to the public nuisance act and related criminal activity, it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the excessive fines clause of the eighth amendment of the United States constitution or article II, section 20, of the Colorado constitution.

(V) and (VI) (Deleted by amendment, L. 2003, p. 890, § 2, effective July 1, 2003.)

(b) As used in paragraph (a) of this subsection (2.1), an owner was "involved in or knew of the subject act" if it is established that:

(I) The owner was involved in the subject act; or

(II) (A) The owner knew of the subject act or had notice of the acts facilitating the criminal activity or prior similar conduct and failed to take reasonable steps to prohibit or abate the illegal use of the property;

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (II), if the plaintiff proves by clear and convincing evidence that the owner knew or had notice of the unlawful use of the property, the owner must prove by a preponderance of the evidence that the owner took reasonable steps to prohibit or abate the unlawful use of the property for the court to find the owner was not a party to the offense or related criminal activity.

(2.2) (a) With respect to a partial or whole ownership interest in existence at the time the conduct subjecting the property to seizure took place, the term "innocent owner" means any owner who:

(I) Did not have actual knowledge of the conduct subjecting the property to seizure or notice of an act or circumstance facilitating the criminal activity or prior similar conduct, notice being satisfied by, but not limited to, sending notice of an act or circumstance facilitating the criminal activity by certified mail; or

(II) Upon learning of the conduct subjecting the property to seizure, took reasonable steps to prohibit the conduct. An owner may demonstrate that he or she took reasonable action to prohibit such conduct if the owner:

(A) Timely revoked or attempted to revoke permission for those engaging in such conduct to use the property; or

(B) Took reasonable actions to discourage or prevent the use of the property in conduct subjecting the property to seizure.

(b) With respect to a partial or whole ownership interest acquired after the conduct subjecting the property to seizure has occurred, the term "innocent owner" means a person who, at the time he or she acquired the interest in the property, had no knowledge that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:

(I) Acquired an interest in the property in a bona fide transaction for value;

(II) Acquired an interest in the property through probate or inheritance; or

(III) Acquired an interest in the property through dissolution of marriage or by operation

of law.

(c) An innocent owner's interest in property shall not be forfeited under any provision of state law. An innocent owner has the burden of proving by a preponderance of the evidence that he or she has an ownership interest in the subject property. Otherwise, the burden of proof under this subsection (2.2) shall be as provided in subsection (2.1) of this section.

(d) A person who is convicted of a criminal offense arising from the same activity giving rise to the forfeiture proceedings in accordance with section 16-13-505 (1.5) shall not be eligible to assert an innocent owner defense.

(2.3) The prosecuting attorney shall set forth in the petition initiating the forfeiture action pursuant to this part 5 the existence of any liens and whether forfeiture of any liens will be sought. If forfeiture of a lien is not sought, the lienholder does not need to appear to preserve any interest in the property which is the subject of the forfeiture action which such lienholder may possess.

(3) (Deleted by amendment, L. 93, p. 627, § 2, effective July 1, 1993.)

16-13-505. Forfeiture proceedings. (1) The several district courts of this state shall have original jurisdiction in proceedings under this part 5.

(1.5) No judgment of forfeiture of property in any forfeiture proceeding shall be entered unless and until an owner of the property is convicted of an offense involving the conduct listed in section 16-13-503, or a lesser included offense of an eligible offense if the conviction is the result of a negotiated guilty plea. Nothing in this section shall be construed to require the conviction to be obtained in the same jurisdiction as the jurisdiction in which the forfeiture action is brought. In the event criminal charges arising from the same activity giving rise to the forfeiture proceedings are filed against any individual claiming an interest in the property subject to the forfeiture proceeding, the trial and discovery phases of the forfeiture proceeding shall be stayed by the court until the disposition of the criminal charges. A stay shall not be maintained during an appeal or post-conviction proceeding challenging a criminal conviction. Nothing in this section shall be construed to prohibit or prevent the parties from contemporaneously resolving criminal charges and a forfeiture proceeding arising from the same activity.

(1.6) Upon acquittal or dismissal of a criminal action against a person named in a forfeiture action related to the criminal action, unless the forfeiture action was brought pursuant to one or more of paragraphs (a) to (f) of subsection (1.7) of this section, the forfeiture claim shall be dismissed and the seized property shall be returned as respects the subject matter property or interest therein of that person, if the case has been adjudicated as to all other claims, interests, and owners, unless possession of the property is illegal. If the forfeiture action is dismissed or judgment is entered in favor of the claimant, the claimant shall not be subject to any monetary charges by the state for storage of the property or expenses incurred in the preservation of the property, unless at the time of dismissal the plaintiff shows that those expenses would have been incurred to prevent waste of the property even if it had not been seized.

(1.7) Notwithstanding the provisions of subsection (1.5) of this section:

(a) (I) A person shall lack standing for and shall be disallowed from pursuit of a claim or defense in a civil forfeiture action upon a finding that a warrant or other process has been issued

for the apprehension of the person, and, in order to avoid criminal prosecution, the person:

(A) Purposely leaves the state; or

(B) Declines to enter or reenter the state to submit to its jurisdiction; or

(C) Otherwise evades the jurisdiction of the court in which a criminal case is pending against the person or from which a warrant has been issued, by failing to appear in court or surrender on the warrant; and

(D) Is not known to be confined or held in custody in any other jurisdiction within the United States for commission of criminal conduct in that jurisdiction.

(II) If a person lacks standing pursuant to this paragraph (a), the forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of an owner, upon motion and notice as provided in the rules of civil procedure.

(b) If, following notice to all persons known to have an interest or who have asserted an interest in the property subject to forfeiture, an owner fails to file an answer or other appropriate response with the court claiming an interest in the subject matter property, or no person establishes standing to contest the forfeiture action pursuant to section 16-13-504 (2), a forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of an owner.

(c) If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-503 (1) or that the property is traceable proceeds of the offense or related criminal activity by a nonowner and the plaintiff proves by clear and convincing evidence that an owner is not an innocent owner pursuant to section 16-13-504 (2.2), a judgment of forfeiture may be entered without a criminal conviction of an owner.

(d) If an owner of the property who was involved in the public nuisance act or conduct giving rise to the claim of forfeiture subsequently dies, and was not an innocent owner pursuant to section 16-13-504 (2.2), a judgment of forfeiture may be entered without a criminal conviction of an owner.

(e) If an owner received a deferred judgment, deferred sentence, or participated in a diversion program, or in the case of a juvenile a deferred adjudication or deferred sentence or participated in a diversion program for the offense, a judgment of forfeiture may be entered without a criminal conviction.

(f) A defendant or claimant shall be permitted to waive the requirement of a criminal conviction in order to settle a forfeiture action.

(2) (a) The prosecuting attorney shall file a petition in forfeiture to perfect title in seized contraband property no later than sixty-three days after the seizure. The prosecuting attorney may file the petition after the expiration of sixty-three days from the date of seizure only if the petition is accompanied by a written statement of good cause for the late filing. The sixty-three-day time limitation established by this paragraph (a) shall not apply where the seizure of the property occurred pursuant to a warrant authorizing such seizure or otherwise under any statute or rule of criminal procedure if the property is held as evidence in a pending criminal investigation or in a pending criminal case. The petition shall be accompanied by a supporting affidavit, and both shall describe the property seized with reasonable particularity and shall include a list of

witnesses to be called in support of the claim for forfeiture, including the addresses and telephone numbers thereof.

(b) If the court finds from the petition and supporting affidavit that probable cause exists to believe that the seized property is contraband property as defined in this part 5, it shall, without delay, issue a citation directed to interested parties to show cause why the property should not be forfeited. The citation shall fix the date and time for a first appearance on the petition. The date fixed shall be no less than thirty-five days and no more than sixty-three days from the date of the issuance of the citation.

(c) At the first appearance on the petition, the court shall set a date and time for a hearing on the merits of the petition within forty-nine days after the first appearance.

(d) The only responsive pleading shall be designated a response to petition and citation to show cause and shall be filed with the court at or before the first appearance on the petition and shall include:

(I) A statement admitting or denying the averments of the petition;

(II) A statement setting forth with particularity why the seized property should not be forfeited. The statement shall include specific factual and legal grounds supporting it and any affirmative defense to forfeiture as provided in this part 5.

(III) A list of witnesses whom the respondent intends to call at the hearing on the merits, including the addresses and telephone numbers thereof; and

(IV) A verified statement, supported by documentation, that the claimant is the true owner of the property or an interest therein.

(e) No claim for relief against the plaintiff shall be set forth in the response, except a request for return of the seized property.

(2.5) All forfeiture actions shall proceed in state district court if the property was seized by a local or state law enforcement agency as a result of an ongoing state criminal investigation and the owner is being prosecuted in state court. Unless, directed by an authorized agent of the federal government, no state or local law enforcement agency may transfer any property seized by the state or local agency to a federal agency for forfeiture under federal law unless an owner of the property is being prosecuted in federal court.

(3) The citation specified in paragraph (b) of subsection (2) of this section shall:

(a) Describe the property;

(b) State the county, place, and date of seizure;

(c) State the name of the agency holding the seized property;

(d) State the date and time of the first appearance and the court in which it will be held;

(e) State that judgment in favor of the plaintiff shall enter forthwith against any party who fails to file a response pursuant to paragraph (d) of subsection (2) of this section or who fails to appear personally or by counsel at the first appearance before the court; and

(f) Advise the defendant of the right to continue the action under the circumstances stated in subsection (5) of this section.

(4) Except as otherwise provided in this part 5, the practice and procedure in an action to perfect title to contraband property shall be governed by the Colorado rules of civil procedure. Actions to perfect title to contraband property shall be included in the category of "expedited proceedings" specified in rules 16 and 26 of the Colorado rules of civil procedure; except that

each party may conduct limited discovery as provided for in rule 26 (b) (2) of the Colorado rules of civil procedure. In addition, each party may move the court to authorize additional discovery upon good cause shown.

(5) Continuance of the hearing on the merits shall be granted upon stipulation of the parties or upon good cause shown.

(6) The hearing on the merits shall be heard by the court without a jury.

(7) If the seized property is of a type for which title or registration is required by law, or if the owner of the property and his or her address are known in fact, or if the seized property is subject to a perfected security interest, the prosecuting attorney shall give notice of the forfeiture action to the claimant, either by personal service of the petition, supporting affidavit, and citation upon him or her or by sending copies of such documents by certified mail, return receipt requested, to the last-known address of such claimant. If the documents are properly mailed to an address which the prosecutor has reasonable grounds to believe is the last-known address of the potential claimant, said documents shall be deemed served whether or not the claimant responds to the notice to claim them at the post office. Unknown persons who may claim any interest in the property, persons whose addresses are unknown, and persons upon whom the prosecutor has been unable to effect service as otherwise provided in this subsection (7) despite diligent good faith efforts may be served pursuant to a court order by publishing a copy of the citation twice in a newspaper of general circulation in the county in which the proceeding is instituted. The fact of such publication shall be conclusively established by the publisher's affidavit of publication. The first publication shall be more than fourteen days and the last publication not less than seven days before the first appearance date on the citation.

(8) If any claimant to the property subject to a forfeiture action, including a claimant unknown to the plaintiff, is properly served with the citation according to the procedures specified in subsection (7) of this section and fails to appear personally or by counsel on the first appearance date or fails to file a response as required by this section, the court shall forthwith find said person in default and enter an order forfeiting said person's interest in the property and distributing the proceeds of forfeiture as provided in this part 5. A default order of forfeiture entered pursuant to this section shall only be set aside upon an express finding by the court that a claimant was improperly served through no fault of such claimant and had no notice of the first appearance on the citation or was prevented from appearing and responding due to an emergency situation caused by events beyond such claimant's control when such claimant had made diligent, good faith, and reasonable efforts to prepare a response and appear.

(9) If a forfeiture hearing held pursuant to this part 5 results in an order to return the subject property to a claimant and the prosecution states an intent to appeal and proceeds to initiate an appeal of the order, the court shall stay execution of the order pending appeal, unless the court finds that the appeal is taken in bad faith or for the purpose of delay. No appeal bond shall be required, but the court may make appropriate orders to preserve the value of the property pending appeal.

(10) The evidentiary burdens at a forfeiture hearing brought pursuant to this part 5 shall be as follows:

(a) The claimant shall first prove by a preponderance of the evidence that such claimant is the true owner of the property.

(b) If the claimant establishes that such claimant is the true owner of the property sought to be forfeited, the prosecuting attorney shall have the burden of going forward with the evidence and proving the allegations of the petition by clear and convincing evidence.

(c) (Deleted by amendment, L. 93, p. 629, § 3, effective July 1, 1993.)

(11) Actions pursuant to this part 5 shall be brought in the name of the people of the state of Colorado by the district attorney in the county in which the property was seized or in the county in which any subject act occurred. With the consent of the district attorney, the attorney general may also bring such an action.

16-13-506. Final order - disposition of property. (1) If the prosecution prevails in the forfeiture action, the court shall order the property forfeited and perfect the state's right and interest in and title to such property. The court shall also order such property to be sold at public sale by the law enforcement agency in possession of the property in the manner provided for sales on execution or in another commercially reasonable manner. The proceeds of sale shall be applied in the manner and priority enumerated in section 16-13-311. The order for sale shall perfect the state's right and interest in and title to the property and shall relate back to the date when title to the property vested in the state pursuant to section 16-13-316.

(2) In the event that the seizing agency is a state agency, proceeds allocated to such agency pursuant to subsection (1) of this section shall be distributed directly to said state agency.

(3) It is the intent of the general assembly that moneys allocated to a seizing agency pursuant to subsection (1) of this section shall not be considered a source of revenue to meet normal operating needs.

(4) If more than one seizing agency was substantially involved in effecting the forfeiture, the agencies shall enter into a stipulation with regard to costs incurred by the agencies and the percentage of any remaining proceeds which shall be deposited for the benefit of the agencies, and, upon filing such stipulation with the court, the court shall order the proceeds so distributed. If the agencies are unable to reach an agreement, the court shall take testimony and equitably distribute the proceeds according to the formula set out in subsection (1) of this section.

(4.5) If the court finds that a vehicle or personal property forfeited pursuant to this part 5 can be used for law enforcement purposes by a seizing agency, the court shall order that the vehicle or personal property be delivered to the agency instead of sold. If more than one seizing agency was substantially involved in effecting the forfeiture, the priority for receiving such vehicle or personal property shall be established by stipulation pursuant to subsection (4) of this section.

(5) Any forfeited money or currency shall be in addition to the proceeds obtained from sale of forfeited personalty and shall be equitably distributed pursuant to subsection (1) of this section.

(6) Upon the sale of any vehicle, the state shall issue a certificate of title to the purchaser thereof.

(7) In any order issued by the court pursuant to subsections (1) and (4) of this section, the court shall only order the amounts to be distributed and to whom, and the courts shall not have

the power to dictate the use for which the moneys are to be appropriated, employed, received, or expended by the seizing agency or injured person.

(8) (a) (Deleted by amendment, L. 92, p. 450, § 5, effective July 1, 1992.)

(b) Repealed.

16-13-507. Disposition of contraband article or property. Any property seized pursuant to section 16-13-504 which is required by law to be destroyed, or the possession of which is illegal, or which in the opinion of the court is not properly the subject of a sale may be destroyed pursuant to a warrant for the destruction of personal property issued by the court and directed to the sheriff of the proper county or any peace officer and returned by the sheriff or peace officer after execution thereof. The court shall stay the execution of any such warrant during the period in which the property is used as evidence in any pending criminal or civil proceeding.

16-13-508. Forfeitures. Notwithstanding anything contained in this part 5, this part 5 shall not be construed as an amendment or repeal of any of the criminal laws of this state, but the provisions of this part 5, insofar as they relate to those laws, shall be considered a cumulative right of the people in the enforcement of such laws. Nothing in this part 5 shall be construed to limit or preempt the powers of any court or political subdivision to abate or control public nuisances, and this part 5 shall be an additional remedy in those situations where an action could be brought under part 3 of this article.

16-13-509. Evidentiary presumption. (1) Whenever clear and convincing evidence adduced in an action pursuant to this part 5 shows a substantial connection between currency and the acts specified in section 16-13-503, a rebuttable presumption shall arise that said currency is contraband property. A substantial connection exists if:

(a) Currency in the aggregate amount of one thousand dollars or more was seized at or close to the time of the occurrence of the subject act or of the recovery of evidence of the subject act; and

(b) (I) Said amount of currency was seized on the same premises or in the same vehicle where the subject acts occurred or where evidence of said acts was developed or recovered; or

(II) Said amount of currency was seized from the possession or control of a person engaged in said acts; or

(III) Traces of a controlled substance were discovered on the currency or an animal trained in the olfactory detection of controlled substances indicated the presence of the odor of a controlled substance on the currency as testified to by an expert witness.

(1.5) Notwithstanding any other provision of this part 5 to the contrary, the plaintiff shall have the burden of proving, by clear and convincing evidence, only the facts that give rise to the presumption that currency is contraband property pursuant to subsection (1) of this section. However, when a preponderance of credible evidence is adduced to rebut a presumption that has

arisen pursuant to subsection (1) of this section, the burden of proof shall revert to the plaintiff to prove, by clear and convincing evidence, the elements of the plaintiff's case with respect to the currency.

(2) The provisions of subsection (1) of this section shall not be construed so as to limit the introduction of any other competent evidence offered to prove that seized currency is contraband property.

16-13-510. Money placed in account. Currency seized pursuant to this part 5 may be placed in an interest-bearing account during the proceedings pursuant to this part 5 if so ordered by the court upon the motion of any party. Photocopies of portions of the bills shall serve as evidence at all hearings. The account and all interest accrued shall be forfeited or returned to the prevailing party in lieu of the currency.

16-13-511. Severability. If any provision of this part 5 is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this part 5 are valid, unless it appears to the court that the valid provisions of this part 5 are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the general assembly would have enacted the valid provisions without the void provision or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent of this part 5.

PART 6

RECEIPT OF FEDERALLY FORFEITED PROPERTY

16-13-601. Receipt of federally forfeited property. Any agency charged with the enforcement of the laws of this state, including the Colorado National Guard when participating in operations pursuant to the drug interdiction and enforcement plan required by part 13 of article 3 of title 28, C.R.S., is authorized to accept, receive, dispose of, and expend the property or proceeds from any property forfeited to the federal government and allocated to such agency by the United States attorney general pursuant to 21 U.S.C. sec. 881 (e). Such revenues shall be in addition to the moneys appropriated to such law enforcement agency by the general assembly or any unit of local government. Said property or proceeds may be credited to any lawfully created fund designated to receive proceeds of forfeitures. Any proceeds received pursuant to this section are exempt from the distribution requirements of section 16-13-311 (3) (a).

PART 7

REPORTING AND DISPOSITION

16-13-701. Reporting of forfeited property. (1) Any provision of law to the contrary notwithstanding, the elected district attorney for each judicial district shall file an annual forfeiture report on or before April 1 for the previous calendar year. Such report shall include:

(a) A description of all property that was the subject of a forfeiture action filed in the judicial district, including the forfeiture case number;

(b) The criminal charges filed against the owner of the property and the criminal case number;

(c) Disposition or status of the criminal and forfeiture actions, including the value of the property forfeited or the amount of proceeds of the forfeiture, if the property is liquidated;

(d) A description and the value of any property seized by the district attorney's office that was transferred to the United States for forfeiture under federal law, including the federal forfeiture case number and the criminal case number, whether the criminal action was filed in state or federal court, and the grounds for the transfer; and

(e) The total proceeds received by the district attorney in the judicial district from all federal forfeiture actions arising in the judicial district.

(2) The report required in this section shall be filed with the department of local affairs and shall constitute a public record and shall be open to inspection as provided in the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.

(3) Any state or local law enforcement agency or multijurisdictional task force that receives proceeds from federal forfeiture actions shall submit a copy to the department of local affairs of any accounting report filed by such agency pursuant to federal law or regulation. The federal annual accounting report shall constitute a public record and shall be open to inspection as provided in the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S. Such information shall be subject to audit in accordance with part 6 of article 1 of title 29, C.R.S.

(4) The unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, shall prepare an annual accounting report of moneys received by the managed service organization pursuant to section 16-13-311 (3) (a) (VII) (B), including revenues, expenditures, beginning and ending balances, and services provided. The unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, shall provide this information in its annual report pursuant to section 27-80-110, C.R.S.

(5) Any report submitted pursuant to this section shall be subject to audit in accordance with part 6 of article 1 of title 29, C.R.S.

16-13-702. Disposition of forfeited property. (1) No forfeited property shall be used nor shall any forfeited proceeds be expended by any seizing agency to whom section 16-13-701 (1) applies unless such use or expenditure has been approved by a committee on disposition of forfeited property which is created in subsection (2) of this section.

(2) There is hereby created, for each seizing agency, a committee on disposition of forfeited property. The committee on disposition of forfeited property shall meet as necessary to approve the use of forfeited property or the expenditure of forfeited proceeds by the seizing agency.

(3) The composition of the committee for a seizing agency shall, at a minimum, include the district attorney of the judicial district having jurisdiction over the forfeited property, or a designee of such district attorney; the head of the seizing agency, or the designee of such person; and a representative of the governmental body having budgetary authority over the seizing agency appointed by the governmental body. The required members of the committee may select other members to serve on the committee by unanimous agreement.

(4) The composition of the committee, where the seizing agency is a district attorney's office, shall, at a minimum, include the district attorney or the designee of such district attorney; the head of a law enforcement agency from among the law enforcement agencies in the district attorney's judicial district, who is appointed by the district attorney; and one representative of one of the governmental bodies having budgetary authority over the district attorney's budget, to be selected by the unanimous agreement of all of the governmental bodies in the judicial district which have budgetary authority over the district attorney's budget. The required members of the committee may select other members to serve on the committee by unanimous agreement.

(5) The composition of the committee for any group of law enforcement agencies which have associated and are authorized to perform special law enforcement functions shall include the district attorney of the judicial district having jurisdiction over the property forfeited under this article, or the designee of such district attorney; the head of the seizing agency having jurisdiction over the property forfeited under this article, or such person's designee; and a representative from the governing body having budgetary authority over the seizing agency. The required members of the committee may select other members to serve on the committee by unanimous agreement.

(6) Nothing in this article shall be construed to prevent multiple seizing agencies from combining to form a single committee on disposition of forfeited property which has a membership different from the committees described in subsection (3), (4), or (5) of this section so long as the membership of such committee is approved by all governing bodies which have approval over the budgets of each of the seizing agencies which have combined to form the committee.

PART 8

LIFETIME SUPERVISION OF SEX OFFENDERS

16-13-801 to 16-13-812. (Repealed)

PART 9

COMMUNITY NOTIFICATION CONCERNING

16-13-901. Legislative declaration. The general assembly hereby finds that persons who are convicted of offenses involving unlawful sexual behavior and who are identified as sexually violent predators pose a high enough level of risk to the community that persons in the community should receive notification concerning the identity of these sexually violent predators. The general assembly also recognizes the high potential for vigilantism that often results from community notification and the dangerous potential that the fear of such vigilantism will drive a sex offender to disappear and attempt to live without supervision. The general assembly therefore finds that sex offender notification should only occur in cases involving a high degree of risk to the community and should only occur under carefully controlled circumstances that include providing additional information and education to the community concerning supervision and treatment of sex offenders.

16-13-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Department" means the department of corrections created in section 24-1-128.5, C.R.S.

(2) "Management board" means the sex offender management board created in section 16-11.7-103.

(3) "Parole board" means the state board of parole created in section 17-2-201, C.R.S.

(4) "Sex offender" means a person sentenced pursuant to part 10 of article 1.3 of title 18, C.R.S.

(5) "Sexually violent predator" means a sex offender who is identified as a sexually violent predator pursuant to section 18-3-414.5, C.R.S., or who is found to be a sexually violent predator or its equivalent in any other state or jurisdiction, including but not limited to a military or federal jurisdiction. For purposes of this subsection (5), "equivalent", with respect to an offender found to be a sexually violent predator or its equivalent, means a sex offender convicted in another state or jurisdiction, including but not limited to a military, tribal, territorial, or federal jurisdiction, who has been assessed or labeled at the highest registration and notification levels in the jurisdiction where the conviction was entered and who satisfies the age, date of offense, and conviction requirements for sexually violent predator status pursuant to Colorado law.

(6) "Technical assistance team" means the group of persons established by the division of criminal justice pursuant to section 16-13-906 to assist local law enforcement in carrying out community notification and to provide general community education concerning sex offenders.

16-13-903. Sexually violent predator subject to community notification - determination - implementation. (1) A sexually violent predator shall be subject to community notification as provided in this part 9, pursuant to criteria, protocols, and procedures established by the management board pursuant to section 16-13-904.

(2) (Deleted by amendment, L. 2006, p. 1312, § 3, effective May 30, 2006.)

(3) (a) When a sexually violent predator is sentenced to probation or community corrections or is released into the community following incarceration, the sexually violent predator's supervising officer, or the official in charge of the releasing facility or his or her designee if there is no supervising officer, shall notify the local law enforcement agency for the jurisdiction in which the sexually violent predator resides or plans to reside upon release from incarceration. The local law enforcement agency shall notify the Colorado bureau of investigation, and the sexually violent predator's status as being subject to community notification shall be entered in the central registry of persons required to register as sex offenders created pursuant to section 16-22-110.

(b) When a sexually violent predator living in a community changes residence, upon registration in the new community or notification to the new community's law enforcement agency, that agency shall notify the Colorado bureau of investigation and implement community notification protocols.

(4) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(5) A sex offender convicted in another jurisdiction who is designated as a sexually violent predator by the department of public safety for purposes of Colorado law shall be notified of his or her designation and shall have the right to appeal the designation in district court.

16-13-904. Sex offender management board - duties. (1) The management board, in collaboration with the department of corrections, the judicial department, and the parole board, shall establish and revise when necessary:

(a) (Deleted by amendment, L. 2006, p. 1312, § 4, effective May 30, 2006.)

(b) Criteria to be applied by a local law enforcement agency in determining when to carry out a community notification;

(c) Protocols and procedures for carrying out community notification.

(2) The management board shall collaborate with the technical assistance team in establishing the protocols and procedures for carrying out community notification. Such protocols and procedures shall be designed to ensure that notice is provided in a manner that is as specific as possible to the population within the community that is at risk. Such protocols and procedures shall also include provision to the community of general information and education concerning sex offenders, including treatment and supervision of sex offenders, and procedures to attempt to minimize the risk of vigilantism.

(3) (Deleted by amendment, L. 2006, p. 1312, § 4, effective May 30, 2006.)

16-13-905. Local law enforcement - duties - immunity. (1) The local law enforcement agency for the jurisdiction in which a sexually violent predator who is subject to community notification resides shall be responsible for carrying out any community notification regarding said sexually violent predator. Such community notification shall only occur under the circumstances and in the manner specified by the management board pursuant to section 16-13-

904. The local law enforcement agency may apply to the division of criminal justice for assistance from the technical assistance team in carrying out any community notification.

(2) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

16-13-906. Division of criminal justice - technical assistance team. (1) The division of criminal justice of the department of public safety shall establish a technical assistance team to provide assistance to local law enforcement agencies in carrying out community notification. The technical assistance team shall include persons with expertise in sex offender management, sex offender supervision, and law enforcement.

(2) The technical assistance team shall also be available upon request to assist communities in providing general information concerning sex offenders, including treatment, management, and supervision of sex offenders within society. Such education may be provided in situations that are not related to the provision of notice concerning a specific sexually violent predator.

(3) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT

ARTICLE 14

Uniform Mandatory Disposition
of Detainers Act

16-14-101. Short title. This article shall be known and may be cited as the "Uniform Mandatory Disposition of Detainers Act".

16-14-102. Request for disposition of untried complaint or information. (1) Any person who is in the custody of the department of corrections pursuant to section 16-11-301 or parts 8 and 9 of article 1.3 of title 18, C.R.S., may request final disposition of any untried indictment, information, or criminal complaint pending against him in this state. The request shall be in writing addressed to the court in which the indictment, information, or criminal complaint is pending and to the prosecuting official charged with the duty of prosecuting it and shall set forth the place of confinement.

(2) It is the duty of the superintendent of the institution where the prisoner is confined to promptly inform each prisoner, in writing, of the source and nature of any untried indictment, information, or criminal complaint against him of which the superintendent has knowledge, and of the prisoner's right to make a request for final disposition thereof.

(3) Failure of the superintendent of the institution where the prisoner is confined to inform a prisoner, as required by subsection (2) of this section, within one year after a detainer from this state has been filed with the institution where the prisoner is confined shall entitle the prisoner to a dismissal with prejudice of the indictment, information, or criminal complaint.

16-14-103. Duties of superintendent upon delivery of request. (1) Any request made pursuant to section 16-14-102 shall be delivered to the superintendent where the prisoner is confined who shall forthwith:

(a) Certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the earned time earned, the time of parole eligibility of the prisoner, and any decisions of the state board of parole relating to the prisoner; and

(b) Send, by registered mail, a copy of the request made by the prisoner and a copy of the information certified under paragraph (a) of this subsection (1) to both the court having jurisdiction of the untried offense and to the prosecuting official charged with the duty of prosecuting the offense.

16-14-104. Trial or dismissal. (1) Within one hundred eighty-two days after the receipt of the request by the court and the prosecuting official, or within such additional time as the court for good cause shown in open court may grant, the prisoner or the prisoner's counsel being present, the indictment, information, or criminal complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the prisoner's attorney and opportunity to be heard. If, after such a request, the indictment, information, or criminal complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information, or criminal complaint be of any further force or effect, and the court shall dismiss it with prejudice.

(2) Any prisoner who requests disposition pursuant to section 16-14-102 may waive the right to disposition within the time specified in subsection (1) of this section by express waiver on the record after full advisement by the court. If a prisoner makes said waiver, the time for trial of the indictment, information, or criminal complaint shall be extended as provided in section 18-1-405 (4), C.R.S., concerning waiver of the right to speedy trial.

16-14-105. Escape voids request. Escape from custody by any prisoner subsequent to his execution of a request for final disposition of an untried indictment, information, or criminal complaint shall void the request.

16-14-106. Article does not apply. The provisions of this article do not apply to any person determined to be mentally incompetent by a court of competent jurisdiction.

16-14-107. Prisoners to be informed of provisions of article. The superintendent shall arrange for all prisoners under his care and control to be informed in writing of the provisions of this article and for a record thereof to be placed in each prisoner's file.

16-14-108. Construction of article. This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

WIRETAPPING AND EAVESDROPPING

ARTICLE 15

Wiretapping and Eavesdropping

16-15-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

(1.5) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(2) "Common carrier" means any person engaged as a common carrier for hire, in intrastate, interstate, or foreign communication by wire or radio, or in intrastate, interstate, or foreign radio transmission of energy.

(3) "Contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.

(3.3) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce but does not include:

(a) (Deleted by amendment, L. 97, p. 601, § 1, effective August 6, 1997.)

(b) Any wire or oral communication;

(c) Any communication made through a tone-only paging device; or

(d) Any communication from a tracking device.

(3.5) "Electronic communication service" means any service which provides to users

thereof the ability to send or receive wire or electronic communications.

(3.7) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communications.

(4) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication, other than:

(a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business, or furnished by such subscriber or user for connection to the facilities of such service and being used in the ordinary course of its business, or being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal hearing.

(4.5) "Electronic storage" means:

(a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(b) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

(5) "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(6) "Investigative or law enforcement officer" means any officer of the United States or of the state of Colorado or a political subdivision thereof, who is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in title 18, C.R.S., and any attorney authorized by law to prosecute or participate in the prosecution of those offenses.

(7) "Judge of competent jurisdiction" means any justice of the supreme court of Colorado and a judge of any district court of the state of Colorado.

(8) "Oral communication" means any oral communication uttered by any person believing that such communication is not subject to interception, under circumstances justifying that belief, but does not include any electronic communication.

(8.5) "Readily accessible to the general public" means, with respect to a radio communication, that such communication is not:

(a) Scrambled or encrypted;

(b) Transmitted using modulation techniques having essential parameters withheld from the public with the intention of preserving the privacy of such communication;

(c) Carried on a subcarrier or other signal subsidiary to a radio transmission;

(d) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or

(e) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the rules of the federal communications commission, unless, in the case of a

communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

(8.6) "Tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

(8.7) "User" means any person or entity which uses an electronic communication service and is duly authorized by the provider of such service to engage in such use.

(9) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in a switching station, between the point of origin and the point of reception, furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications and includes any electronic storage of such communication.

16-15-102. Ex parte order authorizing the interception of wire, oral, or electronic communications. (1) (a) An ex parte order authorizing or approving the interception of any wire, oral, or electronic communication may be issued by any judge of competent jurisdiction of the state of Colorado upon application of the attorney general or a district attorney, or his or her designee if the attorney general or district attorney is absent from his or her jurisdiction, showing by affidavit that there is probable cause to believe that evidence will be obtained of the commission of any one of the crimes enumerated in this subsection (1) or that one of said enumerated crimes will be committed:

(I) Murder in the first or second degree as defined in sections 18-3-102 and 18-3-103, C.R.S.;

(II) Kidnapping in the first or second degree as defined in sections 18-3-301 and 18-3-302, C.R.S.;

(III) Gambling, meaning professional gambling, as defined in section 18-10-102 (8), C.R.S., and subject to prosecution under section 18-10-103 (2), C.R.S.;

(IV) Robbery as defined in section 18-4-301, C.R.S., aggravated robbery as defined in section 18-4-302, C.R.S., or burglary in the first or second degree as defined in sections 18-4-202 and 18-4-203, C.R.S.;

(V) Bribery as defined in section 18-8-302, C.R.S., compensation for past official behavior as defined in section 18-8-303, C.R.S., attempt to influence a public servant as defined in section 18-8-306, C.R.S., designation of supplier as defined in section 18-8-307, C.R.S., or misuse of official information as defined in section 18-8-402, C.R.S.;

(VI) Dealing in controlled substances as covered by part 1 of article 42.5 of title 12, C.R.S., or part 2 of article 80 of title 27, C.R.S., as such offenses are subject to prosecution as felonies;

(VII) Crimes dangerous to life, limb, or property, meaning extortion, as defined as menacing by use of a deadly weapon in section 18-3-206, C.R.S., theft by means other than the use of force, threat, or intimidation as defined in section 18-4-401 (5), C.R.S., arson as defined in

sections 18-4-102 to 18-4-105, C.R.S., as these offenses are subject to prosecution as felonies, assault in the first or second degree as defined in sections 18-3-202 and 18-3-203, C.R.S.;

(VII.5) Escape, as defined in section 18-8-208, C.R.S., or introducing contraband in the first or second degree, as defined in sections 18-8-203 and 18-8-204, C.R.S.;

(VIII) A criminal conspiracy as defined in section 18-2-201, C.R.S., to commit any of the aforementioned enumerated crimes;

(IX) Limited gaming as defined in article 47.1 of title 12, C.R.S., or in violation of article 20 of title 18, C.R.S.

(b) Anything to the contrary notwithstanding, an ex parte order for wiretapping or eavesdropping may be issued only for a crime specified in this subsection (1) for which a felony penalty is authorized upon conviction.

(c) For the purposes of paragraph (a) of this subsection (1):

(I) The district attorney shall designate the assistant district attorney or the chief deputy district attorney; and

(II) The attorney general shall designate either the chief deputy attorney general or the deputy attorney general of the criminal section of the office of the attorney general.

(2) Each application for an order authorizing or approving the interception of any wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) A complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including: Details as to the particular offense that has been, is being, or is about to be committed, except as provided in subsection (17) of this section, a particular description of the nature and location of the facilities from which, or the place where, the communication is to be intercepted; a particular description of the type of communication sought to be intercepted; and the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried, or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, there shall be required a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(e) A complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the

results thus far obtained from the interception, or a reasonable explanation of the failure to obtain those results.

(3) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(4) Upon an application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of any wire, oral, or electronic communication within the territorial jurisdiction of the court in which the judge is sitting and outside that jurisdiction but within the United States in the case of a mobile interception device, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that a person is committing, has committed, or is about to commit a particular offense enumerated in this section;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(c) Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous;

(d) Except as provided in subsection (17) of this section, there is probable cause for belief that the facilities from which or the place where the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of an offense or are leased to, listed in the name of, or commonly used by the person alleged to be involved in the commission of the offense.

(5) Each order authorizing or approving wiretapping or eavesdropping shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) Except as otherwise provided in subsection (17) of this section, the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) The period of time during which an interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication is first obtained.

(6) An order entered under this section may not authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization nor in any event longer than thirty days. Such thirty-day period begins the first day on which the investigative or law enforcement officer begins to conduct an interception under the order or ten days after the order is entered, whichever occurs earlier. An extension of an order may be granted but only upon application for an extension made in accordance with subsection (2) of this section and the court making the findings required by subsection (4) of this section. The period of an extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and each extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a

way as to minimize the interception under this section, and must terminate upon attainment of the authorized objective, or in any event in thirty days. No more than three extensions may be granted for any order entered under this section. In the event that the intercepted communication is in a code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception made pursuant to this section may be conducted in whole or in part by government personnel or by an individual operating pursuant to a contract with the government and acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(7) If an order authorizing interception is entered pursuant to this section, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such report shall be made at such times as the judge may require.

(8) (a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this section shall, if possible, be recorded on tape, wire, or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection (8) shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon expiration of the period of the order, or extension thereof, the recording shall be made available to the judge issuing the order and sealed under his directions. Custody of the recording shall be wherever the judge orders. A recording shall not be destroyed except upon an order of the judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of this section. The presence of the seal provided for by this subsection (8), or a satisfactory explanation for the absence thereof, is a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived under this section.

(b) Applications made and orders granted under this section shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction, and shall not be destroyed except on order of the judge to whom presented, and in any event shall be kept for ten years. Information obtained pursuant to a court order authorizing interception of wire, oral, or electronic communications shall not be used, published, or divulged except in accordance with the provisions of this article.

(c) Any violation of the provisions of this subsection (8) may be punished as contempt of court.

(d) Within a reasonable time, but not later than ninety days after the filing of an application for an order of approval under this section, which application is denied, or after the termination of the period of an order or extensions thereof, the judge to whom the application was presented shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion is in the interest of justice, notice of the following:

(I) The fact of the entry of the order or application;

(II) The date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and

(III) The fact that during the period wire, oral, or electronic communications were or were not intercepted. The judge, upon the filing of a motion, may, in his discretion, make available to any such person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the matter required by this paragraph (d) may be postponed.

(9) The contents of any intercepted wire, oral, or electronic communication or the evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a state court, unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with the information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving this information.

(10) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the state of Colorado, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, oral, or electronic communication or the evidence derived therefrom on the grounds that: The communication was unlawfully intercepted; the order of authorization or approval under which it was intercepted is insufficient on its face; or the interception was not made in conformity with the order of authorization or approval. This motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication or the evidence derived therefrom shall not be received as evidence. The remedies and sanctions provided for in this section with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this section involving such communications.

(11) In addition to any other right to appeal, the state of Colorado has the right to appeal from an order granting a motion to suppress made under subsection (10) of this section, or the denial of an application for an order of approval, if the person making or authorizing the application certifies to the judge granting the motion or denying an application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(12) Any investigative or law enforcement officer who, by any means authorized by this section, has obtained knowledge of the contents of any wire, oral, or electronic communication or the evidence derived therefrom may disclose such contents to another investigative or law enforcement officer to the extent that this disclosure is appropriate in the proper performance of the official duties of the officer making or receiving the disclosure.

(13) Any investigative or law enforcement officer who, by any means authorized by this section, has obtained knowledge of the contents of any wire, oral, or electronic communication or the evidence derived therefrom may use those contents to the extent the use is appropriate in the official performance of his official duties.

(14) Any person who has received, by any means authorized by this section, any

information concerning a wire, oral, or electronic communication or any evidence derived therefrom, intercepted in accordance with the provisions of this section, may disclose the contents of that communication or derivative evidence while giving testimony in any criminal proceeding in any court of this state or in a grand jury proceeding.

(15) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this section shall lose its privileged character.

(16) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized in this section, intercepts wire, oral, or electronic communications relating to an offense other than one specified in the order of authorization or approval, the contents thereof and the evidence derived therefrom may be disclosed or used as provided in subsections (12) and (13) of this section only if an offense other than one specified in the order is an offense which constitutes a felony under Colorado statutes. The contents thereof and the evidence derived therefrom, as authorized by this section, may be used under subsection (14) of this section only when authorized or approved by a judge of competent jurisdiction when the judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this section. This application shall be made as soon as practicable.

(17) (a) The requirements of paragraph (b) of subsection (2), paragraph (d) of subsection (4), and paragraph (b) of subsection (5) of this section relating to the specification of the facilities from which, or the place where, the communications are to be intercepted do not apply if:

(I) In the case of an application with respect to the interception of an oral communication:

(A) The application is made by an investigative or law enforcement officer and is approved by the attorney general or the district attorney of the district in which the application is sought;

(B) The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(C) The judge finds that such specification is not practical; and

(II) In the case of an application with respect to the interception of a wire or electronic communication:

(A) The application is made by an investigative or law enforcement officer and is approved by the attorney general or the district attorney of the district in which the application is sought;

(B) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(C) The judge finds that such purpose has been adequately shown.

(b) An interception of a communication under an order with respect to which the requirements of paragraph (b) of subsection (2), paragraph (d) of subsection (4), and paragraph (b) of subsection (5) of this section do not apply pursuant to the provisions of paragraph (a) of this subsection (17) shall not begin until the facilities from which, or the place where, the

communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order pursuant to subparagraph (II) of paragraph (a) of this subsection (17) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

(18) (a) Any other provision of this article notwithstanding, any investigative or law enforcement officer specifically designated by the attorney general or a district attorney may intercept wire, oral, or electronic communications for a period not to exceed twenty-four hours under the following circumstances:

(I) When an emergency situation exists that involves the holding of hostages or kidnapping by the use of physical force, a deadly weapon, or an explosive device, and there is imminent danger of serious bodily injury or death to any person, or where one or more suspects in a felony crime have barricaded themselves in a building and there is a reasonable belief that one or more of the suspects is armed with a deadly weapon or explosive device; and

(II) There are reasonable and sufficient grounds present upon which an order could be entered to authorize such interception.

(b) Any emergency interception shall terminate upon attainment of the authorized objective as set forth in subparagraph (I) of paragraph (a) of this subsection (18) or at the end of the twenty-four-hour period, whichever comes first.

(c) The investigative or law enforcement officer designated pursuant to paragraph (a) of this subsection (18) and the official making such designation shall submit an application for the interception of wire, oral, or electronic communications to a judge of competent jurisdiction within the twenty-four-hour period described in paragraph (a) of this subsection (18). Such application shall be submitted regardless of whether or not the interception was terminated within the twenty-four-hour period. Such application shall comply in all respects with the requirements of this section and sections 16-15-101, 16-15-103, and 16-15-104.

(d) If, after the application described in paragraph (c) of this subsection (18) is made, the application is denied, any interception shall immediately cease. In such case, all recordings shall be sealed by the court as soon as practicable, and any communication intercepted shall be treated as a communication which has been obtained in violation of section 18-9-305, C.R.S., and an inventory shall be served in accordance with this article. Any such communication shall not be admissible in any legal action against any person whose communication was intercepted.

(e) All provisions of this article shall be applicable with respect to the execution of any interception under emergency circumstances.

(f) Repealed.

16-15-103. Order may direct others to furnish assistance. An order authorizing the interception of a wire, oral, or electronic communication shall, upon request of the applicant, direct that a provider of wire or electronic communication service shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service

provider is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service furnishing these facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance.

16-15-104. Reports to state court administrator and attorney general. (1) All courts having jurisdiction to issue orders under section 16-15-102 shall submit to the state court administrator reports, as prescribed by the chief justice of the supreme court of Colorado, on the number of applications for orders permitting wiretapping or eavesdropping, whether the applications were granted or denied, the period for which an interception was authorized, and whether any extensions were granted on the original order.

(2) (Deleted by amendment, L. 98, p. 726, § 6, effective May 18, 1998.)

(3) District attorneys shall report annually to the attorney general information as to the number of applications made for orders permitting the interception of wire, oral, or electronic communications; the offense specified in the order or application; the nature of the facilities from which, or the place where, communications were to be intercepted; a general description of the interceptions made under any order or extension, including the nature and frequency of incriminating communications intercepted, the nature and frequency of other communications intercepted, the number of persons whose communications were intercepted, and the nature, amount, and cost of the manpower and other resources used in the interceptions; the number of arrests resulting from interceptions made under such order or extension and the offenses for which arrests were made; the number of motions to suppress made with respect to such interceptions and the number granted or denied; the number of convictions resulting from the interceptions and the offenses for which the convictions were obtained; and a general assessment of the importance of the interceptions. These reports shall be submitted to the attorney general by February 1 of each year and shall include all orders and applications made during the preceding year.

(4) Repealed.

CRIMINAL ACTIVITY INFORMATION

ARTICLE 15.5

Formal Requests for
Criminal Activity Information
from Public Utilities

16-15.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Life-threatening situation" means a circumstance in which a person is causing or has caused or is threatening to cause serious bodily injury to another person or persons, including a situation in which a person has taken another person or persons hostage.

16-15.5-102. Formal written request for information relating to specific criminal activity. (1) Except as otherwise provided in subsection (2) of this section, upon a receipt of a formal written request for information about a particular individual in connection with a life-threatening situation made pursuant to this section by a chief of police, an elected district attorney, the state attorney general, a sheriff, or the director of the Colorado bureau of investigation, an authorized representative of a fixed public utility shall, as soon as possible, provide to the person making such request the following information about the individual named in the formal written request, including and limited to the name or names used, the address or addresses used, and the nonpublished number. Such requests shall be made during regular business hours, whenever practicable.

(2) Notwithstanding the provisions of subsection (1) of this section, if the need for information about a particular individual in connection with a life-threatening situation arises at a time other than regular business hours, a law enforcement officer listed in subsection (1) of this section or, if such officer is unavailable, the next officer in command, may orally request and obtain such information; except that a formal written request shall be submitted in accordance with subsection (1) of this section by the end of the next working day for the law enforcement agency.

(3) A formal written request for information made pursuant to this section shall be returned to the district court for review in the judicial district within which the formal written request was made. Such return shall be made within seventy-two hours after the issuance of the formal written request for information.

(4) The public utilities and local law enforcement agencies shall establish a procedure for obtaining information based on oral requests. A fixed public utility or authorized representative thereof which responds to a formal written or oral request made pursuant to this section shall not be liable to any person or entity for providing the information requested absent a showing of willful, wanton, or malicious intent.

ARTICLE 15.7

Crime Stopper Organizations

16-15.7-101. Legislative declaration. The general assembly finds that a significant

number of criminal offenders remain at large in this state because law enforcement agencies often lack information concerning criminal activity. In many instances private citizens have information that, if known to law enforcement agencies, would lead to the detection and apprehension of such offenders. Private, nonprofit crime stopper organizations that offer rewards for such information have been successful at encouraging some citizens to come forward; however, even with the offer of a reward, many citizens do not come forward because they fear involvement and shun publicity. In order to remedy this situation and to increase the effectiveness of crime stopper organizations, the general assembly finds and declares that it is appropriate to provide for the anonymity of any person who provides information concerning criminal activity to a crime stopper organization and to provide for the confidentiality of crime stopper organization records.

16-15.7-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Crime stopper organization" means a private, nonprofit organization:

(a) Whose primary purposes are to accept donations for the payment of rewards to persons who provide information concerning criminal activity and to forward such information to appropriate law enforcement agencies;

(b) Is subject to the provisions of articles 121 to 137 of title 7, C.R.S.;

(c) Is held to be tax exempt by the United States internal revenue service; and

(d) Has complied with the requirements of section 16-15.7-103.

16-15.7-103. Requirements for articles of incorporation of crime stopper organizations. (1) In addition to any other requirements for articles of incorporation imposed by articles 121 to 137 of title 7, C.R.S., the articles of incorporation for any crime stopper organization that elects to avail itself of the confidentiality provisions of this article shall provide that the organization shall:

(a) Establish a method to ensure that the identity of any person who provides information concerning criminal activity to the organization remains unknown to all persons and entities, including officers and employees of the organization;

(b) Establish a method to ensure that if the identity of any person who provides information becomes known to the crime stopper organization, whether through voluntary disclosure or by any other means, such identity is not further disclosed;

(c) Assist law enforcement agencies in the detection of crime and apprehension of criminal offenders by promptly forwarding information received concerning criminal acts to such agencies;

(d) Foster the detection of crime and encourage citizens to report information about criminal activity; and

(e) Encourage news and other media to promote local crime stopper organizations by informing the public of the functions and benefits of the organization.

16-15.7-104. In camera review - confidentiality - records and information - criminal penalty. (1) (a) A crime stopper organization may not be compelled to produce records concerning a report of criminal activity before a court or other tribunal except on the motion of a criminal defendant to the court in which the offense is being tried that the records or report contain impeachment evidence or evidence that is exculpatory to the defendant in the trial of that offense.

(b) On motion of a defendant pursuant to paragraph (a) of this subsection (1), the court may subpoena the records or report. The court shall conduct an ex parte in camera inspection of materials produced under subpoena to determine whether the materials contain impeachment evidence or evidence that is exculpatory to the defendant.

(c) If the court determines that the materials produced contain impeachment evidence or evidence that is exculpatory to the defendant, the court shall present the evidence to the defendant. In the event the materials contain information which would identify the person who was the source of the evidence, the court shall ensure that such identity is not disclosed, unless the state or federal constitution requires the disclosure of that person's identity. The court shall execute an affidavit accompanying the disclosed materials swearing that, in the opinion of the court, the materials disclosed represent the impeachment or exculpatory evidence the defendant is entitled to receive under this section.

(d) The court shall return to the crime stoppers organization all materials produced under this subsection (1) which are not disclosed to the defendant. The crime stoppers organization shall retain such materials until the conclusion of the criminal trial and the expiration of the time for all direct appeals in the case.

(2) (a) Records and information of a crime stopper organization concerning criminal acts are confidential, and no person shall disclose such records or information. A crime stopper organization shall only be compelled to produce such records or information before a court or other tribunal pursuant to court order for an in camera review. Any such review shall be limited to an inspection of records and information which are relevant to the specific case pending before the court.

(b) Any person who knowingly or intentionally discloses confidential records or information in violation of the provisions of this subsection (2) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any criminal prosecution brought pursuant to the provisions of this subsection (2) shall be brought within five years after the date the violation occurred.

ARTICLE 15.8

Safe2tell Program

16-15.8-101 to 16-15.8-104. (Repealed)

SENTENCING AND IMPRISONMENT

ARTICLE 16

Criminal Sentencing Act of 1967

16-16-101. Short title. This article shall be known and may be cited as the "Criminal Sentencing Act of 1967".

16-16-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Executive director" means the executive director of the department of corrections.

(2) "Facility" means any residential community treatment center, honor farm, preparole release center, or other correctional facility.

(3) "Immediate family" means a spouse, child (including stepchild, adopted child, or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(4) and (5) Repealed.

(6) "Warden" means the chief correctional officer at a correctional facility.

16-16-103. Place of confinement - extension of limits. (1) The wardens, with the approval of the executive director, shall designate one or more facilities that may be physically separated from the correctional facilities and that may be used for the following purposes:

(a) Honor farm or camp;

(b) Agricultural, industrial, or vocational training or rehabilitation;

(c) Preparole center;

(d) Medical treatment or research center;

(e) Work-release residential center;

(f) Any other use or function properly connected with or in aid of the uses and purposes of correctional facilities.

(2) The executive director, in the exercise of his or her discretion, may extend the limits of confinement of any inmate in the following instances:

(a) Repealed.

(b) To work at paid employment or participate in a program of job training, only if:

(I) Representatives of labor organizations in the community in which the inmate will

work or obtain employment are advised of such actions;

(II) Such paid employment will not result in the significant displacement of employed workers, or such inmates will not be utilized in skills, crafts, or trades in which there is a surplus of available labor in the community, or such inmates will not impair existing contracts for services;

(III) The rates of pay, hours, and other conditions of employment will be substantially comparable to those afforded others in the community for the performance of work of a similar nature.

(3) (a) Any inmate who is allowed to participate in such paid employment or in such job training for which a subsistence allowance is paid in connection with the job training shall pay over to the executive director all moneys received from the paid employment or job training; except that the inmate may retain that part of the moneys so received that the executive director deems necessary for expenses connected with the employment or job training. These expenses shall include, but not be limited to, travel expenses, food expenses, clothing, tools, and safety equipment.

(b) The remainder of the moneys shall be disbursed by the executive director for the following purposes, in the order stated:

(I) To the state treasurer for the reasonable cost of the inmate's confinement as determined by the executive director;

(II) The support of the inmate's dependents, if any;

(III) The payment, either in full or ratably, of the inmate's obligations acknowledged by him in writing or which have been reduced to judgment;

(IV) The balance, if any, to the inmate upon his parole or discharge.

(c) The state of Colorado shall have a lien upon the wages or subsistence allowance of any such inmate who fails to comply with the provisions of this subsection (3).

(4) The extension of the limits of confinement by the executive director shall not for any purpose be considered to be parole as provided in part 2 of article 2 or article 22.5 of title 17, C.R.S.

ARTICLE 17

Commutation of Sentence

16-17-101. Governor may commute sentence. The governor is hereby fully authorized, when he deems it proper and advisable and consistent with the public interests and the rights and interests of the condemned, to commute the sentence in any case by reducing the penalty in a capital case to imprisonment for life or for a term of not less than twenty years at hard labor.

16-17-102. Application - character certificate. After a conviction, all applications for commutation of sentence or pardon for crimes committed shall be accompanied by a certificate of the respective superintendent of the correctional facility, showing the conduct of an applicant during his or her confinement in the correctional facility, together with such evidences of former good character as the applicant may be able to produce. Before the governor approves such application, it shall be first submitted to the present district attorney of the district in which the applicant was convicted and to the judge who sentenced and the attorney who prosecuted at the trial of the applicant, if available, for such comment as they may deem proper concerning the merits of the application, so as to provide the governor with information upon which to base his or her action. The governor shall make reasonable efforts to locate the judge who sentenced and the attorney who prosecuted at the trial of the applicant and shall afford them a reasonable time, not less than fourteen days, to comment on such applications. The requirements of this section shall be deemed to have been met if the persons to whom the application is submitted for comment do not comment within fourteen days after their receipt of the application or within such other reasonable time in excess of fourteen days as specified by the governor, or if the sentencing judge or prosecuting attorney cannot be located, are incapacitated, or are otherwise unavailable for comment despite the good-faith efforts of the governor to obtain their comments. Good character previous to conviction, good conduct during confinement in the correctional facility, the statements of the sentencing judge and the district attorneys, if any, and any other material concerning the merits of the application shall be given such weight as to the governor may seem just and proper, in view of the circumstances of each particular case, a due regard being had to the reformation of the accused. The governor shall have sole discretion in evaluating said comments and in soliciting other comments he or she deems appropriate.

16-17-103. Effect of pardon and commutation of sentence - definitions. (1) A pardon issued by the governor shall waive all collateral consequences associated with each conviction for which the person received a pardon unless the pardon limits the scope of the pardon regarding collateral consequences.

(2) If the governor grants a pardon or a request for commutation of sentence, the governor shall provide a copy of the pardon or commutation of sentence to the Colorado bureau of investigation, and the Colorado bureau of investigation shall note in the individual's record in the Colorado crime information center that a pardon was issued or commutation of sentence was granted.

(3) For purposes of this section, "collateral consequences" means a penalty, prohibition, bar, disadvantage, or disqualification, however denominated, imposed on an individual as a result of the individual's conviction of an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral consequences" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

COSTS - CRIMINAL ACTIONS

ARTICLE 18

Costs in Criminal Actions

16-18-101. Costs in criminal cases. (1) The costs in criminal cases shall be paid by the state pursuant to section 13-3-104, C.R.S., when the defendant is acquitted or when the defendant is convicted and the court determines he is unable to pay them.

(2) The costs of preliminary hearings, including any reporters' transcripts thereof ordered by a defendant, shall be paid pursuant to subsection (1) of this section. Reporters' transcripts of preliminary hearings which are ordered by the prosecution shall be paid for by the prosecution, unless otherwise ordered by the court.

(3) The department of corrections, from annual appropriations made by the general assembly, shall reimburse the county or counties in a judicial district for the costs of prosecuting any crime alleged to have been committed by a person in the custody of the department. The county or counties shall certify these costs to the department, and upon approval of the executive director of the department, the costs shall be paid. The provisions of this subsection (3) shall apply to costs that are not otherwise paid by the state.

16-18-102. Costs taxed against complainant. If any informer or complainant under a penal statute of this state, to whom the penalty or any part thereof, if recovered, is given, dismisses his suit or prosecution, or fails in the same, or willfully absents himself from trial or examination, he shall be adjudged to pay all costs accruing on such suit or prosecution, unless he is an officer whose duty it is to make and file the information or complaint; but in all cases of examination into any criminal charge before a county judge, where the party accused is discharged, and it appears to the judge before whom such examination was made that there was no reasonable ground for the complaint, or that it was maliciously entered, and in all cases where the complaining witness willfully absents himself from or fails to appear at such examination or trial, the county judge shall give judgment against the complainant for all costs of the examination or trial and shall issue execution thereon. Appeal may be had in all such cases, as provided by law for the taking of appeals from judgments rendered in county courts.

16-18-103. When taxed against informant before grand jury. If any person complains to any grand jury of injury done to his person, or to any person of his household, or to his property, done by another, and upon hearing evidence of the charge it appears to the grand jury that the same is untrue, and that it was maliciously entered, it is the duty of the grand jury to

return the facts into court, and the court shall thereupon tax the costs incurred in the investigation of the charge and enter judgment against the person who made the complaint for the amount thereof. In proceedings under this section, the action of the grand jury shall be determined by twelve members thereof.

16-18-104. Prosecuting witness before grand jury liable - when. If any person complains to any grand jury of injury done to his person, or to any person of his household, or to his property, and after indictment found does not appear in the court in which the indictment is pending to give evidence in that behalf against the party charged in the indictment, and the party charged is acquitted, or if proceedings under said indictment are discontinued for want of testimony, the court in which the indictment is pending shall give judgment against the person who preferred the complaint for the costs arising in that case. Upon the trial of the party charged in any such indictment, if he is acquitted and the jury finds that the proceeding was maliciously commenced, the court shall give judgment against the prosecuting witness for the costs arising in the case. Whenever any person complains, the grand jury shall cause the name of the person so complaining to be endorsed upon the indictment, with the words "prosecuting witness" added, and this shall be evidence that the complaint was made by the person whose name is thus endorsed.

16-18-105. Enforcing judgment. Judgment rendered under the provisions of sections 16-18-103 and 16-18-104 may be enforced in the same manner as in other criminal cases.

ARTICLE 18.5

Restitution in Criminal Actions

16-18.5-101. Legislative declaration. (Repealed)

16-18.5-102. Definitions. (Repealed)

16-18.5-103. Assessment of restitution - corrective orders. (Repealed)

16-18.5-104. Initial collections investigation - payment schedule. (1) Orders for restitution shall be due and payable at the time that the order of conviction is entered. Unless the

defendant is sentenced to the custody of the executive director of the department of corrections, if at the time that the court enters an order for restitution pursuant to section 18-1.3-603, C.R.S., the defendant alleges that he or she cannot pay the full amount of restitution, the court shall direct that the defendant report immediately to the collections investigator.

(2) The time payment fee established in section 16-11-101.6 shall be assessed, and the associated provisions of section 16-11-101.6 shall apply to cases in which restitution is not paid in full on the date that it is imposed. The fee shall be collected from the defendant after the defendant has satisfied all orders for restitution. All payments for the time payment fee shall be credited to the judicial collection enhancement fund created in section 16-11-101.6 (2). In addition, reasonable costs incurred and collected by the state for restitution shall be credited to the fund.

(3) (a) Upon referral of a defendant pursuant to subsection (2) of this section, the collections investigator shall conduct an investigation into the financial ability of the defendant to pay the restitution ordered by the court. Such investigation may consist of but is not limited to:

(I) Submission of written financial affidavits or disclosures of the defendant's personal, household, and business income, assets, and liabilities;

(II) Submission to an oral examination of the defendant's financial circumstances;

(III) Submission of books, papers, documents, or other tangible things related to the defendant's financial circumstances including but not limited to:

(A) Payroll stubs;

(B) Financial institution account statements;

(C) Stock certificates;

(D) Deeds, titles, or other evidence of ownership;

(E) State and federal tax records; and

(F) Insurance policies and statements;

(IV) Research and verification of all oral and written statements made by the defendant.

(b) In the case of a juvenile defendant, the collections investigator may conduct the investigation into the juvenile's parents' or legal guardian's financial circumstances as well as the juvenile's.

(c) For purposes of conducting the investigation required by this subsection (3), the collections investigator shall have access to data maintained by other state agencies including but not limited to wage data, employment data, and income tax data. The judicial department and any other departments are authorized to enter into agreements for the sharing of such data.

(d) Notwithstanding the provisions of article 72 of title 24, C.R.S., documents and information obtained by the collections investigators pursuant to this subsection (3) shall not be public records, but shall be open to public inspection only upon an order of the court based on a finding of good cause. Documents and information obtained by the collection investigators may be made available to the victim and to any private collection agency or third party with whom the judicial department may contract for the collection of past due restitution. In addition, if any warrant is issued for the arrest of any defendant due to nonpayment of restitution, information concerning the defendant's address and place of employment may be shared with a criminal justice agency.

(4) (a) (I) Following the investigation described in subsection (3) of this section, the collections investigator shall establish a payment schedule and direct that the defendant:

(A) Pay the full amount ordered immediately;

(B) Pay the full amount ordered as a single payment on a specified date; or

(C) Pay the full amount ordered in specified partial amounts on specified dates.

(II) The collections investigator may ask the court to enter the payment schedule as an order of court.

(b) In addition to the payments required by paragraph (a) of this subsection (4), the collections investigator may direct that:

(I) If the defendant is unemployed, the defendant seek gainful employment and report to the investigator on such efforts by a specified date;

(II) The defendant shall not incur additional debt or financial obligation without the approval of the collections investigator, which approval shall not be unreasonably withheld; or

(III) The defendant promptly report to the collections investigator any changes in income, assets, or other financial circumstances.

(5) Following the investigation required by subsection (3) of this section, the collections investigator may also:

(a) (I) Record a transcript of the order for restitution in the real estate records in the office of the clerk and recorder of any county in which the defendant holds an interest in real property. From the time of the recording of the transcript, there shall be a lien that is an encumbrance in favor of the state or the victim, or an assignee of the state or the victim, and shall encumber any interest of the defendant in real property in such county.

(II) (A) The lien created by this paragraph (a) shall remain in effect until all amounts of restitution, including interest, costs, time payment fees, and late fees are paid or for a period of twenty years after the recording of the transcript. So long as there is an amount still owing, the collections investigator or the victim or the assignee of the state or the victim may record a new transcript of the order of restitution. Any transcript of the order for restitution recorded pursuant to this subparagraph (II) prior to the expiration of the twenty-year period shall relate back to the date of the recording of the original transcript of the order for restitution and shall be valid for a period of twenty years after the recording of the subsequent transcript. More than one subsequent transcript shall be permitted.

(B) Within twenty-one days after the payment of all such amounts of restitution, the collections investigator or the victim, or the assignee of the state or the victim, shall record a certificate of satisfaction of judgment issued by the clerk of the court with each clerk and recorder where a transcript was recorded. The satisfaction of judgment shall be conclusive evidence that the lien was extinguished.

(III) The collections investigator and the victim shall be exempt from the payment of recording fees charged by the clerk and recorder for the recording of the transcripts and satisfactions of judgment.

(b) (I) File a transcript of the order for restitution with the secretary of state. From the time of the filing of the transcript, there shall be a lien that is an encumbrance in favor of the state or the victim, or an assignee of the state or the victim, and shall encumber any interest of the defendant in any personal property.

(II) The lien created by this paragraph (b), shall remain in effect without the necessity of renewal for twelve years or until all amounts of restitution, including interest, costs, time payment fees, and late fees are paid. Within twenty-one days after the payment of all such amounts of restitution, the collections investigator or the victim, or the assignee of the state or the victim, shall file a satisfaction of judgment with the secretary of state. The satisfaction of judgment shall be conclusive evidence that the lien was extinguished.

(III) The collections investigator and the victim shall be exempt from the payment of filing fees charged by the secretary of state.

(c) (I) File a transcript of the order for restitution with the authorized agent as defined in section 42-6-102 (1), C.R.S. From the time of the filing of the transcript, there shall be a lien that is an encumbrance in favor of the state or the victim, or an assignee of the state or the victim, and shall encumber any interest of the defendant in a motor vehicle. In order for such lien to be effective as a valid lien against a motor vehicle, the state or the victim, or the assignee of the state or the victim, shall have such lien filed for public record and noted on the owner's certificate of title in the manner provided in sections 42-6-121 and 42-6-129, C.R.S.

(II) The lien created by this paragraph (c), shall remain in effect for the same period of time as any other lien on motor vehicles as specified in section 42-6-127, C.R.S., or until all amounts of restitution, including interest, costs, time payment fees, and late fees are paid, whichever occurs first. A lien created pursuant to this paragraph (c) may be renewed pursuant to section 42-6-127, C.R.S. Within twenty-one days after the payment of all such amounts of restitution, the collections investigator or the victim or the assignee of the state or the victim shall release the lien pursuant to the procedures specified in section 42-6-125, C.R.S. When a lien created by this paragraph (c) is released, the authorized agent and the executive director of the department of revenue shall proceed as provided in section 42-6-126, C.R.S.

(III) The collections investigator and the victim shall not be exempt from the payment of filing fees charged by the authorized agent for the filing of either the transcript of order or the release of lien. However, the state or the victim, or the assignee of the state or the victim, may add the amount of the filing fees to the lien amount and collect the amount from the defendant.

16-18.5-105. Monitoring - default - penalties. (1) The collections investigator shall be responsible for monitoring the payments of restitution by any defendant referred to the investigator pursuant to section 16-18.5-104. Based upon changes in the defendant's financial circumstances, the collections investigator may modify the payment schedule established pursuant to section 16-18.5-104 (4). If a payment schedule has been made an order of the court pursuant to section 16-18.5-104 (4) (a) (II), prior to enforcing a new schedule, the collections investigator shall request and obtain a modification of the order.

(2) In addition to any other costs that may accrue, for each payment of restitution that a defendant fails to make within seven days after the date that the payment is due pursuant to any payment schedule established pursuant to this article, the late penalty fee established in section 16-11-101.6 shall be assessed, and the associated provisions of section 16-11-101.6 may apply. The late fees shall be collected from the defendant after the defendant has satisfied all orders for restitution. All payments for late fees shall be credited to the judicial collection enhancement

fund created in section 16-11-101.6 (2).

(3) Whenever a defendant fails to make a payment of restitution within seven days after the date that the payment is due pursuant to a payment schedule established pursuant to this article, in addition to any other remedy, the collections investigator may:

(a) Conduct an additional financial investigation of the defendant as described in section 16-18.5-104 (3);

(b) Issue an attachment of earnings requiring that a certain portion of a defendant's earnings, not to exceed fifty percent, be withheld and applied to any unpaid restitution, if such an attachment does not adversely impact the defendant's ability to comply with other orders of the court. An attachment of earnings under this paragraph (b) may be modified to a lesser or greater amount based upon changes in a defendant's circumstances as long as the amount withheld does not exceed fifty percent and may be suspended or cancelled at the court's discretion. An attachment of earnings issued pursuant to this paragraph (b) shall be enforceable in the same manner as a garnishment in a civil action. For purposes of this section, "earnings" shall have the same meaning as set forth for any type of garnishment in section 13-54.5-101, C.R.S., and shall include profits.

(c) Request that the clerk of the court issue a writ of execution, writ of attachment, or other civil process to collect upon a judgment pursuant to article 52 of title 13, C.R.S.;

(d) Request that the court issue a notice to show cause requiring the defendant to appear before the court and show cause why the required payment or payments were not made. Upon a finding of the defendant's failure to pay, unless the defendant establishes that he or she was unable to make the payments, the court may:

(I) Revoke probation and impose any other sentence permitted by law;

(II) Order that the defendant be confined to jail with a recommendation that the defendant participate in a work release program;

(III) Extend the period of probation; or

(IV) Find the defendant in contempt of court and impose any authorized penalties for such action.

(e) (I) Employ any method available to collect state receivables, including the assignment of the defendant's accounts to a third party that has an agreement with the judicial department under this paragraph (e).

(II) The judicial department may enter into agreements with third parties for collection-related services. Any fees or costs of the third parties shall be added to the amount of restitution owed by the defendant, but such fees and costs shall not exceed twenty-five percent of the amount collected.

16-18.5-106. Restitution for persons sentenced to the department of corrections. (1) Whenever a person is sentenced to the department of corrections, the department of corrections is authorized to conduct an investigation into the financial circumstances of the defendant, as described in section 16-18.5-104 (3), for purposes of determining the defendant's ability to pay court ordered costs, surcharges, restitution, time payment fees, late fees, and other fines, fees, or surcharges pursuant to section 16-18.5-110.

(2) During any period of time that a defendant is a state inmate, as defined in section 17-1-102 (8), C.R.S., the executive director of the department of corrections, or his or her designee, may fix the time and manner of payment for court ordered costs, surcharges, restitution, time payment fees, late fees, and any other fines, fees, or surcharges pursuant to section 16-18.5-110 resulting from a criminal case or for child support, and may direct that a portion of the deposits into such inmate's bank account be applied to any outstanding balance existing before, on, or after September 1, 2000. At a minimum, the executive director shall order that twenty percent of all deposits into an inmate's bank account, including deposits for inmate pay shall be deducted and paid toward any outstanding order from a criminal case or for child support. If an inmate owes money on more than one order from a criminal case or for child support, the executive director may equitably apportion payments among the outstanding obligations.

(3) Whenever a defendant is released from a correctional facility, the defendant shall be obligated to make payments for restitution as required by section 17-2-201 (5) (c) (I), C.R.S.

(4) The department of corrections may enter into a memorandum of understanding with the judicial department or contract with a private collection agency for the collection of court ordered costs, surcharges, restitution, time payment fees, late fees, and any other fines, fees, or surcharges pursuant to section 16-18.5-110 from defendants sentenced to the department of corrections or released on parole.

16-18.5-106.5. Lottery winnings offset - restitution. (1) (a) The judicial department shall, on no less than a monthly basis, certify to the department of revenue information regarding any defendant who has been ordered to pay restitution pursuant to section 18-1.3-603 or 19-2-918, C.R.S.

(b) The information described in paragraph (a) of this subsection (1) shall include the social security number of the person who is obligated to pay restitution and the amount of restitution due and owing. The department of revenue may request additional identifying information, as needed, from the judicial department in order to obtain an accurate data match pursuant to subsection (2) of this section.

(2) (a) Prior to the payment of lottery winnings required by rule and regulation of the Colorado lottery commission to be paid only at the lottery offices, the department of revenue shall check the social security number of each winner with those certified by the judicial department pursuant to subsection (1) of this section. If the name and associated social security number of a lottery winner appear among those certified, the department of revenue shall obtain the current address of the winner, shall suspend the payment of the winnings, and shall notify the judicial department. The notification shall include the name, home address, and social security number of the winner. The judicial department shall forward the notification to the court in which the lottery winner's restitution obligation is pending.

(b) (I) After receipt of the notification, the court shall notify the person that is obligated to pay restitution, in writing, that the state intends to offset the person's restitution obligation against his or her winnings from the state lottery. Such notification shall include information concerning the obligated person's right to object to the offset and to request an administrative

review pursuant to the rules and regulations of the state court administrator.

(II) The sole issues to be determined at the administrative review described in subparagraph (I) of this paragraph (b) shall be:

(A) Whether the person is required to pay restitution pursuant to an order entered by a court of this state; and

(B) The amount of restitution outstanding.

(3) (a) Except as otherwise provided in subsection (5) of this section, upon notification by the department of revenue of amounts deposited with the state treasurer pursuant to section 24-35-212.5, C.R.S., and upon the transfer of the amounts by the state treasurer to the court in which the restitution obligation is pending, the court shall disburse the amounts in accordance with this subsection (3).

(b) The clerk of the court shall apply the amounts toward the outstanding restitution balance owed in the criminal or juvenile case. The clerk shall distribute the remainder, if any, to the person against whom the restitution order was entered. The court shall notify the crime victim or victims of actions taken under this paragraph (b).

(4) The state court administrator shall promulgate rules and regulations, subject to the approval of the supreme court, establishing procedures to implement this section including but not limited to the process by which a lottery winner may object to an offset against restitution in accordance with paragraph (b) of subsection (2) of this section.

(5) If a lottery winner owes restitution in a criminal or juvenile case and also owes a child support debt or arrearages as described in section 26-13-118 (1), C.R.S., the lottery winnings offset described in sections 24-35-212 (5) and 26-13-118, C.R.S., shall take priority and be applied first. Any remaining lottery winnings shall be disbursed and distributed in accordance with this section.

(6) The home addresses and social security numbers of persons subject to the state lottery winnings offset described in this section that are provided to the judicial department by the department of revenue shall be sent to the respective court.

16-18.5-106.7. Unclaimed property offset. (1) The judicial department may enter into a memorandum of understanding with the state treasurer, acting as the administrator of unclaimed property under the "Unclaimed Property Act", article 13 of title 38, C.R.S., for the purpose of offsetting against a claim for unclaimed property the unpaid amount of restitution the person making the claim has been ordered to pay pursuant to section 18-1.3-603 or 19-2-918, C.R.S. When an offset is to be made, the judicial department or the court in which the person's restitution obligation is pending shall notify the person in writing that the state intends to offset the amount of the person's unpaid restitution obligation against his or her claim for unclaimed property.

(2) The state court administrator may adopt rules establishing the process by which an unclaimed property claimant may object to an offset and request an administrative review. The sole issues to be determined at the administrative review shall be whether the person is required to pay restitution pursuant to an order entered by a court of this state and the amount of the outstanding restitution.

(3) For purposes of this section, "claim for unclaimed property" means a cash claim filed in accordance with section 38-13-117, C.R.S.

16-18.5-106.8. State income tax refund offsets - restitution - definitions. (1) In any case in which a defendant has an unsatisfied restitution obligation ordered pursuant to section 18-1.3-603 or 19-2-918, C.R.S., the judicial department is authorized to transmit data concerning the obligation to the department of revenue for the purpose of conducting a data match and offsetting the restitution obligation against a state income tax refund pursuant to section 39-21-108 (3), C.R.S. For any restitution obligation identified by the judicial department for offset, the state court administrator shall:

(a) On at least an annual basis, certify to the department of revenue the social security number of the defendant who is obligated to pay the restitution obligation and the amount of the outstanding restitution obligation. The department of revenue may request additional identifying information from the judicial department that is necessary to obtain an accurate data match.

(b) Upon notification by the department of revenue of a data match, notify the appropriate court that a match has occurred and that an offset is pending and provide to the court the identifying information received from the department concerning the defendant whose state income tax refund is subject to the offset;

(c) Provide or require the appropriate court to provide written notice to the defendant that the state intends to offset the defendant's restitution obligation against his or her state income tax refund and that the defendant has the right to object to the offset and request an administrative review; and

(d) Upon receipt of funds for offset from the department of revenue, transmit the funds to the appropriate court.

(2) The clerk of court shall apply funds received pursuant to this section to the defendant's outstanding restitution obligation. If the moneys received exceed the defendant's current restitution obligation, the excess may be applied to other financial obligations the defendant owes the court or the judicial department. If no other financial obligations are owed, the clerk of court shall refund any excess to the defendant.

(3) The state court administrator may adopt rules establishing the process by which a defendant may object to an offset and request an administrative review. The sole issues to be determined at the administrative review shall be whether the person is required to pay the restitution and the amount of the outstanding restitution.

(4) The department of revenue is authorized to receive data from the judicial department and execute offsets of state income tax refunds in accordance with this section and section 39-21-108 (3), C.R.S.

(5) As used in this section, "defendant" means any person, including an adult or juvenile, who has been ordered to pay restitution pursuant to section 18-1.3-603 or 19-2-918, C.R.S.

16-18.5-107. Collection of restitution by the victim. (1) Any victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of

restitution owed to such person in such person's own name. Any victim who wishes to collect restitution pursuant to the provisions of this section shall first deliver to the clerk of the court or, if the defendant was sentenced to the department of corrections, to the executive director of the department of corrections a notice of intent to pursue collection. Upon receipt of notice of intent to pursue collection, the court, the collections investigator, and the department of corrections shall cease all attempts to collect the restitution due to the person or persons named in the notice, except that the collections investigator may still assist the victim in the victim's effort. The filing of a victim's intent to pursue collection and a victim's subsequent collection efforts do not alter a court's order that restitution is a condition of the defendant's probation, and such probation may still be revoked by the court upon a finding of failure to pay restitution.

(2) Any victim who has filed a notice of intent to pursue collection may apply to the sentencing court for issuance of any of the following that, if provided, shall be provided without cost:

(a) One or more certified copies of the transcript of the order for restitution;

(b) An order that a portion of the defendant's earnings be withheld pursuant to section 16-18.5-105 (3) (b);

(c) A writ of execution, writ of attachment, or other civil process to collect upon a judgment pursuant to article 52 of title 13, C.R.S.

(3) If the victim chooses to record a copy of the transcript with a clerk and recorder or with the secretary of state, the victim may do so without charge.

(4) A victim may withdraw his or her intent to pursue collection by filing a notice of such withdrawal with the person to whom the notice of intent was served pursuant to subsection (1) of this section. Such notice shall state the amount, if any, of restitution collected by the victim. Upon receipt of a notice of withdrawal, the collections investigator or the department of corrections shall pursue collection of the restitution pursuant to this article.

(5) The judicial department shall develop informational brochures for victims explaining the process of restitution and the victim's rights and remedies.

16-18.5-108. Dishonored check fee. Whenever a payment of restitution that was presented in the form of a check or similar sight draft for the payment of money is subsequently dishonored by the financial institution for any reason upon presentment within thirty days after issue, the agency supervising the collection of such payment may assess a twenty dollar penalty against the defendant. The penalty provided in this section shall be assessed in addition to any other penalties or interest authorized by law.

16-18.5-109. Declined or unclaimed restitution. (1) If at the time that an order for restitution is entered no victim can be reasonably located or the victim declines to accept restitution, the defendant shall still pay restitution but such restitution shall be made to the state and distributed as provided for in subsection (3) of this section.

(2) Notwithstanding the provisions of sections 13-32-108 and 13-32-112, C.R.S., all restitution paid to the clerk of any court or into the registry of any court that has been unclaimed

for a period of two years or more after the final determination of any case in which said restitution was collected or money deposited shall be distributed as provided for in subsection (3) of this section.

(3) The amounts of restitution remaining undistributed pursuant to subsections (1) and (2) of this section shall be paid to the victims and witnesses assistance and law enforcement fund created pursuant to section 24-4.2-103, C.R.S., and to the crime victim compensation fund created pursuant to section 24-4.1-117, C.R.S., in the judicial district in which the crime occurred. The chair of the victims and witnesses assistance and law enforcement board, in consultation with the board, and the chair of the crime victim compensation board, in consultation with the board, in each judicial district shall designate on or before each December 1, starting December 1, 2000, how moneys received pursuant to this section shall be divided between the two funds during the next calendar year for that judicial district. If the chairs are unable to agree on a distribution, the crime victim services advisory board created in section 24-4.1-117.3 (1), C.R.S., shall designate how the moneys shall be divided between the funds for that judicial district. If no designation is made, the payments shall be made to the victims and witnesses assistance and law enforcement fund.

16-18.5-110. Order of crediting payments. (1) Payments received shall be credited in the following order:

(a) Costs for crime victim compensation fund, pursuant to section 24-4.1-119, C.R.S.;

(b) Surcharges for victims and witnesses assistance and law enforcement fund, pursuant to section 24-4.2-104, C.R.S.;

(c) Restitution to victims in the following order:

(I) A victim, as defined in section 18-1.3-602 (4) (a) (I), C.R.S.;

(II) A victim, as defined in section 18-1.3-602 (4) (a) (II), C.R.S.;

(III) A victim, as defined in section 18-1.3-602 (4) (a) (III), C.R.S.;

(c.5) Surcharges related to the address confidentiality program pursuant to section 24-30-2114, C.R.S.;

(d) Time payment fee;

(e) Late fees; and

(f) Any other fines, fees, or surcharges.

16-18.5-111. Effect of termination of deferred judgment and sentence or deferred adjudication. The provisions of this article apply notwithstanding the termination of a deferred judgment and sentence or a deferred adjudication.

FUGITIVES AND EXTRADITION

ARTICLE 19

16-19-101. Short title. This article shall be known and may be cited as the "Uniform Criminal Extradition Act".

16-19-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Executive authority" includes the governor and any person performing the function of governor in a state other than this state.

(2) "Governor" includes any person performing the functions of governor by authority of the law of this state.

(3) "State", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States.

16-19-103. Fugitives from justice. Subject to the provisions of this article, the provisions of the constitution of the United States controlling, and any act of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

16-19-104. Form of demand. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 16-19-107, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon, or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, or judgment of conviction or sentence must be authenticated by the executive authority making the demand.

16-19-105. Governor may investigate case. When a demand is made upon the governor of this state by the executive authority of another state for the surrender of a person so charged

with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

16-19-106. Extradition of persons imprisoned or awaiting trial. (1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of the other state for the extradition of that person before the conclusion of such proceedings or his term of sentence in the other state, upon condition that such person be returned to the other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 16-19-124 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

16-19-107. Extradition of persons not present where crime committed. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 16-19-104 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this article not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

16-19-108. Issue of governor's warrant. If the governor decides that the demand should be complied with, the governor shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom the governor may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. Any electronically or electromagnetically transmitted facsimile of a governor's warrant shall be treated as an original document.

16-19-109. Manner and place of execution. The warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this article, to the duly authorized agent of the demanding state.

16-19-110. Authority of arresting officer. Every peace officer or other person

empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

16-19-111. Rights of accused - habeas corpus. No person arrested upon such a warrant shall be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel. If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the agent of the demanding state. Review beyond the court of record shall be only in the supreme court by petition for certiorari, pursuant to such rules as that court may promulgate.

16-19-112. Penalty for noncompliance. Any person who delivers to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience to section 16-19-111, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

16-19-113. Confinement in jail. The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner has been delivered, when necessary, may confine the prisoner in the jail in any county or city through which he may pass. The keeper of the jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping. The officer or agent of a demanding state to whom a prisoner has been delivered following extradition proceedings in another state, or to whom a prisoner has been delivered after waiving extradition in such other state, and who is passing through this state with the prisoner for the purpose of immediately returning the prisoner to the demanding state, when necessary, may confine the prisoner in the jail of any county or city through which he may pass. The keeper of the jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; but the officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner shall not be entitled to demand a new requisition while in this state.

16-19-114. Arrest prior to requisition. When any person within this state is charged on the oath of any credible person before any judge of this state with the commission of any crime in any other state and, except in cases arising under section 16-19-107, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or whenever complaint has been made before any judge in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 16-19-107, has fled from justice or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, and is believed to be in this state, the judge shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge or court which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

16-19-115. Arrest without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year. When so arrested the accused must be taken before a judge with all practicable speed, and complaint must be made against him under oath setting forth the ground for arrest as in section 16-19-114; and thereafter his answer shall be heard as if he had been arrested on a warrant.

16-19-116. Commitment to await requisition - bail. If from the examination before the judge it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 16-19-107, that he or she has fled from justice, the judge shall, by a warrant reciting the accusation, commit him or her to the county jail for such a time not exceeding thirty-five days and as specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in section 16-19-117, or until he or she is legally discharged.

16-19-117. Bail pending extradition. (1) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state or territory or country in which it is alleged to have been committed, or having been convicted of a crime in the demanding state, the fugitive is alleged to have escaped from custody or confinement in the demanding state or to have violated the terms of his or her bail, probation,

parole, or sentence, or the fugitive has executed a written waiver of extradition pursuant to section 16-19-126, the judge of any district court within the state of Colorado may admit any person arrested, held, or detained for extradition or interstate rendition to another state or territory of the United States or to any foreign country, to bail by bond or undertaking, with such sufficient sureties and in such sum as such judge deems proper, conditioned upon the appearance of such person before the court at a time specified in the bond or undertaking and for such person's surrender upon the warrant of the governor of this state for such person's extradition or interstate rendition to another state or territory of the United States or to any foreign country. When any such person has been served with a governor's warrant, such person shall no longer be eligible to be admitted to bail.

(2) Before granting the bond provided for in subsection (1) of this section, the judge of the district court within the state of Colorado to whom such application for bail is made shall cause reasonable notice to be served upon the district attorney of the judicial district within which an application is made and also upon the person or authority holding or detaining the person.

16-19-118. Extension of time. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge of a district court shall either recommit him or her for a further period not to exceed sixty days or again take bail for his or her appearance and surrender, as provided in section 16-19-117, but within a period not to exceed sixty days after the date of the new bond.

16-19-119. Forfeiture of bail. If the person so held is admitted to bail as provided for in section 16-19-117 and fails to appear and surrender himself according to the conditions of his bond, the judge of the district court, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within this state. Recovery may be had on such bond in the name of the people of the state of Colorado as in the case of other bonds or undertakings given by a defendant in criminal proceedings.

16-19-119.5. Custody pending arrival of agent of the demanding state. Upon ordering the delivery of a fugitive forthwith to the agent of a demanding state, a judge shall allow the agent of the demanding state a period of not less than fifteen days and not more than thirty days from the date of the order within which to complete transportation arrangements, travel to this state, and appear to take custody of the fugitive. During this period, pending the arrival of the agent of the demanding state, the fugitive shall remain in custody in this state without bail and shall not be discharged.

16-19-120. Persons under prosecution when demanded. If a criminal prosecution has been instituted against a person under the laws of this state and is still pending, the governor, in

his discretion, subject to such criminal prosecution, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

16-19-121. When guilt inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceedings after the demand for extradition accompanied by a charge of crime in legal form has been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

16-19-122. Governor may recall warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

16-19-123. Fugitives from this state. When the governor of this state demands a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the executive authority of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

16-19-124. Application for requisition. (1) When the return to this state of a person charged with crime in this state is required, the district attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the said district attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the state board of parole, or the superintendent of the institution or sheriff of the county from which escape was made shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including

the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, state board of parole, superintendent, or sheriff may also attach such further affidavits and other documents in duplicate as he deems proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

16-19-125. Immunity from civil process. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

16-19-126. Written waiver of extradition. (1) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his or her bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 16-19-108 and 16-19-109 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he or she consents to return to the demanding state and acknowledging that he or she shall not be admitted to bail; but, before the waiver is executed or subscribed by such person, it is the duty of the judge to inform such person of his or her rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 16-19-111.

(2) If and when a consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having the person in custody to deliver such person forthwith to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to that agent or those agents a copy of the consent. Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(3) A fugitive shall not be permitted to withdraw a waiver of extradition unless the fugitive makes a showing of good cause for the withdrawal of the waiver of extradition. The fugitive shall provide the court, governor, and district attorney with the request to withdraw the

waiver of extradition stating the reasons for withdrawing the waiver. If the court grants the withdrawal, it shall provide the governor with an order permitting the withdrawal of the waiver of extradition. A judge shall commit a fugitive who is permitted to withdraw his or her waiver of extradition to the county jail without bond for a specified period of time, of not less than thirty days and not more than ninety days, as will enable the arrest of the accused to be made under warrant of the governor or on a requisition of the executive authority of the state having jurisdiction of the offense.

16-19-126.5. Prior waiver of extradition. (1) Notwithstanding any other provision of law, a law enforcement agency in the state of Colorado holding a person who is alleged to have broken the terms of such person's probation, parole, bail, or any other conditional release in the demanding state shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a demand by the executive authority of the demanding state, and without the requirement of a governor's warrant issued by the governor of the state of Colorado, if such person has signed a prior waiver of extradition as a condition of such person's current probation, parole, bail, or other conditional release in the demanding state.

(2) The law enforcement agency shall immediately deliver any person pursuant to subsection (1) of this section upon the receipt of the following documents, which shall be accepted as conclusive proof of the contents of such documents and of the validity of the waiver set forth therein:

(a) A certified copy of the prior waiver of extradition signed by the person being held by the law enforcement agency, or an electronically or electromagnetically transmitted facsimile thereof;

(b) A certified copy of an order or warrant from the demanding state directing the return of the person for violating the conditions of such person's probation, parole, bail, or other conditional release, or an electronically or electromagnetically transmitted facsimile thereof; and

(c) A photograph, fingerprints, or other evidence which identifies the person held by the law enforcement agency as the person who signed the waiver of extradition and who is named in the order or warrant, or an electronically or electromagnetically transmitted facsimile thereof.

(3) Nothing in this section shall be deemed to limit the right, power, or privilege of the state of Colorado to hold, try, and punish any person demanded by another state for any crime committed in the state of Colorado before delivering such person to the demanding state.

16-19-127. Nonwaiver by this state. Nothing contained in this article shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for any crime committed within this state, or of its right, power, or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under this article which result in, or fail to result in, extradition be deemed a waiver by this state of any of

its rights, privileges, or jurisdiction in any way whatsoever.

16-19-128. Prosecution of other charges. After a person has been brought back to this state by, or after waiver of, extradition proceedings, he may be tried in this state for other crimes which he may be charged with committing here as well as that specified in the requisition for his extradition.

16-19-129. Security for costs - default - fees. (1) In all cases where complaint is made against any fugitive from justice, the judge or justice in his discretion may require from complainant good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond to the clerk of the district court, conditioned for the payment of costs, which bond, together with a statement of the costs which have accrued on the examination, shall be returned to the office of the clerk of the district court. Upon the determination of the proceedings against the fugitive within that county, the clerk shall issue a fee bill as in other cases, to be served on the persons named in the bond, or any of them, which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees are not paid on or before the first day of the next district court to be held in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee bill has been served and when the fees are collected shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to one dollar for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services. Nothing contained in this section shall prevent the clerk from instituting suits on said bonds in the ordinary mode of judicial proceedings, if he deems it proper. The costs which may accrue from the arrest and detention of such fugitive, as described in this section, shall include any reasonable and necessary costs incurred by the district attorney which are directly the result of the prosecution of such fugitive from justice. When such costs are recovered by the clerk, such costs shall be remitted to the office of the district attorney which incurred such costs.

(2) For purposes of this section, reasonable costs incurred by the district attorney include but are not limited to those in section 18-1.3-701, C.R.S., as well as attorney fees and support staff costs.

16-19-130. Rewards - how audited - paid. When the governor is satisfied that the crime of murder or arson or kidnapping has been committed within the state, and that the person charged therewith has not been arrested or has escaped therefrom, he may in his discretion offer a reward not exceeding one thousand dollars for the arrest and delivery to the proper authorities of the person so charged, which reward, upon the certificate of the governor that the same has been earned, shall be audited and paid by the state out of any funds appropriated for that purpose.

16-19-131. Escape - reward. If any person charged with or convicted of a felony breaks prison or escapes or flees from justice or absconds and secretes himself, it shall be lawful for the governor, if he judges it necessary, to offer any reward not exceeding two hundred dollars for apprehending and delivering such person into custody of the sheriff or other officer as he may direct. Upon the person or persons so apprehending and delivering any such person and producing the sheriff's or justice's receipt for the body to the governor, it shall be lawful for the governor to certify the amount of the claim to the controller, who shall issue his warrant on the treasury for the same.

16-19-132. Interpretation. The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the laws of those states which enact it.

16-19-133. Concealment of fugitives - penalty. (Repealed)

16-19-134. Securing the attendance of a defendant who is outside the United States. (1) When a criminal action for an offense committed in this state is pending in a criminal court of this state against a defendant who is in a foreign country with which the United States has an extradition treaty, and when the accusatory instrument charges an offense that is declared in the treaty to be an extraditable offense, and when the district attorney of the judicial district in which the offense was allegedly committed desires the international extradition of the defendant, the district attorney shall apply to the governor, requesting the governor to apply to the president of the United States, to institute extradition proceedings for the return of the defendant to this country and state for the purpose of prosecution of the action. The district attorney's application shall comply with the rules, regulations, and guidelines established by the governor for such applications and shall be accompanied by all of the accusatory instruments, affidavits, and other documents required by the governor's rules, regulations, and guidelines.

(2) Upon receipt of the district attorney's application, the governor, if satisfied that the defendant is in the foreign country in question, that the offense charged is an extraditable offense pursuant to the treaty in question, and that there are no factors or impediments which in law may preclude such an extradition, may in his or her discretion submit an application, addressed to the secretary of state of the United States, requesting that the president of the United States institute extradition proceedings for the return of the defendant from the foreign country. The governor's application shall comply with the rules, regulations, and guidelines established by the secretary of state of the United States for such applications and shall be accompanied by all of the accusatory instruments, affidavits, and other documents required by such rules, regulations, and guidelines.

(3) Nothing in this section shall preclude prosecution in another country of a fugitive from justice charged with committing a crime in Colorado, if the other country offers domestic prosecution of such fugitives as an alternative to extradition. This includes, but is not limited to,

prosecution in Mexico pursuant to the Mexican federal penal code.

(4) The provisions of this section also apply equally to extradition or attempted extradition of a person who is a fugitive following the entry of a judgment of conviction against him or her in a criminal court of this state.

ARTICLE 20

Extradition of Persons of Unsound Mind

16-20-101. Short title. This article shall be known and may be cited as the "Colorado Extradition of Persons of Unsound Mind Act".

16-20-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Executive authority" means the executive authority of any state; and, when used in connection with a request to return any person, pursuant to the provisions of this article, to or from the District of Columbia, "executive authority" includes a justice of the supreme court of the District of Columbia and any other authority.

(2) "Flight" or "fled" means any voluntary or involuntary departure from the jurisdiction of the court where proceedings for determination as a person of unsound mind have been instituted and are still pending with the effect of avoiding, impeding, or delaying the action of the court in which such proceedings have been instituted or are pending or any such departure from the state where the person demanded then was, if he was then under detention by law as a person of unsound mind and subject to detention.

(3) "Person of unsound mind" includes the terms "insane person", "mentally ill person", "person with a mental illness", "mentally incompetent person", and "lunatic".

16-20-103. Persons subject to extradition. (1) A person alleged to be of unsound mind found in this state who has fled from another state shall be extradited from this state on demand of the executive authority of the state from which he fled if, at the time of his flight:

(a) He was under detention by law in a hospital, asylum, or other institution for the insane as a person of unsound mind;

(b) He had been determined by a legal proceeding to be of unsound mind prior to his flight, the finding being unreversed and in full force and effect and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or

(c) He was subject to detention in such state, being then his legal domicile (personal process having been made), based on legal proceedings to have him declared of unsound mind.

16-20-104. Executive authority - procedure. (1) When the executive authority of any state demands of the executive authority of this state any fugitive pursuant to this article and produces a copy of commitment, decree, or other process and proceedings certified as authentic by the executive authority of the state from which the person so charged has fled, with an affidavit made before a proper officer showing the person to be such fugitive, it is the duty of the executive authority of this state to cause immediate notice of the apprehension to be given to the executive authority making such demand or to the agent of such executive authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he appears. If no such agent appears within thirty days from the time of the apprehension, the fugitive may be discharged. Any agent so appointed who receives the fugitive into his custody shall transmit him to the state from which he has fled.

(2) All costs and expenses incurred in apprehending, securing, maintaining, and transmitting such fugitive to the state making such demand shall be paid by such state.

(3) The executive authority of this state has the power, on the application of any person interested, to demand the return of any fugitive from this state in accordance with this article.

16-20-105. Limitation. (Repealed)

OFFENDERS - REGISTRATION

ARTICLE 20.5

Integrated Criminal Justice
Information System

16-20.5-101. Short title. This article and article 21 of this title shall be known and may be cited as the "Criminal Justice Information System Act".

16-20.5-101.5. Legislative declaration. (1) The general assembly hereby finds and determines that, since 1974, there have been proposals for an automated criminal justice information system that shares and tracks data concerning offenders among the various criminal justice agencies. Because each of the criminal justice agencies in the state has developed independent information systems to address each agency's own management and planning needs, the status of criminal justice information in the state has been fragmented.

(2) The general assembly hereby declares that this article is enacted for the purpose of developing, operating, supporting, maintaining, and enhancing, in a cost-effective manner, a

seamless, integrated criminal justice information system that maximizes standardization of data and communications technology among law enforcement agencies, district attorneys, the courts, and state-funded corrections for adult and youth offenders and other agencies as approved by the general assembly or by the executive board pursuant to this article. Such a system will improve:

(a) Public safety by making more timely, accurate, and complete information concerning offenders available statewide to all criminal justice agencies and to individual decision-makers in the criminal justice system, including but not limited to police officers, prosecutors, judges, probation officers, and corrections officers;

(b) Decision-making by increasing the availability of statistical measures for evaluating public policy;

(c) Productivity of existing staff by continually working toward eliminating redundant data collection and input efforts among the agencies and by reducing or eliminating paper-based processing;

(d) Access to timely, accurate, and complete information by both staff from all criminal justice agencies and the public when permitted by article 72 of title 24, C.R.S.

(3) Because information about offenders collected by local law enforcement agencies may be the most current, the general assembly directs criminal justice agencies, where practical, to cooperate with and to encourage local law enforcement agencies to participate in the Colorado integrated criminal justice information system program developed under this article.

(4) The general assembly hereby finds that the Colorado integrated criminal justice information system program has been successfully implemented and that the sharing of criminal justice information is being enhanced as a result. The general assembly further finds that there is a need to provide ongoing maintenance, support, and leadership for the continued operation and enhancement of the Colorado integrated criminal justice information system program.

(5) The general assembly hereby finds and declares that the operation of the integrated criminal justice information system established by this article is critical to the accurate, complete, and timely performance of criminal background checks and to the effective communications between and among law enforcement, the state judicial department, and executive agencies and political subdivisions of the state. The general assembly further finds and declares that it is in the best interests of the citizens of the state and for the enhancement of public safety that the collaborative effort surrounding the integrated criminal justice information system be maintained, supported, and enhanced.

16-20.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Action" means the district attorneys' case management system.

(2) "CCIC" means the Colorado crime information center.

(3) "Chief information officer" means the chief information officer who reports to the executive board and who is selected pursuant to section 16-20.5-103 and who is responsible for coordinating the implementation of a strategic plan for and operating, supporting, maintaining, and enhancing the integrated criminal justice information system.

(4) "CICJIS" means the automated system of the Colorado integrated criminal justice

information system program that integrates agency systems.

(5) Repealed.

(6) "Criminal justice agency" means any of the following: The department of public safety, department of corrections, department of human services, judicial department, Colorado district attorneys council, and other approved agencies.

(7) "DCIS" means the department of corrections information system.

(8) "ICON" or "eclipse" means the integrated Colorado online network that is the judicial department's case management system.

(9) "Integrated criminal justice information system" or "system" means an automated information system capable of tracking the complete life cycle of a criminal case throughout its various stages involving different criminal justice agencies through potentially separate and individual systems and without unnecessary duplication of data collection, data storage, or data entry.

(10) "TRAILS" means the case management system of the division of youth corrections of the department of human services.

16-20.5-103. Colorado integrated criminal justice information system program - executive board. (1) There is hereby established the Colorado integrated criminal justice information system program, referred to in this article as the "program". The program shall be a joint effort of the criminal justice agencies and other approved agencies. The program shall be implemented, maintained, supported, and enhanced by the criminal justice information program executive board, which is hereby created and referred to in this article as the "executive board". Membership of the executive board shall be comprised initially of the executive directors of the department of public safety, department of corrections, department of human services, and Colorado district attorneys council and the state court administrator. The executive board shall unanimously designate a chief information officer. Upon unanimous agreement, the executive board may approve the addition of either voting or nonvoting members.

(2) The executive board shall be responsible and accountable for the program. The program shall include mechanisms to enable the criminal justice agencies to share data stored in each agency's information system. Initially, the program shall maximize the use of existing data bases and platforms through the use of a virtual data base created by a network linking existing data bases and platforms among the various departments. The program shall also develop plans for new interoperable system platforms when the existing platforms become obsolete.

16-20.5-104. Repeal of article. (Repealed)

16-20.5-105. Task force plan for implementation - integrated criminal justice information system. (Repealed)

16-20.5-106. Approval - funding. (Repealed)

16-20.5-107. Future modifications and purchases. (1) The executive board shall develop and maintain a process to determine if and how changes to existing criminal justice applications impact the integrated network. Changes to criminal justice applications, databases, platforms, or business processes that have an impact on the integrated network must be coordinated through and approved by the executive board.

(2) Any state-funded expenditures by a criminal justice agency for computer platforms, databases, or applications in support of criminal justice applications shall be reviewed and approved by the executive board. The executive board shall make recommendations concerning such purchases to all appropriate budgetary approval agencies.

16-20.5-108. Local criminal justice agencies pilot program. (Repealed)

ARTICLE 21

Offender-based Tracking System

16-21-101. Legislative declaration. The general assembly hereby finds and declares that the creation of an offender-based tracking system is necessary in order to improve the consistency of data shared by the different elements of the criminal justice system and to allow for the tracking of offenders through the criminal justice system. The general assembly further finds and declares that the offender-based tracking system should be operated through the Colorado integrated criminal justice information system program.

16-21-102. "Offender" defined. Except as otherwise provided in section 16-21-103, for the purposes of this article, "offender" means any person charged as an adult with a felony, a class 1 misdemeanor, or a misdemeanor pursuant to section 42-4-1301, C.R.S., or a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S.

16-21-103. Information on offenders required - duties of law enforcement agencies - court. (1) (a) For purposes of this section, unless the context otherwise requires:

(I) "Act of domestic violence" has the same meaning as set forth in section 18-6-800.3 (1), C.R.S.

(II) "Arrest number" means a number that shall be assigned by the arresting agency to an arrest of the arrestee.

(III) "Bureau" means the Colorado bureau of investigation.

(III.3) "CICJIS" means the Colorado integrated criminal justice information system program, as defined in section 16-20.5-102.

(III.5) "Electronic signature" means information transferred from one agency to another through CICJIS, including but not limited to warrants, mittimuses, judgments, and plea agreements.

(III.7) "ICON" means the integrated Colorado online network, as defined in section 16-20.5-102.

(IV) "Sexual offense" means crimes described in article 3 of title 18, C.R.S., and crimes described in articles 6 and 7 of title 18, C.R.S.

(V) "State identification number" means the number assigned to an offender by the bureau based on fingerprint identification.

(b) The requirements of this section are intended to complement the rules of criminal procedure and shall not be interpreted to conflict with or supersede any such rules.

(2) (a) A law enforcement agency that requests the filing of any criminal case shall submit to the district attorney the arresting agency's name, the offender's full name and date of birth, the charge or charges being requested, the investigating agency's case number, and the date of arrest and the arrest number. In addition, the law enforcement agency shall submit to the district attorney any relevant information about the offender's affiliation or association with gangs or gang activities.

(b) In addition to the information described in paragraph (a) of this subsection (2), a law enforcement agency shall comply with the following procedures:

(I) When requesting the filing of any felony, misdemeanor, or petty offense, criminal charge, or a violation of a municipal ordinance, the factual basis of which includes an act of domestic violence or a sexual offense, the law enforcement agency shall submit to the prosecuting attorney the information set forth in this subsection (2).

(II) If a law enforcement agency directly issues a complaint, summons, or summons and complaint for the charges described in subparagraph (I) of this paragraph (b), the agency shall identify on the face of such document whether the factual basis for the charge or charges includes an act of domestic violence or a sexual offense.

(3) A district attorney who files any criminal case with the court or who reports to the bureau a final disposition occurring in the district attorney's office shall submit the arresting agency's name, the offender's full name and date of birth, the investigating agency's case number, the date of arrest and the arrest number, and any other information that a law enforcement agency is required to submit in accordance with subsection (2) of this section.

(4) (a) Upon the issuance of a warrant of arrest, the court shall notify the sheriff of the county in which the court is located of the issuance of such warrant. When the court withdraws, cancels, quashes, or otherwise renders a warrant of arrest invalid, the court shall immediately notify the bureau of such action in a manner that is consistent with procedures established jointly by the state court administrator and the director of the bureau.

(b) When the court creates a new criminal case in ICON, the court shall electronically

notify the bureau of such action and shall provide the bureau with the arresting agency's name, the arrest date, and the arrest number provided to the court in accordance with subsection (3) of this section. Thereafter, the bureau shall electronically notify the court of the state identification number, if any, assigned to the offender.

(c) The court shall report the final disposition concerning an offender to the bureau in a form that is electronically consistent with applicable law. The report shall be made within seventy-two hours after the final disposition; except that the time period shall not include Saturdays, Sundays, or legal holidays. The report shall include the information provided to the court in accordance with subsection (3) of this section, the disposition of each charge, and the court case number, and, with respect to any charge, the factual basis of which includes an act of domestic violence or a sexual offense, the court and the bureau shall comply with the following procedures:

(I) The court shall advise the bureau to reflect the change of the status of domestic violence or sexual offense if the defendant is found not guilty of the alleged crime or if the case is dismissed.

(II) The court shall specify that there is a change in the status of the charge originally submitted to the bureau in accordance with paragraph (b) of this subsection (4), based upon the court's findings.

(III) The bureau shall reflect the change of status but shall not delete or eliminate information concerning the original charge.

(5) (a) The bureau shall maintain the information it receives pursuant to this article and shall make such information immediately available electronically to the department of corrections and to any other criminal justice agency upon request.

(b) Upon receipt of the fingerprints required pursuant to this article, the bureau shall perform a complete search of the bureau's files to identify any prior criminal record that the offender may have. Upon the association of a unique state identification number with any such offender, the bureau shall report such number electronically to CICJIS, the submitting agency, and the district attorney with jurisdiction over the offense. Upon nonassociation, the bureau shall create a new state identification number and electronically report the number to CICJIS and the submitting agency. Upon receipt of the number, CICJIS shall electronically report the number to the court and the district attorney with jurisdiction over the offense.

(6) The information received by the bureau pursuant to this article shall be made available to any sentencing court, probation office, or other pretrial services agency preparing a report on domestic violence or sexual offense cases.

16-21-104. Fingerprinting - ordered by court. (1) If the offender has not been fingerprinted and photographed for the charges pending before the court, the court at the first appearance of the offender after the filing of charges shall order the offender to report to the investigating agency within fourteen days for fingerprinting and photographing. The investigating agency shall endorse upon a copy of the order the completion of the fingerprinting and photographing and return the same to the court. At least one set of fingerprints and one set of photographs ordered pursuant to this section shall be forwarded by the investigating agency to

the Colorado bureau of investigation in a form and manner prescribed by such bureau.

(2) Any fingerprints required by this section to be forwarded shall be forwarded within twenty-four hours after completion; except that such time period shall not include Saturdays, Sundays, and legal holidays.

16-21-104.5. Electronic signatures - validity. The information contained in an electronic signature, as defined in section 16-21-103 (1) (a) (III.5), sent between agencies using CICJIS, as defined in section 16-20.5-102, shall be presumed to be valid on its face without signed hard copy.

16-21-105. Applicability of article to municipal courts - local law enforcement. (1) The provisions of this article concerning the duty of a law enforcement agency to identify on the face of a complaint, summons, or summons and complaint whether the factual basis of the charge or charges being filed include an act of domestic violence shall apply to local law enforcement agencies.

(2) The provisions of this article concerning the duty of a court to notify the bureau concerning actions involving crimes in which the charge or charges include an act of domestic violence shall apply to municipal courts.

ARTICLE 22

Colorado Sex Offender Registration Act

16-22-101. Short title. This article shall be known and may be cited as the "Colorado Sex Offender Registration Act".

16-22-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Birthday" means a person's birthday as reflected on the notice provided to the person pursuant to section 16-22-106 or 16-22-107 or the person's actual date of birth if the notice does not reflect the person's birthday.

(2) "CBI" means the Colorado bureau of investigation established pursuant to part 4 of article 33.5 of title 24, C.R.S.

(3) "Convicted" or "conviction" means having received a verdict of guilty by a judge or jury, having pleaded guilty or nolo contendere, having received a disposition as a juvenile, having been adjudicated a juvenile delinquent, or having received a deferred judgment and sentence or a deferred adjudication.

(3.5) "Employed at an institution of postsecondary education" means a person:

(a) Is employed by or is an independent contractor with an institution of postsecondary education or is employed by or is an independent contractor with an entity that contracts with an institution of postsecondary education; and

(b) Spends any period of time in furtherance of the employment or independent contractor relationship on the campus of the postsecondary institution or at a site that is owned or leased by the postsecondary institution.

(4) "Immediate family" means a person's spouse, parent, grandparent, sibling, or child.

(4.3) (a) "Lacks a fixed residence" means that a person does not have a living situation that meets the definition of "residence" pursuant to subsection (5.7) of this section. "Lacks a fixed residence" may include, but need not be limited to, outdoor sleeping locations or any public or private locations not designed as traditional living accommodations. "Lacks a fixed residence" may also include temporary public or private housing or temporary shelter facilities, residential treatment facilities, or any other residential program or facility if the person remains at the location for less than fourteen days.

(b) "Lacks a fixed residence" also includes a person who is registered in any jurisdiction if the person:

(I) Ceases to reside at an address in that jurisdiction; and

(II) Fails to register:

(A) A change of address in the same jurisdiction; or

(B) In a new jurisdiction pursuant to section 16-22-108 (4); or

(C) Pursuant to section 16-22-108 (3).

(4.5) "Local law enforcement agency" means the law enforcement agency, including but not limited to a campus police agency, that has jurisdiction over a certain geographic area.

(5) "Register" and "registration" include initial registration pursuant to section 16-22-104, and registration, confirmation of registration, and reregistration, as required in section 16-22-108.

(5.5) "Registrant" means a person who is required to register in accordance with this article.

(5.7) "Residence" means a place or dwelling that is used, intended to be used, or usually used for habitation by a person who is required to register pursuant to section 16-22-103. "Residence" may include, but need not be limited to, a temporary shelter or institution, if the person resides at the temporary shelter or institution for fourteen consecutive days or longer, if the owner of the shelter or institution consents to the person utilizing the shelter or institution as his or her registered address as required by section 16-22-106 (4) or 16-22-107 (4) (a), and if the residence of the person at the shelter or institution can be verified as required by section 16-22-109 (3.5). A person may establish multiple residences by residing in more than one place or dwelling.

(5.8) "Resides" includes residence and lacks a fixed residence.

(6) "Sex offender registry" means the Colorado sex offender registry created and maintained by the CBI pursuant to section 16-22-110.

(7) "Sexually violent predator" means a person who is found to be a sexually violent predator pursuant to section 18-3-414.5, C.R.S.

(8) "Temporary resident" means a person who is a resident of another state but in Colorado temporarily because the person is:

(a) Employed in this state on a full-time or part-time basis, with or without compensation, for more than fourteen consecutive business days or for an aggregate period of more than thirty days in any calendar year; or

(b) Enrolled in any type of educational institution in this state on a full-time or part-time basis; or

(c) Present in Colorado for more than fourteen consecutive business days or for an aggregate period of more than thirty days in a calendar year for any purpose, including but not limited to vacation, travel, or retirement.

(9) "Unlawful sexual behavior" means any of the following offenses or criminal attempt, conspiracy, or solicitation to commit any of the following offenses:

(a) (I) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(b) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(c) (I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(d) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(e) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(f) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(g) Enticement of a child, in violation of section 18-3-305, C.R.S.;

(h) Incest, in violation of section 18-6-301, C.R.S.;

(i) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(j) Human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2), C.R.S.;

(k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(l) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;

(m) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(n) Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.;

(o) Pandering of a child, in violation of section 18-7-403, C.R.S.;

(p) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;

(q) Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.;

(r) Pimping of a child, in violation of section 18-7-405, C.R.S.;

(s) Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.;

(t) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.;

(u) Engaging in sexual conduct in a correctional institution, in violation of section 18-7-701, C.R.S.;

(v) Wholesale promotion of obscenity to a minor, in violation of section 18-7-102 (1.5), C.R.S.;

(w) Promotion of obscenity to a minor, in violation of section 18-7-102 (2.5), C.R.S.;

(x) Class 4 felony internet luring of a child, in violation of section 18-3-306 (3), C.R.S.;

(y) Internet sexual exploitation of a child, in violation of section 18-3-405.4, C.R.S.;

(z) Public indecency, committed in violation of section 18-7-301 (2) (b), C.R.S., if a second offense is committed within five years of the previous offense or a third or subsequent offense is committed;

(aa) Invasion of privacy for sexual gratification, in violation of section 18-3-405.6, C.R.S.; or

(bb) Second degree kidnapping, if committed in violation of section 18-3-302 (3) (a), C.R.S.

16-22-103. Sex offender registration - required - applicability - exception. (1) Effective July 1, 1998, the following persons shall be required to register pursuant to the provisions of section 16-22-108 and shall be subject to the requirements and other provisions specified in this article:

(a) Any person who was convicted on or after July 1, 1991, in the state of Colorado, of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.;

(b) Any person who was convicted on or after July 1, 1991, in another state or jurisdiction, including but not limited to a military, tribal, territorial, or federal jurisdiction, of an offense that, if committed in Colorado, would constitute an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.; and

(c) Any person who was released on or after July 1, 1991, from the custody of the department of corrections of this state or any other state, having served a sentence for an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.

(2) (a) On and after July 1, 1994, any person who is convicted in the state of Colorado of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior, or any person who is released from the custody of the department of corrections having completed serving a sentence for unlawful sexual behavior or for another offense, the underlying factual basis of which involved unlawful sexual behavior, shall be required to register in the manner prescribed in section 16-22-104, section 16-22-106 or 16-22-107, whichever is applicable, and section 16-22-108.

(b) A person shall be deemed to have been convicted of unlawful sexual behavior if he or she is convicted of one or more of the offenses specified in section 16-22-102 (9), or of attempt,

solicitation, or conspiracy to commit one or more of the offenses specified in said section.

(c) (I) For convictions entered on or after July 1, 2002, a person shall be deemed to be convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior, if:

(A) The person is convicted of an offense that requires proof of unlawful sexual behavior as an element of the offense; or

(B) The person is convicted of an offense and is eligible for and receives an enhanced sentence based on a circumstance that requires proof of unlawful sexual behavior; or

(C) The person was originally charged with unlawful sexual behavior or with an offense that meets the description in sub-subparagraph (A) or (B) of this subparagraph (I), the person pleads guilty to an offense that does not constitute unlawful sexual behavior, and, as part of the plea agreement, the person admits, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior; or

(D) The person was charged with and convicted of an offense that does not constitute unlawful sexual behavior and the person admits on the record, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense involved unlawful sexual behavior.

(II) If a person is originally charged with unlawful sexual behavior or with an offense that meets the description in sub-subparagraph (A) or (B) of subparagraph (I) of this paragraph (c), the court may accept a plea agreement to an offense that does not constitute unlawful sexual behavior only if:

(A) The district attorney stipulates that the underlying factual basis of the offense to which the person is pleading guilty does not involve unlawful sexual behavior; or

(B) The person admits, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior.

(III) The advisement provided for purposes of this paragraph (c), in addition to meeting the requirements of the Colorado rules of criminal procedure, shall advise the person that admitting that the underlying factual basis of the offense to which the person is pleading or of which the person is convicted involves unlawful sexual behavior will have the collateral result of making the person subject to the requirements of this article. Notwithstanding any provision of this paragraph (c) to the contrary, failure to advise a person pursuant to the provisions of this subparagraph (III) shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the defendant had actual notice of the duty to register.

(IV) In any case in which a person is deemed to have been convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior, as provided in this paragraph (c), the judgment of conviction shall specify that the person is convicted of such an offense and specify the particular crime of unlawful sexual behavior involved.

(V) The provisions of this paragraph (c) shall apply to juveniles for purposes of determining whether a juvenile is convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior.

(d) (I) Notwithstanding any other provision of this section, any stipulation by a district

attorney and any finding by the court with regard to whether the offense of which the person is convicted includes an underlying factual basis involving unlawful sexual behavior, as defined in section 16-22-102, shall be binding on the department of corrections for purposes of classification. On or after July 1, 2008, if the department of corrections receives a mittimus that does not indicate the necessary findings as required by section 16-22-103 (2) (c) (II), the department shall notify the court and request that the court enter the necessary findings pursuant to section 16-22-103 (2) (c) (II).

(II) The department of corrections shall have the authority to make a determination that a person is a sex offender, as defined in section 16-11.7-102 (2) (a), for the purposes of classification and treatment if:

(A) The person has one or more prior convictions for a sex offense as defined in section 16-11.7-102 (3);

(B) The person has a prior offense for which a determination has been made by the court that the underlying factual basis involved a sex offense as defined in section 16-11.7-102 (3); or

(C) The person has been classified as a sex offender in accordance with procedures established by the department of corrections.

(III) The procedures established by the department of corrections to classify a person as a sex offender shall require that:

(A) The classification proceeding be conducted by a licensed attorney who shall serve as an administrative hearing officer;

(B) The offender's attorney be permitted to attend, represent, and assist the offender at the classification proceeding; and

(C) The offender be entitled to written notice of the reason for the proceeding, disclosure of the evidence to be presented against him or her, an opportunity to be heard in person and to present witnesses and documentary evidence, the right to confront and cross-examine adverse witnesses, unless the administrative hearing officer finds good cause for not allowing confrontation, and written findings and conclusions indicating the evidence and reasons relied upon for the classification as a sex offender.

(IV) Notwithstanding any statutory provisions to the contrary, the department of corrections shall ensure that all procedures and policies comply with the federal "Prison Rape Elimination Act of 2003", Pub.L. 108-79, as amended.

(3) In addition to the persons specified in subsections (1) and (2) of this section, any person convicted of an offense in any other state or jurisdiction, including but not limited to a military or federal jurisdiction, for which the person, as a result of the conviction, is, was, has been, or would be required to register if he or she resided in the state or jurisdiction of conviction, or for which such person would be required to register if convicted in Colorado, shall be required to register in the manner specified in section 16-22-108, so long as such person is a temporary or permanent resident of Colorado. Such person may petition the court for an order that discontinues the requirement for registration in this state at the times specified in section 16-22-113 for offense classifications that are comparable to the classification of the offense for which the person was convicted in the other state or jurisdiction.

(4) The provisions of this article shall apply to any person who receives a disposition or is adjudicated a juvenile delinquent based on the commission of any act that may constitute

unlawful sexual behavior or who receives a deferred adjudication based on commission of any act that may constitute unlawful sexual behavior; except that, with respect to section 16-22-113 (1) (a) to (1) (e), a person may petition the court for an order to discontinue the duty to register as provided in those paragraphs, but only if the person has not subsequently received a disposition for, been adjudicated a juvenile delinquent for, or been otherwise convicted of any offense involving unlawful sexual behavior. In addition, the duty to provide notice to a person of the duty to register, as set forth in sections 16-22-105 to 16-22-107, shall apply to juvenile parole and probation officers and appropriate personnel of the division of youth corrections in the department of human services.

(5) (a) Notwithstanding any provision of this article to the contrary, if, pursuant to a motion filed by a person described in this subsection (5) or on its own motion, a court determines that the registration requirement specified in this section would be unfairly punitive and that exempting the person from the registration requirement would not pose a significant risk to the community, the court, upon consideration of the totality of the circumstances, may exempt the person from the registration requirements imposed pursuant to this section if:

(I) The person was younger than eighteen years of age at the time of the commission of the offense; and

(II) The person has not been previously charged with unlawful sexual behavior; and

(III) The offense, as charged in the first petition filed with the court, is a first offense of either misdemeanor unlawful sexual contact, as described in section 18-3-404, C.R.S., or indecent exposure, as described in section 18-7-302, C.R.S.; and

(IV) The person has received a sex offender evaluation that conforms with the standards developed pursuant to section 16-11.7-103 (4) (i), from an evaluator who meets the standards established by the sex offender management board, and the evaluator recommends exempting the person from the registration requirements based upon the best interests of that person and the community; and

(V) The court makes written findings of fact specifying the grounds for granting such exemption.

(b) Any defendant who files a motion pursuant to this subsection (5) or the court, if considering its own motion, shall provide notice of the motion to the prosecuting district attorney. In addition, the court shall provide notice of the motion to the victim of the offense. Prior to deciding the motion, the court shall conduct a hearing on the motion at which both the district attorney and the victim shall have opportunity to be heard.

(6) Any person who is required to register pursuant to this section and fails to do so or otherwise fails to comply with the provisions of this article may be subject to prosecution for the offense of failure to register as a sex offender, as described in section 18-3-412.5, C.R.S. Failure of any governmental entity or any employee of any governmental entity to comply with any requirement of this article shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the defendant had actual notice of the duty to register.

16-22-104. Initial registration - effective date. (1) (a) (I) Beginning January 1, 2005, for any person required to register pursuant to section 16-22-103, the court, within the later of

twenty-four hours or the next business day after sentencing the person, shall electronically file with the CBI the initial registration of the person, providing the information required by the CBI.

(II) Beginning May 27, 2004, the court shall specify on the judgment of conviction the person's duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if the person is sentenced on or after January 1, 2005, and the person's duty to reregister.

(b) Any person who is sentenced prior to January 1, 2005, and who is required to register pursuant to section 16-22-103 shall initially register in the manner provided and within the times specified in section 16-22-108 (1) (a) for registration.

(c) The state court administrator is hereby authorized to receive and expend any public or private gifts, grants, or donations that may be available to offset the costs incurred in implementing the provisions of this subsection (1).

(2) Repealed.

16-22-105. Notice - requirements - residence - presumption. (1) Any person who is required to register pursuant to section 16-22-103 shall receive notice of the duty to register as provided in section 16-22-106 or 16-22-107, whichever is applicable. Such notice shall inform the person of the duty to register, in the manner provided in section 16-22-108, with the local law enforcement agency of each jurisdiction in which the person resides. The notice shall inform the person that he or she has a duty to register with local law enforcement agencies in any state or other jurisdiction to which the person may move and that the CBI shall notify the agency responsible for registration in the new state as provided in section 16-22-108 (4). The notice shall also inform the person that, at the time the person registers, he or she must provide his or her date of birth, a current photograph, and a complete set of fingerprints.

(2) Failure of any person to sign the notice of duty to register, as required in sections 16-22-106 and 16-22-107, shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the person had actual notice of the duty to register.

(3) For purposes of this article, any person who is required to register pursuant to section 16-22-103 shall register in all jurisdictions in which he or she establishes a residence. A person establishes a residence through an intent to make any place or dwelling his or her residence. The prosecution may prove intent to establish residence by reference to hotel or motel receipts or a lease of real property, ownership of real property, proof the person accepted responsibility for utility bills, proof the person established a mailing address, or any other action demonstrating such intent. Notwithstanding the existence of any other evidence of intent, occupying or inhabiting any dwelling for more than fourteen days in any thirty-day period shall constitute the establishment of residence.

16-22-106. Duties - probation department - community corrections administrator - court personnel - jail personnel - notice. (1) (a) If a person who is required to register pursuant to section 16-22-103 is sentenced to probation, the probation department, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of his

or her duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides or a statement that the person lacks a fixed residence. Beginning on May 27, 2004, the court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if sentenced on or after January 1, 2005, and to reregister.

(b) The probation department shall electronically notify the CBI of the date on which the person's probation is terminated, and the probation department shall notify the CBI if the person absconds or dies prior to the probation termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this paragraph (b).

(2) (a) If a person who is required to register pursuant to section 16-22-103 receives a direct sentence to community corrections, the administrator for the community corrections program, or his or her designee, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides. The court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration, if sentenced on or after January 1, 2005, and to reregister.

(b) The administrator of the community corrections program, or his or her designee, shall electronically notify the CBI of the date on which the sentence to community corrections is terminated, and the administrator of the community corrections program shall notify the CBI if the person escapes or dies prior to the sentence termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this paragraph (b).

(3) (a) (I) If a person who is required to register pursuant to section 16-22-103 is held for more than five business days in a county jail pending court disposition for any offense, the sheriff of the county in which the county jail is located, or his or her designee, shall transmit to the local law enforcement agency of the jurisdiction in which the person was last registered and to the CBI confirmation of the person's registration. The confirmation shall be transmitted on a standardized form provided by the CBI and shall include the address or addresses at which the person will reside while in custody of the county jail, the person's date of birth, a current photograph of the person, and the person's fingerprints. <P N=" "(3)(a)(II)"> (II) If a person who is required to register pursuant to section 16-22-103 is sentenced to a county jail for any offense, the sheriff of the county in which the county jail is located, or his or her designee, as soon as possible following sentencing, shall transmit to the local law enforcement agency of the jurisdiction in which the person was last registered and to the CBI confirmation of the person's registration. The confirmation shall be transmitted on a standardized form provided by the CBI and shall include the address or addresses at which the person will reside while in custody of the county jail, the

person's date of birth, a current photograph of the person, and the person's fingerprints.

(III) The provisions of this paragraph (a) shall apply to persons sentenced on or after January 1, 2005.

(b) At least five days prior to the discharge of the person from custody, the sheriff, or his or her designee, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon discharge.

(c) Within five days, but not fewer than two days, prior to the discharge of the person from custody, the sheriff, or his or her designee, shall notify the CBI and the local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person's discharge. Such notice, at a minimum, shall include the address at which the person plans to reside upon discharge, provided by the person pursuant to paragraph (b) of this subsection (3), and the person's date of birth, fingerprints, and current photograph.

(3.5) With regard to a person who is required to register within a state, military, or federal jurisdiction other than Colorado, the chief local law enforcement officer, or his or her designee, of the Colorado jurisdiction in which the person resides shall provide notice, as described in section 16-22-105, to the person as soon as possible after discovering the person's presence in the jurisdiction, of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each Colorado jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides.

(4) For any person who is required to register pursuant to section 16-22-103, who is not committed to the department of human services, and who is not sentenced to probation, community corrections, county jail, or the department of corrections, the judge or magistrate who has jurisdiction over the person shall, at sentencing, provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides or a statement that the person lacks a fixed residence.

16-22-107. Duties - department of corrections - department of human services - confirmation of registration - notice - address verification. (1) (a) If a person who is required to register pursuant to section 16-22-103 is sentenced to the department of corrections, the department of corrections shall transmit to the CBI confirmation of the person's registration on a standardized form provided by the CBI, including the person's date of birth and the person's fingerprints. The department of corrections shall also transmit a photograph of the person if requested by the CBI.

(b) The provisions of this subsection (1) shall apply to persons sentenced on or after

January 1, 2005.

(2) At least ten business days prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department of corrections shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon release or discharge or a statement that the person lacks a fixed residence.

(3) Within five days, but not fewer than two days, prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department shall notify the CBI and the local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person's release or discharge. Such notice shall include the address at which the person intends to reside upon release or discharge, provided by the person pursuant to subsection (2) of this section, and the person's date of birth and the person's current photograph if requested by the CBI. In addition, such notice may include additional information concerning the person, including but not limited to any information obtained in conducting the assessment to determine whether the person may be subject to community notification pursuant to section 16-13-903.

(4) (a) Prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, department of corrections personnel, if the person is being released on parole, or the local law enforcement agency of the jurisdiction in which the person intends to reside, if the person is being discharged, shall verify that:

(I) The address provided by the person pursuant to subsection (2) of this section is a residence;

(II) The occupants or owners of the residence know of the person's history of unlawful sexual behavior;

(III) The occupants or owners of the residence have agreed to allow the person to reside at the address; and

(IV) If the person is being released on parole, the address complies with any conditions imposed by the parole board.

(b) If, in attempting to verify the address provided by the person, department of corrections personnel or local law enforcement officers determine that any of the information specified in paragraph (a) of this subsection (4) is not true, the person shall be deemed to have provided false information to department personnel concerning the address at which the person intends to reside upon release.

(4.5) With regard to a person who has been sentenced to the department of corrections, is released on parole, and is required to register pursuant to section 16-22-103, the department shall electronically notify the CBI of the date on which the person's parole is terminated, and the department shall notify the CBI if the person absconds or dies prior to the parole termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in

which the person resides of the occurrence of any of the events specified in this subsection (4.5).

(5) In the case of a juvenile who is required to register pursuant to section 16-22-103 and is committed to the department of human services, said department shall have and carry out the duties specified in this section for the department of corrections with regard to said juvenile.

16-22-108. Registration - procedure - frequency - place - change of address - fee. (1) (a) (I) Each person who is required to register pursuant to section 16-22-103 shall register with the local law enforcement agency in each jurisdiction in which the person resides. A local law enforcement agency shall accept the registration of a person who lacks a fixed residence; except that the law enforcement agency is not required to accept the person's registration if it includes a residence or location that would violate state law or local ordinance. If the residence or location with which the person attempts to register constitutes such a violation, the law enforcement agency shall so advise the person and give the person an opportunity to secure an alternate location within five days.

(II) Each person who is required to register pursuant to section 16-22-103 shall initially register or, if sentenced on or after January 1, 2005, confirm his or her initial registration within five business days after release from incarceration for commission of the offense requiring registration or within five business days after receiving notice of the duty to register, if the person was not incarcerated. The person shall register with the local law enforcement agency during business hours by completing a standardized registration form provided to the person by the local law enforcement agency and paying the registration fee imposed by the local law enforcement agency as provided in subsection (7) of this section. The CBI shall provide standardized registration forms to the local law enforcement agencies pursuant to section 16-22-109.

(b) Except as otherwise provided in paragraph (d) of this subsection (1), each person who is required to register pursuant to section 16-22-103 shall reregister within five business days before or after the person's first birthday following initial registration and annually within five business days before or after the person's birthday thereafter. Such person shall reregister pursuant to this paragraph (b) with the local law enforcement agency of each jurisdiction in which the person resides within five business days before or after his or her birthday, in the manner provided in paragraph (a) of this subsection (1).

(c) Each person who is required to register pursuant to section 16-22-103 and who establishes an additional residence shall, within five business days after establishing an additional residence in any city, town, county, or city and county within Colorado, register with the local law enforcement agency of the jurisdiction in which he or she establishes the additional residence. The person shall register in said jurisdiction in the manner provided in paragraph (a) of this subsection (1) and shall reregister as provided in paragraph (b) of this subsection (1) or paragraph (d) of this subsection (1), whichever is applicable, in said jurisdiction so long as the person resides in said jurisdiction. For purposes of this paragraph (c), "additional residence" shall include, when the person's residence is a trailer or motor home, an address at which the person's trailer or motor home is lawfully located.

(d) (I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in subparagraph (II) of this paragraph (d) has a duty to

register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in subparagraph (II) of this paragraph (d), the person may petition the court for discontinuation of the duty to register as provided in section 16-22-113 (1) (d). In addition to registering as required in paragraph (a) of this subsection (1), the person shall reregister within five business days before or after the date that is three months after the date on which the person was released from incarceration for commission of the offense requiring registration or, if the person was not incarcerated, after the date on which he or she received notice of the duty to register. The person shall register within five business days before or after that date every three months thereafter until the person's birthday. The person shall reregister within five business days before or after his or her next birthday and shall reregister within five business days before or after that date every three months thereafter. The person shall reregister pursuant to this paragraph (d) with the local law enforcement agency of each jurisdiction in which the person resides or in any jurisdiction if the person lacks a fixed residence on the reregistration date, in the manner provided in paragraph (a) of this subsection (1).

(I.5) (A) A person convicted of an offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, who, as a result of the conviction, is required to register quarterly as a sex offender in the state or jurisdiction of conviction is required to register as provided in subparagraph (I) of this paragraph (d) so long as the person is a temporary or permanent resident of Colorado.

(B) A person convicted of an offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, which conviction would require the person to register as provided in subparagraph (I) of this paragraph (d) if the conviction occurred in Colorado, is required to register as provided in said subparagraph (I) so long as the person is a temporary or permanent resident of Colorado.

(II) The provisions of this paragraph (d) shall apply to persons convicted of one or more of the following offenses:

(A) Felony sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000, or felony sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000; or

(B) Sexual assault on a child in violation of section 18-3-405, C.R.S.; or

(C) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or

(D) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or

(E) Incest, in violation of section 18-6-301, C.R.S.; or

(F) Aggravated incest, in violation of section 18-6-302, C.R.S.

(e) Notwithstanding the time period for registration specified in paragraph (a) of this subsection (1), any person who is discharged from the department of corrections of this state or another state without supervision shall register in the manner provided in paragraph (a) of this subsection (1) no later than the next business day following discharge.

(2) Persons who reside within the corporate limits of any city, town, or city and county shall register at the office of the chief law enforcement officer of such city, town, or city and

county; except that, if there is no chief law enforcement officer of the city, town, or city and county in which a person resides, the person shall register at the office of the county sheriff of the county in which the person resides. Persons who reside outside of the corporate limits of any city, town, or city and county shall register at the office of the county sheriff of the county where such person resides.

(2.5) (a) Any person who is required to register pursuant to section 16-22-103 and who has been convicted of a child sex crime shall be required to register all e-mail addresses, instant-messaging identities, or chat room identities prior to using the address or identity. The entity that accepts the registration of a person required to register all e-mail addresses shall make a reasonable effort to verify all e-mail addresses provided by the person.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2.5), a person shall not be required to register an employment e-mail address if:

(I) The person's employer provided the e-mail address for use primarily in the course of the person's employment;

(II) The e-mail address identifies the employer by name, initials, or other commonly recognized identifier; and

(III) The person required to register is not an owner or operator of the employing entity that provided the e-mail address.

(c) For purposes of this section, "child sex crime" means sexual assault on a child, as described in section 18-3-405, C.R.S.; sexual assault on a child by one in a position of trust, as described in section 18-3-405.3, C.R.S.; unlawful sexual contact, as described in section 18-3-404 (1.5), C.R.S.; enticement of a child, as described in section 18-3-305, C.R.S.; aggravated incest, as described in section 18-6-302 (1) (b), C.R.S.; human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2), C.R.S.; sexual exploitation of children, as described in section 18-6-403, C.R.S.; procurement of a child for sexual exploitation, as described in section 18-6-404, C.R.S.; soliciting for child prostitution, as described in section 18-7-402, C.R.S.; pandering of a child, as described in section 18-7-403, C.R.S.; procurement of a child, as described in section 18-7-403.5, C.R.S.; keeping a place of child prostitution, as described in section 18-7-404, C.R.S.; pimping of a child, as described in section 18-7-405, C.R.S.; inducement of child prostitution, as described in section 18-7-405.5, C.R.S.; patronizing a prostituted child, as described in section 18-7-406, C.R.S.; internet luring of a child, as described in section 18-3-306, C.R.S.; internet sexual exploitation of a child, as described in section 18-3-405.4, C.R.S.; wholesale promotion of obscenity to a minor, as described in section 18-7-102 (1.5), C.R.S.; promotion of obscenity to a minor, as described in section 18-7-102 (2.5), C.R.S.; sexual assault, as described in section 18-3-402 (1) (d) and (1) (e), C.R.S.; sexual assault in the second degree as it existed prior to July 1, 2000, as described in section 18-3-403 (1) (e) and (1) (e.5), C.R.S.; or criminal attempt, conspiracy, or solicitation to commit any of the acts specified in this paragraph (c).

(d) The entity that accepts the registration of a person required to register all e-mail addresses, instant-messaging identities, or chat room identities pursuant to paragraph (a) of this subsection (2.5) shall require the person to sign a statement that the e-mail addresses, instant-messaging identities, or chat room identities provided on the registration form are e-mail addresses, instant-messaging identities, or chat room identities that the person has the authority to

use. The statement shall also state that providing false information related to the person's e-mail addresses, instant-messaging identities, or chat room identities may constitute a misdemeanor or felony criminal offense. This signed statement constitutes a reasonable effort to verify all e-mail addresses provided by the person as required by paragraph (a) of this subsection (2.5), but does not preclude additional verification efforts.

(3) Any person who is required to register pursuant to section 16-22-103 shall be required to register within five business days before or after each time the person:

(a) Changes such person's address, regardless of whether such person has moved to a new address within the jurisdiction of the law enforcement agency with which such person previously registered;

(a.5) Changes the address at which a vehicle, trailer, or motor home is located, if the vehicle, trailer, or motor home is the person's place of residence, regardless of whether the new address is within the jurisdiction of the law enforcement agency with which such person previously registered;

(b) Legally changes such person's name;

(c) Establishes an additional residence in another jurisdiction or an additional residence in the same jurisdiction;

(d) Becomes employed or changes employment or employment location, if employed at an institution of postsecondary education;

(e) Becomes enrolled or changes enrollment in an institution of postsecondary education, or changes the location of enrollment;

(f) Becomes a volunteer or changes the volunteer work location, if volunteering at an institution of postsecondary education;

(g) Changes his or her e-mail address, instant-messaging identity, or chat room identity, if the person is required to register that information pursuant to subsection (2.5) of this section. The person shall register the e-mail address, instant-messaging identity, or chat room identity prior to using it.

(h) Ceases to lack a fixed residence and establishes a residence; or

(i) Ceases to reside at an address and lacks a fixed residence.

(4) (a) (I) Any time a person who is required to register pursuant to section 16-22-103 ceases to reside at an address, the person shall register with the local law enforcement agency for his or her new address and include the address at which the person will no longer reside and all addresses at which the person will reside. The person shall file the new registration form within five business days after ceasing to reside at an address. The local law enforcement agency that receives the new registration form shall inform the previous jurisdiction of the cancellation of that registration and shall electronically notify the CBI of the registration cancellation.

(II) Any time a person who is required to register pursuant to section 16-22-103 ceases to reside at an address and moves to another state, the person shall notify the local law enforcement agency of the jurisdiction in which said address is located by completing a written registration cancellation form, available from the local law enforcement agency. At a minimum, the registration cancellation form shall indicate the address at which the person will no longer reside and all addresses at which the person will reside. The person shall file the registration cancellation form within five business days after ceasing to reside at an address. A local law

enforcement agency that receives a registration cancellation form shall electronically notify the CBI of the registration cancellation. If the person moves to another state, the CBI shall promptly notify the agency responsible for registration in the other state.

(b) If a person fails to submit the new registration form or registration cancellation form as required in paragraph (a) of this subsection (4) and the address at which the person is no longer residing is a group facility, officials at such facility may provide information concerning the person's cessation of residency to the local law enforcement agency of the jurisdiction in which the address is located. If the person is a juvenile or developmentally disabled and fails to submit the registration cancellation form as required in paragraph (a) of this subsection (4) and the address at which the person is no longer residing is the residence of his or her parent or legal guardian, the person's parent or legal guardian may provide information concerning the person's cessation of residency to the local law enforcement agency of the jurisdiction in which the address is located. Any law enforcement agency that receives such information shall reflect in its records that the person no longer resides at said group facility or the parent's or legal guardian's residence and shall transmit such information to the CBI. Provision of information by a group facility or a person's parent or legal guardian pursuant to this paragraph (b) shall not constitute a defense to a charge of failure to register as a sex offender.

(5) During the initial registration process for a temporary resident, the local law enforcement agency with which the temporary resident is registering shall provide the temporary resident with the registration information specified in section 16-22-105. A temporary resident who is required to register pursuant to the provisions of section 16-22-103 shall, within five business days after arrival in Colorado, register with the local law enforcement agency of each jurisdiction in which the temporary resident resides.

(6) Any person required to register pursuant to section 16-22-103, at the time the person registers with any local law enforcement agency in this state, and thereafter when annually reregistering on the person's birthday or the first business day following the birthday as required in paragraph (b) of subsection (1) of this section, shall sit for a current photograph or image of himself or herself and shall supply a set of fingerprints to verify the person's identity. The person shall bear the cost of the photograph or image and fingerprints.

(7) (a) A local law enforcement agency may establish a registration fee to be paid by persons registering and reregistering annually or quarterly with the local law enforcement agency pursuant to the provisions of this section. The amount of the fee shall reflect the actual direct costs incurred by the local law enforcement agency in implementing the provisions of this article but shall not exceed seventy-five dollars for the initial registration with the local law enforcement agency and twenty-five dollars for any subsequent annual or quarterly registration.

(b) The local law enforcement agency may waive the fee for an indigent person. For all other persons, the local law enforcement agency may pursue payment of the fee through a civil collection process or any other lawful means if the person is unable to pay at the time of registration. A local law enforcement agency shall accept a timely registration in all circumstances even if the person is unable to pay the fee at the time of registration.

(c) A local law enforcement agency may not charge a fee to a person who provides an update to his or her information pursuant to subsection (3) of this section.

16-22-109. Registration forms - local law enforcement agencies - duties. (1) The director of the CBI shall prescribe standardized forms to be used to comply with this article, and the CBI shall provide copies of the standardized forms to the courts, probation departments, community corrections programs, the department of corrections, the department of human services, and local law enforcement agencies. The standardized forms may be provided in electronic form. The standardized forms shall be used to register persons pursuant to this article and to enable persons to cancel registration, as necessary. The standardized forms shall provide that the persons required to register pursuant to section 16-22-103 disclose such information as is required on the standardized forms. The information required on the standardized forms shall include, but need not be limited to:

(a) The name, date of birth, address, and place of employment of the person required to register, and, if the place of employment is at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the person may be physically located;

(a.3) If the person's place of residence is a trailer or motor home, the address at which the trailer or motor home is lawfully located and the vehicle identification number, license tag number, registration number, and description, including color scheme, of the trailer or motor home;

(a.5) If the person is volunteering at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the person may be physically located;

(a.7) If the person enrolls or is enrolled in an institution of a postsecondary education, all addresses and locations of the institution of postsecondary education at which the person attends classes or otherwise participates in required activities;

(a.9) If a person lacks a fixed residence, any public or private locations where the person may be found or habitually sleeps, which information may include, but need not be limited to, cross-streets, intersections, directions to or identifiable landmarks of the locations, or any other information necessary to accurately identify the locations;

(b) All names used at any time by the person required to register, including both aliases and legal names;

(c) For any person who is a temporary resident of the state, the person's address in his or her state of permanent residence and the person's place of employment in this state or the educational institution in which he or she is enrolled in this state and, if the temporary resident of the state is enrolled in, employed by, or volunteers at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the temporary resident attends classes or otherwise participates in required activities or works or performs volunteer activities;

(d) The name, address, and location of any institution of postsecondary education where the person required to register is enrolled;

(e) The name, address, and location of any institution of postsecondary education where the person required to register volunteers;

(f) The vehicle identification number, license tag number, registration number, and

description, including color scheme, of any motor vehicle owned or leased by the person;

(g) All e-mail addresses, instant-messaging identities, and chat room identities to be used by the person if the person is required to register that information pursuant to section 16-22-108 (2.5).

(2) The standardized forms prepared by the CBI pursuant to this section, including electronic versions of said forms, shall be admissible in court without exclusion on hearsay or other evidentiary grounds and shall be self-authenticating as a public record pursuant to the Colorado rules of evidence.

(3) Upon receipt of any completed registration form pursuant to this article, the local law enforcement agency shall retain a copy of such form and shall report the registration to the CBI in the manner and on the standardized form prescribed by the director of the CBI. The local law enforcement agency shall, within three business days after the date on which a person is required to register, report to the CBI such registration and, if it is the registrant's first registration with the local law enforcement agency, transmit the registrant's fingerprints to the CBI. The local law enforcement agency shall transfer additional sets of fingerprints only when requesting CBI to conduct a comparison. The local law enforcement agency shall transmit a photograph of a registrant only upon request of the CBI.

(3.5) (a) The local law enforcement agency with which a person registers pursuant to this article shall, as soon as possible following the registrant's first registration with the local law enforcement agency and at least annually thereafter, verify the residential address reported by the registrant on the standardized form; except that, if the registrant is a sexually violent predator, the local law enforcement agency shall verify the registrant's residential address quarterly.

(b) If a person registers as "lacks a fixed residence", verification of the location or locations reported by the person shall be accomplished by the self-verification enhanced reporting process as described in paragraph (c) of this subsection (3.5). A local law enforcement agency shall not be required to verify the physical location of a person who is required to comply with the self-verification enhanced reporting process.

(c) (I) In addition to any other requirements pursuant to this article, a person who is subject to annual registration and who lacks a fixed residence shall, at least every three months, report to the local law enforcement agency in whose jurisdiction or jurisdictions the person is registered for the self-verification enhancement reporting of the location or locations where the person remains without a fixed residence. The self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, which may include a time schedule that is within five business days before or after the person's birthday. The person shall be required to verify his or her location or locations and verify any and all information required to be reported pursuant to this section.

(II) In addition to any other requirements pursuant to this article, a person who is subject to quarterly registration or registration every three months and who lacks a fixed residence shall, at least every month, report to each local law enforcement agency in whose jurisdiction the person is registered for the self-verification enhanced reporting of the location or locations where the person remains without a fixed residence. The self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, which may include a time schedule that is within five business days before or after the person's birthday. The person shall

be required to verify his or her location or locations and verify any and all information required to be reported pursuant to this section.

(III) A person required to register pursuant to this article who lacks a fixed residence and who fails to comply with the provisions of subparagraphs (I) and (II) of this paragraph (c) is subject to prosecution for the crime of failure to verify location as defined in section 18-3-412.6, C.R.S.

(d) Beginning on July 1, 2012, and ending January 1, 2015, the Colorado bureau of investigation and each local law enforcement agency, subject to available resources, shall report every six months to the department of public safety the number of persons who registered without a fixed residence. The department may require additional information to be reported. By March 31, 2015, the department shall assess the effectiveness of the registration for offenders who lack a fixed residence.

(4) The forms completed by persons required to register pursuant to this article shall be confidential and shall not be open to inspection by the public or any person other than law enforcement personnel, except as provided in sections 16-22-110 (6), 16-22-111, and 16-22-112 and section 25-1-124.5, C.R.S.

(5) Notwithstanding any provision of this article to the contrary, a requirement for electronic notification or electronic transmission of information specified in this article shall be effective on and after January 1, 2005. Prior to said date, or if an agency does not have access to electronic means of transmitting information, the notification and information requirements shall be met by providing the required notification or information by a standard means of transmittal.

16-22-110. Colorado sex offender registry - creation - maintenance - release of information. (1) The director of the Colorado bureau of investigation shall establish a statewide central registry of persons required to register pursuant to section 16-8-115 or 16-8-118 or as a condition of parole or pursuant to this article, to be known as the Colorado sex offender registry. The CBI shall create and maintain the sex offender registry as provided in this section. In addition, the CBI shall be the official custodian of all registration forms completed pursuant to this article and other documents associated with sex offender registration created pursuant to this article.

(2) The sex offender registry shall provide, at a minimum, the following information to all criminal justice agencies with regard to registered persons:

(a) Identification of a person's registration status;

(b) A person's date of birth;

(c) Descriptions of the offenses of unlawful sexual behavior of which a person has been convicted;

(d) Identification of persons who are identified as sexually violent predators;

(e) Notification to local law enforcement agencies when a person who is required to register pursuant to section 16-22-103 fails to register, when a person is required to reregister as provided in section 16-22-108, or when a person reregisters with another jurisdiction in accordance with the provisions of section 16-22-108;

(f) Specification of modus operandi information concerning any person who is required

to register pursuant to section 16-22-103.

(3) (a) In addition to the sex offender registry, the CBI shall maintain one or more interactive data base systems to provide, at a minimum, cross validation of a registrant's known names and known addresses with information maintained by the department of revenue concerning driver's licenses and identification cards issued under article 2 of title 42, C.R.S. Discrepancies between the known names or known addresses listed in the sex offender registry and information maintained by the department of revenue shall be reported through the Colorado crime information center to each local law enforcement agency that has jurisdiction over the location of the person's last-known residences.

(b) The Colorado integrated criminal justice information system established pursuant to article 20.5 of this title shall be used to facilitate the exchange of information among agencies as required in this subsection (3) whenever practicable.

(3.5) The Colorado bureau of investigation shall develop an interactive database within the sex offender registry to provide, at a minimum, the following information to all criminal justice agencies in whose jurisdictions an institution of postsecondary education is located:

(a) Identification of all persons required to register pursuant to section 16-22-103 who volunteer or are employed or enrolled at an institution of postsecondary education and the institution at which each such person volunteers, is employed, or is enrolled;

(b) Identification of all persons who are sexually violent predators who volunteer or are employed or enrolled at an institution of postsecondary education and the institution at which each such person volunteers, is employed, or is enrolled.

(4) Upon development of the interactive databases pursuant to subsection (3) of this section, personnel in the judicial department, the department of corrections, and the department of human services shall be responsible for entering and maintaining in the databases the information specified in subsection (2) of this section for persons in those departments' legal or physical custody. Each local law enforcement agency shall be responsible for entering and maintaining in the databases the information for persons registered with the agency who are not in the physical or legal custody of the judicial department, the department of corrections, or the department of human services.

(5) The CBI, upon receipt of fingerprints and conviction data concerning a person convicted of unlawful sexual behavior, shall transmit promptly such fingerprints and conviction data to the federal bureau of investigation.

(6) (a) The general assembly hereby recognizes the need to balance the expectations of persons convicted of offenses involving unlawful sexual behavior and the public's need to adequately protect themselves and their children from these persons, as expressed in section 16-22-112 (1). The general assembly declares, however, that, in making information concerning persons convicted of offenses involving unlawful sexual behavior available to the public, it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior.

(b) Pursuant to a request for a criminal history check under the provisions of part 3 of article 72 of title 24, C.R.S., the CBI may inform the requesting party as to whether the person who is the subject of the criminal history check is on the sex offender registry.

(c) A person may request from the CBI a list of persons on the sex offender registry.

(d) (Deleted by amendment, L. 2005, p. 611, § 1, effective May 27, 2005.)

(e) Any person requesting information pursuant to paragraph (c) of this subsection (6) shall show proper identification.

(f) Information released pursuant to this subsection (6), at a minimum, shall include the name, address or addresses, and aliases of the registrant; the registrant's date of birth; a photograph of the registrant, if requested and readily available; and the conviction resulting in the registrant being required to register pursuant to this article. Information concerning victims shall not be released pursuant to this section.

(7) The CBI may assess reasonable fees for the search, retrieval, and copying of information requested pursuant to subsection (6) of this section. The amount of such fees shall reflect the actual costs, including but not limited to personnel and equipment, incurred in operating and maintaining the sex offender registry. Any such fees received shall be credited to the sex offender registry fund, which fund is hereby created in the state treasury. The moneys in the sex offender registry fund shall be subject to annual appropriation by the general assembly for the costs, including but not limited to personnel and equipment, incurred in operating and maintaining the sex offender registry. The sex offender registry fund shall consist of the moneys credited thereto pursuant to this subsection (7) and subsection (9) of this section and any additional moneys that may be appropriated thereto by the general assembly. All interest derived from the deposit and investment of moneys in the sex offender registry fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the sex offender registry fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(8) Any information released pursuant to this section shall include in writing the following statement:

> The Colorado sex offender registry includes only those persons who have been required by law to register and who are in compliance with the sex offender registration laws. Persons should not rely solely on the sex offender registry as a safeguard against perpetrators of sexual assault in their communities. The crime for which a person is convicted may not accurately reflect the level of risk.

(9) The CBI shall seek and is hereby authorized to receive and expend any public or private gifts, grants, or donations that may be available to implement the provisions of this article pertaining to establishment and maintenance of the sex offender registry, including but not limited to provisions pertaining to the initial registration of persons pursuant to section 16-22-104 and the transmittal of information between and among local law enforcement agencies, community corrections programs, the judicial department, the department of corrections, the department of human services, and the CBI. Any moneys received pursuant to this subsection (9), except federal moneys that are custodial funds, shall be transmitted to the state treasurer for deposit in the sex offender registry fund created in subsection (7) of this section.

16-22-111. Internet posting of sex offenders - procedure. (1) The CBI shall post a link on the state of Colorado homepage on the internet to a list containing the names, addresses, and physical descriptions of certain persons and descriptions of the offenses committed by said persons. A person's physical description shall include, but need not be limited to, the person's sex, height, and weight, any identifying characteristics of the person, and a digitized photograph or image of the person. The list shall specifically exclude any reference to any victims of the offenses. The list shall include the following persons:

(a) Any person who is a sexually violent predator;

(b) Any person sentenced as or found to be a sexually violent predator under the laws of another state or jurisdiction;

(c) Any person who is required to register pursuant to section 16-22-103 and who has been convicted as an adult of two or more of the following offenses:

(I) A felony offense involving unlawful sexual behavior; or

(II) A crime of violence as defined in section 18-1.3-406, C.R.S.; and

(d) Any person who is required to register pursuant to section 16-22-103 because the person was convicted of a felony as an adult and who fails to register as required by section 16-22-108.

(1.5) In addition to the posting required by subsection (1) of this section, the CBI may post a link on the state of Colorado homepage on the internet to a list, including but not limited to the names, addresses, and physical descriptions of any person required to register pursuant to section 16-22-103, as a result of a conviction for a felony. A person's physical description shall include, but need not be limited to, the person's sex, height, weight, and any other identifying characteristics of the person. The list shall specifically exclude any reference to any victims of the offenses.

(2) (a) For purposes of paragraph (d) of subsection (1) of this section, a person's failure to register shall be determined by the CBI. Whenever the CBI's records show that a person has failed to register as required by this article, the CBI shall forward to each law enforcement agency with which the person is required to register notice of the person's failure to register by the required date. Each law enforcement agency, within three business days after receiving the notice, shall submit to the CBI written confirmation of the person's failure to register. Upon receipt of the written confirmation from the law enforcement agency, the CBI shall post the information concerning the person on the internet as required in this section.

(b) If a local law enforcement agency files criminal charges against a person for failure to register as a sex offender, as described in section 18-3-412.5, C.R.S., the local law enforcement agency shall notify the CBI. On receipt of the notification, the CBI shall post the information concerning the person on the internet, as specified in subsection (1) of this section.

(3) The internet posting required by this section shall be in addition to any other release of information authorized pursuant to this article or pursuant to part 9 of article 13 of this title, or any other provision of law.

16-22-112. Release of information - law enforcement agencies. (1) The general assembly finds that persons convicted of offenses involving unlawful sexual behavior have a

reduced expectation of privacy because of the public's interest in public safety. The general assembly further finds that the public must have access to information concerning persons convicted of offenses involving unlawful sexual behavior that is collected pursuant to this article to allow them to adequately protect themselves and their children from these persons. The general assembly declares, however, that, in making this information available to the public, as provided in this section and section 16-22-110 (6), it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior.

(2) (a) A local law enforcement agency shall release information regarding any person registered with the local law enforcement agency pursuant to this article to any person residing within the local law enforcement agency's jurisdiction. In addition, the local law enforcement agency may post the information specified in paragraph (b) of this subsection (2) on the law enforcement agency's web site.

(b) A local law enforcement agency may post on its web site sex offender registration information of a person from its registration list only if the person is:

(I) An adult convicted of a felony requiring the adult to register pursuant to section 16-22-103;

(II) An adult convicted of a second or subsequent offense of any of the following misdemeanors:

(A) Sexual assault as described in section 18-3-402 (1) (e), C.R.S.;

(B) Unlawful sexual contact as described in section 18-3-404, C.R.S.;

(C) Sexual assault on a client as described in section 18-3-405.5 (2), C.R.S.;

(D) Sexual exploitation of a child by possession of sexually exploitive material as described in section 18-6-403, C.R.S.;

(E) Indecent exposure as described in section 18-7-302, C.R.S.; or

(F) Sexual conduct in a correctional institution as described in section 18-7-701, C.R.S.;

(III) A juvenile with a second or subsequent adjudication involving unlawful sexual behavior or for a crime of violence as defined in section 18-1.3-406, C.R.S.; or

(IV) A juvenile who is required to register pursuant to section 16-22-103 because he or she was adjudicated for an offense that would have been a felony if committed by an adult and has failed to register as required by section 16-22-103.

(3) (a) (Deleted by amendment, L. 2005, p. 612, § 2, effective May 27, 2005.)

(b) At its discretion, a local law enforcement agency may release information regarding any person registered with the local law enforcement agency pursuant to this article to any person who does not reside within the local law enforcement agency's jurisdiction or may post the information specified in paragraph (b) of subsection (2) of this section on the law enforcement agency's web site. If a local law enforcement agency does not elect to release information regarding any person registered with the local law enforcement agency to a person not residing within the local law enforcement agency's jurisdiction, the local law enforcement agency may submit a request from the person to the CBI.

(c) (Deleted by amendment, L. 2005, p. 612, § 2, effective May 27, 2005.)

(d) Upon receipt of a request for information from a law enforcement agency pursuant to

this subsection (3), the CBI shall mail the requested information to the person making the request.

(e) (Deleted by amendment, L. 2007, p. 648, § 1, effective April 26, 2007.)

(3.5) To assist members of the public in protecting themselves from persons who commit offenses involving unlawful sexual behavior, a local law enforcement agency that chooses to post sex offender registration information on its web site shall either post educational information concerning protection from sex offenders on its web site or provide a link to the educational information included on the CBI web site maintained pursuant to section 16-22-111. A local law enforcement agency that posts the educational information shall work with the sex offender management board created pursuant to section 16-11.7-103 and sexual assault victims' advocacy groups in preparing the educational information.

(4) Information released pursuant to this section, at a minimum, shall include the name, address or addresses, and aliases of the registrant; the registrant's date of birth; a photograph of the registrant, if requested and readily available; and a history of the convictions of unlawful sexual behavior resulting in the registrant being required to register pursuant to this article. Information concerning victims shall not be released pursuant to this section.

(5) Any information released pursuant to this section shall include in writing the following statement:

> The Colorado sex offender registry includes only those persons who have been required by law to register and who are in compliance with the sex offender registration laws. Persons should not rely solely on the sex offender registry as a safeguard against perpetrators of sexual assault in their communities. The crime for which a person is convicted may not accurately reflect the level of risk.

16-22-113. Petition for removal from registry. (1) Except as otherwise provided in subsection (3) of this section, any person required to register pursuant to section 16-22-103 or whose information is required to be posted on the internet pursuant to section 16-22-111 may file a petition with the court that issued the order of judgment for the conviction that requires the person to register for an order to discontinue the requirement for such registration or internet posting, or both, as follows:

(a) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 1, 2, or 3 felony, after a period of twenty years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(b) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 4, 5, or 6 felony or the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404,

C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of ten years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(c) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a misdemeanor other than the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of five years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(d) If the person was required to register due to being placed on a deferred judgment and sentence or a deferred adjudication for an offense involving unlawful sexual behavior, after the successful completion of the deferred judgment and sentence or deferred adjudication and dismissal of the case, if the person prior to such time has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (a) of subsection (1.3) of this section;

(e) Except as otherwise provided in subparagraph (II) of paragraph (b) of subsection (1.3) of this section, if the person was younger than eighteen years of age at the time of commission of the offense, after the successful completion of and discharge from a juvenile sentence or disposition, and if the person prior to such time has not been subsequently convicted or has a pending prosecution for unlawful sexual behavior or for any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (b) of subsection (1.3) of this section. Any person petitioning pursuant to this paragraph (e) may also petition for an order removing his or her name from the sex offender registry. In determining whether to grant the order, the court shall consider whether the person is likely to commit a subsequent offense of or involving unlawful sexual behavior. The court shall base its determination on recommendations from the person's probation or community parole officer, the person's treatment provider, and the prosecuting attorney for the jurisdiction in which the person was tried and on the recommendations included in the person's presentence investigation report. In addition, the court shall consider any written or oral testimony submitted by the victim of the offense for which the petitioner was required to register. Notwithstanding the provisions of this subsection (1), a juvenile who files a petition pursuant to this section may file the petition with the court to which venue is transferred pursuant to section 19-2-105, C.R.S., if any.

(f) If the information about the person was required to be posted on the internet pursuant to section 16-22-111 (1) (d) only for failure to register, if the person has fully complied with all

registration requirements for a period of not less than one year and if the person, prior to such time, has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior; except that the provisions of this paragraph (f) shall apply only to a petition to discontinue the requirement for internet posting.

(1.3) (a) If a person is eligible to petition to discontinue his or her duty to register pursuant to paragraph (d) of subsection (1) of this section, the court, at least sixty-three days before dismissing the case, shall notify each of the parties described in paragraph (a) of subsection (2) of this section, the person, and the victim of the offense for which the person was required to register, if the victim has requested notice and has provided current contact information, that the court will consider whether to order that the person may discontinue his or her duty to register when the court dismisses the case as a result of the person's successful completion of the deferred judgment and sentence or deferred adjudication. The court shall set the matter for hearing if any of the parties described in paragraph (a) of subsection (2) of this section or the victim of the offense objects or if the person requests a hearing. If the court enters an order discontinuing the person's duty to register, the person shall send a copy of the order to each local law enforcement agency with which the person is registered and to the CBI. If the victim of the offense has requested notice, the court shall notify the victim of its decision either to continue or discontinue the person's duty to register.

(b) (I) If a juvenile is eligible to petition to discontinue his or her duty to register pursuant to paragraph (e) of subsection (1) of this section, the court, at least sixty-three days before discharging the juvenile's sentence, shall notify each of the parties described in paragraph (a) of subsection (2) of this section, the juvenile, and the victim of the offense for which the juvenile was required to register, if the victim has requested notice and has provided current contact information, that the court shall consider whether to order that the juvenile may discontinue his or her duty to register when the court discharges the juvenile's sentence. The court shall set the matter for hearing if any of the parties described in paragraph (a) of subsection (2) of this section or the victim of the offense objects, or if the juvenile requests a hearing, and shall consider the criteria in paragraph (e) of subsection (1) of this section in determining whether to continue or discontinue the duty to register. If the court enters an order discontinuing the juvenile's duty to register, the department of human services shall send a copy of the order to each local law enforcement agency with which the juvenile is registered, the juvenile parole board, and to the CBI. If the victim of the offense has requested notice, the court shall notify the victim of its decision either to continue or discontinue the juvenile's duty to register.

(II) If a juvenile is eligible to petition to discontinue his or her registration pursuant to paragraph (e) of subsection (1) of this section and is under the custody of the department of human services and yet to be released on parole by the juvenile parole board, the department of human services may petition the court to set a hearing pursuant to paragraph (e) of subsection (1) of this section at least sixty-three days before the juvenile is scheduled to appear before the juvenile parole board.

(III) If a juvenile is eligible to petition to discontinue his or her registration pursuant to paragraph (e) of subsection (1) of this section and is under the custody of the department of human services and yet to be released on parole by the juvenile parole board, the department of

human services, prior to setting the matter for hearing, shall modify the juvenile's parole plan or parole hearing to acknowledge the court order or petition unless it is already incorporated in the parole plan.

(1.5) If the conviction that requires a person to register pursuant to the provisions of section 16-22-103 was not obtained from a Colorado court, the person seeking to discontinue registration or internet posting or both may file a civil case with the district court of the judicial district in which the person resides and seek a civil order to discontinue the requirement to register or internet posting or both under the circumstances specified in subsection (1) of this section.

(2) (a) Prior to filing a petition pursuant to this section, the petitioner shall notify each of the following parties by certified mail of the petitioner's intent to file a request pursuant to this section:

(I) Each local law enforcement agency with which the petitioner is required to register;

(II) The prosecuting attorney for the jurisdiction in which each such local law enforcement agency is located; and

(III) The prosecuting attorney who obtained the conviction for which the petitioner is required to register.

(b) When filing the petition, the petitioner shall attach to the petition copies of the return receipts received from each party notified pursuant to paragraph (a) of this subsection (2).

(c) Upon the filing of the petition, the court shall set a date for a hearing and shall notify the victim of the offense for which the petitioner was required to register, if the victim of the offense has requested notice and has provided current contact information. If the court enters an order discontinuing the petitioner's duty to register, the petitioner shall send a copy of the order to each local law enforcement agency with which the petitioner is registered and the CBI. If the victim of the offense has requested notice, the court shall notify the victim of the offense of its decision either to continue or discontinue the petitioner's duty to register.

(d) On receipt of a copy of an order discontinuing a petitioner's duty to register:

(I) The CBI shall remove the petitioner's sex offender registration information from the sex offender registry; and

(II) If the local law enforcement agency maintains a local registry of sex offenders who are registered with the local law enforcement agency, the local law enforcement agency shall remove the petitioner's sex offender registration information from the local sex offender registry.

(3) The following persons shall not be eligible for relief pursuant to this section, but shall be subject for the remainder of their natural lives to the registration requirements specified in this article or to the comparable requirements of any other jurisdictions in which they may reside:

(a) Any person who is a sexually violent predator;

(b) Any person who is convicted as an adult of:

(I) Sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000, or sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000; or

(II) Sexual assault on a child, in violation of section 18-3-405, C.R.S.; or

(III) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or

(IV) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or

(V) Incest, in violation of section 18-6-301, C.R.S.; or

(VI) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(c) Any adult who has more than one conviction or adjudication for unlawful sexual behavior in this state or any other jurisdiction.

16-22-114. Immunity. State agencies and their employees and local law enforcement agencies and their employees are immune from civil or criminal liability for the good faith implementation of this article.

16-22-115. CBI assistance in apprehending sex offenders who fail to register. In an effort to ensure that a sexual offender who fails to respond to address-verification attempts or who otherwise absconds from registration is located in a timely manner, the Colorado bureau of investigation shall share information with local law enforcement agencies. The Colorado bureau of investigation shall use analytical resources to assist local law enforcement agencies to determine the potential whereabouts of sex offenders who fail to respond to address-verification attempts or who otherwise abscond from registration. The Colorado bureau of investigation shall review and analyze all available information concerning a sex offender who fails to respond to address-verification attempts or otherwise absconds from registration and provide the information to local law enforcement agencies in order to assist in locating and apprehending the sex offender.

ARTICLE 23

DNA Crime Prevention and Exoneration
of the Innocent Act

16-23-101. Short title. This article shall be known and may be cited as "Katie's Law".

16-23-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The collection and use of DNA by law enforcement agencies is a valuable tool in

preventing crime;

(b) The analysis of DNA has been used numerous times in the exoneration of innocent individuals charged with or convicted of crimes; and

(c) The implementation of this article will result in preventing a significant number of violent crimes in Colorado and in solving a number of unsolved crimes in Colorado.

16-23-103. Collection of biological samples from persons arrested for or charged with felonies. (1) The following persons shall submit to collection of a biological substance sample for testing to determine the genetic markers thereof, unless the person has previously provided a biological substance sample for such testing pursuant to a statute of this state and the Colorado bureau of investigation has that sample:

(a) Every adult arrested on or after September 30, 2010, for a felony offense or for the investigation of a felony offense. The arresting law enforcement agency shall collect the biological substance sample from the arrested person as part of the booking process.

(b) (I) Every adult who is charged with a felony by an indictment, information, or felony complaint filed on or after September 30, 2010, and who is not arrested in connection with the felony charge on or after September 30, 2010, whether because the person's arrest occurred before that date, because the person's appearance is procured by summons rather than arrest, or for other reasons.

(II) In cases where a booking process occurs on or after September 30, 2010, the law enforcement agency conducting the booking process shall collect the biological substance sample from the charged adult as part of the booking process.

(III) In all other cases, upon the adult's first appearance in court following the filing of charges, the court shall require the adult to submit to collection of a biological substance sample by the investigating agency responsible for fingerprinting pursuant to section 16-21-104, and that agency shall collect the sample.

(2) (a) At the person's first appearance in court following the filing of charges, the court shall advise the person that the biological substance sample collected pursuant to this section shall be destroyed and the results of the testing of the sample shall be expunged from the federal combined DNA index system and any state index system pursuant to the circumstances described in section 16-23-105.

(b) When an action occurs that qualifies an adult for expungement pursuant to section 16-23-105 (1), the court or district attorney shall advise the adult that the adult may make a request to the Colorado bureau of investigation to have the biological substance sample collected pursuant to this section destroyed and results of the testing of the sample expunged from the federal combined DNA index system and any state index system pursuant to the process described in section 16-23-105.

(3) If collection of a biological substance sample is impractical at the time specified in subsection (1) of this section, an appropriate agency may collect a sample at any other time during the adult's detention or during the pendency of charges.

(4) An agency collecting a biological substance sample pursuant to this section shall make reasonable efforts to determine if the Colorado bureau of investigation already holds a

biological substance sample from the adult. If, but only if, the agency determines that the Colorado bureau of investigation already holds a sample from the adult, then the agency need not collect a sample.

(5) A law enforcement agency may use reasonable force to collect biological substance samples in accordance with this article using medically recognized procedures.

(6) Each law enforcement agency that collects a biological substance sample shall submit the sample to the Colorado bureau of investigation for testing.

16-23-104. Collection and testing. (1) The Colorado bureau of investigation shall provide all specimen vials, mailing tubes, labels, and other materials and instructions necessary for the collection of biological substance samples required pursuant to this article.

(2) The Colorado bureau of investigation shall chemically test the biological substance samples collected pursuant to this article. The Colorado bureau of investigation shall file and maintain the testing results in the state index system after receiving confirmation from the arresting or charging agency that the adult was charged with a felony. If the Colorado bureau of investigation does not receive confirmation of a felony charge within a year after receiving the sample for testing, the Colorado bureau of investigation shall destroy the biological sample and any results from the testing of the sample. The Colorado bureau of investigation shall furnish the results to a law enforcement agency upon request. The Colorado bureau of investigation shall store and preserve all biological substance samples obtained pursuant to this article.

16-23-105. Expungement. (1) Except as provided in subsection (7) of this section, a person whose biological substance sample is collected pursuant to section 16-23-103 qualifies for expungement if:

(a) In the case of a sample collected based upon the filing of a charge or based upon a final court order, each felony charge stemming from the charges has, by final court order, been dismissed, resulted in an acquittal, or resulted in a conviction for an offense other than a felony offense;

(b) In the case of a sample collected based upon an arrest:

(I) A felony charge was not filed within ninety days after the arrest; or

(II) Each felony charge stemming from the arrest has, by final court order, been dismissed, resulted in an acquittal, or resulted in a conviction for an offense other than a felony offense.

(2) A person who qualifies for expungement under subsection (1) of this section may submit a written request for expungement to the Colorado bureau of investigation. The request shall include the items listed in this subsection (2) and may include any additional information that may assist the bureau in locating the records of arrest or charges or the biological substance sample or testing results. The following information shall be included in the submitted request:

(a) The person's name, date of birth, and mailing address;

(b) The name of the agency that collected the biological substance sample;

(c) The date of arrest or other date when the sample was taken;

(d) Whether any charges were filed stemming from the arrest for which a biological substance sample was collected, the identity of the court, and the case number of each case in which charges were filed; and

(e) A declaration that, to the best of the person's knowledge, he or she qualifies for expungement.

(3) Upon receipt of a request satisfying the requirements of subsection (2) of this section, the Colorado bureau of investigation shall promptly submit a written inquiry to the district attorney in the jurisdiction in which the person's biological substance sample was collected concerning the outcome of the arrest or charges.

(4) Within ninety days after receiving the request submitted pursuant to subsection (2) of this section, the Colorado bureau of investigation shall destroy the biological substance sample collected pursuant to section 16-23-103 and expunge the results of the testing of the sample from the federal combined DNA index system and any state index system, unless the bureau receives written notification from the applicable district attorney that the person does not qualify for expungement and the reasons that the person does not qualify.

(5) Within thirty days after receiving a notice from a district attorney pursuant to subsection (4) of this section, or at the end of the ninety-day period identified in subsection (4) of this section, whichever is earlier, the Colorado bureau of investigation shall send notification by first class mail to the person arrested or charged, either stating that the bureau has destroyed the biological substance sample and expunged the results of the testing of the sample or stating why the bureau has not destroyed the sample and expunged the test results.

(6) A data bank or database match shall not be admitted as evidence against a person in a criminal prosecution and shall not be used as a basis to identify a person if the match is:

(a) Derived from a biological substance sample that is required to be destroyed or expunged pursuant to this section; and

(b) Obtained after the required date of destruction or expungement.

(7) This section shall not apply if the person has been arrested for, charged with, or convicted of some other offense on the basis of which a biological substance sample was or could have been collected under state statute.

(8) For purposes of this section, a court order shall not be deemed final if time remains for an appeal or application for discretionary review with respect to the order.