

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0579.01 Michael Dohr x4347

HOUSE BILL 16-1233

HOUSE SPONSORSHIP

Ransom,

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MODIFYING THE PROCEDURE FOR SENTENCING IN CLASS

102 1 FELONIES WHEN THE DEATH PENALTY IS SOUGHT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

The bill changes the process for sentencing for class 1 felonies when the death penalty is sought. The bill creates an aggravation phase at which the prosecution must prove one or more aggravating circumstances beyond a reasonable doubt to the unanimous satisfaction of a jury. The bill also creates a penalty phase at which the defendant has the burden to prove one or more mitigating circumstances by a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

preponderance of evidence, and the jury determines unanimously whether the mitigating circumstances call for leniency. The bill also establishes a procedure for a retrial of the aggravation phase and the penalty phase in the event the jury cannot reach a unanimous verdict.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-8-103.6, **amend**
3 (2) (a) as follows:

4 **16-8-103.6. Waiver of privilege.** (2) (a) A defendant who places
5 his or her mental condition at issue by pleading not guilty by reason of
6 insanity pursuant to section 16-8-103 or disclosing witnesses who may
7 provide evidence concerning the defendant's mental condition during a
8 sentencing hearing held pursuant to ~~section~~ SECTION 18-1.3-1201,
9 18-1.3-1201.5, or 18-1.4-102, C.R.S., or, for offenses committed on or
10 after July 1, 1999, by seeking to introduce evidence concerning his or her
11 mental condition pursuant to section 16-8-107 (3) waives any claim of
12 confidentiality or privilege as to communications made by the defendant
13 to a physician or psychologist in the course of an examination or
14 treatment for such mental condition for the purpose of any trial, hearing
15 on the issue of such mental condition, or sentencing hearing conducted
16 pursuant to ~~section~~ SECTION 18-1.3-1201, 18-1.3-1201.5, or 18-1.4-102,
17 C.R.S. The court shall order both the prosecutor and the defendant to
18 exchange the names, addresses, reports, and statements of any physician
19 or psychologist who has examined or treated the defendant for such
20 mental condition.

21 **SECTION 2.** In Colorado Revised Statutes, 16-8-106, **amend** (2)
22 (c) and (3) (b) as follows:

23 **16-8-106. Examinations and report.** (2) (c) The defendant shall

1 cooperate with psychiatrists, forensic psychologists, and other personnel
2 conducting any examination ordered by the court pursuant to this section.
3 Statements made by the defendant in the course of such examination shall
4 be protected as provided in section 16-8-107. If the defendant does not
5 cooperate with psychiatrists, forensic psychologists, and other personnel
6 conducting the examination, the court shall not allow the defendant to
7 call any psychiatrist, forensic psychologist, or other expert witness to
8 provide evidence at the defendant's trial concerning the defendant's
9 mental condition including, but not limited to, providing evidence on the
10 issue of insanity or at any sentencing hearing held pursuant to ~~section~~
11 SECTION 18-1.3-1201, 18-1.3-1201.5, or 18-1.4-102, C.R.S. In addition,
12 the fact of the defendant's noncooperation with psychiatrists, forensic
13 psychologists, and other personnel conducting the examination may be
14 admissible in the defendant's trial to rebut any evidence introduced by the
15 defendant with regard to the defendant's mental condition including, but
16 not limited to, the issue of insanity and in any sentencing hearing held
17 pursuant to ~~section~~ SECTION 18-1.3-1201, 18-1.3-1201.5, or 18-1.4-102,
18 C.R.S. This paragraph (c) shall apply to offenses committed on or after
19 July 1, 1999.

20 (3) (b) To aid in forming an opinion as to the mental condition of
21 the defendant, it is permissible in the course of an examination under this
22 section to use confessions and admissions of the defendant and any other
23 evidence of the circumstances surrounding the commission of the
24 offense, as well as the medical and social history of the defendant, in
25 questioning the defendant. When the defendant is noncooperative with
26 psychiatrists, forensic psychologists, and other personnel conducting the
27 examination, an opinion of the mental condition of the defendant may be

1 rendered by such psychiatrists, forensic psychologists, or other personnel
2 based upon such confessions, admissions, and any other evidence of the
3 circumstances surrounding the commission of the offense, as well as the
4 known medical and social history of the defendant, and such opinion may
5 be admissible into evidence at trial and in any sentencing hearing held
6 pursuant to ~~section~~ SECTION 18-1.3-1201, 18-1.3-1201.5, or 18-1.4-102,
7 C.R.S. It shall also be permissible to conduct a narcoanalytic interview
8 of the defendant with such drugs as are medically appropriate and to
9 subject the defendant to polygraph examination. In any trial or hearing on
10 the issue of the defendant's sanity or eligibility for release and in any
11 sentencing hearing held pursuant to ~~section~~ SECTION 18-1.3-1201,
12 18-1.3-1201.5, or 18-1.4-102, C.R.S., the physicians and other personnel
13 conducting the examination may testify to the results of any such
14 procedures and the statements and reactions of the defendant insofar as
15 the same entered into the formation of their opinions as to the mental
16 condition of the defendant both at the time of the commission of the
17 alleged offense and at the present time. This paragraph (b) shall apply to
18 offenses committed on or after July 1, 1995.

19 **SECTION 3.** In Colorado Revised Statutes, 16-8-107, **amend** (1)
20 (b), (1) (c), and (1.5) (b) as follows:

21 **16-8-107. Evidence.** (1) (b) Evidence acquired directly or
22 indirectly for the first time from a communication derived from the
23 defendant's mental processes during the course of a court-ordered
24 examination under section 16-8-108 or acquired pursuant to section
25 16-8-103.6 is admissible at any sentencing hearing held pursuant to
26 ~~section~~ SECTION 18-1.3-1201, 18-1.3-1201.5, 18-1.3-1302, or 18-1.4-102,
27 C.R.S., only to prove the existence or absence of any mitigating factor.

1 (c) If the defendant testifies in his or her own behalf upon the trial
2 of the issues raised by the plea of not guilty or at a sentencing hearing
3 held pursuant to ~~section~~ SECTION 18-1.3-1201, 18-1.3-1201.5,
4 18-1.3-1302, or 18-1.4-102, C.R.S., the provisions of this section shall
5 not bar any evidence used to impeach or rebut the defendant's testimony.

6 (1.5)(b) Evidence acquired directly or indirectly for the first time
7 from a communication derived from the defendant's mental processes
8 during the course of a court-ordered examination under section 16-8-106
9 or acquired pursuant to section 16-8-103.6 is admissible at any
10 sentencing hearing held pursuant to ~~section~~ SECTION 18-1.3-1201,
11 18-1.3-1201.5, or 18-1.4-102, C.R.S., only to prove the existence or
12 absence of any mitigating factor.

13 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-108, **amend**
14 (1) (b) and (1) (c) as follows:

15 **16-8.5-108. Evidence.** (1) (b) Evidence acquired directly or
16 indirectly for the first time from a communication derived from the
17 defendant's mental processes during the course of a competency
18 evaluation or involuntary medication proceeding is admissible at any
19 sentencing hearing held pursuant to ~~section~~ SECTION 18-1.3-1201,
20 18-1.3-1201.5, 18-1.3-1302, or 18-1.4-102, C.R.S., only to prove the
21 existence or absence of any mitigating factor.

22 (c) If the defendant testifies on his or her own behalf upon the
23 trial of the issues raised by the plea of not guilty or, for offenses that
24 occurred before July 1, 1995, a plea of not guilty by reason of impaired
25 mental condition, or at a sentencing hearing held pursuant to ~~section~~
26 SECTION 18-1.3-1201, 18-1.3-1201.5, 18-1.3-1302, or 18-1.4-102, C.R.S.,
27 the provisions of this section shall not bar any evidence used to impeach

1 or rebut the defendant's testimony.

2 **SECTION 5.** In Colorado Revised Statutes, 16-12-202, **add** (5)
3 as follows:

4 **16-12-202. Unitary procedure for appeals - scope and**
5 **applicability.** (5) FOR CASES IN WHICH A DEATH SENTENCE IS IMPOSED
6 PURSUANT TO SECTION 18-1.3-1201.5, C.R.S., THIS PART 2 APPLIES.

7 **SECTION 6.** In Colorado Revised Statutes, 18-1-409, **amend** (1)
8 as follows:

9 **18-1-409. Appellate review of sentence for a felony.** (1) When
10 sentence is imposed upon any person following a conviction of any
11 felony, other than a class 1 felony in which a death sentence is
12 automatically reviewed pursuant to ~~section~~ SECTION 18-1.3-1201 (6),
13 18-1.3-1201.5 (22), 18-1.3-1302 (6), or 18-1.4-102 (6), the person
14 convicted shall have the right to one appellate review of the propriety of
15 the sentence, having regard to the nature of the offense, the character of
16 the offender, and the public interest, and the manner in which the
17 sentence was imposed, including the sufficiency and accuracy of the
18 information on which it was based; except that, if the sentence is within
19 a range agreed upon by the parties pursuant to a plea agreement, the
20 defendant shall not have the right of appellate review of the propriety of
21 the sentence. The procedures to be employed in the review shall be as
22 provided by supreme court rule.

23 **SECTION 7.** In Colorado Revised Statutes, 18-1.3-104, **amend**
24 (1) (c) as follows:

25 **18-1.3-104. Alternatives in imposition of sentence.** (1) Within
26 the limitations of the applicable statute pertaining to sentencing and
27 subject to the provisions of this title, the trial court has the following

1 alternatives in entering judgment imposing a sentence:

2 (c) The defendant shall be sentenced to death in those cases in
3 which a death sentence is required under ~~section~~ SECTION 18-1.3-1201,
4 18-1.3-1201.5, 18-1.3-1302, or 18-1.4-102.

5 **SECTION 8.** In Colorado Revised Statutes, 18-1.3-401, **amend**
6 (4) (a) as follows:

7 **18-1.3-401. Felonies classified - presumptive penalties.**

8 (4) (a) A person who has been convicted of a class 1 felony shall be
9 punished by life imprisonment in the department of corrections unless a
10 proceeding held to determine sentence according to the procedure set
11 forth in ~~section~~ SECTION 18-1.3-1201, 18-1.3-1201.5, 18-1.3-1302, or
12 18-1.4-102, results in a verdict that requires imposition of the death
13 penalty, in which event such person shall be sentenced to death. As to any
14 person sentenced for a class 1 felony, for an act committed on or after
15 July 1, 1985, and before July 1, 1990, life imprisonment shall mean
16 imprisonment without the possibility of parole for forty calendar years.
17 As to any person sentenced for a class 1 felony, for an act committed on
18 or after July 1, 1990, life imprisonment shall mean imprisonment without
19 the possibility of parole.

20 **SECTION 9.** In Colorado Revised Statutes, 18-1.3-801, **amend**
21 (1) (e) as follows:

22 **18-1.3-801. Punishment for habitual criminals.** (1) (e) Nothing
23 in this subsection (1) is to be construed to prohibit a person convicted of
24 a class 1 felony from being sentenced pursuant to ~~section~~ SECTION
25 18-1.3-1201, 18-1.3-1201.5, 18-1.3-1302, or 18-1.4-102.

26 **SECTION 10.** In Colorado Revised Statutes, 18-1.3-1201, **add**
27 (9) as follows:

1 **18-1.3-1201. Imposition of sentence in class 1 felonies -**
2 **appellate review.** (9) THIS SECTION APPLIES TO OFFENSES OCCURRING
3 BEFORE FEBRUARY 1, 2017.

4 **SECTION 11.** In Colorado Revised Statutes, **add** 18-1.3-1201.5
5 as follows:

6 **18-1.3-1201.5. Imposition of sentence in class 1 felonies -**
7 **appellate review - definitions.** (1) (a) UPON CONVICTION OF GUILT OF
8 A DEFENDANT OF A CLASS 1 FELONY, THE TRIAL COURT SHALL CONDUCT
9 A SEPARATE SENTENCING HEARING TO DETERMINE WHETHER THE
10 DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT,
11 UNLESS THE DEFENDANT WAS UNDER THE AGE OF EIGHTEEN YEARS AT THE
12 TIME OF THE COMMISSION OF THE OFFENSE OR UNLESS THE DEFENDANT
13 HAS BEEN DETERMINED TO BE A MENTALLY RETARDED DEFENDANT
14 PURSUANT TO PART 11 OF THIS ARTICLE, IN EITHER OF WHICH CASES, THE
15 DEFENDANT SHALL BE SENTENCED TO LIFE IMPRISONMENT. THE
16 SENTENCING HEARING SHALL BE CONDUCTED BY THE TRIAL JUDGE BEFORE
17 THE TRIAL JURY AS SOON AS PRACTICABLE. ALTERNATE JURORS SHALL
18 NOT BE EXCUSED FROM THE CASE PRIOR TO SUBMISSION OF THE ISSUE OF
19 GUILT TO THE TRIAL JURY AND SHALL REMAIN SEPARATELY SEQUESTERED
20 UNTIL A VERDICT IS ENTERED BY THE TRIAL JURY. IF THE VERDICT OF THE
21 TRIAL JURY IS THAT THE DEFENDANT IS GUILTY OF A CLASS 1 FELONY, THE
22 ALTERNATE JURORS SHALL SIT AS ALTERNATE JURORS ON THE ISSUE OF
23 PUNISHMENT. IF, FOR ANY REASON SATISFACTORY TO THE COURT, ANY
24 MEMBER OR MEMBERS OF THE TRIAL JURY ARE EXCUSED FROM
25 PARTICIPATION IN THE SENTENCING HEARING, THE TRIAL JUDGE SHALL
26 REPLACE EACH JUROR OR JURORS WITH AN ALTERNATE JUROR OR JURORS.
27 IN THE EVENT THAT THE DEFENDANT PLEADS GUILTY, THE COURT SHALL

1 IMPANEL A JURY SPECIFICALLY TO CONDUCT A SENTENCING HEARING.
2 AFTER A GUILTY VERDICT OR GUILTY PLEA, THE DEFENDANT MAY ONLY
3 WAIVE HIS OR HER RIGHT TO HAVE A JURY SENTENCING HEARING AFTER A
4 FULL ADVISEMENT BY THE COURT REGARDING THE CONSEQUENCES OF THE
5 WAIVER.

6 (b) ALL ADMISSIBLE EVIDENCE PRESENTED BY EITHER THE
7 PROSECUTING ATTORNEY OR THE DEFENDANT THAT THE COURT DEEMS
8 RELEVANT TO THE NATURE OF THE CRIME, AND THE CHARACTER,
9 BACKGROUND, AND HISTORY OF THE DEFENDANT, INCLUDING ANY
10 EVIDENCE PRESENTED IN THE GUILT PHASE OF THE TRIAL, ANY MATTERS
11 RELATING TO ANY OF THE AGGRAVATING OR MITIGATING CIRCUMSTANCES
12 ENUMERATED IN THIS SECTION, AND ANY MATTERS RELATING TO THE
13 PERSONAL CHARACTERISTICS OF THE VICTIM AND THE IMPACT OF THE
14 CRIMES ON THE VICTIM'S FAMILY MAY BE PRESENTED. ANY SUCH
15 EVIDENCE, INCLUDING BUT NOT LIMITED TO THE TESTIMONY OF MEMBERS
16 OF THE VICTIM'S IMMEDIATE FAMILY, AS DEFINED IN SECTION 24-4.1-302
17 (6), C.R.S., THAT THE COURT DEEMS TO HAVE PROBATIVE VALUE MAY BE
18 RECEIVED, AS LONG AS EACH PARTY IS GIVEN AN OPPORTUNITY TO REBUT
19 SUCH EVIDENCE. THE PROSECUTING ATTORNEY AND THE DEFENDANT OR
20 THE DEFENDANT'S COUNSEL SHALL BE PERMITTED TO PRESENT
21 ARGUMENTS FOR OR AGAINST A SENTENCE OF DEATH. THE JURY SHALL BE
22 INSTRUCTED THAT LIFE IMPRISONMENT MEANS IMPRISONMENT FOR LIFE
23 WITHOUT THE POSSIBILITY OF PAROLE.

24 (2) IN THE AGGRAVATION PHASE OF THE SENTENCING PROCEEDING
25 THAT IS HELD PURSUANT TO THIS SECTION, THE TRIAL COURT SHALL APPLY
26 THE RULES OF EVIDENCE APPLICABLE TO CRIMINAL TRIALS TO
27 ADMISSIBILITY OF INFORMATION RELEVANT TO ANY OF THE AGGRAVATING

1 CIRCUMSTANCES ENUMERATED IN SUBSECTION (6) OF THIS SECTION. THE
2 PROSECUTION SHALL ESTABLISH THE EXISTENCE OF ANY OF THE
3 AGGRAVATING CIRCUMSTANCES AND SHALL PROVE THE EXISTENCE OF THE
4 AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT.

5 (3) AT THE PENALTY PHASE OF THE SENTENCING PROCEEDING
6 THAT IS HELD PURSUANT TO THIS SECTION, THE PROSECUTION OR THE
7 DEFENDANT MAY PRESENT ANY INFORMATION THAT IS RELEVANT TO ANY
8 OF THE MITIGATING CIRCUMSTANCES ENUMERATED IN SUBSECTION (7) OF
9 THIS SECTION, REGARDLESS OF ITS ADMISSIBILITY UNDER THE RULES
10 GOVERNING ADMISSION OF EVIDENCE AT CRIMINAL TRIALS. THE
11 DEFENDANT SHALL ESTABLISH THE EXISTENCE OF THE MITIGATING
12 CIRCUMSTANCES INCLUDED IN THIS SECTION AND SHALL PROVE THE
13 EXISTENCE OF THE MITIGATING CIRCUMSTANCES BY A PREPONDERANCE OF
14 THE EVIDENCE. IF THE TRIER OF FACT IS A JURY, THE JURORS DO NOT HAVE
15 TO AGREE UNANIMOUSLY THAT A MITIGATING CIRCUMSTANCE HAS BEEN
16 PROVEN TO EXIST. EACH JUROR MAY CONSIDER ANY MITIGATING
17 CIRCUMSTANCE FOUND BY THAT JUROR IN DETERMINING THE
18 APPROPRIATE PENALTY.

19 (4) EVIDENCE THAT IS ADMITTED AT THE TRIAL AND THAT
20 RELATES TO ANY AGGRAVATING OR MITIGATING CIRCUMSTANCES IS
21 DEEMED ADMITTED AS EVIDENCE AT A SENTENCING PROCEEDING IF THE
22 SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO WAIVE A
23 SENTENCING JURY, THE SENTENCING JUDGE CONSIDERING THAT EVIDENCE
24 IS THE SAME JURY OR JUDGE THAT DETERMINED THE DEFENDANT'S GUILT.
25 THE PROSECUTION AND THE DEFENDANT SHALL BE PERMITTED TO REBUT
26 ANY INFORMATION RECEIVED AT THE AGGRAVATION OR PENALTY PHASE
27 OF THE SENTENCING PROCEEDING AND SHALL BE GIVEN FAIR OPPORTUNITY

1 TO PRESENT ARGUMENT AS TO WHETHER THE INFORMATION IS SUFFICIENT
2 TO ESTABLISH THE EXISTENCE OF ANY OF THE AGGRAVATING
3 CIRCUMSTANCES INCLUDED IN THIS SECTION.

4 (5) IN DETERMINING WHETHER TO IMPOSE A SENTENCE OF DEATH
5 OR LIFE IMPRISONMENT, THE SENTENCING JURY OR, IF THE DEFENDANT IS
6 ALLOWED TO WAIVE A SENTENCING JURY, THE SENTENCING JUDGE SHALL
7 TAKE INTO ACCOUNT THE AGGRAVATING AND MITIGATING
8 CIRCUMSTANCES THAT HAVE BEEN PROVEN. THE SENTENCING JURY OR, IF
9 THE DEFENDANT IS ALLOWED TO WAIVE A SENTENCING JURY, THE
10 SENTENCING JUDGE SHALL IMPOSE A SENTENCE OF DEATH IF THE
11 SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO WAIVE A
12 SENTENCING JURY, THE SENTENCING JUDGE FINDS ONE OR MORE OF THE
13 AGGRAVATING CIRCUMSTANCES ENUMERATED IN SUBSECTION (6) THIS
14 SECTION AND THEN DETERMINES THAT THERE ARE NO MITIGATING
15 CIRCUMSTANCES SUFFICIENTLY SUBSTANTIAL TO CALL FOR LENIENCY.

16 (6) THE SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO
17 WAIVE A SENTENCING JURY, THE SENTENCING JUDGE MAY CONSIDER THE
18 FOLLOWING AGGRAVATING CIRCUMSTANCES IN DETERMINING WHETHER
19 TO IMPOSE A SENTENCE OF DEATH:

20 (a) THE CLASS 1 FELONY WAS COMMITTED BY A PERSON UNDER
21 SENTENCE OF IMPRISONMENT FOR A CLASS 1, 2, OR 3 FELONY AS DEFINED
22 BY COLORADO LAW OR UNITED STATES LAW, OR FOR A CRIME COMMITTED
23 IN ANOTHER STATE OR THE UNITED STATES THAT WOULD CONSTITUTE A
24 CLASS 1, 2, OR 3 FELONY AS DEFINED BY COLORADO LAW; OR

25 (b) THE DEFENDANT WAS PREVIOUSLY CONVICTED IN THIS STATE
26 OF A CLASS 1 OR 2 FELONY INVOLVING VIOLENCE AS SPECIFIED IN SECTION
27 18-1.3-406 OR WAS PREVIOUSLY CONVICTED BY ANOTHER STATE OR THE

1 UNITED STATES OF AN OFFENSE THAT WOULD CONSTITUTE A CLASS 1 OR
2 FELONY INVOLVING VIOLENCE AS DEFINED BY COLORADO LAW IN
3 SECTION 18-1.3-406; OR

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

11 (I) A PEACE OFFICER OR FORMER PEACE OFFICER AS DESCRIBED IN
12 SECTION 16-2.5-101, C.R.S.; OR

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

15 (III) AN EMERGENCY MEDICAL SERVICE PROVIDER AS DEFINED IN
16 SECTION 18-3-201 (1); OR

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

23 (V) AN ELECTED STATE, COUNTY, OR MUNICIPAL OFFICIAL; OR

24 (VI) A FEDERAL LAW ENFORCEMENT OFFICER OR AGENT OR
25 FORMER FEDERAL LAW ENFORCEMENT OFFICER OR AGENT; OR

26 (d) THE DEFENDANT INTENTIONALLY KILLED A PERSON KIDNAPPED
27 OR BEING HELD AS A HOSTAGE BY THE DEFENDANT OR BY ANYONE

1 ASSOCIATED WITH THE DEFENDANT; OR

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

5 (f) THE DEFENDANT COMMITTED THE OFFENSE WHILE LYING IN
6 WAIT, FROM AMBUSH, OR BY USE OF AN EXPLOSIVE OR INCENDIARY
7 DEVICE OR A CHEMICAL, BIOLOGICAL, OR RADIOLOGICAL WEAPON. AS
8 USED IN THIS PARAGRAPH (f), "EXPLOSIVE OR INCENDIARY DEVICE"
9 MEANS:

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

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

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

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

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

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

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

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

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

13 (m) THE DEFENDANT INTENTIONALLY KILLED A CHILD WHO HAS
14 NOT YET ATTAINED TWELVE YEARS OF AGE; OR

15 (n) THE DEFENDANT COMMITTED THE CLASS 1 FELONY AGAINST
16 THE VICTIM BECAUSE OF THE VICTIM'S RACE, COLOR, ANCESTRY, RELIGION,
17 OR NATIONAL ORIGIN; OR

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

21 (p) THE DEFENDANT INTENTIONALLY KILLED MORE THAN ONE
22 PERSON IN MORE THAN ONE CRIMINAL EPISODE; OR

23 (q) THE VICTIM WAS A PREGNANT WOMAN AND THE DEFENDANT
24 INTENTIONALLY KILLED THE VICTIM, KNOWING SHE WAS PREGNANT.

25 (7) THE SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO
26 WAIVE A SENTENCING JURY, THE SENTENCING JUDGE SHALL CONSIDER AS
27 MITIGATING CIRCUMSTANCES ANY CIRCUMSTANCES PROFFERED BY THE

1 DEFENDANT OR THE STATE THAT ARE RELEVANT IN DETERMINING
2 WHETHER TO IMPOSE A SENTENCE LESS THAN DEATH, INCLUDING ANY
3 ASPECT OF THE DEFENDANT'S CHARACTER, PROPENSITIES, OR RECORD AND
4 ANY OF THE CIRCUMSTANCES OF THE OFFENSE, INCLUDING BUT NOT
5 LIMITED TO THE FOLLOWING:

6 (a) THE YOUTH OR OLD AGE OF THE DEFENDANT AT THE TIME OF
7 THE CRIME; OR

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

13 (c) THE DEFENDANT WAS UNDER UNUSUAL AND SUBSTANTIAL
14 DURESS FROM AN EXTERNAL SOURCE, ALTHOUGH NOT SUCH DURESS AS TO
15 CONSTITUTE A DEFENSE TO PROSECUTION; OR

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

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

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

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

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

4 (i) THE INFLUENCE OF DRUGS OR ALCOHOL; OR

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

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

10 (l) ANY OTHER EVIDENCE THAT IN THE COURT'S DETERMINATION
11 BEARS ON THE QUESTION OF MITIGATION.

12 (8) IF THE STATE HAS FILED A NOTICE OF INTENT TO SEEK THE
13 DEATH PENALTY AND THE DEFENDANT IS CONVICTED OF FIRST DEGREE
14 MURDER, THE SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO
15 WAIVE A SENTENCING JURY, THE SENTENCING JUDGE AT THE SENTENCING
16 PROCEEDING SHALL DETERMINE WHETHER TO IMPOSE A SENTENCE OF
17 DEATH IN ACCORDANCE WITH THE PROCEDURES PROVIDED IN THIS
18 SECTION.

19 (9) WITHIN THIRTY DAYS AFTER ARRAIGNMENT, THE PROSECUTION
20 SHALL FILE WRITTEN NOTICE OF INTENT TO SEEK THE DEATH PENALTY
21 INCLUDING ONE OR MORE OF THE AGGRAVATING CIRCUMSTANCES UNDER
22 THIS SECTION.

23 (10) IF THE DEFENDANT IS CONVICTED AT TRIAL OR PLEADS
24 GUILTY TO A CLASS 1 FELONY IN WHICH THE PROSECUTION HAS FILED A
25 WRITTEN NOTICE OF INTENT TO SEEK THE DEATH PENALTY, THE COURT
26 SHALL IMMEDIATELY PROCEED TO A SENTENCING JURY, UNLESS THE
27 DEFENDANT IS ALLOWED TO WAIVE HIS OR HER RIGHT TO A SENTENCING

1 JURY, IN WHICH CASE THE TRIAL COURT JUDGE SHALL CONDUCT THE
2 SENTENCING PROCEEDING. THE SENTENCING JURY OR, IF THE DEFENDANT
3 IS ALLOWED TO WAIVE HIS RIGHT TO A SENTENCING JURY, THE TRIAL
4 JUDGE SHALL DETERMINE WHETHER ONE OR MORE AGGRAVATING
5 CIRCUMSTANCES HAS BEEN PROVEN. THIS PROCEEDING IS CALLED THE
6 AGGRAVATION PHASE OF THE SENTENCING PROCEEDING.

7 (11) IF THE SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED
8 TO WAIVE A SENTENCING JURY, THE SENTENCING JUDGE FINDS THAT ONE
9 OR MORE OF THE ALLEGED AGGRAVATING CIRCUMSTANCES HAVE BEEN
10 PROVEN, THE SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO
11 WAIVE A SENTENCING JURY, THE SENTENCING JUDGE SHALL THEN
12 IMMEDIATELY DETERMINE WHETHER THE DEATH PENALTY SHOULD BE
13 IMPOSED. THIS PROCEEDING IS THE PENALTY PHASE OF THE SENTENCING
14 PROCEEDING.

15 (12) AT THE AGGRAVATION PHASE, THE SENTENCING JURY OR, IF
16 THE DEFENDANT IS ALLOWED TO WAIVE A SENTENCING JURY, THE
17 SENTENCING JUDGE SHALL MAKE A SPECIAL FINDING ON WHETHER EACH
18 ALLEGED AGGRAVATING CIRCUMSTANCE HAS BEEN PROVEN BASED ON THE
19 EVIDENCE THAT WAS PRESENTED AT THE TRIAL OR AT THE AGGRAVATION
20 PHASE. IF THE TRIER OF FACT IS A JURY, A UNANIMOUS VERDICT IS
21 REQUIRED TO FIND THAT THE AGGRAVATING CIRCUMSTANCE HAS BEEN
22 PROVEN. IF THE SENTENCING JURY UNANIMOUSLY FINDS THAT AN
23 AGGRAVATING CIRCUMSTANCE HAS NOT BEEN PROVEN, THE DEFENDANT
24 IS ENTITLED TO A SPECIAL FINDING THAT THE AGGRAVATING
25 CIRCUMSTANCE HAS NOT BEEN PROVEN. IF THE SENTENCING JURY
26 UNANIMOUSLY FINDS NO AGGRAVATING CIRCUMSTANCES, THE COURT
27 SHALL THEN SENTENCE THE DEFENDANT TO LIFE IN PRISON WITHOUT

1 PAROLE.

2 (13) THE PENALTY PHASE MUST BE HELD IMMEDIATELY AFTER THE
3 SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO WAIVE A
4 SENTENCING HEARING, THE SENTENCING JUDGE FINDS, AT THE
5 AGGRAVATION PHASE, THAT ONE OR MORE OF THE AGGRAVATING
6 CIRCUMSTANCES HAVE BEEN PROVEN. THE PENALTY PHASE MUST BE HELD
7 EVEN IF THE SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO
8 WAIVE A SENTENCING HEARING, THE SENTENCING JUDGE FINDS THAT ANY
9 OF THE REMAINING AGGRAVATING CIRCUMSTANCES ALLEGED HAVE NOT
10 BEEN PROVEN OR THE SENTENCING JURY OR, IF THE DEFENDANT IS
11 ALLOWED TO WAIVE A SENTENCING HEARING, THE SENTENCING JUDGE
12 DOES NOT AGREE ON THE ISSUE OF WHETHER ANY OF THE REMAINING
13 AGGRAVATING CIRCUMSTANCES ALLEGED HAVE BEEN PROVEN.

14 (14) AT THE PENALTY PHASE, THE DEFENDANT AND THE
15 PROSECUTION MAY PRESENT ANY EVIDENCE THAT IS RELEVANT TO THE
16 DETERMINATION OF WHETHER THERE IS MITIGATION THAT IS SUFFICIENTLY
17 SUBSTANTIAL TO CALL FOR LENIENCY. IN ORDER FOR THE SENTENCING
18 JURY OR, IF THE DEFENDANT IS ALLOWED TO WAIVE A SENTENCING
19 HEARING, THE SENTENCING JUDGE TO MAKE THIS DETERMINATION,
20 REGARDLESS OF WHETHER THE DEFENDANT PRESENTS EVIDENCE OF
21 MITIGATION, THE PROSECUTION MAY PRESENT ANY EVIDENCE THAT
22 DEMONSTRATES THAT THE DEFENDANT SHOULD NOT BE SHOWN LENIENCY
23 INCLUDING ANY EVIDENCE REGARDING THE DEFENDANT'S CHARACTER,
24 PROPENSITIES, CRIMINAL RECORD, OTHER ACTS, THE IMPACT OF THE CRIME
25 ON THE VICTIM, AND THE IMPACT OF THE CRIME ON THE VICTIM'S FAMILY.

26 (15) THE SENTENCING JURY SHALL DETERMINE UNANIMOUSLY
27 WHETHER DEATH IS THE APPROPRIATE SENTENCE OR, IF THE DEFENDANT

1 IS ALLOWED TO WAIVE A SENTENCING HEARING, THE SENTENCING JUDGE
2 SHALL DETERMINE WHETHER DEATH IS THE APPROPRIATE SENTENCE. IF
3 TRIER OF FACT IS A JURY AND THE JURY UNANIMOUSLY DETERMINES THAT
4 THE DEATH PENALTY IS NOT APPROPRIATE, THE COURT SHALL SENTENCE
5 THE DEFENDANT TO LIFE IN PRISON WITHOUT PAROLE.

6 (16) AT THE AGGRAVATION PHASE, IF THE TRIER OF FACT IS A JURY
7 AND THE JURY IS UNABLE TO REACH A UNANIMOUS VERDICT ON ANY OF
8 THE ALLEGED AGGRAVATING CIRCUMSTANCES AND THE JURY HAS NOT
9 FOUND THAT AT LEAST ONE OF THE ALLEGED AGGRAVATING
10 CIRCUMSTANCES HAS BEEN PROVEN OR HAS NOT FOUND THAT ALL OF THE
11 ALLEGED AGGRAVATING CIRCUMSTANCES HAVE NOT BEEN PROVEN, THE
12 COURT SHALL DISMISS THE JURY AND SHALL IMPANEL A NEW JURY. THE
13 NEW JURY SHALL NOT RETRY THE ISSUE OF THE DEFENDANT'S GUILT OR
14 THE ISSUE REGARDING ANY OF THE AGGRAVATING CIRCUMSTANCES THAT
15 THE FIRST JURY FOUND NOT PROVED BY UNANIMOUS VERDICT. IF THE NEW
16 JURY IS UNABLE TO REACH A UNANIMOUS VERDICT, THE COURT SHALL
17 IMPOSE A SENTENCE OF LIFE IN PRISON WITHOUT PAROLE.

18 (17) AT THE PENALTY PHASE, IF THE TRIER OF FACT IS A JURY AND
19 THE JURY IS UNABLE TO REACH A VERDICT, THE COURT SHALL DISMISS THE
20 JURY AND SHALL IMPANEL A NEW JURY. THE NEW JURY SHALL NOT RETRY
21 THE ISSUE OF THE DEFENDANT'S GUILT OR THE ISSUE REGARDING ANY OF
22 THE AGGRAVATING CIRCUMSTANCES THAT THE FIRST JURY FOUND BY
23 UNANIMOUS VERDICT TO BE PROVED OR NOT PROVED. IF THE NEW JURY IS
24 UNABLE TO REACH A UNANIMOUS VERDICT, THE COURT SHALL IMPOSE A
25 SENTENCE OF LIFE IN PRISON WITHOUT PAROLE.

26 (18) IF THE JURY THAT RENDERED A VERDICT OF GUILTY IS NOT
27 THE JURY FIRST IMPANELED FOR THE AGGRAVATION PHASE, THE JURY

1 IMPANELED IN THE AGGRAVATION PHASE SHALL NOT RETRY THE ISSUE OF
2 THE DEFENDANT'S GUILT. IF THE JURY IMPANELED IN THE AGGRAVATION
3 PHASE IS UNABLE TO REACH A VERDICT ON ANY OF THE ALLEGED
4 AGGRAVATING CIRCUMSTANCES AND THE JURY HAS NOT FOUND THAT AT
5 LEAST ONE OF THE ALLEGED AGGRAVATING CIRCUMSTANCES HAS BEEN
6 PROVEN, THE COURT SHALL DISMISS THE JURY AND SHALL IMPANEL A NEW
7 JURY. THE NEW JURY SHALL NOT RETRY THE ISSUE OF THE DEFENDANT'S
8 GUILT OR THE ISSUE REGARDING ANY OF THE AGGRAVATING
9 CIRCUMSTANCES THAT THE FIRST JURY FOUND NOT PROVED BY
10 UNANIMOUS VERDICT. IF THE NEW JURY IS UNABLE TO REACH A
11 UNANIMOUS VERDICT, THE COURT SHALL IMPOSE A SENTENCE OF LIFE IN
12 PRISON WITHOUT PAROLE.

13 (19) IN ANY CASE THAT REQUIRES SENTENCING OR RESENTENCING
14 IN WHICH THE DEFENDANT HAS BEEN CONVICTED OF AN OFFENSE THAT IS
15 PUNISHABLE BY DEATH AND IN WHICH THE TRIER OF FACT WAS A JUDGE OR
16 A JURY THAT HAS SINCE BEEN DISCHARGED, THE DEFENDANT SHALL BE
17 SENTENCED OR RESENTENCED PURSUANT TO THIS SECTION BY A JUDGE OR
18 A JURY THAT IS SPECIFICALLY IMPANELED FOR THIS PURPOSE.

19 (20) THE SENTENCING JURY OR, IF THE DEFENDANT IS ALLOWED TO
20 WAIVE A SENTENCING HEARING, THE SENTENCING JUDGE SHALL MAKE ALL
21 FACTUAL DETERMINATIONS REQUIRED BY THIS SECTION OR THE
22 CONSTITUTION OF THE UNITED STATES OR THIS STATE TO IMPOSE A DEATH
23 SENTENCE. IF THE DEFENDANT BEARS THE BURDEN OF PROOF, THE ISSUE
24 SHALL BE DETERMINED IN THE PENALTY PHASE. IF THE STATE BEARS THE
25 BURDEN OF PROOF, THE ISSUE SHALL BE DETERMINED IN THE
26 AGGRAVATION PHASE.

27 (21) (a) WHENEVER A SENTENCE OF DEATH IS IMPOSED UPON A

1 PERSON PURSUANT TO THE PROVISIONS OF THIS SECTION, THE COLORADO
2 SUPREME COURT SHALL REVIEW THE PROPRIETY OF THAT SENTENCE,
3 HAVING REGARD TO THE NATURE OF THE OFFENSE, THE CHARACTER AND
4 RECORD OF THE OFFENDER, THE PUBLIC INTEREST, AND THE MANNER IN
5 WHICH THE SENTENCE WAS IMPOSED, INCLUDING THE SUFFICIENCY AND
6 ACCURACY OF THE INFORMATION ON WHICH IT WAS BASED. THE
7 PROCEDURES TO BE EMPLOYED IN THE REVIEW SHALL BE AS PROVIDED BY
8 SUPREME COURT RULE. THE SUPREME COURT SHALL COMBINE ITS REVIEW
9 PURSUANT TO THIS SUBSECTION (21) WITH CONSIDERATION OF ANY
10 APPEAL THAT MAY BE FILED PURSUANT TO PART 2 OF ARTICLE 12 OF TITLE
11 16, C.R.S.

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

18 (22) (a) IF ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY
19 THE UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME
20 COURT TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH
21 THAT THIS SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE
22 DEATH PENALTY STATUTE FOR CLASS 1 FELONIES, BUT SEVERANCE OF
23 SUCH PROVISIONS WOULD, THROUGH OPERATION OF THE REMAINING
24 PROVISIONS OF THIS SECTION, MAINTAIN THIS SECTION AS A VALID AND
25 OPERATIVE DEATH PENALTY STATUTE FOR CLASS 1 FELONIES, IT IS THE
26 INTENT OF THE GENERAL ASSEMBLY THAT THOSE REMAINING PROVISIONS
27 ARE SEVERABLE AND ARE TO HAVE FULL FORCE AND EFFECT.

1 (b) IF ANY DEATH SENTENCE IS IMPOSED UPON A DEFENDANT
2 PURSUANT TO THE PROVISIONS OF THIS SECTION AND ON APPELLATE
3 REVIEW, INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (21) OF
4 THIS SECTION, THE IMPOSITION OF SUCH DEATH SENTENCE UPON SUCH
5 DEFENDANT IS HELD INVALID FOR REASONS OTHER THAN
6 UNCONSTITUTIONALITY OF THE DEATH PENALTY OR INSUFFICIENCY OF THE
7 EVIDENCE TO SUPPORT THE SENTENCE, THE CASE SHALL BE REMANDED TO
8 THE TRIAL COURT TO SET A NEW SENTENCING HEARING BEFORE A NEWLY
9 IMPANELED JURY OR, IF THE DEFENDANT WAIVED THE RIGHT TO JURY
10 SENTENCING, BEFORE THE TRIAL JUDGE; EXCEPT THAT, IF THE
11 PROSECUTOR INFORMS THE TRIAL COURT THAT, IN THE OPINION OF THE
12 PROSECUTOR, CAPITAL PUNISHMENT WOULD NO LONGER BE IN THE
13 INTEREST OF JUSTICE, SAID DEFENDANT SHALL BE RETURNED TO THE TRIAL
14 COURT AND SHALL THEN BE SENTENCED TO LIFE IMPRISONMENT. IF A
15 DEATH SENTENCE IMPOSED PURSUANT TO THIS SECTION IS HELD INVALID
16 BASED ON UNCONSTITUTIONALITY OF THE DEATH PENALTY OR
17 INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE SENTENCE, SAID
18 DEFENDANT SHALL BE RETURNED TO THE TRIAL COURT AND SHALL THEN
19 BE SENTENCED TO LIFE IMPRISONMENT.

20 (23) IF, ON APPEAL, THE COLORADO SUPREME COURT FINDS ONE
21 OR MORE OF THE AGGRAVATING CIRCUMSTANCES THAT WERE FOUND TO
22 SUPPORT A SENTENCE OF DEATH TO BE INVALID FOR ANY REASON, THE
23 SUPREME COURT MAY DETERMINE WHETHER THE SENTENCE OF DEATH
24 SHOULD BE AFFIRMED ON APPEAL BY:

25 (a) REWEIGHING THE REMAINING AGGRAVATING CIRCUMSTANCE
26 OR CIRCUMSTANCES AND ALL MITIGATING CIRCUMSTANCES AND THEN
27 DETERMINING WHETHER DEATH IS THE APPROPRIATE PUNISHMENT IN THE

1 CASE; OR

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

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

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

15 (24) THIS SECTION SHALL APPLY TO ALL OFFENSES OCCURRING ON
16 OR AFTER FEBRUARY 1, 2017.

17 **SECTION 12.** In Colorado Revised Statutes, 18-3-107, **amend**
18 (3) as follows:

19 **18-3-107. First degree murder of a peace officer, firefighter,**
20 **or emergency medical service provider - legislative declaration.** (3) A
21 person convicted of first degree murder of a peace officer, firefighter, or
22 emergency medical service provider shall be punished by life
23 imprisonment without the possibility of parole for the rest of his or her
24 natural life, unless a proceeding held to determine sentence according to
25 the procedure set forth in ~~section~~ SECTION 18-1.3-1201, 18-1.3-1201.5,
26 18-1.3-1302, or 18-1.4-102 results in a verdict that requires imposition
27 of the death penalty, in which event the person shall be sentenced to

1 death. Nothing in this subsection (3) is construed as limiting the power
2 of the governor to grant reprieves, commutations, and pardons pursuant
3 to section 7 of article IV of the Colorado constitution.

4 **SECTION 13.** In Colorado Revised Statutes, 24-4.1-302.5,
5 **amend** (1) (g) as follows:

6 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
7 preserve and protect a victim's rights to justice and due process, each
8 victim of a crime shall have the following rights:

9 (g) The right to be present at the sentencing hearing, including
10 any hearing conducted pursuant to ~~section~~ SECTION 18-1.3-1201,
11 18-1.3-1201.5, or 18-1.4-102, C.R.S., for cases involving class 1 felonies,
12 of any person convicted of a crime against such victim, and to inform the
13 district attorney and the court, in writing, by a victim impact statement,
14 and by an oral statement, of the harm that the victim has sustained as a
15 result of the crime, with the determination of whether the victim makes
16 written input or oral input, or both, to be made at the sole discretion of
17 the victim;

18 **SECTION 14. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.