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0495 Interim Committee on Criminal Sentencing



Interim Committee on Criminal Sentencing

**Report to the
COLORADO
GENERAL ASSEMBLY**

**Colorado Legislative Council
Research Publication No. 495
December 2001**

RECOMMENDATIONS FOR 2002

**INTERIM COMMITTEE TO STUDY THE
CRIMINAL SENTENCING STATUTES**

**Report to the
Colorado General Assembly**

**Research Publication No. 495
December 2001**

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December 2001

To Members of the Sixty-third General Assembly:

Submitted herewith is the final report of the Interim Committee to Study the Criminal Sentencing Statutes. This committee was created pursuant to House Joint Resolution 01-1027. The charge to the committee was to identify ways in which the criminal sentencing statutes could be simplified and clarified as well as ways to improve Colorado's criminal justice system.

At its meeting on November 15, 2001, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2002 session was approved.

Respectfully submitted,

/s/ Senator Stan Matsunaka
Chairman
Legislative Council

SM/CJ/cs

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Interim Committee to Study the Criminal Sentencing Statutes

Members of the Committee

Representative Lynn Hefley Chairman	Senator Ken Gordon Vice-Chairman
Representative Richard Decker	Senator Ken Arnold
Representative Peter Groff	Senator Jim Dyer
Representative Don Lee	Senator Rob Hernandez
Representative Alice Madden	Senator Doug Linkhart
Representative Shawn Mitchell	Senator Sue Windels

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EXECUTIVE SUMMARY

Committee Charge

Pursuant to House Joint Resolution 01-1027, the Interim Committee on Criminal Sentencing was charged with studying Colorado's criminal sentencing statutes with the goal of preserving and protecting the public peace and safety. The committee was directed to examine the sentencing statutes to determine areas that could be simplified or clarified, make recommendations on improving the public safety, consider alternatives to prison, and to ensure a fair, effective, and economic criminal justice system.

Committee Activities

At the first committee meeting, members heard testimony from various interests within the criminal justice system such as state agencies, prosecuting and defense attorneys, judges, victims groups, organizations representing individual rights, and other interested persons. Those who testified explained their concerns with Colorado's sentencing statutes. As a result, the committee decided to create four subcommittees to work during the interim on the major themes expressed by the witnesses. The four subcommittees were directed to focus on the following areas: Substance Abuse Treatment and Alternative Sentencing; Simplification and Clarification; Demographic Disparities; and Truth-in-Sentencing, Parole, and Judicial Discretion. Each subcommittee was charged with holding hearings and then returning to the full committee to report any findings and recommendations for legislation. At the four subsequent committee meetings, the chairmen of the subcommittees presented findings from the subcommittees and bill proposals from subcommittee members.

Substance Abuse Treatment and Alternative Sentencing. The Subcommittee on Substance Abuse Treatment and Alternative Sentencing, chaired by Senator Sue Windels, heard testimony from a number of state agencies, district attorneys, defense attorneys, and other interested persons regarding current drug treatment options available to offenders in Colorado. The subcommittee recommended legislation attempting to increase funds for drug treatment options by lowering prison sentences for certain nonviolent drug offenders.

Simplification and Clarification. The Subcommittee on Simplification and Clarification, chaired by Representative Don Lee, discussed some of the problems, inconsistencies, and complexities of Colorado's sentencing laws. The subcommittee heard testimony from the office of Colorado's Attorney General, the Criminal Defense Bar, the District Attorneys Council, Colorado's Public Defender, and other interested persons on how to make the sentencing laws easier to use and to understand. The subcommittee recommended relocating all sentencing provisions into the criminal code in order to centralize the sentencing statutes. The subcommittee also recommended a resolution to

continue the interim committee for another year in order to continue the work of clarifying and simplifying Colorado's criminal sentencing statutes. This resolution was not approved by the Legislative Council but a resolution to continue the interim committee may be introduced during the 2002 legislative session.

Demographic Disparities. The Subcommittee on Demographic Disparities, chaired by Representative Peter Groff, heard testimony from a number of witnesses who discussed the disproportionate numbers of minorities serving prison sentences as well as a disproportionate increase in women serving prison sentences. Individuals testified to the various reasons for the disparities such as socio-economic factors, practices by local law enforcement officers, and differences in the kinds of crimes that are investigated and charged. The chairman of the subcommittee recommended to the interim committee a bill to study racial and gender disparities in the criminal justice system; however, the interim committee did not approve the recommendation.

Truth-in-Sentencing, Parole, and Judicial Discretion. The Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion, chaired by Representative Richard Decker, heard testimony from members of the Parole Board, Judicial Branch, District Attorneys Council, and other members of the public regarding issues such as the re-victimization of individuals at parole hearings and the coordination of re-entry services for offenders. The subcommittee recommended a bill to coordinate services for adult offenders in each judicial district. A bill was proposed (Bill B), but later withdrawn, that would have denied an inmate convicted of a violent crime from accumulating earned time until 50 percent of his or her sentence was served.

Committee Recommendations

Bill A — Penalties for Persons Convicted of Criminal Violations. Bill A was recommended by the Subcommittee on Substance Abuse Treatment and Alternative Sentencing as an attempt to divert certain drug offenders from prison and to increase funds for drug treatment programs. The bill decreases the penalty for the use of, and for the possession of one gram or less of controlled substances; allows the court to commit a probationer to county jail for up to 180 days in order to divert the offender from prison; and increases the drug offender surcharge for all classes of drug offenders.

Bill A also creates the Drug Offender Treatment Fund that is overseen by the president of the Colorado District Attorneys Council, the State Public Defender, and the State Court Administrator. Monies from the increase in the drug offender surcharges and projected cost savings will be directed to the fund to be distributed to each judicial district for local drug treatment programs. If in FY 2003-04, \$2.2 million is not appropriated to the Drug Offender Treatment Fund from the bill's anticipated savings, then the provisions of the act are to repeal and return to existing language.

Bill C — Local Adult Offender Services Planning Committees. Bill C, recommended by the Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion allows each judicial district to establish an adult offender service planning committee with membership from various criminal justice, social service, and community entities. Once appointed, the committee is to develop and implement plans for the coordination and delivery of services for adult offenders in the judicial district.

Bill E — Relocation of Certain Existing Criminal Sentencing Statutes to a New Article in Title 18, C.R.S. The Subcommittee on Simplification and Clarification heard testimony regarding the complexity of the criminal statutes and the difficulty in locating the appropriate sentencing provisions that are now located in three different titles within the Colorado Revised Statutes. Bill E relocates provisions of the criminal sentencing statutes from Titles 16, 17, and 18 of the Colorado Revised Statutes, to a new article in Title 18. The bill also makes conforming amendments and repeals relocated statutes but does not make any substantive changes or alter the elements of any crime.

STATUTORY AUTHORITY AND RESPONSIBILITIES

Pursuant to House Joint Resolution 01-1027, the Interim Committee on Criminal Sentencing was charged with studying Colorado's criminal sentencing statutes in order to harmonize and clarify the criminal sentencing laws and to prevent misinterpretation of the sentencing provisions. With the goal of preserving and protecting the public peace and safety, the committee was charged with:

- identifying and clarifying conflicting and confusing statutes;
- recommending ways to clarify those statutes;
- considering and recommending, if appropriate, changes to the statutes to keep dangerous criminals separated from the community;
- considering alternative sentencing options; and
- devising the most fair, effective and economic criminal justice system possible.

COMMITTEE ACTIVITIES

Background Information

The Interim Committee to Study the Criminal Sentencing Statutes was created during the 2001 legislative session to help harmonize and clarify the criminal sentencing statutes in Colorado. Members of the General Assembly were concerned that the complexity of Colorado's statutes could result in misinterpretation of the statutory sentencing laws and thought that an analysis was necessary as the laws had not been examined in their totality by the General Assembly in several years.

At the first meeting of the Interim Committee on Criminal Sentencing, members heard testimony from various interests within the criminal justice system such as state agencies, prosecuting and defense attorneys, judges, victims' groups, organizations representing individual rights, and other interested persons. Those who testified explained their concerns with Colorado's sentencing statutes. A number of individuals spoke to the complexity of the statutes while others discussed the need of the criminal justice system to actively pursue the rehabilitation of offenders. Several people testified to the re-victimization of individuals through the sentencing and parole process, and the need for a criminal justice system that treats offenders and victims equally.

As a result of the testimony, the committee decided to create four subcommittees to work during the interim on the major themes expressed by the witnesses. The four subcommittees were directed to focus on the following areas: Substance Abuse Treatment and Alternative Sentencing; Simplification and Clarification; Demographic Disparities; and Truth-in-Sentencing, Parole, and Judicial Discretion. Each subcommittee was charged with holding hearings and then returning to the full committee to report any findings or recommendations for legislation. At the four subsequent committee meetings, the chairmen of the subcommittees presented findings from the subcommittees and bill proposals from subcommittee members.

Subcommittee on Substance Abuse Treatment and Alternative Sentencing

Members of the interim committee heard testimony regarding the pressure that substance abuse puts on the criminal justice system. Prison capacity is strained by new prison admissions resulting from crimes related to drug possession or distribution, as well as parolees who are returned to prison as a result of drug use and subsequent parole revocation. The Department of Corrections reported that nearly two-thirds of inmates have a substance abuse problem.

In addition to the costs of incarceration, there are societal costs as a result of offenders' continuing their drug addictions. Several witnesses testified regarding the lack of adequate substance abuse treatment available for offenders, both in Colorado and across the country. Other states have passed citizen-initiated ballot measures to reduce jail and prison sentences for drug offenders and mandate substance abuse treatment.

At its first meeting, the subcommittee was given an overview of California's Proposition 36 and Arizona's Proposition 200; ballot measures which reduced sanctions for minor drug crimes and increased mandatory treatment. After discussing the merits and flaws of the ballot measures, as well as Connecticut's alternative sentencing program (which allows courts to sentence low-risk offenders to community service, day incarceration, or treatment), the subcommittee focused on two issues for further study: 1) the impact of drug offenders on the state's prison population; and 2) the effectiveness and availability of existing treatment programs. The subcommittee requested additional information including: an estimate of how many offenders are incarcerated for drug possession or use, and how many of those are 'first-time' offenders; current substance abuse treatment programs available throughout the state, including those in prisons; existing gaps in the treatment of offenders; and how additional treatment funds would best be spent.

Impact of drug offenders on Colorado's prison population. The subcommittee heard testimony from state agencies, district attorneys, and other interested parties regarding the issue of sanctions for drug offenders. It was generally agreed that first-time drug offenders convicted of possession or use are rarely sentenced to prison. Most drug offenders sentenced to prison have a prior criminal history, have committed multiple crimes at the time of arrest, or have pled guilty to drug possession rather than face a more serious charge. The Department of Corrections and Legislative Council Staff provided information in response to these issues.

- The Department of Corrections reported that as of June 30, 2000, 3,226 inmates (20.2 percent of the total prison population) were incarcerated for a drug offense, and of those, 1,714 were convicted of drug possession or use. A review of the 1,714 offenders convicted of drug possession or use revealed that 87 percent had at least one prior misdemeanor conviction, and 43 percent had at least one prior felony arrest. Only 51 had no prior criminal history.
- Legislative Council Staff reported that, for those defendants charged with a drug crime between 1996 and 2000: 76 percent of those charged with possession were also charged with additional crimes; and 67 percent of those charged with any drug crime eventually pled guilty to a lesser crime.

Effectiveness and availability of existing substance abuse treatment programs. The Department of Human Services' Alcohol and Drug Abuse Division provided information on treatment programs available statewide; the Department of Corrections provided information on treatment programs available in prison. The division reported that

no single treatment is effective for everyone. However, several programs are licensed by the state and are proven to be effective for specific populations.

Some type of treatment is available in each area of the state. However, the entire range of care — including intensive residential treatment, transitional services, and monitoring — is not available statewide, especially in rural areas. The most significant gaps exist in aftercare (services for those who have recently completed an intense treatment therapy) and residential treatment programs which may not be able to house clients for the time necessary for effective treatment.

Both the Alcohol and Drug Abuse Division and the Department of Corrections reported that resources are inadequate to meet current needs. The Alcohol and Drug Abuse Division estimates that more than 11,000 individuals seeking treatment are unable to get it due to lack of resources. The Department of Corrections estimates that 80 percent of new admissions, 4,919 in FY 2000-01, need some level of treatment. The department has 1,486 treatment slots available, and its ability to handle inmates' treatment needs depends on their length of stay in the various treatment programs. At the current resource level, approximately 50 percent of inmates receive some form of treatment.

Recommendation. The committee proposes Bill A, which reduces the penalty for possession of less than one gram and for use of an illegal drug. The penalty would be lowered from a class 4 felony to a class 6 felony in most cases. The shorter prison sentences associated with the lower penalty will ease the pressure on the Department of Corrections, in turn freeing resources to be directed toward substance abuse treatment programs. The treatment programs would be implemented statewide by the individual judicial districts.

Subcommittee on Simplification and Clarification of Statutes

The interim committee heard from various entities about the need to simplify and clarify the sentencing statutes. Citizens find the sentencing statutes impossible to interpret. District attorneys, public defenders, and defense attorneys find using the sentencing statutes and training new district attorneys and public defenders in Colorado's sentencing scheme to be difficult. Further, courts often have difficulty interpreting the sentencing statutes and determining the legislature's intent when sentencing offenders in criminal court.

Sentencing provisions for some offenses are located in more than one title (e.g. sentencing provisions for sex offenders are located in three titles). There are several different requirements, some of which overlap, for enhanced sentences. In addition, some crimes require a mandatory minimum sentence. When considering all of the statutory sentencing enhancers, mitigators, and aggravators for the crime of second degree assault for instance, there are 34 different possible sentences.

The interim committee recognized that when looking at simplifying and clarifying the sentencing statutes, consideration must be given to judicial discretion. The need to provide defendants, prosecutors, and defense attorneys with a clean, understandable, and usable sentencing scheme, and with some clear sense of legislative intent must be balanced with the discretion of the court to take myriad factors under advisement when deciding a sentence.

Simplification vs. clarification. The Subcommittee on Simplification and Clarification first saw the need to distinguish between simplification and clarification. *Clarification* of the sentencing statutes would mean efforts to *physically move and relocate now-scattered sentencing statutes to one place* so that they are easier to find. Clarification would require a recodification of the criminal sentencing statutes. *Simplification* of the sentencing statutes would mean efforts to *simplify the sentencing scheme* so that courts would find the sentencing statutes easier to administer and so that practitioners would be better able to interpret the sentencing scheme when charging and defending defendants. Simplification would require substantive changes to sentencing laws.

The complexity of the criminal sentencing statutes. In trying to decide whether or not to tackle simplification or clarification or both this legislative interim, the subcommittee received input and assistance from two sub-subcommittees comprised of the following: Judge Ruthanne Polidori, First Judicial District; Chief District Court Judge Harlan Bockman, 17th Judicial District; the Colorado District Attorneys Council; the Colorado Attorney General's Office; the Denver District Attorney's Office; the Colorado Public Defender's Office; and the Colorado Criminal Defense Bar.

The two sub-subcommittees, with the assistance of the Office of Legislative Legal Services (OLLS), compiled several pieces of documentation to illustrate the complexity of and the need for simplification and clarification of the sentencing statutes (these documents are listed on page 19). One chart listed the crimes which provide for enhanced sentences that are specific to that crime. For instance, in the first degree kidnapping statute, first degree kidnapping is a class 2 felony when the victim is liberated unharmed. That statute says that first degree kidnapping is a class 1 felony when the victim suffers bodily injury.

The gist of the complexity in the sentencing statutes is that while some statutes contain enhanced sentences that are specific to that crime (as noted above), other statutes provide for enhanced sentences that can apply to any crime. For instance, first degree kidnapping is a class 1 or 2 felony depending on the elements of the crime, but the sentence for the class 2 felony can be increased or decreased depending upon whether or not the circumstances of the crime included statutory mitigating, aggravating, or sentence-enhancing factors. These mitigating, aggravating, and sentence-enhancing factors are contained in several different statutes. The sentence can increase if the defendant was on parole for another felony at the time of the crime or if the defendant was on bond for another felony. Further lending to the complexity, the same aggravating and sentence-enhancing factors are listed in more than one statute leading to questions over which law takes precedence. Table 1 illustrates the complexity of the sentencing statutes.

**Table 1:
Colorado Sentencing Law as of July 2001**

Class of Crime	Normal Presumptive Range 18-1-105	Extraordinary Mitigating Circumstances 18-1-105 (6)	Sentence Enhancing Circumstances 18-1-105 (9.5)	Extraordinary Aggravating Circumstances 18-1-105 (9)/ Crime of Violence (16-11-309)	Extraordinary Aggravating Circumstances 18-1-105 (6)	Little Habitual 16-13-101 (1.5)	Big Habitual 16-13-101 (2)	Mandatory Parole 18-1-105
Class 2	8-24 yrs	4-8 yrs	8-48 yrs	16-48 yrs	24-48 yrs	72 yrs	96 yrs	5 yrs
Class 3 (extraordinary risk of harm 18-1-105 (9.7))	4-16	2-4	4-32	10-32	16-32	48	64	5
Class 3	4-12	2-4	4-24	8-24	12-24	36	48	5
Class 4 (extraordinary risk of harm 18-1-105 (9.7))	2-8	1-2	2-16	5-16	8-16	24	32	3
Class 4	2-6	1-2	2-12	4-12	6-12	18	24	3
Class 5 (extraordinary risk of harm 18-1-105 (9.7))	1-4	6 mos - 1 yr	1-8	30 mos - 8 yrs	4-8	12	16	2
Class 5	1-3	6 mos - 1 yr	1-6	2-6	3-6	9	12	2
Class 6 (extraordinary risk of harm 18-1-105 (9.7))	1-2	6 mos - 1 yr	1-4	18 mos - 4 yrs	2-4	NA	8	1
Class 6	1 yr - 18 mos	6 mos - 1 yr	1-3	15 mos - 3 yrs	18 mos - 3 yrs	NA	6	1

Source: Colorado District Attorneys Council, Legislative Council Staff

There are several factors contributing to the complexity in the sentencing statutes:

- 1) in moving from an indeterminate sentencing scheme, the General Assembly provided for determinate sentences which fall into a presumptive sentencing range based on the felony class level of the crime; however
- 2) in order to take into consideration some of the specific aggravating circumstances that are present when a person commits a crime, the General Assembly has adopted numerous statutes that augment the presumptive ranges with increased sentences based on the presence of specific aggravating circumstances; while
- 3) making efforts to provide prosecutors adequate tools with which to prosecute law-breakers; and
- 4) attempting to balance the court's discretion with the need to ensure that the sentence fits the crime.

This has resulted in a sentencing scheme that has been pieced together from year-to-year and that is fragmented, making it difficult for practitioners and judges to interpret and use the statutes.

Recommendations. One of the subcommittee's first realizations was that any effort to simplify statutory crimes and sentences would require examining each crime and its sentence along with the list of sentence mitigators, aggravators, and enhancers in order to simplify the sentencing scheme. Any effort to clarify the sentencing statutes by locating all sentencing provisions together in one statutory article would require searching for sentencing provisions across three different C.R.S. titles and then reorganizing those statutes in an order that is "user friendly" and that makes sense. Either task would take tremendous amounts of time. Ultimately, the subcommittee decided not to attempt both tasks this legislative interim. Instead, the first recommendation from the subcommittee was to ask that the interim committee be extended for another year in order to, among other things, take an additional year to tackle the job of simplifying the sentencing scheme. This recommendation (in the form of a resolution) was not approved by the Legislative Council. However, the resolution will likely be introduced during the 2002 legislative session.

The subcommittee recommends Bill E to clarify the sentencing statutes by moving statutory sentencing provisions that are now scattered throughout Title 16, Title 17, and Title 18 and moving them to a new article in Title 18.

Subcommittee on Demographic Disparities in the Criminal Justice System

The subcommittee on Demographic Disparities in the Criminal Justice System was charged with looking at some of the factors that have contributed to racial and gender disparities within the criminal justice system. According to the Rocky Mountain News, 1 in 19 African American males in the state of Colorado is in prison compared with an average of 1 in 192 white males. Although the African American community comprises 3.8 percent

of the state's population according to 2000 census data, 23.3 percent of the prison population is of African American descent. Table 2 shows the ethnic distribution of Colorado's prison population compared to the 2000 census totals.

**Table 2:
Ethnic Distribution of Colorado's Prison Population**

Race	Number of Inmates	Percent of Prison Population	2000 Census Total	Percent of Total Population*
White	7,182	45.3	3,560,005	82.8
Hispanic	4,516	28.5	735,601	17.1
African American	3,687	23.3	165,063	3.8
American Indian	335	2.1	44,241	1.0
Asian	115	0.7	95,213	2.2
Other/Unknown	11	0.1	309,931	7.2

Source: Colorado Department of Corrections, 2000 Statistical Report and 2000 U.S. Census

*The 2000 census information makes a distinction between race and ethnicity for the Hispanic population. Total population may not equal the sum of all classes combined as Hispanics may be counted in the White and Hispanic categories.

The disparity in the number of minority populations in prison is a nationwide phenomenon. A number of states have taken steps to address the over-representation of minorities at various points of contact within the criminal justice system. Several states have undertaken statewide studies while others have created commissions to address the disproportionate number of minorities in prison. Several communities have developed additional offender reintegration services aimed at helping people of color as well as "race-neutral" computer software to eliminate racial bias in the sentencing of offenders.

A number of witnesses who testified before the subcommittee spoke to socio-economic factors that may contribute to the over-representation of people of color in the criminal justice system. Examples of these factors included generally lower levels of education in minority communities, the types of crimes that are committed which may be more susceptible to detection by law enforcement such as open air drug markets, as well as the distribution of wealth in minority communities which tend to have fewer economic opportunities and lower average incomes. Witnesses also testified that the population of women prisoners has increased at a greater rate than male prisoners in recent years.

The committee chair recommended a bill to study demographic disparities in the criminal justice system but the bill was not approved by the interim committee.

Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion

The Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion discussed a number of issues related to the re-victimization of individuals through the parole process as well as coordinating services when offenders are released from custody and placed on parole or probation. The subcommittee also discussed the need for judicial discretion in delivering sentences and possible ways to ensure that victims are provided with greater certainty regarding the amount of time that an offender will serve in prison.

Parole. Parole is the release of an offender from prison into the community under state supervision with restrictions. In Colorado, non-violent offenders must serve at least 50 percent of their sentence while violent offenders must serve 75 percent of their sentence before being eligible to appear before the Parole Board. However, an offender's sentence may be reduced by up to ten days per month in earned time. (Earned time may be withheld from the offender for misbehavior while in prison.) Non-violent offenders who earn 100 percent of their earned time are eligible to appear before the Parole Board after serving 38 percent of their sentence, while violent offenders who earn 100 percent of their earned time are eligible after serving 56 percent of their sentence. Table 3 below, shows the earliest possible date offenders will be eligible to appear before the Parole Board assuming they earn 100 percent of their earned time.

**Table 3:
Overview of Earliest Possible Parole Eligibility Date (PED)**

Sentence/ Years	Assumes Offender Eligible after Serving:				Maximum Time Served — Assumes Discretionary Parole Denied and 100% Earned Time	
	50% of Sentence, Less Earned Time		75% of Sentence, Less Earned Time		Total Earned Time, Years	Discharge Date, Years
	Total Earned Time, Years	Earliest Possible PED, Years	Total Earned Time, Years	Earliest Possible PED, Years		
1	0.12	0.38	0.19	0.56	0.25	0.75
5	0.62	1.88	0.93	2.82	1.25	3.75
10	1.24	3.76	1.86	5.64	2.50	7.50
15	1.86	5.64	2.78	8.47	3.75	11.25
20	2.47	7.53	3.71	11.29	5.00	15.00
25	3.09	9.41	4.64	14.11	6.25	18.75
30	3.71	11.29	5.57	16.93	7.50	22.50
35	4.33	13.17	6.49	19.76	8.75	26.25

0.12 years = 1.5 months

0.25 years = 3.0 months

0.50 years = 6.0 months

0.75 years = 9.0 months

Source: Legislative Council Staff

Once released on parole, the offender must follow the conditions set by the Parole Board for his or her release. Such conditions generally restrict the freedom of the parolee and may include electronic monitoring, periodic drug tests, and meeting with parole officers.

If the conditions of parole are violated then the parolee has a revocation hearing before the Parole Board. The board may decide to send the parolee back to prison or impose additional conditions on his or her parole.

According to the Department of Corrections, the number of parolees returned to prison has decreased in the past year. Prior to FY01, the DOC reported a yearly increase in the numbers of parolees returned to prison. The Parole Board noted that offenders on mandatory parole have a higher rate of recidivism than parolees who are on discretionary parole. Additionally, revocations of offenders on mandatory parole have increased the number of parole hearings. Table 4 shows the number of parole hearings over the past four fiscal years as well as the number of parolees being released into the community and the number who have been returned to prison.

**Table 4:
Parole Hearings and Returns to Prison**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01
Total Parole Hearings	20,324	22,340	22,559	23,571
Released from Custody	2,775	2,758	2,053	2,220
Returned to Prison	1,633	2,105	2,472	2,437

Source: Department of Corrections

The subcommittee heard testimony from crime victims who stated that due to statutory requirements regarding the frequency and notification of parole hearings, and their desire and obligation to attend those hearings, they are re-victimized while attending parole hearings even though, prior to the hearing, they know that the offender will most likely not be released from prison. While the subcommittee chose not to take any action on this matter, the Parole Board stated that it would look at administrative remedies to prevent victims from being invited to attend parole hearings unnecessarily.

Truth-in-sentencing. In discussing truth-in-sentencing, or requiring an offender to serve a greater portion of his or her sentence, the subcommittee looked at information provided by the National Conference of State Legislatures on what other states have done to ensure that certain prisoners serve a maximum portion of their sentences. Some of the options included requiring violent offenders to serve up to 85 percent of their sentences, and eliminating parole for certain or all felony offenders and requiring them to serve 100 percent of their sentence.

The subcommittee reviewed several versions of truth-in-sentencing bills that were debated by the General Assembly during the 1995 legislative session. Each version of the bill had different effects on the amount of a sentence which must be served, the felony offenses to which it applied, and when an offender would become parole eligible. Each bill carried a different fiscal note based on the projected change in prison population, varying from \$200,000 to \$41,000,000 in total costs over the first five years.

Judicial discretion. Colorado's sentencing laws provide judges with a presumptive range of sentences to impose upon convicted offenders depending upon the felony level of the crime committed and the circumstances of the crime. Judges may only deliver a sentence that is within the minimum and maximum of the presumptive range. Included in the sentencing structure is the option to prosecute an individual under one of the habitual offender statutes, under Colorado's three strikes law, or as a violent offender. These statutes increase the mandatory minimum and maximum sentences that a judge is allowed to give to an offender. Certain crimes also have mandatory sentences, such as life imprisonment for first degree murder of a peace officer or firefighter, or may have sentence-enhancing circumstances, such as committing the crime while on bond for another offense, which may increase an offender's sentence.

Testimony provided to the committee indicated that Colorado's sentencing laws sometimes require judges to impose sentences upon individuals that the judges think are too harsh and may be unjust. One judge indicated that he is provided sufficient information on the offender and circumstances of the offense at the time of sentencing, and that in certain instances, the mandatory sentences and sentence enhancements limit his discretion in delivering an appropriate sentence.

Recommendations. Although the subcommittee chose not to make changes to Colorado's sentencing laws, the subcommittee did recommend two bills to the interim committee. The committee recommends Bill C to assist local communities in planning for an offender's reintegration into the community. Bill C would allow each judicial district to establish an adult offender service planning committee with membership from various criminal justice, social service, and community entities to implement plans for the coordination and delivery of services for adult offenders in the judicial district.

Bill B, which was withdrawn at the sponsor's request, would have required violent offenders to serve at least 50 percent of their sentence if the crime was committed with a deadly weapon before accumulating any earned time.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following three bills are recommended to the Colorado General Assembly.

Bill A — Concerning Penalties for Persons Convicted of Criminal Violations

Bill A creates new and reduced penalties for possession of less than one gram of a schedule I through schedule IV controlled substance and for use of a schedule I or II controlled substance. The anticipated savings from the reduced prison sentences are intended to fund drug treatment programs. Recognizing that the General Assembly cannot allocate any anticipated savings to drug treatment programs, the bill further states that if the General Assembly does not fund the newly-created Drug Offender Treatment Fund to a certain level, then the sentences that were lowered are repealed and return to their original higher sentence. Following is a summary of the bill's provisions.

The statement of legislative intent declares the following:

- the General Assembly intends to reduce the felony level of drug possession offenses involving small amounts of a controlled substance;
- the General Assembly intends to use the anticipated savings to fund drug offender treatment programs;
- by increasing the funding for drug treatment, the General Assembly wants to decrease the number of drug-dependent Coloradans; and
- the General Assembly finds that fewer drug-dependent Coloradans will reduce the burden on the state's criminal justice system, penal system, and health care system.

The bill makes the following changes to the offense level of use and possession crimes:

- changes from a class 5 felony to a class 6 felony the *use* of a schedule I or II controlled substance;
- maintains current law for *use* of a schedule III, IV, or V controlled substance as a class 1 misdemeanor;
- creates the new offense of *possession* of one gram or less of a schedule I through IV controlled substance, a class 6 felony (under current law, possession of any amount of a schedule I controlled substance is a class 3 felony; possession of any amount of a schedule II or III controlled substance is a class 4 felony; and possession of any amount of a schedule IV controlled substance is a class 5 felony); and
- the new offense of *possession* of one gram or less of a schedule I through IV controlled substance is a class 4 felony for a second or subsequent offense.

In order to account for the reduced penalties and create additional funding for drug treatment programs, the bill increases the drug offender surcharge for class 2 through 6 felonies, class 1, 2, and 3 misdemeanors, and for marihuana petty offenses. The bill also changes the distribution of surcharge moneys so that 65 percent (instead of 90 percent under current law) will go to the Drug Offender Surcharge Fund and that 25 percent will go to the newly-created Drug Offender Treatment Fund. The bill specifies that moneys are to be appropriated from the new fund to the Judicial Department for allocation to the newly-created State Drug Offender Treatment Board to cover the costs associated with drug abuse assessment, testing, education, and treatment.

The bill provides that the Drug Offender Treatment Board is to consist of the president of the Colorado District Attorneys Council, the State Public Defender, and the State Court Administrator or their designees. The board must allocate at least 80 percent of the yearly Drug Offender Treatment Fund allocation to the judicial districts' Drug Offender Treatment Boards. Such allocation must be based upon a formula developed by the State Board that considers the judicial district's population and the number of drug case filings in the judicial district.

The bill creates local Drug Offender Treatment Boards consisting of the district attorney in that judicial district, the chief public defender in that judicial district, and a probation officer working in that judicial district to be chosen by the chief judge in that judicial district. Under the bill, local boards will receive moneys from the State Board and distribute moneys to drug treatment programs in their judicial districts.

In order to avail courts of the additional drug treatment options anticipated by the bill, the bill states that offenders convicted of a second or subsequent violation of less than one gram of a class I through IV controlled substance may be eligible for probation. Under current law, these offenders are ineligible for probation. In order to further avail courts of additional drug treatment options and to divert certain drug offenders from prison, the bill provides that courts may sentence an offender up to 180 days for a felony in a county jail. Current law is 90 days.

In an attempt to ensure that any savings resulting from lowering sentences go towards drug treatment programs, the bill repeals all of the changes if the General Assembly does not appropriate at least \$2.2 million dollars to the Drug Offender Treatment Fund for FY 2004-2005. If the money is not appropriated and the bill's provisions are repealed, current law is re-enacted.

Bill C — Concerning Local Adult Offender Services Planning Committees

Comments received by the Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion concerned the growth in parole hearings and the need for services in the reintegration of offenders into society. In an attempt to help coordinate community-based programs and reduce recidivism among offenders the interim committee recommends Bill C.

Bill C allows each judicial district to establish an adult offender service planning Committee with membership from various criminal justice, social service, and community entities. Once appointed, the committee is to develop and implement plans for the coordination and delivery of services for adult offenders in the judicial district. The committee is to share information and work with other agencies in providing treatment and supervision of these individuals. Copies of any plans adopted and any reports made by the committee are to be delivered to the House Civil Justice, House Criminal Justice, and Senate Judiciary Committees of the General Assembly.

Bill E — Concerning the Relocation of Certain Existing Criminal Sentencing Statutes to a New Article in Title 18, C.R.S.

The Subcommittee on Simplification and Clarification heard testimony regarding the complexity of the criminal statutes and the difficulty in locating the appropriate sentencing provisions that are now located in three different titles within the Colorado Revised Statutes. Bill E relocates provisions of the criminal sentencing statutes from Titles 16, 17, and 18 of the Colorado Revised Statutes, to a new article in Title 18. The bill also makes conforming amendments and repeals relocated statutes but does not make any substantive changes or alter the elements of any crime.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303) 866-2055. For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

www.state.co.us/gov_dir/leg_dir/lcsstaff/2001/01interim.

Meeting Summaries	Topics Discussed
July 10, 2001	Organizational meeting; overview of Colorado criminal sentencing laws; presentations by state agencies, interest groups, law enforcement associations, citizens, and citizen groups.
September 4, 2001	Report from Subcommittee on Simplification and Clarification of Colorado's sentencing laws and consideration of legislative recommendations; progress reports from other subcommittees.
September 26, 2001	Report from Subcommittee on Substance Abuse Treatment and Alternative Sentencing and Subcommittee on Demographic Disparity; consideration of legislative recommendations.
October 4, 2001	Updates on draft bill requests; report from Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion; discussion of bill draft requests.
October 23, 2001	Final committee action on draft legislation and selection of bill sponsors.

Memoranda and Reports

Publications

- January 2001 *An Overview of the Colorado Adult Criminal Justice System*, Colorado Legislative Council.
- August 2001 *DOC Prison and Community Substance Abuse Treatment* (presentation materials), Department of Corrections.
- August 2001 *Criminal History Profile of Incarcerated Drug Offenders*, Department of Corrections.
- July 2001 *Blueprints for Violence Prevention*, U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention.
- June 2001 *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, The Urban Institute.
- June 2001 *Critical Choices: Making Drug Policy at the State Level*, Drug Strategies.
- March 2001 *Directory of Licensed Treatment Programs*, Colorado Department of Human Services, Alcohol and Drug Abuse Division.
- March 2001 *Directory of Level I and Level II DUI Treatment Programs*, Colorado Department of Human Services, Alcohol and Drug Abuse Division.
- October 2000 *Reducing Racial Disparity in the Criminal Justice System*, The Sentencing Project.
- October 1999 *Principals of Drug Addiction Treatment*, National Institute on Drug Abuse.
- March 1998 *Breaking the Cycle with Science Based Policy*, The Office of National Drug Control Policy.
- Undated *Justice on Trial: Racial Disparities in the American Criminal Justice System*, Leadership Conference on Civil Rights, Leadership Conference Education Fund.
- Undated *State Assembly Presentation Alcohol and Drug Use and Abuse in Colorado: Prevalence and Trends*, Colorado Department of Human Services, Alcohol and Drug Abuse Division.

Agency Reports

FY 2001	Listing of Alcohol and Drug Abuse Division payments to substance abuse treatment providers.
FY 2001	Listing of Alcohol and Drug Abuse Division-funded residential substance abuse treatment.
FY 2000	Colorado Board of Parole, Annual Report.
FY 2000	Colorado Department of Corrections, Statistical Report.

Legislative Council Staff Memoranda Titles

September 28, 2001	<i>Juvenile Defendants and Time from Arrest to Adjudication.</i>
September 24, 2001	<i>Representation of Minorities in Colorado Criminal Justice System.</i>
August 17, 2001	<i>Department of Human Services Response to questions from July 17, 2001, Subcommittee Meeting.</i>
August 17, 2001	<i>Legislative Council Staff Response to questions from July 17, 2001, Subcommittee Meeting.</i>
August 8, 2001	<i>National Conference of State Legislatures staff Response to Questions from July 17, 2001, Subcommittee Meeting.</i>
August 7, 2001	<i>Length of Sentence Served/Parole Eligibility.</i>
July 20, 2001	<i>Over-representation of Minorities in Colorado's Criminal Justice System.</i>
July 12, 2001	<i>Alternatives to Incarceration for Non-violent Offenders.</i>
July 2001	<i>List of Felony Offenses.</i>
June 2001	<i>Mandatory Sentences to Incarceration in the Colorado Criminal Code.</i>
June 2001	<i>Sentencing Law as of June 2001.</i>

Other Resource Materials

- August 21, 2001 *Chart of 34 possible sentences for the crime of second degree assault under current law; prepared by the Department of Law.*
- July 23, 2001 *Example of sentencing under current law for a person convicted of sexual assault on a child; prepared by OLLS.*
- Undated *Flowchart of the existing sentencing scheme and a new proposed sentencing scheme; prepared by the Department of Law.*
- Undated *Verbal flowchart of the existing sentencing scheme; prepared by the Department of Law.*
- Undated *Table of the average actual time served under indeterminate sentencing in Wisconsin and the Wisconsin sentencing guidelines worksheet.*

Bill A

HOUSE SPONSORSHIP

Gordon, Linkhart, and Windels

SENATE SPONSORSHIP

Hefley, Groff, and Madden

A BILL FOR AN ACT

CONCERNING PENALTIES FOR PERSONS CONVICTED OF CRIMINAL VIOLATIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Criminal Sentencing. Decreases the penalty for use of a schedule I or II controlled substance to a class 6 felony. Reduces to a class 6 felony the penalty for a first possession offense when the amount of a schedule I through IV controlled substance is one gram or less. Lowers to a class 4 felony the penalty for a second or subsequent possession offense when the amount of a schedule I through IV controlled substance is one gram or less. Increases the drug offender surcharge for all classes of drug offenses.

Reduces the percentage of the drug offender surcharge appropriated to the drug offender surcharge fund. Creates the drug offender treatment fund and appropriates a portion of the drug offender surcharge to said fund. Creates a state drug offender treatment board ("state board"). Identifies the state board membership as the president of the Colorado district attorneys' council, the state public defender, and the state court administrator. Authorizes the state board to allocate moneys to drug treatment programs and drug offender treatment boards in each judicial district. Requires each judicial district to create a drug offender treatment board. Directs each drug offender treatment board to consist of a district attorney, a public defender, and a probation officer. Stipulates that the drug offender treatment boards will distribute moneys to drug treatment providers in the judicial districts.

Allows an offender who has 2 previous felony convictions and who is convicted of possession of one gram or less of a schedule I through IV controlled substance to be placed on probation. Extends the court's power to commit a probationer to county jail during the probation period to an aggregate period of 180 days.

Requires all portions of the act, except the provision implementing the 180-day extension, to return to existing language if the expected savings from the act are not applied to the drug offender treatment fund in the fiscal year beginning in 2004 or any fiscal year thereafter.

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

SECTION 1. Legislative intent. It is the intent of the general assembly to reduce the felony level of drug possession offenses where the defendant possesses a small amount of a controlled substance. In reducing the felony level, the general assembly intends to use the anticipated savings to fund drug offender treatment programs. By increasing the availability of funding for drug treatment, the general assembly anticipates decreasing the number of drug-dependant Coloradans. The general assembly finds that Colorado will benefit from fewer drug-dependant Coloradans through a reduced burden on the state's criminal justice system, penal system, and health care system. In addition, Colorado will experience many other social and economic benefits by reducing the number of drug-dependant Coloradans.

SECTION 2. 18-18-404 (1), Colorado Revised Statutes, is amended, and the said 18-18-404 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-18-404. Unlawful use of a controlled substance - repeal.

(1) (a) Except as is otherwise provided for offenses concerning marihuana and marihuana concentrate in sections 18-18-406 and 18-18-406.5, any person who uses any controlled substance, except when it is dispensed by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense such controlled substance for bona fide medical needs, commits:

(a) (I) A class 5 6 felony, if the controlled substance is listed in schedule I or II of part 2 of this article;

(b) (II) A class 1 misdemeanor, if the controlled substance is listed in schedule III, IV, or V of part 2 of this article.

(b) THIS SUBSECTION (1) IS REPEALED ON THE FIRST DAY OF JULY FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-___, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

(1.1) (a) EXCEPT AS IS OTHERWISE PROVIDED FOR OFFENSES CONCERNING MARIHUANA AND MARIHUANA CONCENTRATE IN SECTIONS 18-18-406 AND 18-18-406.5, ANY PERSON WHO USES ANY CONTROLLED SUBSTANCE, EXCEPT WHEN IT IS DISPENSED BY OR UNDER THE DIRECTION OF A PERSON LICENSED OR AUTHORIZED BY LAW TO PRESCRIBE, ADMINISTER, OR DISPENSE SUCH CONTROLLED SUBSTANCE FOR BONA FIDE MEDICAL NEEDS, COMMITS:

(I) A CLASS 5 FELONY, IF THE CONTROLLED SUBSTANCE IS LISTED IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE;

(II) A CLASS 1 MISDEMEANOR, IF THE CONTROLLED SUBSTANCE IS LISTED IN SCHEDULE III, IV, OR V OF PART 2 OF THIS ARTICLE.

(b) THIS SUBSECTION (1.1) SHALL ONLY BECOME EFFECTIVE IF SUBSECTION (1) OF THIS SECTION IS REPEALED. THIS SUBSECTION (1.1) SHALL BECOME EFFECTIVE ON THE JULY 1 EFFECTIVE DATE OF THE REPEAL OF SUBSECTION (1) OF THIS SECTION AND SHALL APPLY ONLY TO OFFENSES COMMITTED ON OR AFTER THAT DATE.

SECTION 3. 18-18-405 (2) and (2.5) and the introductory portion to 18-18-405 (3) (a), Colorado Revised Statutes, are amended, and the said 18-18-405 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession - repeal. (2) (a) Except as is otherwise provided for offenses concerning marihuana and marihuana concentrate in section 18-18-406, AND FOR POSSESSION OFFENSES INVOLVING ONE GRAM OR LESS OF A SCHEDULE I THROUGH IV CONTROLLED SUBSTANCE IN SUBSECTION (2.3) OF THIS SECTION, and FOR offenses involving minors in section 18-18-407 (1) (g), any person who violates any of the provisions of subsection (1) of this section:

(a) (I) In the case of a controlled substance listed in schedule I or II of part 2 of this article, commits:

(f) (A) A class 3 felony; except that a person commits a class 4 felony if such violation is based on the possession of a controlled substance listed in schedule II unless otherwise provided in paragraph (a) of subsection (3) of this section; or

(f) (B) A class 2 felony, if the violation is committed subsequent to a prior conviction for a violation to which this ~~paragraph (a)~~ SUBPARAGRAPH (I) applies;

(b) (II) In the case of a controlled substance listed in schedule III of part 2 of this article, commits:

(f) (A) A class 4 felony; or

(f) (B) A class 3 felony, if the violation is committed subsequent to any prior conviction under SUBPARAGRAPH (I) OF THIS paragraph (a) ~~of this subsection (2) or this paragraph (b)~~ SUBPARAGRAPH (II);

(c) (III) In the case of a controlled substance listed in schedule IV of part 2 of this article, commits:

(f) (A) A class 5 felony; or

(f) (B) A class 4 felony, if the violation is committed subsequent to a prior conviction for a violation to which ~~paragraph (a) or (b) of this subsection (2) or this paragraph (c)~~ SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a) OR THIS SUBPARAGRAPH (III) applies;

(d) (IV) In the case of a controlled substance listed in schedule V of part 2 of this article, commits:

(f) (A) A class 1 misdemeanor; or

(f) (B) A class 5 felony, if the violation is committed subsequent to any prior conviction under ~~paragraph (a), (b), or (c) of this subsection (2) or this paragraph (d)~~ SUBPARAGRAPH (I), (II), OR (III) OF THIS PARAGRAPH (a) OR THIS SUBPARAGRAPH (IV).

(b) THIS SUBSECTION (2) IS REPEALED ON THE FIRST DAY OF JULY FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT OF MONEY

OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-___, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

(2.1) (a) EXCEPT AS IS OTHERWISE PROVIDED FOR OFFENSES CONCERNING MARIHUANA AND MARIHUANA CONCENTRATE IN SECTION 18-18-406 AND OFFENSES INVOLVING MINORS IN SECTION 18-18-407 (1) (g), ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION:

(I) IN THE CASE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE, COMMITS:

(A) A CLASS 3 FELONY; EXCEPT THAT A PERSON COMMITS A CLASS 4 FELONY IF SUCH VIOLATION IS BASED ON THE POSSESSION OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE II UNLESS OTHERWISE PROVIDED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION; OR

(B) A CLASS 2 FELONY, IF THE VIOLATION IS COMMITTED SUBSEQUENT TO A PRIOR CONVICTION FOR A VIOLATION TO WHICH THIS SUBPARAGRAPH (I) APPLIES;

(II) IN THE CASE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE III OF PART 2 OF THIS ARTICLE, COMMITS:

(A) A CLASS 4 FELONY; OR

(B) A CLASS 3 FELONY, IF THE VIOLATION IS COMMITTED SUBSEQUENT TO ANY PRIOR CONVICTION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) OR THIS SUBPARAGRAPH (II);

(III) IN THE CASE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE IV OF PART 2 OF THIS ARTICLE, COMMITS:

(A) A CLASS 5 FELONY; OR

(B) A CLASS 4 FELONY, IF THE VIOLATION IS COMMITTED SUBSEQUENT TO A PRIOR CONVICTION FOR A VIOLATION TO WHICH SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a) OR THIS SUBPARAGRAPH (III) APPLIES;

(IV) IN THE CASE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE V OF PART 2 OF THIS ARTICLE, COMMITS:

(A) A CLASS 1 MISDEMEANOR; OR

(B) A CLASS 5 FELONY, IF THE VIOLATION IS COMMITTED SUBSEQUENT TO ANY PRIOR CONVICTION UNDER SUBPARAGRAPH (I), (II), OR (III) OF THIS PARAGRAPH (a) OR THIS SUBPARAGRAPH (IV).

(b) THIS SUBSECTION (2.1) SHALL ONLY BECOME EFFECTIVE IF SUBSECTION (2) OF THIS SECTION IS REPEALED. THIS SUBSECTION (2.1) SHALL

BECOME EFFECTIVE ON THE JULY 1 EFFECTIVE DATE OF THE REPEAL OF SUBSECTION (2) OF THIS SECTION AND SHALL APPLY ONLY TO OFFENSES COMMITTED ON OR AFTER THAT DATE.

(2.3) (a) ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION BY POSSESSION OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULES I THROUGH IV OF PART 2 OF THIS ARTICLE IN AN AMOUNT WEIGHING ONE GRAM OR LESS COMMITS:

(I) A CLASS 6 FELONY; OR

(II) A CLASS 4 FELONY, IF THE VIOLATION IS COMMITTED SUBSEQUENT TO ANY PRIOR CONVICTION UNDER SUBPARAGRAPH (I), (II), OR (III) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION OR THIS SUBSECTION (2.3).

(b) THIS SUBSECTION (2.3) IS REPEALED ON THE FIRST DAY OF JULY FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER

JULY 1, 2004, WAS NOT APPROPRIATED TO THE DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

(2.5) (a) Notwithstanding the provisions of ~~paragraph (c)~~ SUBPARAGRAPH (III) OF PARAGRAPH (a) of subsection (2) of this section, a person who violates the provisions of subsection (1) of this section with regard to flunitrazepam commits a class 3 felony; except that the person commits a class 2 felony if the violation is committed subsequent to a prior conviction for a violation involving flunitrazepam or to which SUBPARAGRAPH (I) OF paragraph (a) of subsection (2) of this section applies.

(b) Any person convicted of violating the provisions of subsection (1) of this section with regard to flunitrazepam shall be subject to the mandatory sentencing provisions of subsection (3) of this section.

(c) THIS SUBSECTION (2.5) IS REPEALED ON THE FIRST DAY OF JULY FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER JULY

1, 2004, WAS NOT APPROPRIATED TO THE DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

(2.6) (a) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (2.1) OF THIS SECTION, A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION WITH REGARD TO FLUNITRAZEPAM COMMITS A CLASS 3 FELONY; EXCEPT THAT THE PERSON COMMITS A CLASS 2 FELONY IF THE VIOLATION IS COMMITTED SUBSEQUENT TO A PRIOR CONVICTION FOR A VIOLATION INVOLVING FLUNITRAZEPAM OR TO WHICH SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (2.1) OF THIS SECTION APPLIES.

(b) ANY PERSON CONVICTED OF VIOLATING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION WITH REGARD TO FLUNITRAZEPAM SHALL BE SUBJECT TO THE MANDATORY SENTENCING PROVISIONS OF SUBSECTION (3) OF THIS SECTION.

(c) THIS SUBSECTION (2.6) SHALL ONLY BECOME EFFECTIVE IF SUBSECTION (2.5) OF THIS SECTION IS REPEALED. THIS SUBSECTION (2.6) SHALL BECOME EFFECTIVE ON THE JULY 1 EFFECTIVE DATE OF THE REPEAL OF SUBSECTION (2.5) OF THIS SECTION AND SHALL APPLY ONLY TO OFFENSES COMMITTED ON OR AFTER THAT DATE.

(3) (a) Except as otherwise provided in section 18-18-407 relating to special offenders, any person convicted pursuant to SUBPARAGRAPH (I) OF paragraph (a) of subsection (2) of this section for knowingly manufacturing, dispensing, selling, distributing, possessing, or possessing with intent to manufacture, dispense, sell, or distribute, or inducing, attempting to induce, or conspiring with one or more other persons, to manufacture, dispense, sell, distribute, possess, or possess with intent to manufacture, dispense, sell, or distribute an amount that is or has been represented to be:

SECTION 4. 18-19-103, Colorado Revised Statutes, is amended to read:

18-19-103. Source of revenues - allocation of moneys - repeal.

(1) For offenses committed on and after July 1, 1996, each drug offender who is convicted, or receives a deferred sentence pursuant to section 16-7-403, C.R.S., shall be required to pay a surcharge to the clerk of the court in the county in which the conviction occurs or in which the deferred sentence is entered. Such surcharge shall be in the following amounts:

(a) For each class 2 felony of which a person is convicted, ~~four thousand five hundred~~ FIVE THOUSAND dollars;

(b) For each class 3 felony of which a person is convicted, ~~three~~ FOUR thousand dollars;

(c) For each class 4 felony of which a person is convicted, ~~one thousand five hundred~~ TWO THOUSAND dollars;

(d) For each class 5 felony of which a person is convicted, ~~one thousand one hundred twenty-five~~ ONE THOUSAND FIVE HUNDRED dollars;

(e) For each class 6 felony of which a person is convicted, ~~seven hundred fifty~~ ONE THOUSAND dollars;

(f) For each class 1 misdemeanor of which a person is convicted, ~~six hundred~~ SEVEN HUNDRED FIFTY dollars;

(g) For each class 2 misdemeanor of which a person is convicted, ~~four hundred fifty~~ SIX HUNDRED dollars;

(h) For each class 3 misdemeanor of which a person is convicted, ~~two hundred twenty-five~~ THREE HUNDRED dollars.

(2) Each drug offender convicted of a violation of section 18-18-406 (1), or who receives a deferred sentence pursuant to section 16-7-403, C.R.S., for a violation of section 18-18-406 (1), shall be assessed a surcharge of one hundred FIFTY dollars.

(3) The clerk of the court shall disburse the surcharge required by subsection (1) of this section as follows:

(a) Five percent shall be retained by the clerk for purposes of administering the disbursement of the surcharge pursuant to this subsection (3).

(b) Four percent shall be disbursed to the investigating agency to cover the costs of fingerprinting and photographing offenders pursuant to section 16-21-104 (1), C.R.S.

(c) One percent shall be disbursed to the sheriff of the county in which the conviction or deferred sentence is entered, to cover the costs of fingerprinting and photographing offenders pursuant to section 18-18-432 (3).

(d) ~~Ninety SIXTY-FIVE~~ percent shall be disbursed to the state treasurer who shall credit the same to the drug offender surcharge fund created pursuant to subsection (4) of this section.

(e) TWENTY-FIVE PERCENT SHALL BE DISBURSED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE DRUG OFFENDER TREATMENT FUND CREATED PURSUANT TO SUBSECTION (5.5) OF THIS SECTION.

(4) There is hereby created in the state treasury a drug offender surcharge fund which shall consist of moneys received by the state treasurer pursuant to paragraph (d) of subsection (3) of this section. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated by the general assembly shall remain in the drug offender surcharge fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year. All moneys in the fund shall be subject to annual appropriation by the general assembly to the judicial

department, the department of corrections, the division of criminal justice of the department of public safety, and the department of human services, after consideration of the plan developed pursuant to section 16-11.5-102 (3), C.R.S., to cover the costs associated with substance abuse assessment, testing, education, and treatment.

(5) The department of public safety shall award such moneys received by it pursuant to subsection (4) of this section as are designated in the plan developed pursuant to section 16-11.5-102 (3), C.R.S., and appropriated by the general assembly for such purpose.

(5.5) THERE IS HEREBY CREATED IN THE STATE TREASURY A DRUG OFFENDER TREATMENT FUND THAT SHALL CONSIST OF MONEYS RECEIVED BY THE STATE TREASURER PURSUANT TO PARAGRAPH (e) OF SUBSECTION (3) OF THIS SECTION AND ANY OTHER MONEYS APPROPRIATED THERETO. THE FUND MAY ACCEPT GIFTS, GRANTS, AND DONATIONS. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY SHALL REMAIN IN THE DRUG OFFENDER TREATMENT FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR. ALL MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE STATE JUDICIAL

DEPARTMENT FOR ALLOCATION TO THE STATE DRUG OFFENDER TREATMENT BOARD, TO COVER THE COSTS ASSOCIATED WITH SUBSTANCE ABUSE ASSESSMENT, TESTING, EDUCATION, AND TREATMENT.

(6) (a) The court may not waive any portion of the surcharge required by this section unless the court first finds that the drug offender is financially unable to pay any portion of said surcharge.

(b) The finding required by paragraph (a) of this subsection (6) shall only be made after a hearing at which the drug offender shall have the burden of presenting clear and convincing evidence that he OR SHE is financially unable to pay any portion of the surcharge.

(c) The court shall waive only that portion of the surcharge which the court has found the drug offender is financially unable to pay.

(7) THIS SECTION IS REPEALED ON THE FIRST DAY OF JULY FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-___, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2004, WAS

NOT APPROPRIATED TO THE DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

SECTION 5. Article 19 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

18-19-103.1. Source of revenues - allocation of moneys. (1) FOR OFFENSES COMMITTED ON AND AFTER JULY 1, 1996, EACH DRUG OFFENDER WHO IS CONVICTED, OR RECEIVES A DEFERRED SENTENCE PURSUANT TO SECTION 16-7-403, C.R.S., SHALL BE REQUIRED TO PAY A SURCHARGE TO THE CLERK OF THE COURT IN THE COUNTY IN WHICH THE CONVICTION OCCURS OR IN WHICH THE DEFERRED SENTENCE IS ENTERED. SUCH SURCHARGE SHALL BE IN THE FOLLOWING AMOUNTS:

(a) FOR EACH CLASS 2 FELONY OF WHICH A PERSON IS CONVICTED, FOUR THOUSAND FIVE HUNDRED DOLLARS;

(b) FOR EACH CLASS 3 FELONY OF WHICH A PERSON IS CONVICTED, THREE THOUSAND DOLLARS;

(c) FOR EACH CLASS 4 FELONY OF WHICH A PERSON IS CONVICTED, ONE THOUSAND FIVE HUNDRED DOLLARS;

(d) FOR EACH CLASS 5 FELONY OF WHICH A PERSON IS CONVICTED, ONE THOUSAND ONE HUNDRED TWENTY-FIVE DOLLARS;

(e) FOR EACH CLASS 6 FELONY OF WHICH A PERSON IS CONVICTED, SEVEN HUNDRED FIFTY DOLLARS;

(f) FOR EACH CLASS 1 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, SIX HUNDRED DOLLARS;

(g) FOR EACH CLASS 2 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, FOUR HUNDRED FIFTY DOLLARS;

(h) FOR EACH CLASS 3 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, TWO HUNDRED TWENTY-FIVE DOLLARS.

(2) EACH DRUG OFFENDER CONVICTED OF A VIOLATION OF SECTION 18-18-406 (1), OR WHO RECEIVES A DEFERRED SENTENCE PURSUANT TO SECTION 16-7-403, C.R.S., FOR A VIOLATION OF SECTION 18-18-406 (1), SHALL BE ASSESSED A SURCHARGE OF ONE HUNDRED DOLLARS.

(3) THE CLERK OF THE COURT SHALL DISBURSE THE SURCHARGE REQUIRED BY SUBSECTION (1) OF THIS SECTION AS FOLLOWS:

(a) FIVE PERCENT SHALL BE RETAINED BY THE CLERK FOR PURPOSES OF ADMINISTERING THE DISBURSAL OF THE SURCHARGE PURSUANT TO THIS SUBSECTION (3).

(b) FOUR PERCENT SHALL BE DISBURSED TO THE INVESTIGATING AGENCY TO COVER THE COSTS OF FINGERPRINTING AND PHOTOGRAPHING OFFENDERS PURSUANT TO SECTION 16-21-104 (1), C.R.S.

(c) ONE PERCENT SHALL BE DISBURSED TO THE SHERIFF OF THE COUNTY IN WHICH THE CONVICTION OCCURS OR IN WHICH THE DEFERRED SENTENCE IS ENTERED, TO COVER THE COSTS OF FINGERPRINTING AND PHOTOGRAPHING OFFENDERS PURSUANT TO SECTION 18-18-432 (3).

(d) NINETY PERCENT SHALL BE DISBURSED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE DRUG OFFENDER SURCHARGE FUND CREATED PURSUANT TO SUBSECTION (4) OF THIS SECTION.

(4) THERE IS HEREBY CREATED IN THE STATE TREASURY A DRUG OFFENDER SURCHARGE FUND THAT SHALL CONSIST OF MONEYS RECEIVED BY THE STATE TREASURER PURSUANT TO PARAGRAPH (d) OF SUBSECTION (3) OF THIS SECTION. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY SHALL REMAIN IN THE DRUG OFFENDER SURCHARGE FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR. ALL MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE JUDICIAL DEPARTMENT, THE DEPARTMENT OF CORRECTIONS, THE DIVISION OF CRIMINAL JUSTICE OF THE DEPARTMENT OF PUBLIC SAFETY, AND THE DEPARTMENT OF HUMAN SERVICES, AFTER CONSIDERATION OF THE PLAN DEVELOPED PURSUANT TO SECTION

16-11.5-102 (3), C.R.S., TO COVER THE COSTS ASSOCIATED WITH SUBSTANCE ABUSE ASSESSMENT, TESTING, EDUCATION, AND TREATMENT.

(5) THE DEPARTMENT OF PUBLIC SAFETY SHALL AWARD SUCH MONEYS RECEIVED BY IT PURSUANT TO SUBSECTION (4) OF THIS SECTION AS ARE DESIGNATED IN THE PLAN DEVELOPED PURSUANT TO SECTION 16-11.5-102 (3), C.R.S., AND APPROPRIATED BY THE GENERAL ASSEMBLY FOR SUCH PURPOSE.

(6) (a) THE COURT MAY NOT WAIVE ANY PORTION OF THE SURCHARGE REQUIRED BY THIS SECTION UNLESS THE COURT FIRST FINDS THAT THE DRUG OFFENDER IS FINANCIALLY UNABLE TO PAY ANY PORTION OF SAID SURCHARGE.

(b) THE FINDING REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (6) SHALL ONLY BE MADE AFTER A HEARING AT WHICH THE DRUG OFFENDER SHALL HAVE THE BURDEN OF PRESENTING CLEAR AND CONVINCING EVIDENCE THAT HE OR SHE IS FINANCIALLY UNABLE TO PAY ANY PORTION OF THE SURCHARGE.

(c) THE COURT SHALL WAIVE ONLY THAT PORTION OF THE SURCHARGE THAT THE COURT HAS FOUND THE DRUG OFFENDER IS FINANCIALLY UNABLE TO PAY.

(7) THIS SECTION SHALL ONLY BECOME EFFECTIVE IF SECTION 18-19-103 IS REPEALED. THIS SECTION SHALL BECOME EFFECTIVE ON THE JULY

1 EFFECTIVE DATE OF THE REPEAL OF SECTION 18-19-103 AND SHALL APPLY ONLY TO OFFENSES COMMITTED ON OR AFTER THAT DATE.

18-19-104. State drug offender treatment boards - repeal.

(1) THERE IS HEREBY CREATED THE STATE DRUG OFFENDER TREATMENT BOARD THAT SHALL CONSIST OF THREE MEMBERS AS FOLLOWS:

(a) THE PRESIDENT OF THE COLORADO DISTRICT ATTORNEYS' COUNCIL, OR HIS OR HER DESIGNEE;

(b) THE STATE PUBLIC DEFENDER, OR HIS OR HER DESIGNEE; AND

(c) THE STATE COURT ADMINISTRATOR, OR HIS OR HER DESIGNEE.

(2) (a) THE STATE DRUG OFFENDER TREATMENT BOARD SHALL ALLOCATE AT LEAST EIGHTY PERCENT OF THE YEARLY DRUG OFFENDER TREATMENT FUND ALLOCATION TO THE JUDICIAL DISTRICT DRUG OFFENDER TREATMENT BOARDS CREATED PURSUANT TO SECTION 18-19-105. SUCH ALLOCATION SHALL BE BASED UPON A FORMULA DEVELOPED BY THE STATE DRUG OFFENDER TREATMENT BOARD. THE FORMULA, AT A MINIMUM, SHALL ACCOUNT FOR A JUDICIAL DISTRICT'S POPULATION AND THE NUMBER OF DRUG CASE FILINGS IN THE JUDICIAL DISTRICT.

(b) THE STATE DRUG OFFENDER TREATMENT BOARD MAY ALLOCATE UP TO TWENTY PERCENT OF THE YEARLY DRUG OFFENDER TREATMENT FUND ALLOCATION TO DRUG TREATMENT PROGRAMS THAT SERVE MORE THAN ONE

JUDICIAL DISTRICT. WHEN ALLOCATING FUNDS PURSUANT TO THIS PARAGRAPH (b), THE STATE DRUG OFFENDER TREATMENT BOARD IS ENCOURAGED TO FUND AND DEVELOP INNOVATIVE AND EFFECTIVE DRUG TREATMENT PROGRAMS.

(3) THE STATE DRUG OFFENDER TREATMENT BOARD MAY ADOPT RULES AND GUIDELINES AS NECESSARY TO PERFORM THE FUNCTIONS OF THE BOARD.

(4) THIS SECTION IS REPEALED ON THE FIRST DAY OF JULY FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-___, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

18-19-105. Judicial district drug offender treatment boards - repeal. (1) EACH JUDICIAL DISTRICT SHALL CREATE A DRUG OFFENDER TREATMENT BOARD CONSISTING OF THE DISTRICT ATTORNEY SERVING THE JUDICIAL DISTRICT OR HIS OR HER DESIGNEE, THE CHIEF PUBLIC DEFENDER SERVING THE JUDICIAL DISTRICT OR HIS OR HER DESIGNEE, AND A PROBATION

OFFICER WORKING IN THE JUDICIAL DISTRICT CHOSEN BY THE CHIEF JUDGE OF THE JUDICIAL DISTRICT.

(2) EACH DRUG OFFENDER TREATMENT BOARD SHALL RECEIVE MONEYS FROM THE STATE DRUG OFFENDER TREATMENT BOARD PURSUANT TO SECTION 18-19-104 (2) (a) AND SHALL DISTRIBUTE THOSE MONEYS TO DRUG TREATMENT PROGRAMS BASED IN THE JUDICIAL DISTRICT. NO PROGRAM SHALL RECEIVE MONEYS FROM THE DRUG OFFENDER TREATMENT BOARD WITHOUT A MAJORITY VOTE OF THE BOARD.

(3) EACH JUDICIAL DISTRICT'S DRUG OFFENDER TREATMENT BOARD MAY ADOPT RULES AND GUIDELINES AS NECESSARY TO PERFORM THE FUNCTIONS OF THE BOARD.

(4) THIS SECTION IS REPEALED ON THE FIRST DAY OF JULY FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-___, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

SECTION 6. 16-11-201 (2), Colorado Revised Statutes, is amended. and the said 16-11-201 is further amended BY THE ADDITION OF NEW SUBSECTION, to read:

16-11-201. Application for probation - repeal. (2) (a) A person who has been twice convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction on which his OR HER application is based shall not be eligible for probation; EXCEPT THAT AN OFFENDER CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF SECTION 18-18-405 (2.3), C.R.S., MAY BE ELIGIBLE FOR PROBATION. ~~and~~ Notwithstanding any other provision of law, a person who has been convicted of one or more felonies under the laws of this state, any other state, or the United States within ten years prior to a class 1, 2, or 3 felony conviction on which his OR HER application is based shall not be eligible for probation.

(b) THIS SUBSECTION (2) IS REPEALED ON THE FIRST DAY OF JULY FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS GENERATED FROM SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-___, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2004, WAS

NOT APPROPRIATED TO THE DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

(2.1) (a) A PERSON WHO HAS BEEN TWICE CONVICTED OF A FELONY UNDER THE LAWS OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES PRIOR TO THE CONVICTION ON WHICH HIS OR HER APPLICATION IS BASED SHALL NOT BE ELIGIBLE FOR PROBATION, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON WHO HAS BEEN CONVICTED OF ONE OR MORE FELONIES UNDER THE LAWS OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES WITHIN TEN YEARS PRIOR TO A CLASS 1, 2, OR 3 FELONY CONVICTION ON WHICH HIS OR HER APPLICATION IS BASED SHALL NOT BE ELIGIBLE FOR PROBATION.

(b) THIS SUBSECTION (2.1) SHALL ONLY BECOME EFFECTIVE IF SUBSECTION (2) OF THIS SECTION IS REPEALED. THIS SUBSECTION (2.1) SHALL BECOME EFFECTIVE ON THE JULY 1 EFFECTIVE DATE OF THE REPEAL OF SUBSECTION (2) OF THIS SECTION AND SHALL APPLY ONLY TO OFFENSES COMMITTED ON OR AFTER THAT DATE.

SECTION 7. 16-11-202 (1), Colorado Revised Statutes, is amended to read:

16-11-202. Probationary power of court. (1) When it appears to the satisfaction of the court that the ends of justice and the best interest of the

public, as well as the defendant, will be served thereby, the court may grant the defendant probation for such period and upon such terms and conditions as it deems best. If the court chooses to grant the defendant probation, the order placing the defendant on probation shall take effect upon entry and, if any appeal is brought, shall remain in effect pending review by an appellate court unless the court grants a stay of probation pursuant to section 16-4-201. Unless an appeal is filed that raises a claim that probation was granted contrary to the provisions of this title, the trial court shall retain jurisdiction of the case for the purpose of adjudicating complaints filed against the defendant that allege a violation of the terms and conditions of probation. In addition to imposing other conditions, the court has the power to commit the defendant to any jail operated by the county or city and county in which the offense was committed during such time or for such intervals within the period of probation as the court determines. The aggregate length of any such commitment whether continuous or at designated intervals shall not exceed ~~ninety~~ ONE HUNDRED EIGHTY days for a felony, sixty days for a misdemeanor, or ten days for a petty offense unless it is a part of a work release program pursuant to section 16-11-212. That the defendant submit to commitment imposed under this section shall be deemed a condition of probation.

SECTION 8. 42-2-125 (1) (k) (II), Colorado Revised Statutes, is amended to read:

42-2-125. Mandatory revocation of license and permit. (1) The department shall immediately revoke the license or permit of any driver or minor driver upon receiving a record showing that such driver has:

(k) (II) In the case of a minor driver, been convicted of or adjudicated for any offense provided for in section ~~18-18-404 (1) (b)~~, ~~18-18-405 (2) (d) (i)~~, 18-18-404 (1) (a) (II), 18-18-405 (2) (a) (IV) (A), or 18-18-406 (1), (3) (a) (I), or (4) (a) (I), C.R.S., or any comparable municipal charter or ordinance offense.

SECTION 9. Effective date - applicability. (1) This act shall take effect July 1, 2002.

(2) The amendments to section 18-18-404 (1) (a) (I), C.R.S., the amendments to section 18-18-405 (2) (a), C.R.S., the amendments to section 18-18-405 (2.5), C.R.S., the amendments to section 16-11-201 (2) (a), C.R.S., the newly created subsection 18-18-405 (2.3), the newly created section 18-19-104, the newly created section 18-19-105, and sections 4, 7, and 8 of the act shall apply to offenses committed on or after said July 1, 2002.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Colorado Legislative Council Staff

**STATE
FISCAL IMPACT**

Drafting Number: LLS 02-0170
Prime Sponsor(s): Sen. Gordon
 Rep. Hefley

Date: November 26, 2001
Bill Status: Interim Committee on Criminal
 Sentencing
Fiscal Analyst: Geoff Barsch (303-866-4102)

TITLE: CONCERNING PENALTIES FOR PERSONS CONVICTED OF CRIMINAL VIOLATIONS.

Fiscal Impact Summary	FY 2002/2003	FY 2003/2004
State Revenues		
Drug Offender Surcharge Fund	(\$673,516)	(\$715,274)
Drug Offender Treatment Fund	\$952,494	\$1,011,548
Cash Funds - Courts	\$15,499	\$16,460
State Expenditures		
General Fund	\$0	\$0
FTE Position Change	0.0 FTE	0.0 FTE
TABOR refund from General Fund*		\$309,200
Effective Date: July 1, 2002		
Appropriation Summary for FY 2001/2002: No appropriation is required		
Local Government Impact: See Local Government Impact section		

* Under current law, the state is required to refund 105 percent of the amount estimated to be refunded by the six-tier sales tax refund mechanism.

Note: The official Legislative Council staff revenue forecast for September 2001 indicates a TABOR revenue surplus for the next several years. However, revenue tracking since the September forecast indicates a potential for a revision downward of the surplus amount. If this occurs, the fiscal note will be revised to reflect the most recent revenue forecast.

Summary of Legislation

This bill makes several changes to the offense level of illegal drug use or possession. Changes include reducing the penalty for **use** of a schedule I or II controlled substance and creating the new penalty of **possession** of one gram or less of a controlled substance. The bill reduces:

- use of a schedule I or II controlled substance from a class 5 felony to a class 6 felony;

- possession of a schedule I controlled substance from a class 3 felony to a class 6 felony if the amount is one gram or less;
- possession of a schedule II or III controlled substance from a class 4 felony to a class 6 felony if the amount is one gram or less;
- possession of a schedule IV controlled substance from a class 5 felony to a class 6 felony if the amount is one gram or less; and
- a second or subsequent offense of possession of a schedule I through IV controlled substance to a class 4 felony when the amount is one gram or less.

The bill also increases the Drug Offender Surcharge for all classes of drug offenses, creates the Drug Offender Treatment Fund, and directs 25 percent of Drug Offender Surcharge revenue to the Drug Offender Treatment Fund. The bill creates the State Drug Offender Treatment Board and specifies board membership. The board is authorized to allocate moneys to local Drug Offender Treatment Boards, consisting of a district attorney, a public defender, and a probation officer, for distribution to drug treatment providers in the judicial districts.

The bill allows an offender who has two previous felony convictions and who is convicted of possession of one gram or less of a schedule I through IV controlled substance to be placed on probation. The bill extends the court's power to commit a probationer to county jail during the probation period from 90 days to a cumulative period of 180 days.

The bill requires all portions of the act, except the provision implementing the 180-day extension, to return to existing language if \$2.2 million is not appropriated to the drug offender treatment fund in the fiscal year beginning in 2004 or any fiscal year thereafter.

State Revenues

The bill creates the Drug Offender Treatment Fund, increases drug offender surcharges on felonies, misdemeanors, and marijuana petty offenses, and directs 25 percent of the revenue collected to the Fund. The surcharge increases are shown in Table 1.

Table 1. Drug Offender Surcharge Increases			
Penalty	Current Fine	Proposed Fine	Difference
Class 2 Felony	\$4,500	\$5,000	\$500
Class 3 Felony	3,000	4,000	1,000
Class 4 Felony	1,500	2,000	500
Class 5 Felony	1,250	1,500	250
Class 6 Felony	750	1,000	250
Class 1 Misdemeanor	600	750	150

Bill A

Class 2 Misdemeanor	450	600	150
Class 3 Misdemeanor	225	300	75
Class 2 Petty Offense (marihuana)	100	150	50
Average	\$1,375	\$1,700	\$325

While revenue collections will increase as a result of the higher surcharge amounts, it is estimated that 40 percent of the increased surcharge assessments will be collected. The Judicial Department estimates that FY 2001-02 Drug Offender Surcharge revenue will be approximately \$3.5 million. The bill proposes to increase the assessment of Drug Offender Surcharge fines by 24 percent, or \$840,000. If 40 percent of the increased assessment is actually collected, revenue will increase by \$336,000. However, when taking into account the reduced penalties for drug possession of one gram or less, overall revenue is estimated to increase by \$310,000. Of the total, \$201,500 will be deposited to the Drug Offender Surcharge Fund, \$77,500 will be deposited to the Drug Offender Treatment Fund, and the remainder will be distributed to the court clerks, investigating agencies, and county sheriffs.

Because 25 percent of revenue collected is directed to the Drug Offender Treatment Fund, the bill will reduce the overall revenue directed to the Drug Offender Surcharge Fund. Of the total revenue collected, \$2.48 million will be deposited to the Drug Offender Surcharge Fund, \$0.95 million will be deposited to the Drug Offender Treatment Fund, and the remainder will be distributed to the court clerks, investigating agencies, and county sheriffs. The result is an estimated reduction to the Drug Offender Surcharge Fund of \$673,516.

State Expenditures

This bill will result in a General Fund savings of \$2,364,700 beginning in FY 2004-05 as a result of shorter prison sentences for offenders convicted of possessing one gram or less of an illegal drug. The fiscal note assumes the following:

- The lower penalty will not be offered to those offenders charged with a crime more serious than possession. According to the 1999 Colorado District Attorney's Council database, 2,026 offenders were convicted of possession of a schedule I through IV controlled substance. Of these, 918 were originally charged with a more serious crime, while possession was the most serious charge for 1,108 offenders.
- Offenders convicted of the new crime of possessing one gram or less of an illegal drug will be sentenced to prison at the same rate as current possession offenders. Of the 1,108 offenders noted above, 299 were sentenced to the Department of Corrections.
- Approximately one-third of offenders convicted of drug possession will be arrested with one gram or less. Based on the Department of Public Safety,

Bill A

Division of Criminal Justice's 1998 sample of cases from ten judicial districts, 30.9 percent of drug cases involved possession of one gram or less.

Table 2 below shows the number of offenders estimated to be impacted by the lower class 6 felony sentence of possessing one gram or less of an illegal controlled substance. An estimated 93 offenders will be sentenced to the Department of Corrections and serve an average sentence length of 12 months. Beginning in FY 2004-05, the offenders will complete their sentences, resulting in an operating cost reduction compared to current sentences.

Table 2. Offenders Sentenced to DOC for Possessing One Gram or Less of an Illegal Drug					
Controlled Substance	Current Felony Class	Proposed Felony Class	Offenders Convicted of Possession	Offenders Sentenced to DOC	Offenders Sentenced Under Bill A (30.9%)
Schedule I	Class 3	Class 6	106	20	6
Schedule II, III	Class 4	Class 6	748	206	64
Schedule IV	Class 5	Class 6	254	73	23

The lower penalties for use of a schedule I or II controlled substance and for second and subsequent offenses are not anticipated to have a significant impact on the department's operations.

Five-Year Fiscal Impact on Correctional Facilities

Table 3 shows the five-year calculated savings of Criminal Sentencing Interim Committee Bill A. Operating costs are estimated to be \$26,238 per bed. It should be noted that the calculated savings begin in FY 2004-05. This estimate accounts for the estimated time for criminal filing, trial, disposition, and sentencing, followed by the estimated 12 months prison sentence of the new penalty for possessing one gram or less of an illegal drug.

Table 3. Five-Year Impact of Criminal Sentencing Interim Committee Bill A				
Fiscal Year	ADA Impact	Construction Cost	Operating Cost	Total Cost
FY 2002-03	0.0	\$0	\$0	\$0
FY 2003-04	0.0	0	0	0
FY 2004-05	(90.1)	0	(2,364,700)	(2,364,700)
FY 2005-06	(154.8)	0	(4,061,424)	(4,061,424)
FY 2006-07	(160.3)	0	(4,207,045)	(4,207,045)
TOTAL		\$0	(\$10,633,168)	(\$10,633,168)

Local Government Impact

County jails will be impacted by the increased length of stay allowed for offenders who violate terms of their probation under the bill. Current law limits to 90 days the cumulative amount of time a probationer may be sentenced to a county jail. The bill expands the limit to 180 days. While the daily cost to house an offender in a county jail facility varies, the FY 2000-01 rate the state pays local jails for holding state inmates is \$49.40 per offender per day. The statewide impact of the increased limit is not estimated at this time.

State Appropriations

No appropriation is required. The bill stipulates that its provisions will be repealed July 1, 2004 if the General Assembly does not appropriate \$2.2 million to the Drug Offender Treatment Fund for FY 2004-05.

Departments Contacted

Corrections Human Services Judicial

Bill C

HOUSE SPONSORSHIP

Madden, and Groff

SENATE SPONSORSHIP

Linkhart, and Windels

A BILL FOR AN ACT

CONCERNING LOCAL ADULT OFFENDER SERVICES PLANNING COMMITTEES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Criminal Sentencing. Allows each judicial district to establish an adult offender services planning committee ("committee") to be appointed by the chief judge of the judicial district. Specifies the members of the committee. Directs the committee to share information regarding services available for adult offenders within the judicial district, to develop and implement plans for the coordination and delivery of such services, and to cooperate with the juvenile services planning committee and the relevant state departments. Instructs the committee to submit to the general assembly's judiciary committees copies of any plans adopted and any reports made by the committee.

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

SECTION 1. Part 1 of article 11 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

16-11-105. Local adult services planning committees - legislative declaration - creation - duties. (1) THE GENERAL ASSEMBLY FINDS THAT

EFFECTIVE MANAGEMENT OF COMMUNITY-BASED PROGRAMS FOR ADULT OFFENDERS, EITHER UPON RELEASE FROM INCARCERATION OR WHILE SERVING SENTENCES WITHIN THE COMMUNITY, REQUIRES EXTENSIVE PLANNING, COOPERATION, AND COORDINATION AMONG THE ENTITIES RESPONSIBLE FOR PROVIDING SERVICES AND SUPERVISING OFFENDERS. COORDINATION AND COMMUNICATION AMONG SUCH ENTITIES WILL PROMOTE THE EFFICIENT USE OF SERVICES, PROVIDE BETTER EVALUATION OF EXISTING AND PROPOSED SERVICES, AND REDUCE RECIDIVISM AMONG OFFENDERS. THE GENERAL ASSEMBLY THEREFORE FINDS THAT THE CREATION OF A COMMITTEE WITHIN EACH JUDICIAL DISTRICT TO COORDINATE ADULT OFFENDER SERVICES IS NECESSARY TO IMPROVE THE QUALITY AND EFFECTIVENESS OF ADULT OFFENDER SERVICES.

(2) THERE MAY BE CREATED IN EACH JUDICIAL DISTRICT AN ADULT OFFENDER SERVICES PLANNING COMMITTEE. IF A JUDICIAL DISTRICT ELECTS TO ESTABLISH AN ADULT OFFENDER SERVICES PLANNING COMMITTEE, THE CHIEF JUDGE OF THE JUDICIAL DISTRICT SHALL APPOINT THE MEMBERS OF THE COMMITTEE BASED ON RECOMMENDATIONS FROM THE BOARD OF COUNTY COMMISSIONERS OF EACH COUNTY LOCATED WITHIN THE JUDICIAL DISTRICT AND THE CITY COUNCIL OF EACH CITY AND COUNTY LOCATED WITHIN THE JUDICIAL DISTRICT. EACH COMMITTEE, TO THE EXTENT PRACTICABLE, SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, A REPRESENTATIVE OF THE MUNICIPALITIES LOCATED WITHIN THE JUDICIAL DISTRICT AND A

REPRESENTATIVE FROM EACH OF THE FOLLOWING ORGANIZATIONS LOCATED
WITHIN THE JUDICIAL DISTRICT:

- (a) A COUNTY DEPARTMENT OF SOCIAL SERVICES;
- (b) A LOCAL LAW ENFORCEMENT AGENCY;
- (c) A LOCAL PROBATION OFFICE;
- (d) A LOCAL OFFICE OF STATE PAROLE;
- (e) A LOCAL COMMUNITY CORRECTIONS BOARD;
- (f) THE DISTRICT ATTORNEY'S OFFICE;
- (g) THE PUBLIC DEFENDER'S OFFICE; AND
- (h) A LOCAL COMMUNITY MENTAL HEALTH OFFICE.

(3) EACH ADULT OFFENDER SERVICES PLANNING COMMITTEE SHALL
MEET AS NECESSARY TO SHARE INFORMATION REGARDING THE SERVICES
AVAILABLE TO ADULTS CONVICTED OF CRIMINAL OFFENSES. IN ADDITION,
EACH COMMITTEE SHALL DEVELOP AND IMPLEMENT PLANS FOR THE PROVISION
AND COORDINATION OF ADULT OFFENDER SERVICES WITHIN THE JUDICIAL
DISTRICT. AT A MINIMUM, EACH PLAN SHALL ADDRESS TREATMENT,
SANCTIONS, AND SUPERVISION ISSUES. EACH COMMITTEE SHALL SHARE
INFORMATION AND COOPERATE WITH THE LOCAL JUVENILE SERVICES
PLANNING COMMITTEE FOR THE JUDICIAL DISTRICT AND RELEVANT STATE
DEPARTMENTS, INCLUDING AT A MINIMUM THE DEPARTMENTS REFERENCED IN
SECTION 16-11.5-102 (1). EACH COMMITTEE SHALL SUBMIT A COPY OF ANY

PLANS ADOPTED BY THE COMMITTEE AND ANY REPORTS MADE BY THE
COMMITTEE TO THE JUDICIARY COMMITTEE OF THE SENATE AND THE CIVIL
JUSTICE AND JUDICIARY COMMITTEE AND THE CRIMINAL JUSTICE COMMITTEE
OF THE HOUSE OF REPRESENTATIVES.

SECTION 2. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, and safety.

DRAFT

Bill C

Colorado Legislative Council Staff

LOCAL

CONDITIONAL FISCAL IMPACT

No State General Fund Impact

Drafting Number: LLS 02-0171
Prime Sponsor(s): Rep. Madden
Sen. Linkhart

Date: November 30, 2001
Bill Status: Interim Committee on Criminal Sentencing
Fiscal Analyst: Geoff Barsch (303-866-4102)

TITLE: CONCERNING LOCAL ADULT OFFENDER SERVICES PLANNING COMMITTEES.

Table with 3 columns: Fiscal Impact Summary, FY 2002/2003, FY 2003/2004. Rows include State Revenues, State Expenditures, FTE Position Change, and Appropriation Summary for FY 2002/2003.

Summary of Legislation

This bill authorizes each judicial district to establish an Adult Offender Services Planning Committee, and specifies committee membership. The bill directs the committee to:

- share information regarding services available for adult offenders within the judicial district;
develop and implement plans for the coordination and delivery of services; and
cooperate with the Juvenile Services Planning Committee and relevant state departments.

Committees are required to submit copies of any plans adopted to the General Assembly.

Local Government Impact

The bill is assessed as having a local conditional fiscal impact. Under the bill, judicial districts are not required to establish Adult Offender Services Planning Committees, and thus, no expenditures are required. However, this fiscal note assumes that some districts will form

committees anticipating benefits, and that those districts will absorb the costs associated with establishing the committee.

Departments Contacted

Corrections Human Services Judicial Public Safety

Bill E

HOUSE SPONSORSHIP

Lee, Decker, Groff, Hefley, Madden, and Mitchell

SENATE SPONSORSHIP

Windels, Dyer, Arnold, Gordon, and Linkhart

A BILL FOR AN ACT

CONCERNING THE RELOCATION OF CERTAIN EXISTING CRIMINAL SENTENCING STATUTES TO A NEW ARTICLE IN TITLE 18, C.R.S.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Criminal Sentencing. Relocates the provisions of certain criminal sentencing statutes in titles 16, 17, and 18, Colorado Revised Statutes, to a new article in title 18, Colorado Revised Statutes. Repeals most, but not all, of the current statutes containing the provisions being relocated. Makes conforming amendments.

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

SECTION 1. Legislative declaration. The general assembly hereby finds that the relocation of certain existing criminal sentencing statutes to a new article in the criminal code represents an important initial step toward the centralization of the substantive criminal statutes of this state. The general assembly further finds that the provisions of this act merely relocate certain

existing criminal sentencing statutes without making any substantive changes or altering the elements of any crime, and without altering the penalty for any crime. Therefore, the provisions of this act are not retrospective or ex post facto, and they may constitutionally apply to all cases in which a person is charged with a criminal offense under the laws of this state.

SECTION 2. Title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

ARTICLE 1.3

Sentencing in Criminal Cases

PART 1

ALTERNATIVES IN SENTENCING

18-1.3-101. [Formerly 16-7-401.] Deferred prosecution.

(1) Except as otherwise provided in section 18-6-801 (4), ~~C.R.S.~~, in any case, the court may, prior to trial or entry of a plea of guilty and with the consent of the defendant and the prosecution, order the prosecution of the offense to be deferred for a period not to exceed two years; except that the period of deferred prosecution may be extended for an additional time up to one hundred eighty days if the failure to pay the amounts specified in subsection (2) of this section

is the sole condition of supervision which has not been fulfilled, because of inability to pay, and the defendant has shown a future ability to pay. During that time, the court may place the defendant under the supervision of the probation department and may require the defendant to undergo counseling or treatment for the defendant's mental condition, or for alcohol or drug abuse, or for both such conditions.

(2) Upon the defendant's satisfactory completion of and discharge from supervision, the charge against the defendant shall be dismissed with prejudice. If the conditions of supervision are violated, the defendant shall be tried for the offense for which he OR SHE is charged. The violation of conditions of supervision shall be determined by a hearing before the court which granted the deferred prosecution. The burden in such hearing shall be upon the district attorney by a preponderance of the evidence to show that a violation has in fact occurred. However, if the alleged violation is the 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 presiding judge at the hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(3) Upon consenting to a deferred prosecution as provided in this

section, the defendant shall execute a written waiver of his OR HER right to a speedy trial. Consent to a deferred prosecution under this section shall not be construed as an admission of guilt, nor shall such consent be admitted in evidence in a trial for the offense for which he OR SHE is charged.

18-1.3-102. [Formerly 16-7-403.] Deferred sentencing of defendant. (1) In any case in which the defendant has entered a plea of guilty, the court accepting the plea has the power, with the written consent of the defendant and his OR HER attorney of record and the district attorney, to continue the case for a period not to exceed four years from the date of entry of a plea to a felony or two years from the date of entry of a plea to a misdemeanor, or petty offense, or traffic offense for the purpose of entering judgment and sentence upon such plea of guilty; except that such period may be extended for an additional time up to one hundred eighty days if the failure to pay restitution is the sole condition of supervision which has not been fulfilled, because of inability to pay, and the defendant has shown a future ability to pay. During such time, the court may place the defendant under the supervision of the probation department.

(2) Prior to entry of a plea of guilty to be followed by deferred judgment and sentence, the district attorney, in the course of plea discussion as

provided in sections 16-7-301 and 16-7-302, C.R.S., is authorized to enter into a written stipulation, to be signed by the defendant, the defendant's attorney of record, and the district attorney, under which the defendant is obligated to adhere to such stipulation. The conditions imposed in the stipulation shall be similar in all respects to conditions permitted as part of probation. Any person convicted of 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., shall stipulate to the conditions specified in section ~~16-11-204 (2) (b)~~ 18-1.3-204 (2) (b). In addition, the stipulation may require the defendant to perform community or charitable work service projects or make donations thereto. Upon full compliance with such conditions by the defendant, the plea of guilty previously entered shall be withdrawn and the charge upon which the judgment and sentence of the court was deferred shall be dismissed with prejudice. Such stipulation shall specifically provide that, upon a breach by the defendant of any condition regulating the conduct of the defendant, the court shall enter judgment and impose sentence upon such guilty plea. When, as a condition of the deferred sentence, the court orders the defendant to make restitution, evidence of failure to pay the said restitution shall constitute prima facie evidence of a violation. Whether a breach of condition has occurred shall be

determined by the court without a jury upon application of the district attorney and upon notice of hearing thereon of not less than five days to the defendant or the defendant's attorney of record. Application for entry of judgment and imposition of sentence may be made by the district attorney at any time within the term of the deferred judgment or within thirty days thereafter. The burden of proof at such hearing shall be by a preponderance of the evidence, and the procedural safeguards required in a revocation of probation hearing shall apply.

(3) When a defendant signs a stipulation by which it is provided that judgment and sentence shall be deferred for a time certain, he OR SHE thereby waives all rights to a speedy trial, as provided in section 18-1-405, C.R.S.

(4) A warrant for the arrest of any defendant for breach of a condition of a deferred sentence 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 the deferred sentence has been violated and that the arrest of the defendant 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 defendant is found.

18-1.3-103. [Formerly 16-7-403.7.] Deferred sentencing - drug

offenders - legislative declaration - demonstration program - repeal.

(1) The general assembly finds that:

(a) Illegal drug use plays a part in much of the crime in Colorado, costs millions of dollars in lost productivity, and contributes to the overcrowding of our courts and jails;

(b) Programs in which drug offenders are closely supervised and treated and receive frequent drug tests, commonly referred to as "drug courts", have proven effective in certain judicial districts in Colorado and in other states;

(c) It is in the best interest of the citizens of this state to explore the expanded use of these drug courts in Colorado.

(2) As used in this section, unless the context otherwise requires, "drug court" means a program whereby eligible defendants are offered a deferred sentence pursuant to the provisions of section ~~16-7-403~~ 18-1.3-102 but are required to participate in an intensive treatment program involving frequent reporting and testing conditions.

(3) (a) On or before December 1, 2000, the state court administrator shall select up to three judicial districts to participate in a three-year demonstration program to study the use of drug courts, referred to in this

section as the "demonstration program". Of the judicial districts selected, at least one shall be located in a rural area and at least one shall be located west of the continental divide.

(b) Any judicial district desiring to participate in the demonstration program shall submit an application to the state court administrator no later than September 1, 2000. The contents of an application may be specified by the state court administrator but shall, at a minimum, include:

(I) A statement by the chief judge and the court administrator of the judicial district indicating support for the demonstration program;

(II) A plan that:

(A) Specifies the criteria that will be used to determine which defendants are eligible for participation in the demonstration program;

(B) Specifies the terms of any proposed deferred sentence;

(C) Describes the treatment that a participating defendant will be required to undergo; and

(D) Describes objective measures that will be used to evaluate the effectiveness of the demonstration program and any cost savings from the demonstration program.

(III) A budget that identifies how any additional moneys made

available for the drug court would be expended.

(4) On or before January 1, 2002, and each January 1 thereafter, each judicial district participating in the demonstration program shall submit a report to the state court administrator concerning the effectiveness of the demonstration program and any cost savings achieved as a result of implementation of the demonstration program. On or before March 1, 2004, the state court administrator shall compile the reports from the participating judicial districts and report to the judiciary committees of the senate and house of representatives on the effectiveness of the demonstration program and any cost savings achieved as a result of the implementation of the demonstration program.

(5) For fiscal years commencing July 1, 2001, and for fiscal years thereafter, the demonstration program in any judicial district shall only continue if moneys for such program are contained in the plan, submitted pursuant to section 16-11.5-102 (3), C.R.S., for the allocation of moneys from the drug offender surcharge fund.

(6) This section is repealed, effective July 1, 2006.

18-1.3-104. [Formerly 16-11-101.] Alternatives in imposition of sentence - repeal. (1) Within the limitations of the penalties provided by the

classification of the offense of which a person is found guilty, and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(a) The defendant may be granted probation unless the offense of which he OR SHE is convicted makes him OR HER ineligible for probation. The granting or denial of probation and the conditions of probation shall not be subject to appellate review unless probation is granted contrary to the provisions of this title.

(b) Subject to the provisions of section ~~18-1-105~~, C.R.S. 18-1.3-401, in class 2, class 3, class 4, and class 5 felonies, the defendant may be sentenced to imprisonment for a definite period of time.

(b.5) (I) Except as otherwise provided by subparagraph (II) of this paragraph (b.5), any defendant who, in the determination of the court, is a candidate for an alternative sentencing option and who would otherwise be sentenced to imprisonment pursuant to paragraph (b) of this subsection (1) may, as an alternative, be sentenced to a specialized restitution and community service program ~~adopted pursuant to article 27.9 of title 17, C.R.S.~~, SECTION 18-1.3-302 if such defendant is determined eligible and is accepted into such program.

(II) (A) The court shall consider and may sentence any defendant who is a nonviolent offender as defined in sub-subparagraph (B) of this subparagraph (II) pursuant to subsection (2) of this section.

(B) As used in this section, "nonviolent offender" means a person convicted of a felony other than a crime of violence as defined in section ~~16-11-309 (2)~~ 18-1.3-406 (2), one of the felonies set forth in section 18-3-104, 18-4-203, 18-4-301, or 18-4-401 (2) (c), (2) (d), or (5), ~~C.R.S.~~; or a felony offense committed against a child as set forth in articles 3, 6, and 7 of THIS title, ~~18, C.R.S.~~; and who is not subject to the provisions of section ~~16-13-101~~ 18-1.3-801.

(c) The defendant shall be sentenced to death in those cases in which a death sentence is required under section ~~16-11-103~~ 18-1.3-1201.

(d) Repealed.

(e) The defendant may be sentenced to the payment of a fine or to a term of imprisonment or to both a term of imprisonment and the payment of a fine; except that a person who has been twice convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction for which he or she is being sentenced is not eligible to receive a fine in lieu of imprisonment. No fine shall be imposed for conviction of a felony except as

provided in ~~sections 18-1-105~~ SECTION 18-1.3-401 and SECTION 25-15-310, articles 22 to 29 of title 39, or article 3 of title 42, C.R.S.

(f) The defendant may be sentenced to comply with any other court order authorized by law.

(g) The defendant may be sentenced to payment of costs.

(h) The defendant may be sentenced pursuant to part 3 4 OR 5 of this article.

(i) (I) If the defendant is eligible pursuant to section 19-2-517 (3), C.R.S., the defendant may be sentenced to the youthful offender system in accordance with section ~~16-11-311~~ 18-1.3-407.

(II) This paragraph (i) is repealed, effective June 30, 2004.

(j) Notwithstanding any provision of this subsection (1) to the contrary, the court shall sentence any person convicted of a sex offense, as defined in section ~~16-13-803 (5)~~ 18-1.3-1003 (5), committed on or after November 1, 1998, pursuant to the provisions of part 8 of ~~article 13~~ 10 of this ~~title~~ ARTICLE.

(2) (a) The sentencing court shall consider the following factors in sentencing nonviolent offenders:

(1) The nature and character of the offense;

(II) The character and record of the nonviolent offender, including whether the offender is a first-time offender;

(III) The offender's employment history;

(IV) The potential rehabilitative value of the sentencing alternatives available to the court;

(V) Any potential impact on the safety of the victim, the victim's family, and the general public based upon sentencing alternatives available to the court; and

(VI) The offender's ability to pay restitution to the victim or the victim's family based upon the sentencing alternatives available to the court.

(b) A nonviolent offender may be granted probation pursuant to paragraph (a) of subsection (1) of this section and, as a condition of probation, be required to participate in an intensive supervision program pursuant to section ~~16-11-213~~ 18-1.3-208.

(c) The court shall consider and may sentence a nonviolent offender to any one or any combination of the sentences described in this paragraph (c) if, upon consideration of the factors described in paragraph (a) of this subsection (2), the court does not grant probation pursuant to paragraph (b) of this subsection (2) or does not sentence the offender to the department of

corrections as provided under paragraph (d) of this subsection (2):

(I) A community corrections program pursuant to ~~article 27 of title 17, C.R.S.~~ SECTION 18-1.3-301;

(II) A home detention program pursuant to ~~article 27.8 of title 17, C.R.S.~~ SECTION 18-1.3-105; or

(III) A specialized restitution and community service program ~~adopted pursuant to article 27.9 of title 17, C.R.S.~~ SECTION 18-1.3-302.

(d) Nothing in this subsection (2) shall be construed as prohibiting a court from exercising its discretion in sentencing a nonviolent offender to the department of corrections based upon, but not limited to, any one or more factors described in paragraph (a) of this subsection (2).

(3) (a) In determining the appropriate sentencing alternative for a defendant who has been convicted of unlawful sexual behavior as defined in section 18-3-412.5 (1) (b), ~~C.R.S.~~, the sentencing court shall consider the defendant's previous criminal and juvenile delinquency records, if any, set forth in the presentence investigation report prepared pursuant to section 16-11-102 (1) (a), C.R.S.

(b) For purposes of this subsection (3), "convicted" means a conviction by a jury or by a court and shall also include a deferred judgment and

sentence, a deferred adjudication, an adjudication, and a plea of guilty or nolo contendere.

18-1.3-105. [Formerly 17-27.8-102.] Authority of sentencing courts to utilize home detention programs. (1) (a) A sentencing judge is authorized to sentence any offender, as defined in ~~section 17-27.8-101 (2)~~ SUBSECTION (5) OF THIS SECTION, to a home detention program operated pursuant to a contractual agreement with the department of public safety pursuant to this article for all or part of such offender's sentence.

(b) Prior to sentencing any offender directly to a home detention program, the sentencing judge shall consider the following factors:

(I) The safety of victims and witnesses of the offender's criminal acts;

(II) The safety of the public at large;

(III) The seriousness of any offense committed by the offender together with any information relating to the original charge against the offender;

(IV) The offender's prior criminal record; and

(V) The ability of the offender to pay for the costs of home detention and any restitution to victims of his OR HER criminal acts.

(c) The sentencing judge shall make every reasonable effort to notify

the victims of crime that the offender has been sentenced to a home detention program. Such notice shall be sent to the last address in the possession of the court, and the victim of the crime has the duty to keep the court informed of his or her most current address.

(d) An offender who has been convicted of a crime, the underlying factual basis of which was found by the court to include an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., shall not be eligible for home detention in the home of the victim pursuant to this article.

(2) Any offender who is directly sentenced to a home detention program pursuant to subsection (1) of this section and fails to carry out the terms and conditions prescribed by the sentencing court in his OR HER sentence to a home detention program shall be returned to the court and resented as soon as possible.

(3) A sentencing judge is authorized to require any offender, as defined in ~~section 17-27.8-101 (2)~~ SUBSECTION (5) OF THIS SECTION, as a condition of probation, to serve an appropriate period of time extending from ninety days to one year in a home detention program operated directly by the judicial department, or in a home detention program operated pursuant to a contractual agreement with the department of public safety.

(4) The general assembly hereby declares that this section shall be effective July 1, 1990, only in the counties of Boulder, Larimer, and Pueblo in order to facilitate a pilot program in Boulder, Larimer, and Pueblo counties which shall extend from July 1, 1990, until July 1, 1992. (5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "HOME DETENTION" MEANS AN ALTERNATIVE CORRECTIONAL SENTENCE OR TERM OF PROBATION SUPERVISION WHEREIN A DEFENDANT CONVICTED OF ANY FELONY, OTHER THAN A CLASS I OR VIOLENT FELONY, IS ALLOWED TO SERVE HIS OR HER SENTENCE OR TERM OF PROBATION, OR A PORTION THEREOF, WITHIN HIS OR HER HOME OR OTHER APPROVED RESIDENCE. SUCH SENTENCE OR TERM OF PROBATION SHALL REQUIRE THE OFFENDER TO REMAIN WITHIN HIS OR HER APPROVED RESIDENCE AT ALL TIMES EXCEPT FOR APPROVED EMPLOYMENT, COURT-ORDERED ACTIVITIES, AND MEDICAL NEEDS.

(b) "OFFENDER" MEANS ANY PERSON WHO HAS BEEN CONVICTED OF OR WHO HAS RECEIVED A DEFERRED SENTENCE FOR A FELONY, OTHER THAN A CLASS I OR VIOLENT FELONY.

18-1.3-106. [Formerly 17-26-128.] County jail sentencing alternatives - work, educational, and medical release - home detention - day reporting. (1) (a) Any county may provide a program whereby any

person sentenced to the county jail upon conviction for a crime, nonpayment of any fine or forfeiture, or contempt of court may be granted by the court the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

(I) Seeking employment;

(II) Working at his or her employment;

(III) Conducting his or her own business or other self-employed occupation including housekeeping and attending to the needs of the family;

(IV) Attendance at an educational institution;

(V) Medical treatment;

(VI) Home detention; or

(VII) Day reporting.

(b) A court may order a person who would otherwise be sentenced to the county jail upon conviction of a crime to be sentenced directly to an available day reporting program if the court deems such a sentence to be appropriate for the offender.

(1.1) For purposes of this section, "home detention" means an alternative correctional sentence or term of legal supervision wherein a defendant charged or convicted of a misdemeanor, felony, nonpayment of any

fine, or contempt of court is allowed to serve his or her sentence or term of supervision, or a portion thereof, within his or her home or other approved residence. Such sentence or term of supervision shall cause the defendant to remain within such defendant's approved residence at all times except for approved employment, court-ordered activities, and medical needs. Supervision of the defendant shall include personal monitoring by an agent or designee of the referring unit of government and monitoring by electronic devices which are capable of detecting and reporting the defendant's absence or presence within the approved residence.

(1.3) Before a court may grant a person sentenced to the county jail the privilege of leaving the jail to attend a postsecondary educational institution, the court shall first notify the prosecuting attorney and the postsecondary educational institution of its intention to grant the privilege and requesting their comments thereon. The notice shall include all relevant information pertaining to the person and the crime for which he OR SHE was convicted. Both the prosecuting attorney and the postsecondary institution shall reply to the court in writing within ten days of receipt of the notification or within such other reasonable time in excess of ten days as specified by the court. The postsecondary educational institution's reply shall include a

statement of whether or not it will accept the person as a student. Acceptance by a state postsecondary educational institution shall be pursuant to section 23-5-106, C.R.S.

(2) Unless directly sentenced to a day reporting program pursuant to paragraph (b) of subsection (1) of this section or unless such privilege is otherwise expressly granted by the sentencing court, the prisoner shall be confined as sentenced. The prisoner may petition the court for such privilege at the time of sentencing or thereafter and, in the discretion of the court, may renew his or her petition. The court may withdraw the privilege at any time by order entered with or without notice.

(3) The sheriff may endeavor to secure employment for unemployed prisoners under this section. If a prisoner is employed for wages or salary, the sheriff may collect the same or require the prisoner to turn over his OR HER wages or salary in full when received, and the sheriff shall deposit the same in a trust checking account and shall keep a ledger showing the status of the account of each prisoner.

(4) Every prisoner gainfully employed shall be liable for the cost of his OR HER board in the jail or the cost of the supervision and administrative services if he OR SHE is home-detained, as fixed by the board of county

commissioners. If necessarily absent from jail at mealtime, he OR SHE shall, at his OR HER request, be furnished with an adequate nourishing lunch to carry to work. The sheriff shall charge his OR HER account, if he OR SHE has one, for such board. If the prisoner is gainfully self-employed, he OR SHE shall pay the sheriff for such board, in default of which his OR HER privilege under this section shall be automatically forfeited. If the jail food is furnished directly by the county, the sheriff shall account for and pay over such board payments to the county treasurer. The board of county commissioners may, by resolution, provide that the county furnish or pay for the transportation of prisoners employed under this section to and from the place of employment. The sheriff shall reimburse the county or other disbursing agent for all such expenses incurred in accordance with this SECTION AND article 26 OF TITLE 17, C.R.S., as soon as adequate funds are available in the prisoner's account and in accordance with paragraph (b) of subsection (5) of this section.

(5) By order of the court, the wages or salaries of employed prisoners shall be disbursed by the sheriff for the following purposes, in the order stated:

- (a) Payment of any current child support order;
- (b) Payment of any child support arrearage;
- (b.3) Payment of any child support debt order;

- (c) Payment of any spousal maintenance;
- (d) Payment of costs for the crime victims compensation fund, pursuant to section 24-4.1-119, C.R.S.;
- (e) Payment of surcharges for the victims and witnesses assistance and law enforcement fund, pursuant to section 24-4.2-104, C.R.S.;
- (f) Payment of restitution;
- (g) Payment of a time payment fee;
- (h) Payment of late fees;
- (i) Payment of any other fines, fees, or surcharges;
- (j) Payment of the board of the prisoner;
- (k) Payment of the supervision and administrative services provided to the prisoner during his OR HER home detention;
- (l) Payment of necessary travel expense to and from work and other incidental expenses of the prisoner;
- (m) Payment, either in full or ratably, of the prisoner's obligations acknowledged by him OR HER in writing or which have been reduced to judgment; and
- (n) The balance, if any, to the prisoner upon his OR HER discharge.
- (6) The court may by order authorize the sheriff to whom the prisoner

is committed to arrange with another sheriff for the employment or home detention of the prisoner in the other's county and, while so employed or so detained, for the prisoner to be in the other's custody but in other respects to be and continue subject to the commitment.

(7) If the prisoner was convicted in a court in another county, the court of record having criminal jurisdiction may, at the request or with the concurrence of the committing court, make all determinations and orders under this section which might otherwise be made by the sentencing court after the prisoner is received at the jail.

(8) The board of county commissioners may, by resolution, direct that functions of the sheriff under either subsection (3) or (5) of this section, or both, be performed by the county department of social services; or, if the board of county commissioners has not so directed, a court of record may order that the prisoner's earnings be collected and disbursed by the clerk of the court. Such order shall remain in force until rescinded by the board or the court, whichever made it.

(9) The county department of social services shall at the request of the court investigate and report to the court the amount necessary for the support of the prisoner's dependents.

(10) The sheriff may refuse to permit the prisoner to exercise his OR HER privilege to leave the jail as provided in subsection (1) of this section for any breach of discipline or other violation of jail regulations. Any such breach of discipline or other violation of jail regulations shall be reported to the sentencing court.

(11) A prisoner who has been convicted of one of the crimes of violence as defined in section ~~16-11-309 (2)~~, C.R.S. 18-1.3-406 (2), who has been convicted of a sex offense as defined in sections ~~16-13-202 (5)~~ 18-1.3-903 (5) and 18-3-411, C.R.S.; who has been convicted of a crime, the underlying factual basis of which was found by the court to include an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., or who has been convicted of a class 1 misdemeanor in which a deadly weapon is used shall not be eligible for home detention pursuant to this section.

(12) Persons sentenced to the county jail as a direct sentence or sentenced to the county jail as a condition of probation who are permitted to participate in work, educational, medical release, home detention, or day reporting programs pursuant to subsection (1) of this section shall receive one day credit against their sentences for each day spent in such programs. As used in this section, "day reporting program" means an alternative correctional

sentence wherein a defendant is allowed to serve his or her sentence by reporting daily to a central location wherein the defendant is supervised in court-ordered activities.

PART 2

PROBATION

18-1.3-201. [Formerly 16-11-201.] Application for probation.

(1) (a) A person who has been convicted of an offense, other than a class 1 felony or a class 2 petty offense, is eligible to apply to the court for probation.

(b) A nonviolent offender as defined in section ~~16-11-101 (1) (b.5)~~ ~~(H) (B)~~ 18-1.3-104 (1) (b.5) (II) (B) is eligible to apply to the court for probation.

(2) A person who has been twice convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction on which his OR HER application is based shall not be eligible for probation, and notwithstanding any other provision of law, a person who has been convicted of one or more felonies under the laws of this state, any other state, or the United States within ten years prior to a class 1, 2, or 3 felony conviction on which his OR HER application is based shall not be eligible for probation.

(3) An application for probation shall be in writing upon forms

furnished by the court, but, when the defendant has been convicted of a misdemeanor or a class 1 petty offense, the court, in its discretion, may waive the written application for probation.

(4) (a) (I) The restrictions upon eligibility for probation in subsection (2) of this section may be waived by the sentencing court regarding a particular defendant upon recommendation of the district attorney approved by an order of the sentencing court.

(II) The restrictions upon eligibility for probation in subsection (2) of this section may be waived upon a recommendation of the district attorney approved by an order of the sentencing court after a showing that the defendant is a nonviolent offender, as defined in section ~~16-11-101 (1) (b.5) (H) (B)~~ 18-1.3-104 (1) (b.5) (II) (B), and that any prior felony conviction for the defendant was not for a crime of violence, as defined in section ~~16-11-309 (2)~~ 18-1.3-406 (2), one of the felonies set forth in section 18-3-104, 18-4-203, 18-4-301, or 18-4-401 (2) (c), (2) (d), or (5), ~~C.R.S.~~, or a felony offense committed against a child as set forth in articles 3, 6, and 7 of THIS title, ~~18; C.R.S.~~, or under the laws of another state or the United States that, if committed in this state, would be a crime of violence, manslaughter, second degree burglary, robbery, theft of property worth five hundred dollars or more, theft

from the person of another by means other than the use of force, threat, or intimidation, or a felony offense committed against a child.

(b) Upon entry of an order pursuant to this subsection (4) regarding a particular defendant, such defendant shall be deemed to be eligible to apply to the court for probation pursuant to this section.

18-1.3-202. [Formerly 16-11-202.] Probationary power of court.

(1) When it appears to the satisfaction of the court that the ends of justice and the best interest of the public, as well as the defendant, will be served thereby, the court may grant the defendant probation for such period and upon such terms and conditions as it deems best. If the court chooses to grant the defendant probation, the order placing the defendant on probation shall take effect upon entry and, if any appeal is brought, shall remain in effect pending review by an appellate court unless the court grants a stay of probation pursuant to section 16-4-201, C.R.S. Unless an appeal is filed that raises a claim that probation was granted contrary to the provisions of this title, the trial court shall retain jurisdiction of the case for the purpose of adjudicating complaints filed against the defendant that allege a violation of the terms and conditions of probation. In addition to imposing other conditions, the court has the power to commit the defendant to any jail operated by the county or city and county

in which the offense was committed during such time or for such intervals within the period of probation as the court determines. The aggregate length of any such commitment whether continuous or at designated intervals shall not exceed ninety days for a felony, sixty days for a misdemeanor, or ten days for a petty offense unless it is a part of a work release program pursuant to section ~~16-11-212~~ 18-1.3-207. That the defendant submit to commitment imposed under this section shall be deemed a condition of probation.

(2) The probation department in each judicial district may enter into agreements with any state agency or other public agency, any corporation, and any private agency or person to provide supervision or other services for defendants placed on probation by the court.

18-1.3-203. [Formerly 16-11-203.] Criteria for granting probation.

(1) The court, subject to the provisions of this title AND TITLE 16, C.R.S., in its discretion may grant probation to a defendant unless, having regard to the nature and circumstances of the offense and to the history and character of the defendant, it is satisfied that imprisonment is the more appropriate sentence for the protection of the public because:

(a) There is undue risk that during a period of probation the defendant will commit another crime; or

(b) The defendant is in need of correctional treatment that can most effectively be provided by a sentence to imprisonment as authorized by section ~~16-11-101~~ 18-1.3-104; or

(c) A sentence to probation will unduly depreciate the seriousness of the defendant's crime or undermine respect for law; or

(d) His OR HER past criminal record indicates that probation would fail to accomplish its intended purposes; or

(e) The crime, the facts surrounding it, or the defendant's history and character when considered in relation to statewide sentencing practices relating to persons in circumstances substantially similar to those of the defendant do not justify the granting of probation.

(2) The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations called for by subsection (1) of this section:

(a) The defendant's criminal conduct neither caused nor threatened serious harm to another person or his OR HER property;

(b) The defendant did not plan or expect that his OR HER criminal conduct would cause or threaten serious harm to another person or his OR HER property;

(c) The defendant acted under strong provocation;

(d) There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct;

(e) The victim of the defendant's conduct induced or facilitated its commission;

(f) The defendant has made or will make restitution or reparation to the victim of his OR HER conduct for the damage or injury which was sustained;

(g) The defendant has no history of prior criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;

(h) The defendant's conduct was the result of circumstances unlikely to recur;

(i) The character, history, and attitudes of the defendant indicate that he OR SHE is unlikely to commit another crime;

(j) The defendant is particularly likely to respond affirmatively to probationary treatment;

(k) The imprisonment of the defendant would entail undue hardship to himself OR HERSELF or his OR HER dependents;

(l) The defendant is elderly or in poor health;

(m) The defendant did not abuse a public position of responsibility or trust;

(n) The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise.

(o) Repealed.

(3) Nothing in this section shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

18-1.3-204. [Formerly 16-11-204.] Conditions of probation.

(1) The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life and to assist the defendant in doing so. The court shall provide as explicit conditions of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation, that the defendant make restitution pursuant to PART 6 OF THIS ARTICLE AND article 18.5 of ~~this~~ title 16, C.R.S., that the defendant comply with any court orders regarding substance abuse testing and treatment issued pursuant to SECTIONS 18-1.3-209 AND 18-1.3-211 AND article 11.5 of ~~this~~ title 16, C.R.S., and that the defendant comply with any court orders regarding the treatment of sex offenders issued pursuant to article 11.7 of ~~this~~ title 16, C.R.S. The court

shall provide as an explicit condition of every sentence to probation 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.

(2) (a) When granting probation, the court may, as a condition of probation, require that the defendant:

(I) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment;

(II) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose. In any case where inpatient psychiatric treatment is indicated, the court shall proceed in accordance with article 10 of title 27, C.R.S., and require the defendant to comply with the recommendation of the professional person in charge of the evaluation required pursuant to section 27-10-105 or 27-10-106, C.R.S.

(III) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(IV) Support the defendant's dependents and meet other family responsibilities, including arranging and fulfilling a payment plan for current

child support, child support arrearages, and child support debt due under a court or administrative order through any delegate child support enforcement unit that may have a child support case with the defendant;

(V) Pay reasonable costs of the court proceedings or costs of supervision of probation, or both. The probation supervision fee shall be thirty-five dollars per month for the length of ordered probation. Notwithstanding the amount specified in this subparagraph (V), the court may lower the costs of supervision of probation to an amount the defendant will be able to pay. The court shall fix the manner of performance for payment of the fee. If the defendant receives probation services from a private provider, the court shall order the defendant to pay the probation supervision fee directly to the provider. The fee shall be imposed for the length of ordered probation.

(VI) Pay any fines or fees imposed by the court;

(VI.5) Repay all or part of any reward paid by a crime stopper organization that led to the defendant's arrest and conviction in accordance with article 15.7 of this title 16, C.R.S.;

(VII) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer;

(VIII) Refrain from excessive use of alcohol or any unlawful use of controlled substances, as defined in section 12-22-303 (7), C.R.S., or of any other dangerous or abusable drug without a prescription;

(IX) Report to a probation officer at reasonable times as directed by the court or the probation officer;

(X) Permit the probation officer to visit the defendant at reasonable times at the defendant's home and elsewhere;

(XI) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer;

(XII) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;

(XIII) Be subject to home detention as defined in section ~~17-26-128~~ ~~(1.1)~~, C.R.S. 18-1.3-106 (1.1);

(XIV) Be restrained from contact with the victim or the victim's family members in cases in which the defendant was convicted of 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.;

(XV) Satisfy any other conditions reasonably related to the defendant's rehabilitation and the purposes of probation.

(b) When granting probation, in addition to the consideration of the provisions set forth in paragraph (a) of this subsection (2), the court shall order as a condition of probation in cases in which the defendant was convicted of 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.~~; that the defendant:

(I) Comply with existing court orders regarding family support;

(II) Comply with any existing court orders concerning a proceeding to determine paternity, custody, the allocation of decision-making responsibility, parenting time, or support;

(III) Comply with the terms of any restraining order in effect against the defendant during the probation period;

(IV) Refrain from possessing a firearm, destructive device, or other dangerous weapon, unless granted written permission by the court or probation officer which shall not be granted in such domestic violence cases unless:

(A) It is required by the defendant's employment; and

(B) The court finds that the defendant's possession of the weapon does not endanger the victim or the victim's children; and

(C) The weapon is stored away from the home and the yard surrounding the home.

(c) If the court orders counseling or treatment as a condition of probation, unless the court makes a specific finding that treatment in another facility or with another person is warranted, the court shall order that such treatment or counseling be at a facility or with a person:

(I) Approved by the division of alcohol and drug abuse established in part 2 of article 2 of title 25, C.R.S., if the treatment is for alcohol or drug abuse;

(II) Certified or approved by the sex offender management board, established in section 16-11.7-103, C.R.S., if the offender is a sex offender;

(III) Certified or approved by a domestic violence treatment board, established pursuant to part 8 of article 6 of THIS title 18, ~~C.R.S.~~, if the offender was convicted of or the underlying factual basis of the offense included an act of domestic violence as defined in section 18-6-800.3; ~~C.R.S.~~; or

(IV) Licensed or certified by the division of adult services in the department of corrections, the department of regulatory agencies, the division of mental health in the department of human services, the state board of nursing, or the state board of medical examiners, whichever is appropriate for the required treatment or counseling.

(d) Notwithstanding the provisions of paragraph (c) of this subsection

(2), if the court orders counseling or treatment as a condition of probation for an offender convicted of an offense involving unlawful sexual behavior, as defined in section 18-3-412.5, ~~C.R.S.~~, the court shall order such treatment or counseling be at a facility or with a person listed in paragraph (c) of this subsection (2), and the court may not make a specific finding that treatment in another facility or with another person is warranted.

(2.3) (a) When granting probation, the court may, as a condition of probation, require any defendant who is less than eighteen years of age at the time of sentencing to attend school or an educational program or to work toward the attainment of a high school diploma or a GED, as that term is defined in section 22-33-102 (4.5), C.R.S.; except that the court shall not require any such juvenile to attend a school from which he or she has been expelled without the prior approval of that school's local board of education.

(b) Following specification of the terms and conditions of probation for a defendant who is less than eighteen years of age at the time of sentencing, where the conditions of probation include the requirement that the defendant attend school, the court shall notify the school district in which the defendant will be enrolled of such requirement.

(2.5) The order of priority for any payments required of a defendant

pursuant to subparagraph (IV), (V), (VI), or (VI.5) of paragraph (a) of subsection (2) of this section shall be as follows:

- (a) Payment of a current child support order;
- (b) Payment of child support arrearage;
- (c) Payment of child support debt order;
- (d) Payment of spousal maintenance;
- (e) Payment of costs for the crime victims compensation fund,

pursuant to section 24-4.1-119, C.R.S.;

(f) Payment of surcharges for the victims and witnesses assistance and law enforcement fund, pursuant to section 24-4.2-104, C.R.S.;

- (g) Payment of restitution;
- (h) Payment of a time payment fee;
- (i) Payment of late fees;
- (j) Payment of any other fines, fees, or surcharges; and
- (k) Repayment of all or part of any reward paid by a crime stopper organization that led to the defendant's arrest and conviction.

(3) When a defendant is granted probation, he OR SHE shall be given a written statement explicitly setting forth the conditions on which he OR SHE is being released.

(4) For good cause shown and after notice to the defendant, the district attorney, and the probation officer, and after a hearing if the defendant or the district attorney requests it, the judge may reduce or increase the term of probation or alter the conditions or impose new conditions.

18-1.3-205. [Formerly 16-11-204.5.] Restitution as a condition of probation. (1) As a condition of every sentence to probation, the court shall order that the defendant make full restitution pursuant to the provisions of PART 6 OF THIS ARTICLE AND article 18.5 of this title 16, C.R.S. Such order shall require the defendant to make restitution within a period of time specified by the court. Such restitution shall be ordered by the court as a condition of probation.

(2) to (4) (Deleted by amendment, L. 2000, p. 1046, § 9, effective September 1, 2000.)

18-1.3-206. [Formerly 16-11-204.6.] Repayment of crime stopper reward as a condition of probation. (1) As a condition of every sentence to probation where information received through a crime stopper organization led to the arrest and felony conviction of a defendant, the court may require such defendant, as a condition of probation, to repay all or part of any reward paid by such organization. The amount of such repayment shall not exceed the

actual reward paid by any crime stopper organization and shall be used solely for paying rewards. The court shall fix the manner and time of repayment.

(2) In the event the defendant fails to repay the crime stopper reward in accordance with an order of the court, the defendant shall be returned to the sentencing court and the court, upon proof of failure to pay, may:

- (a) Modify the amount of the repayment;
- (b) Extend the period of probation;
- (c) Order the defendant committed to jail with work release privileges;

or

- (d) Revoke probation and impose the sentence otherwise required by

law.

(3) When, as a result of a plea bargain agreement, a defendant is ordered to repay a reward pursuant to subsection (1) of this section, the department or agency supervising the collection of such repayment may assess a charge of fifteen dollars to the defendant for collection of each bad check or each bad check received as a repayment.

(4) Any order for the repayment of all or part of a crime stopper reward as a condition of probation shall be prioritized in accordance with section ~~16-11-204 (2.5)~~ 18-1.3-204 (2.5).

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

(a) "Bad check" has the same meaning provided in section ~~16-11-204.5(3)~~ 18-1.3-205 (3).

(b) "Crime stopper organization" has the same meaning provided in section 16-15.7-102 (1), C.R.S.

18-1.3-207. [Formerly 16-11-212.] Work and education release programs. (1) As a specific condition of probation for a person convicted of a felony or misdemeanor, the court may require the probationer to participate for a period not to exceed two years or the term to which he OR SHE might be sentenced for the offense committed, whichever is less, in a supervised work release or education release program. Utilization of the county jail, a municipal jail, or any other facility may be used for the probationer's full-time confinement, care, and maintenance, except for the time he OR SHE is released for scheduled work or education.

(1.1) Before a final ruling by the court authorizing a probationer to participate in a supervised education release program, the court shall notify the prosecuting attorney and the postsecondary educational institution requesting their comments on the pending release. The notice shall include all relevant information pertaining to the probationer and to the nature of the crime for

which he OR SHE was convicted. Both the prosecuting attorney and the postsecondary educational institution shall reply to the court in writing within ten days of receipt of the notification or within such other reasonable time in excess of ten days as specified by the court. The postsecondary educational institution's reply shall include a statement of whether or not it will accept the probationer as a student. Acceptance by a state postsecondary educational institution shall be pursuant to section 23-5-106, C.R.S.

(2) All employment income of a probationer participating in a work release program shall be received and deposited by the probation officer in the registry of the court. The court shall order disbursement of the funds so deposited in payment of the following items which are listed in the order of their priority:

- (a) Any current child support order;
- (b) Any child support arrearage;
- (c) Any child support debt order;
- (d) Any spousal maintenance;
- (e) Costs for the crime victims compensation fund, pursuant to section 24-4.1-119, C.R.S.;
- (f) Surcharges for the victims and witnesses assistance and law

enforcement fund, pursuant to section 24-4.2-104, C.R.S.;

(g) Restitution;

(h) A time payment fee;

(i) Late fees;

(j) Any other fines, fees, or surcharges;

(k) Room, board, and work supervision inside and outside the county jail or other facility; and

(1) The probationer.

(3) Any acts by the probationer in violation of the conditions of probation under subsection (1) of this section may be asserted as a basis for revocation of probation as provided in sections 16-11-205 and 16-11-206, C.R.S., and any willful failure to return to the jail or other facility may be punishable as an escape under section 18-8-208. ~~C.R.S.~~

18-1.3-208. [Formerly 16-11-213.] Intensive supervision probation programs - legislative declaration. (1) The general assembly finds and declares that intensive supervision probation programs are an effective and desirable alternative to sentences to imprisonment or community corrections. It is the purpose of this section to encourage the judicial department to establish programs for the intensive supervision of selected probationers. It is the intent

of the general assembly that such programs be formulated so that they protect the safety and welfare of the public in the community where the programs are operating and throughout the state of Colorado.

(2) The judicial department may establish an intensive supervision probation program in any judicial district or combination of judicial districts in order to provide an alternative to the sentencing of selected offenders to the department of corrections. When establishing such programs, the judicial department shall seek the counsel of the chief judge of the district court, the office of the district attorney, the state public defender or his OR HER designee, the county sheriff, the chief probation officer in the judicial district, the department of corrections, the local community corrections board, and members of the public-at-large.

(3) The judicial department shall require that offenders in the program receive at least the highest level of supervision that is provided to probationers. Such programs are to include highly restricted activities, daily contact between the offender and the probation officer, monitored curfew, home visitation, employment visitation and monitoring, drug and alcohol screening, treatment referrals and monitoring, and restitution and community service and shall minimize any risk to the public.

(4) The court may sentence any offender who is otherwise eligible for probation and who would otherwise be sentenced to the department of corrections to an intensive supervision probation program if the court determines that such offender is not a threat to society. For purposes of this section, "offender" shall have the same meaning as that set forth in section 17-27-102 (6), C.R.S.

(5) The judicial department shall have the power to establish and enforce standards and criteria for the administration of intensive supervision probation programs.

(6) Repealed.

(7) (a) It is the intent of the general assembly in enacting this subsection (7) to address a portion of the projected state inmate bedspace requirements through expansion of intensive supervision probation programs authorized by this section.

(b) The judicial department is directed to implement a three-phase expansion of intensive supervision probation programs in fiscal years 1995-96 and 1996-97 to include an additional seven hundred fifty participants over the number of participants in such programs on July 1, 1995.

18-1.3-209. [Formerly 16-11.5-103.] Substance abuse assessment

required - convicted felons - controlled substance offenders. (1) Each person convicted of a felony committed on or after July 1, 1992, 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, C.R.S., to submit to an assessment for the use of controlled substances or alcohol developed pursuant to section 16-11.5-102 (1) (a), C.R.S.

(2) Each person convicted of a misdemeanor or petty offense pursuant to article 18 of THIS title, ~~18, C.R.S.~~, committed on or after July 1, 1992, shall be required to submit to an alcohol and drug evaluation pursuant to section 42-4-1301, C.R.S. The court shall order such person to comply with the recommendations of such evaluation. If such person is sentenced to probation, such person shall be ordered to comply with the recommendations as a condition of probation at such person's own expense, unless such person is indigent. If such person is not sentenced to probation, such person shall be ordered to comply with the recommendations as a part of the sentence imposed at such person's own expense, unless such person is indigent.

(3) The assessment required by subsection (1) of this section or the evaluation required by subsection (2) of this section shall be at the expense of the person assessed or evaluated, unless such person is indigent.

18-1.3-210. [Formerly 16-7-402.] Counseling or treatment for alcohol or drug abuse. (1) Repealed.

(2) In any case in which treatment or counseling for alcohol or drug abuse is authorized in connection with a deferred prosecution or probation, the court may require the defendant to obtain counseling or treatment for such condition. If the court orders such counseling or treatment, the court shall order that the counseling or treatment be obtained from a treatment facility or person approved by the division of alcohol and drug abuse, established in part 2 of article 2 of title 25, C.R.S., unless the court makes a finding that counseling or treatment in another facility or with another person is warranted. If the defendant voluntarily submits himself or herself for such treatment or counseling, the district attorney and the court may consider his or her willingness to correct his or her condition as a basis for granting deferred prosecution.

(3) Notwithstanding the provisions of subsection (2) of this section, in any case in which treatment or counseling for alcohol or drug abuse is authorized and ordered by the court in connection with a deferred prosecution or probation for an offense involving unlawful sexual behavior, as defined in section 18-3-412.5, C.R.S., the court shall order that the counseling or

treatment be obtained from a treatment facility or person approved by the division of alcohol and drug abuse, established in part 2 of article 1 of title 25, C.R.S.

18-1.3-211. [Formerly 16-11.5-104.] Sentencing of felons - parole of felons - treatment and testing based upon assessment required. (1) Each person sentenced by the court for a felony committed on or after July 1, 1992, shall be required, as a part of any sentence to probation, community corrections, or incarceration with the department of corrections, to undergo periodic testing and treatment for substance abuse which is appropriate to such felon based upon the recommendations of the assessment made pursuant to section ~~16-11.5-103~~ 18-1.3-209, or based upon any subsequent recommendations by the department of corrections, the judicial department, or the division of criminal justice of the department of public safety, whichever is appropriate. Any such testing or treatment shall be at a facility or with a person approved by the division of alcohol and drug abuse, established in part 2 of article 2 of title 25, C.R.S., and at such felon's own expense, unless such felon is indigent.

(2) Each person placed on parole by the state board of parole on or after July 1, 1992, shall be required, as a condition of such parole, to undergo periodic testing and treatment for substance abuse which is appropriate to such

parolee based upon the recommendations of the assessment made pursuant to section ~~16-11-5-103~~ 18-1.3-209 or any assessment or subsequent reassessment made regarding such parolee during his or her incarceration or any period of parole. Any such testing or treatment shall be at a facility or with a person approved by the division of alcohol and drug abuse, established in part 2 of article 2 of title 25, C.R.S., and at such parolee's own expense, unless such parolee is indigent.

18-1.3-212. [Formerly 16-11-102.5.] Drug testing of offenders by judicial department - pilot program. (1) The judicial department is hereby authorized and directed to develop as soon as possible a pilot program for the drug testing of persons during presentence investigation and on probation. Such program shall include testing of persons during presentence investigation and may include random drug testing when an offender is assigned to specialized treatment and rehabilitation programs.

(2) Repealed.

PART 3

COMMUNITY CORRECTIONS AND SPECIALIZED RESTITUTION AND COMMUNITY SERVICE PROGRAMS

18-1.3-301. [Formerly 17-27-105.] Authority to place offenders in

community corrections programs. (1) (a) Any judge of a district court may refer any offender convicted of a felony to a community corrections program unless such offender is required to be sentenced pursuant to section ~~16-11-309~~ (1), ~~C.R.S.~~ 18-1.3-406 (1). If an offender who is sentenced pursuant to section ~~16-11-309~~ (1), ~~C.R.S.~~ 18-1.3-406 (1) has such sentence modified upon the finding of unusual and extenuating circumstances pursuant to such section, such offender may be referred to a community corrections program if such offender is otherwise eligible for such program and is approved for placement pursuant to section 17-27-103 (5), C.R.S., and section 17-27-104 (3), C.R.S. For the purposes of this article, persons sentenced pursuant to the provisions of sections 19-2-908 (1) (a) (I) and (1) (c) (I) (B) and 19-2-910 (2), C.R.S., shall be deemed to be offenders.

(b) In making a direct sentence to a community corrections program, the sentencing court may impose a sentence to community corrections which includes terms, lengths, and conditions pursuant to section ~~18-1-105, C.R.S.~~ 18-1.3-401. The sentencing court may also refer any offender to a community corrections program as a condition of probation pursuant to section ~~16-11-202, C.R.S.~~ 18-1.3-202. Any placement of offenders referred as a direct sentence or as a condition of probation shall be subject to approval pursuant to section

17-27-103 (5), C.R.S., and section 17-27-104 (3), C.R.S.

(c) A probation officer, in making a presentence report to the court pursuant to section 16-11-102, C.R.S., or in making a report to the court after a probation violation, may recommend the utilization of a community corrections program in sentencing or resentencing an offender.

(d) If an offender is rejected by a community corrections board or a community corrections program before placement in a program, the court shall promptly resentence the offender. If a sentence to the department of corrections was imposed upon the offender prior to the referral of the offender to community corrections, the resentence shall not exceed the sentence which was originally imposed upon the offender.

(e) If an offender is rejected after acceptance by a community corrections board or a community corrections program, the court may resentence the offender without any further hearing so long as the offender's sentence does not exceed the sentence which was originally imposed upon the offender.

(f) The probation department of the judicial district in which a community corrections program is located shall have jurisdiction over all offenders sentenced directly to a community corrections program. Such

probation department shall initiate arrest warrants, process reports or other official documents regarding offenders at the direction of the court, coordinate with community corrections boards and community corrections programs, review offender supervision and treatment, authorize offender transfers between residential and nonresidential phases of placement, and carry out such other duties as the court directs.

(g) The sentencing court may make appropriate orders for the detention, transfer, or resentencing of any offender whose placement in a community corrections program is terminated pursuant to section 17-27-103 (7), C.R.S., or section 17-27-104 (5), C.R.S. As to any offender held pursuant to section 17-27-104 (6), C.R.S., in a jail operated by a unit of local government in a county other than where the offender's original conviction occurred, the sentencing court shall order the transfer of the offender to the jail of the county where the original conviction occurred as soon as possible. The sentencing court is not required to provide the offender with an evidentiary hearing pertaining to the rejection of placement in a community corrections program prior to resentencing.

(h) The sentencing court shall have the authority to modify the sentence of an offender who has been directly sentenced to a community

corrections program in the same manner as if the offender had been placed on probation.

(i) (I) An offender sentenced directly to a community corrections program by the sentencing court pursuant to this subsection (1) may be eligible for time credit deductions from the offender's sentence not to exceed ten days for each month of placement upon a demonstration to the program administrator by the offender that the offender has made consistent progress in the following categories:

(A) Maintenance of employment, education, or training, including attendance, promptness, performance, cooperation, care of materials, and safety;

(B) Development and maintenance of positive social and domestic relations;

(C) Compliance with rules, regulations, and requirements of residential or nonresidential program placement;

(D) Completion and compliance with components of the individualized program plan; and

(E) Demonstration of financial responsibility and accountability.

(II) The administrator of each community corrections program shall

develop objective standards for measuring progress in the categories listed in subparagraph (I) of this paragraph (i), shall apply such standards consistently to evaluations of all such offenders, and shall develop procedures for recommending the award of time credits to such offenders.

(III) The administrator of each community corrections program shall review the performance record of each offender directly sentenced to such program. Such review shall be conducted at intervals to be determined by each program administrator. Such reviews shall be conducted at least once every six months, but may be conducted at more frequent intervals as determined by the program administrator. If the program administrator determines that the offender engaged in criminal activity during the time period for which the time credits were granted, the program administrator may withdraw the time credits granted during such period. Prior to the time of the offender's release, the program administrator shall submit to the sentencing court the time credit deductions granted, withdrawn, or restored consistent with the provisions of this paragraph (i). Such time credit deductions shall be submitted on standardized forms prepared by the division of criminal justice in the department of public safety that include verification by the program administrator that the time credit deductions are true and accurate. The sentencing court shall certify such time

credit deductions as part of the offender's permanent record. Any time credits authorized under this paragraph (i) shall vest upon certification of time credit deductions by the sentencing court at the time of the offender's release from the program.

(IV) An offender shall not be credited with more than one-half the allowable time credits for any month or portion thereof unless the offender was employed or was participating in training, education, or treatment programs which precluded the ability to remain employed. This subparagraph (IV) shall not apply to those offenders excused from such employment or training by the program administrator or for medical reasons.

(V) No time credit deductions shall be granted to any offender for time spent in jail, whether awaiting sentencing, placement in the program, disciplinary action, or as a result of a subsequent arrest, unless such time spent in jail was a prearranged component of the offender's individualized program plan and the offender has made consistent progress in the categories listed in subparagraph (I) of this paragraph (i).

(VI) Notwithstanding any other provision of this paragraph (i), time credits shall not reduce the sentence of any offender sentenced directly to a community corrections program by a period of time which is more than

twenty-five percent of the sentence or twenty-five percent of the sentence after adjustments are calculated for any credits outlined by the mittimus.

(j) Except as otherwise provided in paragraph (k) of this subsection (1), any offender sentenced to the department of corrections subsequent to placement in a community corrections program is entitled to credit against the term of confinement as described in section 17-27-104 (9), C.R.S. The court shall make a finding of the amount of such time credits and include such finding in the mittimus that orders the offender to be placed in the custody of the department of corrections. The department of corrections shall apply credits for residential placement in a community corrections program in the same manner as credits for time served in a department of corrections facility.

(k) (I) Any offender who escapes from a residential community corrections program or who absconds from a nonresidential community corrections program shall forfeit any time credit deductions earned pursuant to paragraph (i) of this subsection (1). Within thirty days after an offender's escape or abscondment, the program administrator shall submit to the sentencing court a statement on the form described in subparagraph (III) of paragraph (i) of this subsection (1) of the time credit deductions that would have been earned by the offender.

(II) Repealed.

(2) (a) The executive director of the department of corrections may transfer any offender who is eligible pursuant to this subsection (2) to a community corrections program if such offender is accepted for placement by a community corrections board pursuant to section 17-27-103, C.R.S., and a community corrections program pursuant to section 17-27-104, C.R.S.

(b) Unless the offender has an active felony warrant or detainer or has refused community placement, the executive director of the department of corrections shall refer for placement in a community corrections program:

(I) Any offender who successfully completes a regimented inmate discipline program pursuant to article 27.7 of this title 17, C.R.S., within twenty-eight months prior to the offender's parole eligibility date;

(II) Any offender who is not serving a sentence for an offense referred to in section ~~16-11-309, C.R.S.~~, 18-1.3-406 and who has displayed acceptable institutional behavior sixteen months prior to such offender's parole eligibility date; and

(III) Any other offender who has displayed acceptable institutional behavior one hundred eighty days prior to such offender's parole eligibility date.

(c) Prior to placement of an offender in any community corrections program, the executive director of the department of corrections shall give the first right to refuse placement of such offender to the community corrections board and community corrections programs in the community where the offender intends to reside after release from custody of the department of corrections or parole by the state board of parole.

(d) As to any offender held in a county jail pursuant to section 17-27-104 (6), C.R.S., the executive director of the department of corrections shall order transfer of such offender to a facility of the department of corrections as soon as possible.

(3) (a) The state board of parole may refer any parolee for placement in a community corrections program. Such placement, if approved by the community corrections board pursuant to section 17-27-103, C.R.S., and the community corrections program pursuant to section 17-27-104, C.R.S., may be made a condition of release on parole or as a modification of the conditions of an offender's parole after release or upon temporary revocation of parole pursuant to section 17-2-103 (11), C.R.S.

(b) Repealed.

(4) District courts, county courts, and other local criminal justice

officials may enter into agreements with community corrections programs which include the use of such programs to supervise offenders awaiting trial for felony or misdemeanor offenses, offenders convicted of misdemeanors, or offenders under deferred judgments. Such agreements are subject to review and approval by the community corrections board of the jurisdiction in which any community corrections program making such agreement is located. Any such use of a community corrections program may be supported with funding from local governments, public or private grants, offender fees, and other sources other than the state general fund.

18-1.3-302. [Formerly 17-27.9-101 and 17-27.9-103]. Legislative declaration - offenders who may be sentenced to the specialized restitution and community service program. (1) The general assembly hereby finds that:

(a) The taxpayer costs to incarcerate nonviolent offenders, most of whom have committed property-related offenses, usually outbalances the need to incarcerate such persons to protect the public's safety and that imprisonment generally renders offenders less able to compensate their victims. Therefore, the general assembly declares that the purpose for enacting this article regarding specialized restitution and community service programs is to increase

the cost-efficiency and the effectiveness of Colorado corrections. This article authorizes the establishment of an intermediate sanction whereby nonviolent offenders, at less taxpayer cost than imprisonment, would be required to work under strict supervision in a highly structured program in order to compensate their victims and society for the damage they have caused; and

~~(2) (b) The general assembly hereby declares that~~ Using incarceration as a routine punishment for nonviolent offenders, either upon sentencing or upon the revocation of parole or probation, punishes Colorado's taxpayers. The general assembly finds that limiting the pool of offenders eligible for the specialized restitution and community service program to first-time offenders unreasonably restricts entrance into the program and that the level of supervision mandated for repeat offenders by this article is adequate to ensure public safety from such offenders. The general assembly further finds that the vast majority of repeat offenders do not possess the requisite skills to obtain legitimate employment and that the specialized restitution and community service program will train such repeat offenders for legitimate employment. Therefore, it is in the best interests of the people of the state of Colorado to allow nonviolent repeat offenders and offenders with technical violations of parole or probation into such program.

(†) (2) Any offender shall be eligible to be placed in a specialized restitution and community service program if:

(a) The offender has been convicted of an offense other than a crime of violence, as described in section ~~16-11-309 (2) (a), C.R.S.~~, 18-1.3-406 (2) (a), or any felony offense committed against a child set forth in articles 3, 6, and 7 of THIS title; ~~18, C.R.S.~~; and

(b) (I) A determination is made by the court that the offender would be incarcerated, either pursuant to section ~~16-11-101 (1) (b), C.R.S.~~, 18-1.3-104 (1) (b) or pursuant to a probation revocation, if such offender is not placed in the specialized restitution and community service program; or

(II) A determination is made by the parole board that the offender would be incarcerated pursuant to a parole violation.

(c) (Deleted by amendment, L. 93, p. 1173, § 2, effective July 1, 1993.)

(‡) (3) Prior to sentencing an eligible offender to a specialized restitution and community service program pursuant to this section, the court shall make the determinations required in subsection (†) (2) of this section and such offender must have been accepted by both of the following:

(a) The provider of the specialized restitution and community service

program in which it is proposed that the offender be placed; and

(b) The community corrections board, as defined in section 17-27-102 (2), C.R.S., of the community in which the program is located.

(‡) (4) If an eligible offender is accepted by a provider pursuant to subsection (‡) (3) of this section, the court may sentence an offender to pay restitution or perform community service, or both, in an amount commensurate with the seriousness of the crime and to the custody of any specialized restitution and community service program adopted pursuant to this SECTION OR article 27.9 OF TITLE 17, C.R.S. Notwithstanding any other provision of law to the contrary, a minimum of full restitution may be imposed in an amount that exceeds any actual losses or damages suffered by a victim of the crime. An offender shall be supervised in accordance with and subject to the provisions of article 27 of ~~this~~ title 17, C.R.S.

(‡) (5) The parole board may place parole violators who meet the eligibility criteria of subsection (†) (2) of this section and who have been accepted pursuant to paragraphs (a) and (b) of subsection (‡) (3) of this section in specialized restitution and community service programs. Such parole violators shall be supervised in accordance with and subject to the provisions of article 27 of ~~this~~ title 17, C.R.S.

PART 4

SENTENCES TO IMPRISONMENT

18-1.3-401. [Formerly 18-1-105.] Felonies classified - presumptive penalties. (I) (a) (I) As to any person sentenced for a felony committed after July 1, 1979, and before July 1, 1984, felonies are divided into five classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:

Class	Presumptive Range
1	Life imprisonment or death
2	Eight to twelve years plus one year of parole
3	Four to eight years plus one year of parole
4	Two to four years plus one year of parole
5	One to two years plus one year of parole

(II) As to any person sentenced for a felony committed on or after July 1, 1984, and before July 1, 1985, felonies are divided into five classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:

Class	Presumptive Range
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1	Life imprisonment or death
2	Eight to twelve years
3	Four to eight years
4	Two to four years
5	One to two years

(III) (A) As to any person sentenced for a felony committed on or after July 1, 1985, except as otherwise provided in sub-subparagraph (E) of this subparagraph (III), in addition to, or in lieu of, any sentence to imprisonment, probation, community corrections, or work release, a fine within the following presumptive ranges may be imposed for the specified classes of felonies:

Class	Minimum Sentence	Maximum Sentence
1	No fine	No fine
2	Five thousand dollars	One million dollars
3	Three thousand dollars	Seven hundred fifty thousand dollars
4	Two thousand dollars	Five hundred thousand dollars
5	One thousand dollars	One hundred thousand dollars
6	One thousand dollars	One hundred thousand dollars

(A.5) Notwithstanding any provision of law to the contrary, any person who attempts to commit, conspires to commit, or commits against an elderly

person any felony set forth in part 4 of article 4 of this title, in part 1, 2, 3, or 5 of article 5 of this title, article 5.5 of this title, or section 11-51-603, C.R.S., shall be required to pay a mandatory and substantial fine within the limits permitted by law. However, all moneys collected from the offender shall be applied in the following order: Costs for crime victims compensation fund pursuant to section 24-4.1-119, C.R.S.; surcharges for victims and witnesses assistance and law enforcement fund pursuant to section 24-4.2-104, C.R.S.; restitution; time payment fee; late fees; and any other fines, fees, or surcharges. For purposes of this sub-subparagraph (A.5), an "elderly person" or "elderly victim" means a person sixty years of age or older.

(B) Failure to pay a fine imposed pursuant to this subparagraph (III) is grounds for revocation of probation or revocation of a sentence to community corrections, assuming the defendant's ability to pay. If such a revocation occurs, the court may impose the maximum sentence allowable in the given sentencing ranges.

(C) Each judicial district shall have at least one clerk who shall collect and administer the fines imposed under this subparagraph (III) and under section ~~18-1-106~~ 18-1.3-501 in accordance with the provisions of sub-subparagraph (D) of this subparagraph (III).

(D) All fines collected pursuant to this subparagraph (III) shall be deposited in the fines collection cash fund, which fund is hereby created. The general assembly shall make annual appropriations out of such fund for administrative and personnel costs incurred in the collection and administration of said fines. All unexpended balances shall revert to the general fund at the end of each fiscal year.

(E) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (III), a person who has been twice convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction for which he or she is being sentenced shall not be eligible to receive a fine in lieu of any sentence to imprisonment, community corrections, or work release but shall be sentenced to at least the minimum sentence specified in subparagraph (V) of this paragraph (a) and may receive a fine in addition to said sentence.

(IV) As to any person sentenced for a felony committed on or after July 1, 1985, but prior to July 1, 1993, felonies are divided into six classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:

Class	Minimum Sentence	Maximum Sentence
1	Life imprisonment	Death

- 2 Eight years imprisonment Twenty-four years imprisonment
- 3 Four years imprisonment Sixteen years imprisonment
- 4 Two years imprisonment Eight years imprisonment
- 5 One year imprisonment Four years imprisonment
- 6 One year imprisonment Two years imprisonment

(V) (A) As to any person sentenced for a felony committed on or after July 1, 1993, felonies are divided into six classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:

Class	Minimum Sentence	Maximum Sentence	Mandatory Period of Parole
1	Life imprisonment	Death	None
2	Eight years imprisonment	Twenty-four years imprisonment	Five years
3	Four years imprisonment	Twelve years imprisonment	Five years
4	Two years imprisonment	Six years imprisonment	Three years
5	One year	Three years	Two years

imprisonment imprisonment

- 6 One year imprisonment Eighteen months One year imprisonment imprisonment

(B) Any person who is paroled pursuant to section 17-22.5-403, C.R.S., or any person who is not paroled and is discharged pursuant to law, shall be subject to the mandatory period of parole established pursuant to sub-subparagraph (A) of this subparagraph (V). Such mandatory period of parole may not be waived by the offender or waived or suspended by the court and shall be subject to the provisions of section 17-22.5-403 (8), C.R.S., which permits the state board of parole to discharge the offender at any time during the term of parole upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision.

(C) Notwithstanding sub-subparagraph (A) of this subparagraph (V), the mandatory period of parole for a person convicted of a felony offense committed prior to July 1, 1996, pursuant to part 4 of article 3 of this title, or part 3 of article 6 of this title, shall be five years. Notwithstanding sub-subparagraph (A) of this subparagraph (V), the period of parole for a person convicted of a felony offense committed on or after July 1, 1996, pursuant to

part 4 of article 3 of this title, or part 3 of article 6 of this title, shall be set by the state board of parole pursuant to section 17-2-201 (5) (a.5), C.R.S., but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court.

(C.3) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (V), the period of parole for a person convicted of a felony offense committed on or after July 1, 1996, but prior to November 1, 1998, pursuant to part 4 of article 3 of this title or part 3 of article 6 of this title, shall be set by the state board of parole pursuant to section 17-2-201 (5) (a.5), C.R.S.

(C.5) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (V), any person sentenced for a sex offense, as defined in section ~~16-13-803(5)~~, C.R.S. 18-1.3-1003 (5), committed on or after November 1, 1998, shall be sentenced pursuant to the provisions of part 8 10 of THIS article. ~~13 of title 16, C.R.S.~~

(D) The mandatory period of parole imposed pursuant to sub-subparagraph (A) of this subparagraph (V) shall commence immediately upon the discharge of an offender from imprisonment in the custody of the department of corrections. If the offender has been granted release to parole

supervision by the state board of parole, the offender shall be deemed to have discharged the offender's sentence to imprisonment provided for in sub-subparagraph (A) of this subparagraph (V) in the same manner as if such sentence were discharged pursuant to law; except that the sentence to imprisonment for any person sentenced as a sex offender pursuant to part 8 10 of THIS article ~~13 of title 16, C.R.S.~~, shall not be deemed discharged on release of said person on parole. When an offender is released by the state board of parole or released because the offender's sentence was discharged pursuant to law, the mandatory period of parole shall be served by such offender. An offender sentenced for nonviolent felony offenses, as defined in section 17-22.5-405 (5), C.R.S., may receive earned time pursuant to section 17-22.5-405, C.R.S., while serving a mandatory parole period in accordance with this section but not while such offender is reincarcerated after a revocation of the mandatory period of parole.

(E) If an offender is sentenced consecutively for the commission of two or more felony offenses pursuant to sub-subparagraph (A) of this subparagraph (V), the mandatory period of parole for such offender shall be the mandatory period of parole established for the highest class felony of which such offender has been convicted.

(VI) Any person sentenced for a class 2, 3, 4, or 5 felony, or a class 6 felony that is the offender's second or subsequent felony offense, committed on or after July 1, 1998, regardless of the length of the person's sentence to incarceration and the mandatory period of parole, shall not be deemed to have fully discharged his or her sentence until said person has either completed or been discharged by the state board of parole from the mandatory period of parole imposed pursuant to subparagraph (V) of this paragraph (a) or completed or been discharged by the state board of parole from the twelve-month period of supervision imposed pursuant to section 17-22.5-403 (9), C.R.S., whichever occurs first. Prior to fully discharging his or her sentence, upon revocation of parole, a person may be returned to incarceration for the periods specified in section 17-22.5-403 (9), C.R.S.

(b) (I) Except as provided in subsection (6) and subsection (9) of this section and in section ~~18-4-202.1~~ 18-1.3-804, a person who has been convicted of a class 2, class 3, class 4, class 5, or class 6 felony shall be punished by the imposition of a definite sentence which is within the presumptive ranges set forth in paragraph (a) of this subsection (1). In imposing the sentence within the presumptive range, the court shall consider the nature and elements of the offense, the character and record of the offender, and all aggravating or

mitigating circumstances surrounding the offense and the offender. The prediction of the potential for future criminality by a particular defendant, unless based on prior criminal conduct, shall not be considered in determining the length of sentence to be imposed.

(II) As to any person sentenced for a felony committed on or after July 1, 1985, a person may be sentenced to imprisonment as described in subparagraph (I) of this paragraph (b) or to pay a fine that is within the presumptive ranges set forth in subparagraph (III) of paragraph (a) of this subsection (1) or to both such fine and imprisonment; except that any person who has been twice convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction for which he or she is being sentenced shall not be eligible to receive a fine in lieu of any sentence to imprisonment as described in subparagraph (I) of this paragraph (b) but shall be sentenced to at least the minimum sentence specified in subparagraph (V) of paragraph (a) of this subsection (1) and may receive a fine in addition to said sentence.

(II.5) Notwithstanding anything in this section to the contrary, any person sentenced for a sex offense, as defined in section ~~16-13-803 (5)~~, C.R.S. 18-1.3-1003 (5), committed on or after November 1, 1998, may be sentenced to

pay a fine in addition to, but not instead of, a sentence for imprisonment or probation pursuant to section ~~16-13-804, C.R.S.~~ 18-1.3-1004.

(III) Notwithstanding anything in this section to the contrary, as to any person sentenced for a crime of violence, as defined in section ~~16-11-309, C.R.S.~~ 18-1.3-406, committed on or after July 1, 1985, a person may be sentenced to pay a fine in addition to, but not instead of, a sentence for imprisonment.

(IV) If a person is convicted of assault in the first degree pursuant to section 18-3-202 or assault in the second degree pursuant to section 18-3-203 and the victim is a peace officer or firefighter engaged in the performance of his or her duties, as defined in section ~~18-1-106 (1.5) (b)~~ 18-1.3-501 (1.5) (b), notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (1) and subparagraph (II) of this paragraph (b), the court shall sentence the person to a term of imprisonment. In addition to such term of imprisonment, the court may impose a fine on such person pursuant to subparagraph (III) of paragraph (a) of this subsection (1).

(V) to (VIII) Repealed.

(c) Except as otherwise provided by statute, felonies are punishable by imprisonment in any correctional facility under the supervision of the executive

director of the department of corrections. Nothing in this section shall limit the authority granted in part ~~8~~ of THIS article ~~13 of title 16, C.R.S.~~, to increase sentences for habitual criminals. Nothing in this section shall limit the authority granted in parts ~~2 9~~ and ~~8~~ 10 of THIS article ~~13 of title 16, C.R.S.~~, to sentence sex offenders to the department of corrections or to sentence sex offenders to probation for an indeterminate term. Nothing in this section shall limit the authority granted in section ~~18-4-202-1~~ 18-1.3-804 for increased sentences for habitual burglary offenders.

(2) (a) A corporation which has been found guilty of a class 2 or class 3 felony shall be subject to imposition of a fine of not less than five thousand dollars nor more than fifty thousand dollars. A corporation which has been found guilty of a class 4, class 5, or class 6 felony shall be subject to imposition of a fine of not less than one thousand dollars nor more than thirty thousand dollars.

(b) A corporation which has been found guilty of a class 2, class 3, class 4, class 5, or class 6 felony, for an act committed on or after July 1, 1985, shall be subject to imposition of a fine which is within the presumptive ranges set forth in subparagraph (III) of paragraph (a) of subsection (1) of this section.

(3) Every person convicted of a felony, whether defined as such within

or outside this code, shall be disqualified from holding any office of honor, trust, or profit under the laws of this state or from practicing as an attorney in any of the courts of this state during the actual time of confinement or commitment to imprisonment or release from actual confinement on conditions of probation. Upon his OR HER discharge after completion of service of his OR HER sentence or after service under probation, the right to hold any office of honor, trust, or profit shall be restored, except as provided in section 4 of article XII of the state constitution.

(4) A person who has been convicted of a class 1 felony shall be punished by life imprisonment unless a panel of judges imposes a death sentence pursuant to the procedure set forth in section ~~16-11-103, C.R.S.~~ 18-1.3-1201. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1985, life imprisonment shall mean imprisonment without the possibility of parole for forty calendar years. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole.

(5) In the event the death penalty as provided for in this section is held to be unconstitutional by the Colorado supreme court or the United States

supreme court, a person convicted of a crime punishable by death under the laws of this state shall be punished by life imprisonment. In such circumstance, the court which previously sentenced a person to death shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment.

(6) In imposing a sentence to incarceration, the court shall impose a definite sentence which is within the presumptive ranges set forth in subsection (1) of this section unless it concludes that extraordinary mitigating or aggravating circumstances are present, are based on evidence in the record of the sentencing hearing and the presentence report, and support a different sentence which better serves the purposes of this code with respect to sentencing, as set forth in section 18-1-102.5. If the court finds such extraordinary mitigating or aggravating circumstances, it may impose a sentence which is lesser or greater than the presumptive range; except that in no case shall the term of sentence be greater than twice the maximum nor less than one-half the minimum term authorized in the presumptive range for the punishment of the offense.

(7) In all cases, except as provided in subsection (9) of this section, in which a sentence which is not within the presumptive range is imposed, the

court shall make specific findings on the record of the case, detailing the specific extraordinary circumstances which constitute the reasons for varying from the presumptive sentence.

(8) Repealed.

(9) (a) The presence of any one or more of the following extraordinary aggravating circumstances shall require the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of a felony:

(I) The defendant is convicted of a crime of violence under section ~~16-11-309, C.R.S.~~ 18-1.3-406;

(II) The defendant was on parole for another felony at the time of commission of the felony;

(III) The defendant was on probation or was on bond while awaiting sentencing following revocation of probation for another felony at the time of the commission of the felony;

(IV) and (IV.5) Repealed.

(V) The defendant was under confinement, in prison, or in any correctional institution as a convicted felon, or an escapee from any

correctional institution for another felony at the time of the commission of a felony;

(VI) and (VII) Repealed.

(VIII) At the time of the commission of the felony, the defendant was on appeal bond following his OR HER conviction for a previous felony;

(IX) The defendant is under eighteen years of age and, at the time of the commission of a felony, the defendant was on probation for or on bond while awaiting sentencing following revocation of probation for another offense that would have constituted a felony if committed by an adult.

(b) In any case in which one or more of the extraordinary aggravating circumstances provided for in paragraph (a) of this subsection (9) exist, the provisions of subsection (7) of this section shall not apply.

(c) Nothing in this subsection (9) shall preclude the court from considering aggravating circumstances other than those stated in paragraph (a) of this subsection (9) as the basis for sentencing the defendant to a term greater than the presumptive range for the felony.

(d) (I) If the defendant is convicted of the class 2 or the class 3 felony of child abuse under section 18-6-401 (7) (a) (I) or (7) (a) (III), the court shall be required to sentence the defendant to a term of at least the midpoint in the

presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of that class felony.

(II) In no case shall any defendant sentenced pursuant to subparagraph (I) of this paragraph (d) be eligible for suspension of sentence or for probation or deferred prosecution.

(e) (I) If the defendant is convicted of the class 2 felony of sexual assault in the first degree under section 18-3-402 (3), commission of which offense occurs prior to November 1, 1998, the court shall be required to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of that class of felony.

(II) In no case shall any defendant sentenced pursuant to subparagraph (I) of this paragraph (e) be eligible for suspension of sentence or probation.

(III) As a condition of parole under section 17-2-201 (5) (e), C.R.S., a defendant sentenced pursuant to this paragraph (e) shall be required to participate in a program of mental health counseling or receive appropriate treatment to the extent that the state board of parole deems appropriate to effectuate the successful reintegration of the defendant into the community

while recognizing the need for public safety.

(e.5) If the defendant is convicted of the class 2 felony of sexual assault in the first degree under section 18-3-402 (3), commission of which offense occurs on or after November 1, 1998, the court shall be required to sentence the defendant to an indeterminate sentence of at least the midpoint in the presumptive range for the punishment of that class of felony up to the defendant's natural life.

(f) The court may consider aggravating circumstances such as serious bodily injury caused to the victim or the use of a weapon in the commission of a crime, notwithstanding the fact that such factors constitute elements of the offense.

(g) If the defendant is convicted of class 4 or class 3 felony vehicular homicide under section 18-3-106 (1) (a) or (1) (b), and while committing vehicular homicide the defendant was in immediate flight from the commission of another felony, the court shall be required to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of the class of felony vehicular homicide of which the defendant is convicted.

(9.5) The presence of any one or more of the following

sentence-enhancing circumstances shall require the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the minimum in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of a felony:

(a) At the time of the commission of the felony, the defendant was charged with or was on bond for a felony in a previous case and the defendant was convicted of any felony in the previous case;

(a.5) The defendant is under eighteen years of age and, at the time of the commission of the felony, the defendant was charged with or was on bond for a previous offense that would have constituted a felony if committed by an adult;

(b) At the time of the commission of the felony, the defendant was on bond for having pled guilty to a lesser offense when the original offense charged was a felony;

(c) The defendant was under a deferred judgment and sentence for another felony at the time of the commission of the felony;

(c.5) The defendant is under eighteen years of age and, at the time of the commission of the felony, the defendant was on bond for having pled guilty to a lesser offense when the original offense charged was an offense that would

have constituted a felony if committed by an adult;

(c.7) The defendant is under eighteen years of age and, at the time of the commission of the felony, the defendant was under a deferred judgment and sentence for another offense that would have constituted a felony if committed by an adult;

(d) At the time of the commission of the felony, the defendant was on parole for having been adjudicated a delinquent child for an offense which would constitute a felony if committed by an adult.

(9.7) (a) The general assembly hereby finds that certain crimes which are listed in paragraph (b) of this subsection (9.7) present an extraordinary risk of harm to society and therefore, in the interest of public safety, for such crimes which constitute class 3 felonies, the maximum sentence in the presumptive range shall be increased by four years; for such crimes which constitute class 4 felonies, the maximum sentence in the presumptive range shall be increased by two years; for such crimes which constitute class 5 felonies, the maximum sentence in the presumptive range shall be increased by one year; for such crimes which constitute class 6 felonies, the maximum sentence in the presumptive range shall be increased by six months.

(b) Crimes that present an extraordinary risk of harm to society shall

include the following:

(I) (A) Sexual assault, as defined in section 18-3-402; or

(B) Sexual assault in the first degree, as defined in section 18-3-402, as it existed prior to July 1, 2000;

(II) Sexual assault in the second degree, as defined in section 18-3-403, as it existed prior to July 1, 2000;

(III) (A) Unlawful sexual contact, as defined in section 18-3-404; or

(B) Sexual assault in the third degree, as defined in section 18-3-404, as it existed prior to July 1, 2000;

(IV) Sexual assault on a child, as defined in section 18-3-405;

(V) Sexual assault on a child by one in a position of trust, as defined in section 18-3-405.3;

(VI) Sexual assault on a client by a psychotherapist, as defined in section 18-3-405.5;

(VII) Incest, as defined in section 18-6-301;

(VIII) Aggravated incest, as defined in section 18-6-302;

(IX) Aggravated robbery, as defined in section 18-4-302;

(X) Child abuse, as defined in section 18-6-401;

(XI) Unlawful distribution, manufacturing, dispensing, sale, or

possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense, as defined in section 18-18-405;

(XII) Any crime of violence, as defined in section ~~16-11-309, C.R.S.~~ 18-1.3-406; and

(XIII) Stalking, as described in section 18-9-111 (4).

(c) With respect to the offenses specified in subparagraphs (I) to (VIII) of paragraph (b) of this subsection (9.7) and sexual offenses that constitute crimes of violence, the provisions of this subsection (9.7) apply only to offenses committed prior to November 1, 1998.

(10) When it shall appear to the satisfaction of the court that the ends of justice and the best interest of the public, as well as the defendant, will be best served thereby, the court shall have the power to suspend the imposition or execution of sentence for such period and upon such terms and conditions as it may deem best; except that in no instance shall the court have the power to suspend a sentence to a term of incarceration when the defendant is sentenced pursuant to a mandatory sentencing provision. In no instance shall any such sentence be suspended if the defendant is ineligible for probation pursuant to section ~~16-11-201, C.R.S.~~ 18-1.3-201, except upon an express waiver being made by the sentencing court regarding a particular defendant upon

recommendation of the district attorney and approval of such recommendation by an order of the sentencing court pursuant to section ~~16-11-201 (4)~~, C.R.S. 18-1.3-201 (4).

(11) Repealed.

(12) Every sentence entered under this section shall include consideration of restitution as required by PART 6 OF THIS ARTICLE AND BY article 18.5 of title 16, C.R.S.

(13) (a) The court, if it sentences a defendant who is convicted of any one or more of the offenses specified in paragraph (b) of this subsection (13) to incarceration, shall sentence the defendant to a term of at least the midpoint, but not more than twice the maximum, of the presumptive range authorized for the punishment of the offense of which the defendant is convicted if the court makes the following findings on the record:

(I) The victim of the offense was pregnant at the time of commission of the offense; and

(II) The defendant knew or reasonably should have known that the victim of the offense was pregnant; and

(III) The underlying factual basis of the offense includes an act of domestic violence, as defined in section 18-6-800.3 (1).

(b) The provisions of this subsection (13) shall apply to the following offenses:

(I) Murder in the second degree, as described in section 18-3-103;

(II) Manslaughter, as described in section 18-3-104;

(III) Criminally negligent homicide, as described in section 18-3-105;

(IV) Vehicular homicide, as described in section 18-3-106;

(V) Assault in the first degree, as described in section 18-3-202;

(VI) Assault in the second degree, as described in section 18-3-203;

(VII) Vehicular assault, as described in section 18-3-205.

(c) Notwithstanding any provision of this subsection (13) to the contrary, for any of the offenses specified in paragraph (b) of this subsection (13) that constitute crimes of violence, the court shall sentence the defendant in accordance with the provisions of section ~~16-11-309~~, C.R.S. 18-1.3-406.

18-1.3-402. [Formerly 18-1-108.] Felony offenses not classified.

(1) Any felony ~~misdemeanor, or petty offense~~ defined by state statute without specification of its class shall be punishable as provided in the statute defining it. For felony offenses committed on or after July 1, 1993, if the sentencing court sentences an offender to incarceration pursuant to the provisions of this section, the sentencing court shall also impose a mandatory period of parole of

two years.

(2) Every sentence entered under this section shall include consideration of restitution as required by PART 6 OF THIS ARTICLE AND BY article 18.5 of title 16, C.R.S.

18-1.3-403. [Formerly 18-1-109.] Penalty for felony not fixed by statute - punishment. (1) In all cases where an offense is denominated by statute as being a felony and no penalty is fixed in the statute therefor, the punishment shall be imprisonment for not more than five years in a correctional facility, as defined in section 17-1-102, C.R.S., or a fine of not more than fifteen thousand dollars, or both such imprisonment and fine. For offenses committed on or after July 1, 1985, a fine of not more than one hundred thousand dollars may be levied. For offenses committed on or after July 1, 1993, if the sentencing court sentences an offender to incarceration pursuant to the provisions of this section, the sentencing court shall also impose a mandatory period of parole of two years. ~~In all cases where an offense is denominated a misdemeanor and no penalty is fixed in the statute therefor, the punishment shall be imprisonment for not more than one year in the county jail, or a fine of not more than one thousand dollars, or both such imprisonment and fine.~~

(2) Every sentence entered under this section shall include consideration of restitution as required by PART 6 OF THIS ARTICLE AND BY article 18.5 of title 16, C.R.S.

18-1.3-404. [Formerly 16-11-302.] Duration of sentences for felonies. Unless otherwise provided by law and except as otherwise provided in the "Colorado Children's Code", title 19, C.R.S., courts sentencing any person for the commission of a felony to the custody of the executive director of the department of corrections shall fix a definite term as provided by section ~~18-1-105, C.R.S.~~ 18-1.3-401. The persons so sentenced shall be imprisoned and discharged as provided by other applicable statutes. No person sentenced to a correctional facility for the commission of a felony shall be subjected to imprisonment for a term exceeding the term provided by the statute fixing the length of the sentence for the crime of which he OR SHE was convicted and for which he OR SHE was sentenced.

18-1.3-405. [Formerly 16-11-306.] Credit for presentence confinement. A person who is confined for an offense prior to the imposition of sentence for said offense is entitled to credit against the term of his OR HER sentence for the entire period of such confinement. At the time of sentencing, the court shall make a finding of the amount of presentence confinement to

which the offender is entitled and shall include such finding in the mittimus. Such period of confinement shall be deducted from the sentence by the department of corrections. If a defendant is serving a sentence or is on parole for a previous offense when he OR SHE commits a new offense and he OR SHE continues to serve the sentence for the previous offense while charges on the new offense are pending, the credit given for presentence confinement under this section shall be granted against the sentence the defendant is currently serving for the previous offense and shall not be granted against the sentence for the new offense.

18-1.3-406. [Formerly 16-11-309.] Mandatory sentences for violent crimes. (1) (a) Any person convicted of a crime of violence shall be sentenced pursuant to section ~~18-1-105 (9)~~, C.R.S., 18-1.3-401 (9) to a term of incarceration of at least the midpoint in the presumptive range, but not more than twice the maximum term, provided for such offense in section ~~18-1-105 (1) (a)~~, C.R.S. 18-1.3-401 (1) (a), without suspension; except that, within ninety days after he OR SHE has been placed in the custody of the department of corrections, the department shall transmit to the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case which it considers to be exceptional and to involve unusual and extenuating

circumstances, may thereupon modify the sentence, effective not earlier than one hundred twenty days after his OR HER placement in the custody ~~of the~~ department. Such modification may include probation if the person is otherwise eligible therefor. Whenever a court finds that modification of a sentence is justified, the judge shall notify the state court administrator of his OR HER decision and shall advise said administrator of the unusual and extenuating circumstances that justified such modification. The state court administrator shall maintain a record, which shall be open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state. A person convicted of two or more separate crimes of violence arising out of the same incident shall be sentenced for such crimes so that sentences are served consecutively rather than concurrently.

(b) Repealed.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (1), any person convicted of a sex offense, as defined in section ~~16-13-803 (5)~~ 18-1.3-1003 (5), committed on or after November 1, 1998, that constitutes a crime of violence shall be sentenced to an indeterminate term of incarceration of at least the midpoint in the presumptive range up to a maximum of the person's natural life, as provided in section ~~16-13-804 (1)~~ 18-1.3-1004 (1).

(2) (a) (I) "Crime of violence" means any of the crimes specified in subparagraph (II) of this paragraph (a) committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person:

(A) Used, or possessed and threatened the use of, a deadly weapon;

or

(B) Caused serious bodily injury or death to any other person except another participant.

(II) Subparagraph (I) of this paragraph (a) applies to the following crimes:

(A) Any crime against an at-risk adult or at-risk juvenile;

(B) Murder;

(C) First or second degree assault;

(D) Kidnapping;

(E) Sexual assault;

(F) Aggravated robbery;

(G) First degree arson;

(H) First degree burglary;

(I) Escape; or

(J) Criminal extortion.

(b) (I) "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 (I), "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.~~

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

(c) As used in this section, "at-risk adult" has the same meaning as set forth in section 18-6.5-102 (1), ~~C.R.S.~~, and "at-risk juvenile" has the same meaning as set forth in section 18-6.5-102 (1.5). ~~C.R.S.~~

(3) Repealed.

(4) In any case in which the accused is charged with a crime of violence as defined in subsection (2) (a) (I) of this section, the indictment or information shall so allege in a separate count, even though the use or threatened use of such deadly weapon or infliction of such serious bodily injury or death is not an essential element of the crime charged.

(5) The jury, or the court if no jury trial is had, in any case as provided

in subsection (4) of this section shall make a specific finding as to whether the accused did or did not use, or possessed and threatened to use, a deadly weapon during the commission of such crime or whether such serious bodily injury or death was caused by the accused. If the jury or court finds that the accused used, or possessed and threatened the use of, such deadly weapon or that such injury or death was caused by the accused, the penalty provisions of this section shall be applicable.

(6) In any case in which the accused is charged with a crime of violence as defined in subsection (2) (a) (II) of this section, the indictment or information shall so allege in a separate count, even though the use of threat, intimidation, or force or the infliction of bodily injury is not an essential element of the crime charged.

(7) The jury, or the court if no jury trial is had, in any case as provided in subsection (6) of this section shall make a specific finding as to whether the accused did or did not use threat, intimidation, or force during the commission of such crime or whether such bodily injury was caused by the accused. If the jury or court finds that the accused used threat, intimidation, or force or that such bodily injury was caused by the accused, the penalty provisions of this section shall be applicable.

(8) (a) In any case in which the accused is charged with a crime of violence as defined in this section and the indictment or information specifies the use of a dangerous weapon as defined in sections 18-12-101 and 18-12-102, ~~C.R.S.~~, or the use of a semiautomatic assault weapon as defined in paragraph (b) of this subsection (8), upon conviction for said crime of violence, the judge shall impose an additional sentence of five years for the use of such weapon. The sentence of five years shall be in addition to the mandatory sentence imposed for the substantive offense and shall be served consecutively to any other sentence and shall not be subject to suspension or probation.

(b) For the purposes of this subsection (8), "semiautomatic assault weapon" means any semiautomatic center fire firearm that is equipped with a detachable magazine with a capacity of twenty or more rounds of ammunition.

18-1.3-407. [Formerly 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. (1) (a) It is the intent of the general assembly that the youthful offender system established pursuant to this section shall benefit the state by providing as a sentencing option for certain youthful offenders a controlled and regimented environment that affirms dignity of self and others,

promotes the value of work and self-discipline, and develops useful skills and abilities through enriched programming.

(b) It is the further intent of the general assembly in enacting this section that female and male offenders for whom charges have been directly filed in the district court and who have been convicted in the district court receive equitable treatment in sentencing, particularly in regard to the option of being sentenced to the youthful offender system pursuant to section 19-2-517 (3) or 19-2-518 (1) (d) (II), C.R.S. Accordingly, it is the general assembly's intent that necessary measures be taken by the department of corrections to establish separate housing for female and male offenders who are sentenced to the youthful offender system without compromising the equitable treatment of either.

(c) It is the intent of the general assembly that youthful offenders sentenced to the youthful offender system be housed and serve their sentences in a facility specifically designed and programmed for the youthful offender system and that youthful offenders so sentenced be housed separate from and not brought into daily physical contact with adult inmates sentenced to the department of corrections, except as specifically provided under subsection (5) of this section.

(d) It is the intent of the general assembly that youthful offenders sentenced to the youthful offender system be sentenced as adults and be subject to all laws and department of corrections rules, regulations, and standards pertaining to adult inmates, except as otherwise provided in this section.

(2) (a) (I) A juvenile may be sentenced to the youthful offender system created pursuant to this section under the circumstances set forth in section 19-2-517 (3) (a) (II) or 19-2-518 (1) (d) (II), C.R.S. In order to sentence a juvenile to the youthful offender system, the court shall first impose upon such person a sentence to the department of corrections in accordance with section ~~18-1-105~~, C.R.S: 18-1.3-401. The court shall thereafter suspend such sentence conditioned on completion of a sentence to the youthful offender system, including a period of community supervision. The court shall impose any such sentence to the youthful offender system for a determinate period of not fewer than two years nor more than six years; except that a juvenile convicted of a class 2 felony may be sentenced for a determinate period of up to seven years. In imposing such sentence, the court shall grant authority to the department of corrections to place a youthful offender under a period of community supervision for a period of not fewer than six months and up to twelve months any time after the date on which the youthful offender has twelve months

remaining to complete the determinate sentence. The court may award a juvenile sentenced to the youthful offender system credit for presentence confinement; except that such credit shall not reduce the juvenile's actual time served in the youthful offender system to fewer than two years. The court shall have a presentence investigation conducted before sentencing a juvenile pursuant to this section.

(II) Upon the successful completion of the programs in the youthful offender system, including the mandatory period of supervision, the sentence to the department of corrections shall have been completed. Whenever a person is returned to the district court for revocation pursuant to subsection (5) of this section, the court shall impose the original sentence following the revocation of the sentence to the youthful offender system, except as otherwise provided in paragraph (b) of subsection (5) of this section.

(III) For the purposes of this section, "juvenile" means a person who is under the age of eighteen years when the crime is committed and under the age of nineteen years at the time of sentencing pursuant to this section.

(IV) As used in this section, "community supervision" shall not be construed to mean a community corrections program, as defined in section 17-27-102, C.R.S.

(a.5) During any period of incarceration under the youthful offender system, privileges including, but not limited to, televisions, radios, and entertainment systems, shall not be available for a youthful offender unless such privileges have been earned under a merit system.

(b) Article 22.5 of title 17, C.R.S., concerning time credits, shall not apply to any person sentenced to the youthful offender system; except that an offender whose sentence to the youthful offender system is revoked pursuant to subsection (5) of this section may receive one day of credit against an adult sentence imposed by the court following revocation of the sentence to the youthful offender system for each day the offender served in the youthful offender system, excluding any period of time during which the offender was under community supervision.

(2.1) (a) As originally enacted, this section applied only to offenses committed by juveniles on or after September 13, 1993. For purposes of extending the availability of sentencing options, a juvenile who meets the criteria set forth in section 19-2-517 (3) (a) (II), C.R.S., may be sentenced to the youthful offender system pursuant to this section, under the following circumstances:

(I) The juvenile is sentenced on or after June 3, 1994, for an offense

committed prior to, on, or after September 13, 1993;

(II) The juvenile committed an offense prior to September 13, 1993, and was sentenced for the offense on or after September 13, 1993, but prior to June 3, 1994. Such a juvenile may only be resentenced to the youthful offender system if a court, in its discretion, so orders in response to a motion filed in accordance with rule 35 of the Colorado rules of criminal procedure.

(b) A juvenile who committed an offense prior to September 13, 1993, and who was sentenced prior to September 13, 1993, shall not be eligible to be sentenced to the youthful offender system.

(c) A juvenile described in paragraph (a) of this subsection (2.1) may be sentenced pursuant to this section only if the juvenile meets the age requirement set forth in subparagraph (III) of paragraph (a) of subsection (2) of this section.

(3) The department of corrections shall develop and implement a youthful offender system for offenders sentenced in accordance with subsection (2) of this section. The youthful offender system shall be under the direction and control of the executive director of the department of corrections. The youthful offender system shall be based on the following principles:

(a) The system should provide for teaching offenders self-discipline

by providing clear consequences for inappropriate behavior;

(b) The system should include a daily regimen that involves offenders in physical training, self-discipline exercises, educational and work programs, and meaningful interaction, with a component for a tiered system for swift and strict discipline for noncompliance;

(c) The system should use staff models and mentors to promote within an offender the development of socially accepted attitudes and behaviors;

(d) The system should provide offenders with instruction on problem-solving skills and should incorporate methods to reinforce the use of cognitive behavior strategies that change offenders' orientation toward criminal thinking and behavior;

(e) The system should promote among offenders the creation and development of new group cultures which result in a transition to prosocial behavior; and

(f) The system should provide offenders the opportunity to gradually reenter the community while demonstrating the capacity for self-discipline and the attainment of respect for the community.

(3.3) The youthful offender system consists of the following components, and the department of corrections has the authority described in

paragraphs (a) to (d) of this subsection (3.3) in connection with the administration of the components:

(a) An intake, diagnostic, and orientation program;

(b) (I) Phase I, during which time a range of core programs, supplementary activities, and educational and prevocational programs are provided to youthful offenders.

(II) (Deleted by amendment, L. 2000, p. 1003, § 2, effective May 26, 2000.)

(c) (I) Phase II, which may be administered during the last three months of the period of institutional confinement and during which time the department of corrections is authorized to transfer a youthful offender to a twenty-four-hour custody residential program that serves youth.

(II) In connection with the component described in subparagraph (I) of this paragraph (c), the department of corrections is authorized to operate or to contract with a prerelease youth residential program for those sentenced as youthful offenders. The department of corrections or the contract provider shall provide for twenty-four-hour custody of youthful offenders in phase II.

(d) (I) Phase III, which is to be administered for the period of community supervision that remains after the completion of phase II and

during which the youthful offender is monitored as the offender reintegrates into society.

(II) After the department determines appropriate phase III placement, the department shall notify, no later than thirty days prior to placement, the local law enforcement agency for the jurisdiction in which the offender shall be placed for phase III. The notice shall include the offender's name, the crime committed by the offender, the disposition of the offender's case, and the basis for the placement. The local law enforcement agency may appeal the placement, if the placement is in a jurisdiction other than the jurisdiction where the offender was convicted, it may appeal to the executive director at least fifteen days prior to the placement. Except that the local law enforcement agency may not appeal, if the placement is in the jurisdiction where the juvenile was residing at the time the offense was committed. If there is an appeal, after considering the department's basis for placement and the local law enforcement's basis for appeal, the executive director shall make the final determination of the placement.

(3.4) In addition to the powers granted to the department of corrections in subsection (3.3) of this section, the department of corrections may:

(a) Transfer a youthful offender to an appropriate facility for the

purpose of accomplishing a youthful offender's redirection goals, as long as the transfer does not jeopardize the safety and welfare of the youthful offender;

(b) Operate an emancipation program and provide other support or monitoring services and residential placement for youthful offenders participating in phase II and phase III under the youthful offender system for whom family reintegration poses difficulties. The department of corrections shall provide reintegration support services to a youthful offender placed in an emancipation house.

(c) (Deleted by amendment, L. 2000, p. 1003, § 2, effective May 26, 2000.)

(d) Contract with any public or private entity, including but not limited to a school district, for provision or certification of educational services. Offenders receiving educational services or diplomas from a school district under an agreement entered into pursuant to this paragraph (d) shall not be included in computing the school district's student performance on statewide assessments pursuant to section 22-7-409, C.R.S., or the school district's overall academic performance rating or school improvement rating pursuant to part 6 of article 7 of title 22, C.R.S.

(3.5) The executive director of the department of corrections shall

have final approval on the hiring and transferring of staff for the youthful offender system. In staffing the youthful offender system, the executive director shall select persons who are trained in the treatment of juveniles or will be trained in the treatment of juveniles prior to working with such juveniles, are trained to act as role models and mentors pursuant to paragraph (c) of subsection (3) of this section, and are best equipped to enable the youthful offender system to meet the principles specified in subsection (3) of this section. The executive director shall make a recommendation to the department of personnel regarding the classification of positions with the youthful offender system, taking into account the level of education and training required for such positions.

(4) The youthful offender system shall provide for community supervision which shall consist of highly structured surveillance and monitoring and educational and treatment programs. Community supervision shall be administered by the department of corrections, and revocation of the inmate's supervision status shall be subject to the provisions of subsections (2) and (5) of this section.

(4.3) The youthful offender system shall provide sex offender treatment services for any offender who is sentenced to the youthful offender

system and who has a history of committing any sex offense as defined in section 16-11.7-102 (3), C.R.S., or who has a history of committing any other offense, the underlying factual basis of which includes a sex offense. Prior to July 1, 2002, the sex offender treatment services provided pursuant to this subsection (4.3) shall comply with any existing national standards for juvenile sex offender treatment. On and after July 1, 2002, the sex offender treatment services provided pursuant to this subsection (4.3) shall comply with the juvenile sex offender treatment standards adopted by the sex offender management board pursuant to section 16-11.7-103, C.R.S.

(4.5) The consent of the parent, parents, or legal guardian of an offender under the age of eighteen years who has been sentenced to the youthful offender system pursuant to this section shall not be necessary in order to authorize hospital, medical, dental, emergency health, or emergency surgical care. In addition, neither the department nor any hospital, physician, surgeon, dentist, trained emergency health care provider, or agent or employee thereof who, in good faith, relies on such a minor offender's consent shall be liable for civil damages for failure to secure the consent of such an offender's parent, parents, or legal guardian prior to rendering such care. However, the parent, parents, or legal guardian of a minor offender described in this subsection (4.5)

may be liable, as provided by law, to pay the charges for the care provided the minor on said minor's consent.

(5) (a) Except as otherwise provided by paragraph (b) of this subsection (5), the department of corrections shall implement a procedure for the transfer of an offender to another facility when an offender in the system poses a danger to himself or herself or others. The executive director of the department of corrections shall review any transfer determination by the department prior to the actual transfer of an inmate, including a transfer back to the district court for revocation of the sentence to the youthful offender system. A transfer pursuant to this paragraph (a) shall be limited to a period not to exceed sixty days, at which time the offender shall be returned to the youthful offender facility to complete his or her sentence or returned to the district court for revocation of the sentence to the youthful offender system. In no case shall an offender initially sentenced to the youthful offender system be held in isolation or segregation or in an adult facility for longer than sixty consecutive days without action by the sentencing court.

(b) (1) An offender who is thought to be mentally ill or developmentally disabled by a mental health clinician, as defined by regulation of the department of corrections, may be transferred to another facility for a

period not to exceed sixty days for diagnostic validation of said illness or disability. At the conclusion of the sixty-day period, the psychiatrists or other appropriate professionals conducting the diagnosis shall forward to the executive director of the department of corrections their findings, which at a minimum shall include a statement of whether the offender has the ability to withstand the rigors of the youthful offender system. If the diagnosis determines that the offender is incapable of completing the youthful offender program due to a mental illness or developmental disability, the executive director shall forward such determination to the sentencing court. Based on the determination, the sentencing court shall review the offender's sentence to the youthful offender system and may:

(A) Impose the offender's original sentence to the department of corrections; or

(B) Reconsider and reduce the offender's sentence to the department of corrections in consideration of the offender's mental illness or developmental disability.

(II) Any offender who is resentenced pursuant to this paragraph (b) shall continue to be treated as an adult for purposes of sentencing and shall not be sentenced pursuant to article 2 of title 19, C.R.S.

(III) In no event shall the sentencing court, after reviewing the offender's sentence to the youthful offender system pursuant to this paragraph (b), increase the offender's sentence to the department of corrections due to the offender's diagnosis of mental illness or determination of developmental disability.

(IV) Any offender who is diagnosed as having mental illness or determined to have a developmental disability and is therefore incapable of completing his or her sentence to the youthful offender system may be housed in any department of corrections facility deemed appropriate by the executive director or transferred in accordance with procedures set forth in section 17-23-101, C.R.S., pending action by the sentencing court with regard to the offender's sentence.

(c) The department of corrections shall implement a procedure for returning offenders who cannot successfully complete the sentence to the youthful offender system to the district court. Any offender returned to the district court pursuant to paragraph (a) of this subsection (5) or because he or she cannot successfully complete the sentence to the youthful offender system for reasons other than mental illness or a developmental disability shall receive imposition of the original sentence to the department of corrections. After the

executive director upholds the department's decision, the offender may be held in any correctional facility deemed appropriate by the executive director; except that any offender who cannot successfully complete the sentence to the youthful offender system for reasons other than mental illness or a developmental disability shall be transferred, within thirty days after the executive director upholds the department's decision, to a county jail for holding prior to resentencing. The department shall notify the district attorney of record, and the district attorney of record shall be responsible for seeking the revocation or review of the youthful offender's sentence and the imposition of the original sentence or modification of the original sentence pursuant to sub-subparagraph (B) of subparagraph (I) of paragraph (b) of this subsection (5). The district court shall review the offender's sentence within one hundred twenty days after notification to the district attorney of record by the department of corrections that the offender is not able to complete the sentence to the youthful offender system.

(6) The department of corrections shall establish and enforce standards for the youthful offender system. Offenders in the youthful offender system, including those under community supervision, shall be considered inmates for the purposes of section 17-1-111, C.R.S.

(7) The number of offenders in any program element under the youthful offender system shall be determined by the department within available appropriations.

(8) The department of corrections may and is encouraged to contract with any private or public entity for the provision of services and facilities under the youthful offender system.

(9) On or before November 1, 1993, the department, in conjunction with the division of criminal justice, shall develop and the department shall implement a process for monitoring and evaluating the youthful offender system. In implementing such system, the department may contract with a private agency for assistance.

(10) (a) On or before January 30, 1999, and on or before each January 30 thereafter, the department of corrections shall submit a report to the house and senate judiciary committees concerning the youthful offender system containing:

(I) A summary of the recidivism rate for offenders who complete the programs in the youthful offender system that tracks such offenders for five years following release from the youthful offender system;

(II) An accounting of the amount annually spent per offender

sentenced to the youthful offender system; and

(III) An evaluation of the operations of the youthful offender system.

(b) (Deleted by amendment, L. 98, p. 725, § 3, effective May 18, 1998.)

(c) The division of criminal justice shall independently monitor and evaluate, or contract with a public or private entity to independently monitor and evaluate, the youthful offender system addressing the criteria described in paragraph (a) of this subsection (10). On or before November 1, 2002, and on or before November 1 every two years thereafter, the division of criminal justice shall report its findings, or the findings of the contract entity, to the judiciary committees of the senate and the house of representatives.

(d) (Deleted by amendment, L. 98, p. 725, § 3, effective May 18, 1998.)

(11) Any district attorney in the state shall maintain records regarding juveniles who are sentenced to the youthful offender system and such records shall indicate which juveniles have been filed on as adults or are sentenced to the system and the offenses committed by such juveniles.

(11.5) (a) (I) Any juvenile who is sentenced to the youthful offender system following conviction of an offense involving unlawful sexual behavior,

as defined in section 18-3-412.5 (1) (b), ~~C.R.S.~~, or for which the underlying factual basis involved an offense involving unlawful sexual behavior, shall submit to and pay for a chemical testing of the juvenile's blood to determine the genetic markers thereof.

(II) Collection of the blood sample shall occur as soon as possible after being sentenced to the youthful offender system, and the results thereof shall be filed with and maintained by the Colorado bureau of investigation. The results of such tests shall be furnished to any law enforcement agency upon request.

(b) The department of corrections or its designee or contractor may use reasonable force to obtain blood samples in accordance with paragraph (a) of this subsection (11.5).

(c) Any moneys received from juveniles pursuant to paragraph (a) of this subsection (11.5) shall be deposited in the sex offender identification fund created in section 24-33.5-415.5, C.R.S.

(d) The Colorado bureau of investigation is directed to conduct the chemical testing of the blood obtained pursuant to this subsection (11.5).

(12) The general assembly recognizes that the increased number of violent juvenile crimes is a problem faced by all the states of this nation. By creating the youthful offender system, Colorado stands at the forefront of the

states in creating a new approach to solving the problem of violent juvenile offenders. The general assembly also declares that the cost of implementing and operating the youthful offender system will create a burden on the state's limited resources. Accordingly, the general assembly directs the department of corrections to seek out and accept available federal, state, and local public funds, including project demonstration funds, and private moneys and private systems for the purpose of conducting the youthful offender system.

(13) This section is repealed, effective June 30, 2004.

18-1.3-408. [Formerly 16-11-304.] Determinate sentence of imprisonment imposed by court. When a person has been convicted of a felony and a sentence of imprisonment imposed, the court imposing the sentence shall fix a definite term of imprisonment, which shall be not longer than the terms authorized in section ~~18-1-105~~, C.R.S. 18-1.3-401; except that, for persons convicted on or after November 1, 1998, of a sex offense, as defined in section ~~16-13-803(5)~~ 18-1.3-1003 (5), the court shall impose an indeterminate sentence as provided in part 8 10 of THIS article. ~~13 of this title.~~

PART 5

MISDEMEANOR AND PETTY OFFENSE SENTENCING

18-1.3-501. [Formerly 18-1-106.] Misdemeanors classified - penalties. (1) Misdemeanors are divided into three classes which are distinguished from one another by the following penalties which are authorized upon conviction except as provided in subsection (1.5) of this section:

Class	Minimum Sentence	Maximum Sentence
1	Six months imprisonment, or five hundred dollars fine, or both	Eighteen months imprisonment, or five thousand dollars fine, or both
2	Three months imprisonment, or two hundred fifty dollars fine, or both	Twelve months imprisonment, or one thousand dollars fine, or both
3	Fifty dollars fine	Six months imprisonment, or seven hundred fifty dollars fine, or both

No term of imprisonment for conviction of a misdemeanor shall be served in any state correctional facility unless served concurrently with a term for conviction of a felony.

(1.5) (a) If a defendant is convicted of assault in the third degree pursuant to section 18-3-204 and the victim is a peace officer or firefighter

engaged in the performance of his or her duties, notwithstanding the provisions of subsection (1) of this section, the court shall sentence the defendant to a term of imprisonment greater than the maximum sentence but no more than twice the maximum sentence authorized for the same crime when the victim is not a peace officer or firefighter engaged in the performance of his or her duties. In addition to such term of imprisonment, the court may impose a fine on the defendant pursuant to subsection (1) of this section.

(b) As used in this section, "peace officer or firefighter engaged in the performance of his or her duties" means a peace officer as defined in section 18-1-901 (3) (I) (I) or (3) (I) (II) or a firefighter as defined in section 18-3-201 (1) who is engaged or acting in, or who is present for the purpose of engaging or acting in, the performance of any duty, service, or function imposed, authorized, required, or permitted by law to be performed by a peace officer or firefighter, whether or not the peace officer or firefighter is within the territorial limits of his or her jurisdiction, if the peace officer or firefighter is in uniform or the person committing an assault upon or offense against or otherwise acting toward such peace officer or firefighter knows or reasonably should know that the victim is a peace officer or firefighter or if the peace

officer or firefighter is intentionally assaulted in retaliation for the performance of his or her official duties.

(2) The defendant may be sentenced to perform a certain number of hours of community or useful public service in addition to any other sentence provided by subsection (1) of this section, subject to the conditions and restrictions of section ~~16-11-701~~, C.R.S. 18-1.3-507. An inmate in county jail acting as a trustee shall not be given concurrent credit for community or useful public service when such service is performed in his OR HER capacity as trustee. For the purposes of this subsection (2), "community or useful public service" means any work which is beneficial to the public, any public entity, or any bona fide nonprofit private or public organization, which work involves a minimum of direct supervision or other public cost and which work would not, with the exercise of reasonable care, endanger the health or safety of the person required to work.

(3) (a) The general assembly hereby finds that certain misdemeanors which are listed in paragraph (b) of this subsection (3) present an extraordinary risk of harm to society and therefore, in the interest of public safety, the maximum sentence in the presumptive range for such misdemeanors shall be increased by six months.

(b) Misdemeanors that present an extraordinary risk of harm to society shall include the following:

(I) Assault in the third degree, as defined in section 18-3-204;

(I.5) (A) Sexual assault, as defined in section 18-3-402; or

(B) Sexual assault in the second degree, as defined in section 18-3-403, as it existed prior to July 1, 2000;

(II) (A) Unlawful sexual contact, as defined in section 18-3-404; or

(B) Sexual assault in the third degree, as defined in section 18-3-404, as it existed prior to July 1, 2000;

(III) Child abuse, as defined in section 18-6-401 (7) (a) (V);

(IV) (Deleted by amendment, L. 97, p. 1539, § 1, effective July 1, 1997.)

(V) Second and all subsequent violations of a restraining order as defined in section 18-6-803.5 (1.5) (d); and

(VI) Misdemeanor failure to register as a sex offender, as described in section 18-3-412.5 (4) (b) (II).

(4) Notwithstanding any provision of law to the contrary, any person who attempts to commit, conspires to commit, or commits against an elderly person any misdemeanor set forth in part 4 of article 4 of this title, in part 1,

2, 3, or 5 of article 5 of this title, or article 5.5 of this title shall be required to pay a mandatory and substantial fine within the limits permitted by law. However, all moneys collected from the offender shall be applied in the following order: Costs for crime victims compensation fund pursuant to section 24-4.1-119, C.R.S.; surcharges for victims and witnesses assistance and law enforcement fund pursuant to section 24-4.2-104, C.R.S.; restitution; time payment fee; late fees; and any other fines, fees, or surcharges. For purposes of this subsection (4), an "elderly person" or "elderly victim" means a person sixty years of age or older.

(5) Every sentence entered under this section shall include consideration of restitution as required by PART 6 OF THIS ARTICLE AND BY article 18.5 of title 16, C.R.S.

(6) For a defendant who is convicted of assault in the third degree, as described in section 18-3-204, the court, in addition to any fine the court may impose, shall sentence the defendant to a term of imprisonment of at least six months, but not longer than the maximum sentence authorized for the offense, as specified in this section, which sentence shall not be suspended in whole or in part, if the court makes the following findings on the record:

(a) The victim of the offense was pregnant at the time of commission

of the offense; and

(b) The defendant knew or should have known that the victim of the offense was pregnant; and

(c) The underlying factual basis of the offense includes an act of domestic violence, as defined in section 18-6-800.3 (1).

18-1.3-502. [Formerly 16-11-302.5.] Duration of sentences for misdemeanors. Courts sentencing any person for the commission of a misdemeanor to the custody of the executive director of the department of corrections shall not fix a minimum term but may fix a maximum term less than the maximum provided by law for the offense. The persons so sentenced shall be imprisoned, released under parole, and discharged as provided by other applicable statutes. No person sentenced to a correctional facility for the commission of a misdemeanor shall be subjected to imprisonment for a term exceeding the maximum term provided by the statute fixing the maximum length of the sentence for the crime of which he or she was convicted and for which he or she was sentenced. A person sentenced to a term of imprisonment for the commission of a misdemeanor shall be entitled to the same time credits as if he or she were sentenced to a term of imprisonment for the commission of a felony. No person committed as a juvenile delinquent shall be imprisoned

for a term exceeding two years, except as otherwise provided for aggravated juvenile offenders in section 19-2-601, C.R.S.

18-1.3-503. [Formerly 18-1-107.] Petty offenses classified - penalties. (1) A violation of a statute of this state is a "petty offense" if specifically classified as a class 1 or class 2 petty offense. The penalty for commission of a class 1 petty offense, upon conviction, is a fine of not more than five hundred dollars, or imprisonment for not more than six months other than in state correctional facilities, or both. The penalty for commission of a class 2 petty offense is a fine specified in the section defining the offense. The penalty assessment procedure of section 16-2-201, C.R.S., is available for the payment of fines in class 2 petty offense cases.

(2) Every sentence entered under this section shall include consideration of restitution as required by PART 6 OF THIS ARTICLE AND BY article 18.5 of title 16, C.R.S.

18-1.3-504. [Formerly 18-1-108.] Misdemeanors and petty offenses not classified. (1) Any ~~felony~~ misdemeanor or petty offense defined by state statute without specification of its class shall be punishable as provided in the statute defining it. ~~For felony offenses committed on or after July 1, 1993, if the sentencing court sentences an offender to incarceration pursuant to the~~

~~provisions of this section, the sentencing court shall also impose a mandatory period of parole of two years.~~

(2) Every sentence entered under this section shall include consideration of restitution as required by PART 6 OF THIS ARTICLE AND BY article 18.5 of title 16, C.R.S.

18-1.3-505. [Formerly 18-1-109.] Penalty for misdemeanor not fixed by statute - punishment. (1) ~~In all cases where an offense is denominated by statute as being a felony and no penalty is fixed in the statute therefor, the punishment shall be imprisonment for not more than five years in a correctional facility, as defined in section 17-1-102, C.R.S., or a fine of not more than fifteen thousand dollars, or both such imprisonment and fine. For offenses committed on or after July 1, 1985, a fine of not more than one hundred thousand dollars may be levied. For offenses committed on or after July 1, 1993, if the sentencing court sentences an offender to incarceration pursuant to the provisions of this section, the sentencing court shall also impose a mandatory period of parole of two years.~~ In all cases where an offense is denominated a misdemeanor and no penalty is fixed in the statute therefor, the punishment shall be imprisonment for not more than one year in the county jail, or a fine of not more than one thousand dollars, or both such

imprisonment and fine.

(2) Every sentence entered under this section shall include consideration of restitution as required by PART 6 OF THIS ARTICLE AND BY article 18.5 of title 16, C.R.S.

18-1.3-506. [Formerly 18-1-110.] Payment and collection of fines for class 1, 2, or 3 misdemeanors and class 1 or 2 petty offenses - release from incarceration. (1) Whenever the court imposes a fine for a nonviolent class 1, 2, or 3 misdemeanor or for a class 1 or 2 petty offense, if the person who committed the offense is unable to pay the fine at the time of the court hearing or if he OR SHE fails to pay any fine imposed for the commission of such offense, in order to guarantee the payment of such fine, the court may:

(a) Require the person to post sufficient bond or collateral; or

(b) Enter a judgment in favor of the state or political subdivision to whom the fine is owed and enter an order based on such judgment for the garnishment of the person's earnings in accordance with the provisions of either article 54 or 54.5 of title 13, C.R.S., for the purpose of collecting said fine and the costs incurred in collecting said fine; or

(c) Enter a judgment in favor of the state or political subdivision to whom the fine is owed and execute a lien based on such judgment on any

chattels, lands, tenements, moneys, and real estate of the person in accordance with article 52 of title 13, C.R.S., for the purpose of collecting said fine and the costs incurred in collecting said fine.

(2) The state or a political subdivision may appear before a court of record in this state and request that the court order the release from a county jail or a correctional facility of a person who has been incarcerated as a result of the failure to pay a fine or the failure to appear in court in connection with the commission of a nonviolent class 1, 2, or 3 misdemeanor or a class 1 or 2 petty offense upon the condition that the fine and any costs of collection are collected from the person incarcerated by the use of one of the methods set forth in subsection (1) of this section.

(3) For the purposes of this section, "nonviolent class 1, 2, or 3 misdemeanor" means a class 1, 2, or 3 misdemeanor that does not involve cruelty to an animal, as described in section 18-9-202 (1) (a), or the use or threat of physical force on or to a person in the commission of the misdemeanor.

18-1.3-507. [Formerly 16-11-701.] Community or useful public service - misdemeanors. (1) Any sentence imposed pursuant to section ~~18-1-106(2)~~, C.R.S., 18-1.3-501 (2) shall be subject to the conditions and

restrictions of this ~~part 7~~ SECTION.

(2) (a) A probation department, sentencing court, county sheriff, board of county commissioners, or any other governmental entity, or a private nonprofit entity which has a contract with a governmental entity, may establish a community or useful public service program. It is the purpose of the community or useful public service program: To identify and seek the cooperation of governmental entities and political subdivisions thereof, as well as corporations organized not for profit, for the purpose of providing community or useful public service jobs; to interview persons who have been ordered by the court to perform community or useful public service and to assign such persons to suitable community or useful public service jobs; and to monitor compliance, or noncompliance of such persons in performing community or useful public service assignments within the time established by the court.

(b) Nothing in this subsection (2) shall limit the authority of an entity which is the recipient of community or useful public service to accept or reject such service, in its sole discretion.

(3) Any general public liability insurance policy obtained pursuant to this ~~part 7~~ SECTION shall provide coverage for injuries caused by a person performing services under this ~~part 7~~ SECTION and shall be in a sum of not less

than the current limit on government liability under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(4) For the purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., public employee, as defined in section 24-10-103, C.R.S., does not include any person who is sentenced to participate in any type of community or useful public service.

(5) No governmental entity or private nonprofit entity which has a contract with a governmental entity shall be liable under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., or under the "Colorado Employment Security Act", articles 70 to 82 of title 8, C.R.S., for any benefits on account of any person who is sentenced to participate in any type of community or useful public service, but nothing in this subsection (5) shall prohibit a governmental entity or private nonprofit entity from electing to accept the provisions of the "Workers' Compensation Act of Colorado" by purchasing and keeping in force a policy of workers' compensation insurance covering such person.

(6) The court shall assess an amount, not to exceed sixty dollars, upon every person required to perform community or useful public service pursuant to section ~~18-1-106(2)~~, C.R.S. 18-1.3-501 (2). The court may waive

this fee if the court determines the defendant to be indigent. Such amount shall be used by the operating agency responsible for overseeing such person's community or useful public service program to pay the cost of administration of the program and the cost of personal services. Such amount is to be commensurate with program costs in providing services and shall be adjusted from time to time by the general assembly to insure that the operating agencies shall be financially self-supporting. The proceeds from such amounts shall be used by the operating agency only for defraying the cost of personal services and other operating expenses related to the administration of the program, a general liability policy covering such person, and, if such person will be covered by workers' compensation insurance pursuant to subsection (5) of this section or an insurance policy providing such or similar coverage, the cost of purchasing and keeping in force such insurance coverage and shall not be used by the operating agency for any other purpose.

18-1.3-508. [Formerly 16-11-303.] Definite sentence not void. If, through oversight or otherwise, any person is sentenced or committed to the custody of the executive director of the department of corrections for the commission of a misdemeanor for a definite period of time, the sentence or commitment shall not for that reason be void, but the person so sentenced or

committed shall be subject to the liabilities and entitled to the benefits which are applicable to those persons who are properly sentenced.

PART 6

RESTITUTION

18-1.3-601. [Formerly 16-18.5-101.] Legislative declaration.

(1) The general assembly finds and declares that:

(a) Crime victims endure undue suffering and hardship resulting from physical injury, emotional and psychological injury, or loss of property;

(b) Persons found guilty of causing such suffering and hardship should be under a moral and legal obligation to make full restitution to those harmed by their misconduct;

(c) The payment of restitution by criminal offenders to their victims is a mechanism for the rehabilitation of offenders;

(d) Restitution is recognized as a deterrent to future criminality;

(e) An effective criminal justice system requires timely restitution to victims of crime and to members of the immediate families of such victims in order to lessen the financial burdens inflicted upon them, to compensate them for their suffering and hardship, and to preserve the individual dignity of victims;

(f) Former procedures for restitution assessment, collection, and distribution have proven to be inadequate and inconsistent from case to case;

(g) The purposes of this ~~article~~ PART 6 are to facilitate:

(I) The establishment of programs and procedures to provide for and collect full restitution for victims of crime in the most expeditious manner; and

(II) The effective and timely assessment, collection, and distribution of restitution requires the cooperation and collaboration of all criminal justice agencies and departments.

(2) It is the intent of the general assembly that restitution be ordered, collected, and disbursed to the victims of crime and their immediate families. Such restitution will aid the offender in reintegration as a productive member of society. This ~~article~~ PART 6 shall be liberally construed to accomplish all such purposes.

18-1.3-602. [Formerly 16-18.5-102.] Definitions. As used in this ~~article~~ 18.5 PART 6, unless the context otherwise requires:

(1) "Collections investigator" means a person employed by the judicial department whose primary responsibility is to administer, enforce, and collect on court orders or judgments entered with respect to fines, fees, restitution, or any other accounts receivable of the court, judicial district, or judicial

department.

(2) "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. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.

(3) (a) "Restitution" means any pecuniary loss suffered by a victim, and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, adjustment expenses, and other losses or injuries proximately caused by an offender's conduct and that can be reasonably calculated and recompensed in money.

(b) "Restitution" may also include extraordinary direct public and all private investigative costs.

(4) (a) "Victim" means any person aggrieved by the conduct of an offender and includes but is not limited to the following:

(I) Any person against whom any felony, misdemeanor, petty, or

traffic misdemeanor offense has been perpetrated or attempted;

(II) Any person harmed by an offender's criminal conduct in the course of a scheme, conspiracy, or pattern of criminal activity;

(III) Any person who has suffered losses because of a contractual relationship with, including but not limited to an insurer, or because of liability under section 14-6-110, C.R.S., for a person described in subparagraph (I) or (II) of this paragraph (a);

(IV) Any victim compensation board that has paid a victim compensation claim;

(V) If any person described in subparagraph (I) or (II) of this paragraph (a) is deceased or incapacitated, the person's spouse, parent, legal guardian, natural or adopted child, child living with the victim, sibling, grandparent, significant other, as defined in section 24-4.1.302 (4), C.R.S., or other lawful representative.

(b) "Victim" shall not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan as defined under the law of this state or of the United States.

(c) Any "victim" under the age of eighteen is considered incapacitated, unless that person is legally emancipated or the court orders otherwise.

(d) It is the intent of the general assembly that this definition of the term "victim" shall apply to this ~~article~~ PART 6 and shall not be applied to any other provision of the laws of the state of Colorado that refers to the term "victim".

18-1.3-603. [Formerly 16-18.5-103.] Assessment of restitution.

(1) Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense, except any order of conviction for a state traffic misdemeanor offense issued by a municipal or county court in which the prosecuting attorney is acting as a special deputy district attorney pursuant to an agreement with the district attorney's office, shall include consideration of restitution. Each such order shall include one or more of the following:

(a) An order of a specific amount of restitution be paid by the defendant;

(b) An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined;

(c) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of

specific future treatment of any victim of the crime; or

(d) Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.

(2) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims. Further, the prosecuting attorney shall present this information to the court prior to the order of conviction or within ninety days, if it is not available prior to the order of conviction. The court may extend this date if it finds that there are extenuating circumstances affecting the prosecuting attorney's ability to determine restitution.

(3) Any order for restitution may be:

(a) Increased if additional victims or additional losses not known to the judge or the prosecutor at the time the order of restitution was entered are later discovered and the final amount of restitution due has not been set by the court;

or

(b) Decreased:

(I) With the consent of the prosecuting attorney and the victim or victims to whom the restitution is owed; or

(II) If the defendant has otherwise compensated the victim or victims for the pecuniary losses suffered.

(4) (a) Any order for restitution entered pursuant to this section shall be a final civil judgment in favor of the state and any victim. Notwithstanding any other civil or criminal statute or rule, any such judgment shall remain in force until the restitution is paid in full.

(b) Any order for restitution made pursuant to this section shall also be deemed to order that:

(I) The defendant owes interest from the date of the entry of the order at the rate of twelve percent per annum; and

(II) The defendant owes all reasonable and necessary attorney fees and costs incurred in collecting such order due to the defendant's nonpayment.

(c) The entry of an order for restitution under this section creates a lien by operation of law against the defendant's personal property and any interest that the defendant may have in any personal property.

(d) Any order of restitution imposed shall be considered a debt for "willful and malicious" injury for purposes of exceptions to discharge in

bankruptcy as provided in 11 U.S.C. sec. 523.

(5) If more than one defendant owes restitution to the same victim for the same pecuniary loss, the orders for restitution shall be joint and several obligations of the defendants.

(6) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in any federal or state civil proceeding.

PART 7

FINES AND COSTS

18-1.3-701. [Formerly 16-11-501.] Judgment for costs and fines.

(1) Where any person, association, or corporation is convicted of an offense, or any juvenile is adjudicated a juvenile delinquent for the commission of an act that would have been a criminal offense if committed by an adult, the court shall give judgment in favor of the state of Colorado, the appropriate prosecuting attorney, or the appropriate law enforcement agency and against the offender or juvenile for the amount of the costs of prosecution, the amount of the cost of care, and any fine imposed. No fine shall be imposed for conviction of a felony except as provided in section ~~18-1-105~~, C.R.S. 18-1.3-401. Such judgments shall be enforceable in the same manner as are civil judgments, and, in addition,

the provisions of ~~sections~~ SECTION 16-11-101.6, C.R.S., and SECTION ~~16-11-502~~ 18-1.3-702 apply. Any judgments collected pursuant to this section for fees for interpreters appointed pursuant to section 13-90-204, C.R.S., and reimbursed pursuant to section 13-90-210, C.R.S., shall be remitted to the division of rehabilitation in the department of human services.

(2) The costs assessed pursuant to subsection (1) of this section or section 16-18-101, C.R.S., may include:

(a) Any docket fee required by article 32 of title 13, C.R.S., or any other fee or tax required by statute to be paid to the clerk of the court;

(b) The jury fee required by section 13-71-144, C.R.S.;

(c) Any fees required to be paid to sheriffs pursuant to section 30-1-104, C.R.S.;

(d) Any fees of the court reporter for all or any part of a transcript necessarily obtained for use in the case, including the fees provided for in section 16-18-101 (2), C.R.S., and including the fees for a transcript of any preliminary hearing;

(d.5) The actual costs paid to any expert witness;

(e) (I) The ~~witness fees and mileage paid~~ pursuant to article 33 of title 13, C.R.S., and ~~section 16-9-203~~, C.R.S.;

(II) For any person required to travel more than fifty miles from the person's place of residence to the place where specified in the subpoena, in addition to the witness fee and mileage specified in subparagraph (I) of this paragraph (e):

(A) Actual lodging expenses incurred; and

(B) Actual rental car, taxi, or other transportation costs incurred;

(e.5) If a person under eighteen years of age is required to appear, the amount that a parent or guardian of the person was paid for transportation and lodging expenses incurred while accompanying the person.

(f) Any fees for exemplification and copies of papers necessarily obtained for use in the case;

(g) Any costs of taking depositions for the perpetuation of testimony, including reporter's fees, witness fees, expert witness fees, mileage for witnesses, and sheriff fees for service of subpoenas;

(h) Any statutory fees for service of process or statutory fees for any required publications;

(h.5) Any fees for interpreters required during depositions or during trials;

(i) Any item specifically authorized by statute to be included as part

of the costs;

(j) On proper motion of the prosecuting attorney and at the discretion of the court, any other reasonable and necessary costs incurred by the prosecuting attorney or law enforcement agency which are directly the result of the prosecution of the defendant, including the costs resulting from the collection and analysis of any chemical test upon the defendant pursuant to section 42-4-1301, C.R.S., which costs shall be reimbursed by the defendant directly to the law enforcement agency which performed such chemical tests;

(k) Any costs incurred in obtaining a governor's warrant pursuant to section 16-19-108, C.R.S.;

(l) Any costs incurred by the law enforcement agency in photocopying reports, developing film, and purchasing videotape as necessary for use in the case;

(m) Repealed.

(n) Any costs of participation in a diversion program if the offender or juvenile unsuccessfully participated in a diversion program prior to the conviction or adjudication.

(3) Where any person, association, or corporation is granted probation, the court shall order the offender to make such payments toward the

cost of care as are appropriate under the circumstances. In setting the amount of such payments, the court shall take into consideration and make allowances for any restitution ordered to the victim or victims of a crime, which shall take priority over any payments ordered pursuant to this article, and for the maintenance and support of the offender's spouse, dependent children, or other persons having a legal right to support and maintenance from the estate of the offender. If the court determines that the offender has a sufficient estate to pay all or part of the cost of care, the court shall determine the amount which shall be paid by the offender for the cost of care, which amount shall in no event be in excess of the per capita cost of supervising an offender on probation.

(4) Where any person is sentenced to a term of imprisonment, whether to a county jail or the department of corrections, the court shall order such person to make such payments toward the cost of care as are appropriate under the circumstances. In setting the amount of such payments, the court shall take into consideration and make allowances for any restitution ordered to the victim or victims of a crime, which shall take priority over any payments ordered pursuant to this article, and for the maintenance and support of the inmate's spouse, dependent children, or any other persons having a legal right to support and maintenance out of the offender's estate. The court shall also consider the

financial needs of the offender for the six-month period immediately following the offender's release, for the purpose of allowing said offender to seek employment. If the court determines that the person has a sufficient estate to pay all or part of the cost of care, the court shall determine the amount which shall be paid by the offender, which amount in no event shall be in excess of the per capita cost of maintaining prisoners in the institution or facility in which the offender has been residing prior to sentencing for the purpose of reimbursing the appropriate law enforcement agency and the per capita cost of maintaining prisoners in the department of corrections for the purpose of paying the cost of care after sentencing.

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

(a) "Cost of care" means the cost to the department or the local government charged with the custody of an offender for providing room, board, clothing, medical care, and other normal living expenses for an offender confined to a jail or correctional facility, or any costs associated with maintaining an offender in a home detention program contracted for by the department of public safety, as determined by the executive director of the department of corrections or the executive director of the department of public safety, whichever is appropriate, or the cost of supervision of probation when

the offender is granted probation, or the cost of supervision of parole when the offender is placed on parole by the state board of parole, as determined by the court.

(b) "Estate" means any tangible or intangible properties, real or personal, belonging to or due to an offender, including income or payments to such person received or earned prior to or during incarceration from salary or wages, bonuses, annuities, pensions, or retirement benefits, or any source whatsoever except federal benefits of any kind. Real property that is held in joint ownership or ownership in common with an offender's spouse, while being used and occupied by the spouse as a place of residence, shall not be considered a part of the estate of the offender for the purposes of this section.

(6) After the set-offs for restitution and for maintenance and support as provided in subsection (4) of this section, any amounts recovered pursuant to this section that are available to reimburse the costs of providing medical care shall be used to reimburse the state for the state's financial participation for medical assistance if medical care is provided for the inmate or an infant of a female inmate under the "Colorado Medical Assistance Act", article 4 of title 26, C.R.S.

18-1.3-702. [Formerly 16-11-502.] Fines - methods of payment.

(1) When the court imposes a fine upon an individual, the court may direct as follows:

(a) That the defendant pay the entire amount of the fine at the time sentence is pronounced;

(b) That the defendant pay the entire amount of the fine at some later date;

(c) That the defendant pay a specified portion of the fine at designated periodic intervals, and in such case the court may also direct that the fine be remitted to a designated official who shall report to the court on any failure to comply with the order;

(d) Where the defendant is sentenced to a period of probation as well as a fine, that payment of the fine be a condition of probation.

(2) Where the court imposes a fine, the sentence shall provide that, except in the case of a corporation, if the defendant fails to pay the fine in accordance with the direction of the court, the defendant shall be imprisoned until the fine is satisfied or the defendant is released as provided in subsections (3) and (6) of this section. This provision shall be added at the time sentence is pronounced. If the defendant fails to pay a fine as directed, the court may issue a warrant for his OR HER arrest.

(3) When the court directs that the defendant be imprisoned until the fine is satisfied, the court shall specify a maximum period of imprisonment subject to the following limits:

(a) Where the fine was imposed for a felony, the period shall not exceed one year;

(b) Where the fine was imposed for a misdemeanor, the period shall not exceed one-third of the maximum term of imprisonment authorized for the misdemeanor;

(c) Where the fine was imposed for a petty offense, a traffic violation, or a violation of a municipal ordinance, any of which is punishable by a possible jail sentence, the period shall not exceed fifteen days;

(c.5) There shall be no imprisonment in those cases where no imprisonment is provided for in the possible sentence; and

(d) Where a sentence of imprisonment as well as a fine was imposed, the aggregate of the period and the term of the sentence shall not exceed the maximum term of imprisonment authorized for the offense.

(4) Where the defendant is unable to pay a fine imposed by the court, the defendant may at any time apply to the court for resentencing. If the court is satisfied that the defendant is unable to pay the fine, the court shall:

- (a) Adjust the terms of payment; or
- (b) Lower the amount of the fine; or
- (c) Where the sentence consists of probation or imprisonment and a fine, revoke the portion of the sentence imposing the fine; or
- (d) Revoke the entire sentence imposed and resentence the defendant.

Upon a resentence, the court may impose any sentence it originally could have imposed; except that the amount of any fine imposed shall not be in excess of the amount the defendant is able to pay.

(5) Notwithstanding that the defendant was imprisoned for failure to pay a fine or that he OR SHE has served the period of imprisonment imposed, a fine may be collected in the same manner as a judgment in a civil action. The district attorney may, in his OR HER discretion, and shall, upon order of the court, institute proceedings to collect such fine.

(6) If it satisfactorily appears to the district court of the judicial district in which a person is confined that such person is confined in jail or in a correctional facility or other place of confinement, for any fine or costs of prosecution for any criminal offense, including any violation of a municipal ordinance, and has no estate whatever with which to pay such fine and costs, or costs only, it is the duty of the court to discharge such person from further

imprisonment for the fine and costs. Nothing in this subsection (6) shall authorize any person to be discharged from imprisonment before the expiration of the time for which he OR SHE may be sentenced to be imprisoned as part of his OR HER punishment. The court shall hear without delay any application made under this subsection (6).

PART 8

SPECIAL PROCEEDINGS - SENTENCING OF HABITUAL CRIMINALS

18-1.3-801. [Formerly 16-13-101.] Punishment for habitual criminals. (1) (a) A person shall be adjudged an habitual criminal and shall be punished by a term of life imprisonment if the person:

(I) Is convicted of:

(A) Any class 1 or 2 felony; or

(B) Any class 3 felony that is a crime of violence, as defined in section ~~16-11-309(2)~~ 18-1.3-406 (2); and

(II) Has been twice convicted previously for any of the offenses described in subparagraph (I) of this paragraph (a).

(b) A felony described in subparagraph (I) of paragraph (a) of this subsection (1) is:

(I) One based upon charges separately brought and tried, and arising

out of separate and distinct criminal episodes, in this or any other state; or

(II) A crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be such a felony described in paragraph (a) of this subsection (1).

(c) No person sentenced pursuant to this subsection (1) shall be eligible for parole until such person has served at least forty calendar years.

(d) Nothing in this subsection (1) prohibits the governor from issuing a pardon or a clemency order on a case-by-case basis; however, the governor shall submit a report to the general assembly on each such pardon or clemency order in accordance with section 7 of article IV of the state constitution.

(e) Nothing in this subsection (1) is to be construed to prohibit a person convicted of a class 1 felony from being sentenced pursuant to section ~~16-11-103~~ 18-1.3-1201.

(f) This subsection (1) shall not apply to a person convicted of first or second degree burglary, which person shall be subject to subsections (1.5), (2), and (2.5) of this section and section ~~18-4-202.1~~, C.R.S. 18-1.3-804.

(1.5) Every person convicted in this state of any class 1, 2, 3, 4, or

5 felony who, within ten years of the date of the commission of the said offense, has been twice previously convicted upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony shall be adjudged an habitual criminal and shall be punished for the felony offense of which such person is convicted by confinement in a correctional facility for a term of three times the maximum of the presumptive range pursuant to section ~~18-1-105~~, C.R.S., 18-1.3-401 for the class of felony of which such person is convicted.

(2) Every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished for the felony offense of which such person is convicted by imprisonment in a correctional facility for a term of four times the maximum of the presumptive range pursuant to section ~~18-1-105~~, C.R.S.,

18-1.3-401 for the class of felony of which such person is convicted. Such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment or information. Nothing in this part 1 shall abrogate or affect the punishment by death in any and all crimes punishable by death on or after July 1, 1972.

(2.5) Any person who is convicted and sentenced pursuant to subsection (2) of this section, who is thereafter convicted of a felony which is a crime of violence pursuant to section ~~16-11-309~~ 18-1.3-406, shall be adjudged an habitual criminal and shall be punished by a term of life imprisonment. No person sentenced pursuant to this subsection (2.5) shall be eligible for parole until such person has served at least forty calendar years.

(3) No drug law conviction shall be counted as a prior felony conviction under this section unless such prior offense would be a felony if committed in this state at the time of the commission of the new offense.

(4) A person who meets the criteria set forth in subsection (1) of this section shall be adjudged an habitual criminal and sentenced only in accordance with that subsection and not pursuant to subsections (1.5), (2), and (2.5) of this section.

18-1.3-802. [Formerly 16-13-102.] Evidence of former

convictions - identity. On any trial under the provisions of this ~~part~~ SECTION AND SECTIONS 18-1.3-801 AND 18-1.3-803, a duly authenticated copy of the record of former convictions and judgments of any court of record for any of said crimes against the party indicted or informed against shall be prima facie evidence of such convictions and may be used in evidence against such party. Identification photographs and fingerprints that are part of the record of such former convictions and judgments, or are part of the records kept at the place of such party's incarceration or by any custodian authorized by the executive director of the department of corrections after sentencing for any of such former convictions and judgments, shall be prima facie evidence of the identity of such party and may be used in evidence against him OR HER.

18-1.3-803. [Formerly 16-13-103.] Verdict of jury. (1) If the allegation of previous convictions of other felony offenses is included in an indictment or information and if a verdict of guilty of the substantive offense with which the defendant is charged is returned, the court shall conduct a separate sentencing hearing to determine whether or not the defendant has suffered such previous felony convictions. As soon as practicable, the hearing shall be conducted by the judge who presided at trial or before whom the guilty plea was entered or a replacement for said judge in the event he or she dies,

resigns, is incapacitated, or is otherwise disqualified as provided in section 16-6-201, C.R.S.

(2) An information or indictment seeking the increased penalties authorized by section ~~16-13-101~~ 18-1.3-801 shall identify by separate counts each alleged former conviction and shall allege that the defendant on a date and at a place specified was convicted of a specific felony. If any such conviction was had outside this state, the information or indictment shall allege that the offense, if committed in this state, would be a felony.

(3) Upon arraignment of the defendant, such defendant shall be required to admit or deny that such defendant has been previously convicted of the crimes identified in the information or indictment. If the defendant refuses to admit or deny the previous convictions, such refusal shall be treated as a denial by such defendant that the defendant has been convicted as alleged.

If the defendant admits to having been convicted as alleged in any count charging a previous conviction, no proof of such previous conviction is required. Such admission shall constitute conclusive proof in determining whether the defendant has been previously convicted of an alleged felony and the court shall sentence the defendant in accordance with section ~~16-13-101~~ 18-1.3-801.

(4) If the defendant denies that he or she has been previously convicted as alleged in any count of an information or indictment, the trial judge, or a replacement judge as provided in subsection (1) of this section, shall determine by separate hearing and verdict whether the defendant has been convicted as alleged. The procedure in any case in which the defendant does not become a witness in his or her own behalf upon the trial of the substantive offense shall be as follows:

(a) The jury shall render a verdict upon the issue of the defendant's guilt or innocence of the substantive offense charged;

(b) If the verdict is that the defendant is guilty of the substantive offense charged, the trial judge, or a replacement judge as provided in subsection (1) of this section, shall proceed to try the issues of whether the defendant has been previously convicted as alleged. The prosecuting attorney has the burden of proving beyond a reasonable doubt that the defendant has been previously convicted as alleged.

(5) (a) If, upon the trial of the issues upon the substantive offense charged, the defendant testifies in his OR HER own defense and denies that he OR SHE has been previously convicted as alleged, the prosecuting attorney on rebuttal, may present all evidence relevant to the issues of previous convictions

for the sole purpose of impeachment of the defendant's credibility, subject to the rules governing admission of evidence at criminal trials.

(b) If, upon the trial of the issues upon the substantive offense charged, the defendant testifies in his or her own defense and, after having denied the previous conviction under subsection (3) of this section, admits that he or she has been previously convicted as alleged, the trial judge, or a replacement judge as provided in subsection (1) of this section, shall, in any sentencing hearing, consider any admissions of prior convictions elicited from the defendant in connection with his or her testimony on the substantive offense only as they affect the defendant's credibility. In any sentencing hearing, the prosecution shall be required to meet its burden of proving beyond a reasonable doubt the defendant's prior convictions by evidence independent of the defendant's testimony.

(6) If the prosecuting attorney does not have any information indicating that the defendant has been previously convicted of a felony prior to the time a verdict of guilty is rendered on a felony charge and if thereafter the prosecuting attorney learns of the felony conviction prior to the time that sentence is pronounced by the court, he or she may file a new information in which it shall be alleged in separate counts that the defendant has been

convicted of the particular offense upon which judgment has not been entered and that prior thereto at a specified date and place the defendant has been convicted of a felony warranting application of increased penalties authorized in this ~~part~~ SECTION, SECTION 18-1.3-801, AND SECTION 18-1.3-802. The defendant shall be arraigned upon the new information, and, if the defendant denies the previous conviction, the trial judge, or a replacement judge as provided in subsection (1) of this section, shall try the issue prior to imposition of sentence.

18-1.3-804. [Formerly 18-4-202.1.] Habitual burglary offenders - punishment - legislative declaration. (1) Every person convicted in this state of first degree burglary, first degree burglary of controlled substances, or second degree burglary of a dwelling who, within ten years of the date of the commission of the said offense, has been previously convicted upon charges separately brought and tried, either in this state or elsewhere, of first degree burglary, first degree burglary of drugs or first degree burglary of controlled substances, or second degree burglary of a dwelling or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a felony which, if committed within this state, would be first degree burglary, first degree burglary of drugs or first degree burglary of

controlled substances, or second degree burglary of a dwelling shall be adjudged a habitual burglary offender and shall be sentenced to a term of incarceration greater than the maximum in the presumptive range, but not more than twice the maximum term, provided for such offense in section ~~18-1-105(1)(a)~~ 18-1.3-401 (1) (a).

(2) Every person convicted in this state of first degree burglary, first degree burglary of controlled substances, or second degree burglary of a dwelling who has been previously convicted of two or more felonies shall be subject to the applicable provisions of section ~~16-13-101, C.R.S.~~ 18-1.3-801.

(3) Such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment or information.

(4) In no case shall any person who is subject to the provisions of this section be eligible for suspension of sentence or probation.

(5) Insofar as they may be applicable, sections ~~16-13-102 and 16-13-103, C.R.S.~~ 18-1.3-802 AND 18-1.3-803 shall govern trials which are held as a result of the provisions of this section.

(6) The general assembly hereby finds and declares that the frequency of incidence of the crime of burglary, together with particularly high rates of recidivism among burglary offenders and the extensive economic impact which

results from the crime of burglary, requires the special classification and punishment of habitual burglary offenders as provided in this section.

PART 9

SENTENCING OF SEX OFFENDERS

18-1.3-901. [Formerly 16-13-201.] Short title. This part ~~2~~ 9 shall be known and may be cited as the "Colorado Sex Offenders Act of 1968".

18-1.3-902. [Formerly 16-13-201.5.] Applicability of part. The provisions of this part ~~2~~ 9 shall apply to persons sentenced for offenses committed prior to November 1, 1998.

18-1.3-903. [Formerly 16-13-202.] Definitions. As used in this part ~~2~~ 9, unless the context otherwise requires:

- (1) "Board" means the state board of parole.
- (2) "Conviction" means conviction after trial by court or jury or acceptance of a plea of guilty.
- (3) "Department" means the department of corrections.
- (4) "Sex offender" means a person convicted of a sex offense.
- (5) "Sex offense" means sexual assault, except misdemeanor sexual assault in the third degree, as set forth in part 4 of article 3 of ~~title 18, C.R.S.~~ THIS TITLE; sexual assault on a child, as defined in section 18-3-405; ~~C.R.S.~~

aggravated incest, as defined in section 18-6-302; ~~C.R.S.~~; and an attempt to commit any of the offenses mentioned in this subsection (5).

18-1.3-904. [Formerly 16-13-203.] Indeterminate commitment. The district court having jurisdiction may, subject to the requirements of this part 29, in lieu of the sentence otherwise provided by law, commit a sex offender to the custody of the department for an indeterminate term having a minimum of one day and a maximum of his OR HER natural life.

18-1.3-905. [Formerly 16-13-204.] Requirements before acceptance of a plea of guilty. Before the district court may accept a plea of guilty from any person charged with a sex offense, the court shall, in addition to any other requirement of law, advise the defendant that he OR SHE may be committed to the custody of the department, including any penal institution under the jurisdiction of the department, as provided in section ~~16-13-203~~ 18-1.3-904.

18-1.3-906. [Formerly 16-13-205.] Commencement of proceedings. Within twenty days after the conviction of a sex offense, upon the motion of the district attorney, the defendant, or the court, the court shall commence proceedings under this part 29 by ordering the district attorney to

prepare a notice of the commencement of proceedings and to serve that notice upon the defendant personally.

18-1.3-907. [Formerly 16-13-206.] Defendant to be advised of rights. (1) Upon the commencement of proceedings, the court shall advise the defendant, orally and in writing, that:

(a) The defendant is to be examined in accordance with the provisions of section ~~16-13-207~~ 18-1.3-908;

(b) The defendant has a right to counsel, and, if the defendant is indigent, counsel will be appointed to represent him OR HER;

(c) The defendant has a right to remain silent;

(d) An evidentiary hearing will be held pursuant to section ~~16-13-210~~ 18-1.3-911 and the defendant and his OR HER counsel will be furnished with copies of all reports prepared for the court pursuant to sections ~~16-13-207~~ 18-1.3-908 and ~~16-13-208~~ 18-1.3-909 at least ten days prior to the evidentiary hearing.

(2) The written advisement of rights may be incorporated into the notice of commencement of proceedings.

18-1.3-908. [Formerly 16-13-207.] Psychiatric examination and report. (1) (a) After advising the defendant of his OR HER rights, the court

shall forthwith commit the defendant to the Colorado mental health institute at Pueblo, the university of Colorado psychiatric hospital, or the county jail.

(b) If committed to the Colorado mental health institute at Pueblo or the university of Colorado psychiatric hospital, the defendant shall be examined by two psychiatrists of the receiving institution.

(c) If committed to the county jail, the defendant shall be examined by two psychiatrists appointed by the court.

(2) (a) The examining psychiatrists shall make independent written reports to the court which shall contain the opinion of the psychiatrist as to whether the defendant, if at large, constitutes a threat of bodily harm to members of the public.

(b) The written reports shall also contain opinions concerning:

(I) Whether the defendant is mentally deficient;

(II) Whether the defendant could benefit from psychiatric treatment;

and

(III) Whether the defendant could be adequately supervised on probation.

(3) The examinations shall be made and the reports filed with the court and the probation department within sixty days after the commencement

of proceedings, and this time may not be enlarged by the court.

18-1.3-909. [Formerly 16-13-208.] Report of probation department. (1) Upon the commencement of proceedings under this part 2 9, the court shall order an investigation and report to be made by the probation officer similar to the presentence report provided for in section 16-11-102, C.R.S.

(2) The report shall be filed with the court within seventy-five days after the commencement of proceedings, and this time may not be enlarged by the court.

18-1.3-910. [Formerly 16-13-209.] Termination of proceedings. After reviewing the reports of the psychiatrists and the probation officer, the court may terminate proceedings under this part 2 9 and proceed with sentencing as otherwise provided by law.

18-1.3-911. [Formerly 16-13-210.] Evidentiary hearing. (1) (a) The court shall set a hearing date at least ten days and no more than twenty days after service upon the defendant and his OR HER counsel of the reports required by sections ~~16-13-207~~ 18-1.3-908 and ~~16-13-208~~ 18-1.3-909.

(b) The court may, in its discretion, upon the motion of the defendant, continue the hearing an additional twenty days.

(2) (a) The court shall, upon motion of the district attorney or the defendant, subpoena all witnesses required by the moving party in accordance with the Colorado rules of criminal procedure.

(b) The district attorney shall serve upon the defendant and his OR HER counsel a list of all witnesses to be called by the district attorney at least ten days before the evidentiary hearing.

(3) In the evidentiary hearing, the court shall receive evidence bearing on the issue of whether the defendant, if at large, constitutes a threat of bodily harm to members of the public.

(4) In the evidentiary hearing, the following procedure shall govern:

(a) The district attorney may call and examine witnesses, and the defendant shall be allowed to cross-examine those witnesses.

(b) The defendant may call and examine witnesses, and the district attorney shall be allowed to cross-examine those witnesses.

(c) The defendant may call and cross-examine as adverse witnesses the psychiatrists and probation officers who have filed reports pursuant to sections ~~16-13-207~~ 18-1.3-908 and ~~16-13-208~~ 18-1.3-909.

(5) The reports of the psychiatrists and probation officers filed with the court pursuant to sections ~~16-13-207~~ 18-1.3-908 and ~~16-13-208~~ 18-1.3-909

may be received into evidence.

(6) Except as otherwise provided in this section, the laws of this state concerning evidence in criminal trials shall govern in the evidentiary hearing.

18-1.3-912. [Formerly 16-13-211.] Findings of fact and conclusions of law. (1) After the evidentiary hearing, the court shall, within five days, make oral or written findings of fact and conclusions of law.

(2) If the court finds beyond a reasonable doubt that the defendant, if at large, constitutes a threat of bodily harm to members of the public, the court shall commit the defendant pursuant to section ~~16-13-203~~ 18-1.3-904.

(3) If the court does not find as provided in subsection (2) of this section, it shall terminate proceedings under this part ~~2~~ 9 and proceed with sentencing as otherwise provided by law.

(4) If the findings and conclusions are oral, they shall be reduced to writing and filed within ten days, and the defendant shall not be committed to the custody of the department pursuant to section ~~16-13-203~~ 18-1.3-904 until the findings and conclusions are filed.

18-1.3-913. [Formerly 16-13-212.] Appeal. The defendant may appeal an adverse finding made pursuant to section ~~16-13-211~~ 18-1.3-912 in the

same manner as is provided by law for other criminal appeals.

18-1.3-914. [Formerly 16-13-213.] Time allowed on sentence. If the proceedings under this part 2 9 are terminated by the court, as provided in section ~~16-13-209~~ 18-1.3-910 or section ~~16-13-211~~ (3) 18-1.3-912 (3), the court shall deduct the time from the commencement of proceedings to the termination of proceedings from the minimum sentence of the defendant.

18-1.3-915. [Formerly 16-13-214.] Costs. The costs of the maintenance of the prisoner during the pendency of proceedings under this part 2 9 and the costs of the psychiatric examinations and reports shall be paid by the state of Colorado.

18-1.3-916. [Formerly 16-13-215.] Diagnostic center as receiving center. The diagnostic center, as defined in section 17-40-101 (1.5), C.R.S., shall be the receiving center for all persons committed pursuant to section ~~16-13-203~~ 18-1.3-904.

PART 10

LIFETIME SUPERVISION OF SEX OFFENDERS

18-1.3-1001. [Formerly 16-13-801.] Legislative declaration. The general assembly hereby finds that the majority of persons who commit sex offenses, if incarcerated or supervised without treatment, will continue to

present a danger to the public when released from incarceration and supervision.

The general assembly also finds that keeping all sex offenders in lifetime incarceration imposes an unacceptably high cost in both state dollars and loss of human potential. The general assembly further finds that some sex offenders respond well to treatment and can function as safe, responsible, and contributing members of society, so long as they receive treatment and supervision. The general assembly therefore declares that a program under which sex offenders may receive treatment and supervision for the rest of their lives, if necessary, is necessary for the safety, health, and welfare of the state.

18-1.3-1002. [Formerly 16-13-802.] Short title. This part 8 10 shall be known and may be cited as the "Colorado Sex Offender Lifetime Supervision Act of 1998".

18-1.3-1003. [Formerly 16-13-803.] Definitions. As used in this part 8 10, unless the context otherwise requires:

(1) "Department" means the department of corrections.

(2) "Management board" means the sex offender management board created in section 16-11.7-103, C.R.S.

(3) "Parole board" means the state board of parole created in section 17-2-201, C.R.S.

(4) "Sex offender" means a person who is convicted of or pleads guilty or nolo contendere to a sex offense. "Sex offender" also means any person sentenced as a sex offender pursuant to section ~~16-13-804~~ (4) 18-1.3-1004 (4).

(5) (a) "Sex offense" means any of the following offenses:

(I) (A) Sexual assault, as described in section 18-3-402; ~~C.R.S.~~; or

(B) Sexual assault in the first degree, as described in section 18-3-402 ~~C.R.S.~~; as it existed prior to July 1, 2000;

(II) Sexual assault in the second degree, as described in section 18-3-403 ~~C.R.S.~~; as it existed prior to July 1, 2000;

(III) (A) Felony unlawful sexual contact, as described in section 18-3-404 (2); ~~C.R.S.~~; or

(B) Felony sexual assault in the third degree, as described in section 18-3-404 (2) ~~C.R.S.~~; as it existed prior to July 1, 2000;

(IV) Sexual assault on a child, as described in section 18-3-405; ~~C.R.S.~~;

(V) Sexual assault on a child by one in a position of trust, as described in section 18-3-405.3; ~~C.R.S.~~;

(VI) Aggravated sexual assault on a client by a psychotherapist, as described in section 18-3-405.5 (1); ~~C.R.S.~~;

(VII) Enticement of a child, as described in section 18-3-305; ~~C.R.S.~~;

(VIII) Incest, as described in section 18-6-301; ~~C.R.S.~~;

(IX) Aggravated incest, as described in section 18-6-302; ~~C.R.S.~~;

(X) Patronizing a prostituted child, as described in section 18-7-406.

~~C.R.S.~~

(b) "Sex offense" also includes criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in paragraph (a) of this subsection (4) if such criminal attempt, conspiracy, or solicitation would constitute a class 2, 3, or 4 felony.

18-1.3-1004. [Formerly 16-13-804.] Indeterminate sentence.

(1) (a) Except as otherwise provided in this subsection (1) and in subsection (2) of this section, the district court having jurisdiction shall sentence a sex offender to the custody of the department for an indeterminate term of at least the minimum of the presumptive range specified in section ~~18-1-105~~, ~~C.R.S.~~; 18-1.3-401 for the level of offense committed and a maximum of the sex offender's natural life.

(b) If the sex offender committed a sex offense that constitutes a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, the district court shall sentence the sex offender to the custody of the department for an indeterminate

term of at least the midpoint in the presumptive range for the level of offense committed and a maximum of the sex offender's natural life.

(c) If the sex offender committed a sex offense that makes him or her eligible for sentencing as an habitual sex offender against children pursuant to section 18-3-412, ~~C.R.S.~~, the district court shall sentence the sex offender to the custody of the department for an indeterminate term of at least three times the upper limit of the presumptive range for the level of offense committed and a maximum of the sex offender's natural life.

(d) If the sex offender committed a sex offense that constitutes a sexual offense, as defined in section 18-3-415.5, ~~C.R.S.~~, and the sex offender, prior to committing the offense, had notice that he or she had tested positive for the human immunodeficiency virus (HIV) that causes acquired immune deficiency syndrome, the district court shall sentence the sex offender to the custody of the department for an indeterminate term of at least three times the upper limit of the presumptive range for the level of offense committed and a maximum of the sex offender's natural life.

(2) (a) The district court having jurisdiction, based on consideration of the evaluation conducted pursuant to section 16-11.7-104, C.R.S., and the factors specified in section ~~16-11-203~~ 18-1.3-203, may sentence a sex offender

to probation for an indeterminate period of at least ten years for a class 4 felony or twenty years for a class 2 or 3 felony and a maximum of the sex offender's natural life; except that, if the sex offender committed a sex offense that constitutes a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, or committed a sex offense that makes him or her eligible for sentencing as a habitual sex offender against children pursuant to section 18-3-412, ~~C.R.S.~~, the court shall sentence the sex offender to the department of corrections as provided in subsection (1) of this section. For any sex offender sentenced to probation pursuant to this subsection (2), the court shall order that the sex offender, as a condition of probation, participate in an intensive supervision probation program established pursuant to section ~~16-13-807~~ 18-1.3-1007, until further order of the court.

(b) The court, as a condition of probation, may sentence a sex offender to a residential community corrections program pursuant to ~~article 27 of title 17,~~ ~~C.R.S.~~, SECTION 18-1.3-301 for a minimum period specified by the court. Following completion of the minimum period, the sex offender may be released to intensive supervision probation as provided in section ~~16-13-808 (1.5)~~ 18-1.3-1008 (1.5).

(3) Each sex offender sentenced pursuant to this section shall be

required as a part of the sentence to undergo treatment to the extent appropriate pursuant to section 16-11.7-105, C.R.S.

(4) (a) The court may sentence any person pursuant to the provisions of this section if:

(I) The person is convicted of or pleads guilty or nolo contendere to a crime specified in paragraph (b) of this subsection (4); and

(II) An assessment of the person pursuant to section 16-11.7-104, C.R.S., determines that the person is likely to 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.~~

(b) The provisions of this subsection (4) shall apply to any person who is convicted of or pleads guilty or nolo contendere to any of the following offenses or criminal attempt, conspiracy, or solicitation to commit any of the following offenses:

(I) Trafficking in children, as described in section 18-6-402; ~~C.R.S.~~;

(II) Felony sexual exploitation of children, as described in section 18-6-403; ~~C.R.S.~~;

(III) Procurement of a child for sexual exploitation, as described in section 18-6-404; ~~C.R.S.~~;

(IV) Soliciting for child prostitution, as described in section 18-7-402;

~~C.R.S.~~;

(V) Pandering of a child, as described in section 18-7-403; ~~C.R.S.~~;

(VI) Procurement of a child, as described in section 18-7-403.5;

~~C.R.S.~~;

(VII) Keeping a place of child prostitution, as described in section 18-7-404; ~~C.R.S.~~;

(VIII) Pimping of a child, as described in section 18-7-405; ~~C.R.S.~~;

(IX) Inducement of child prostitution, as described in section 18-7-405.5. ~~C.R.S.~~

(c) Any person sentenced as a sex offender pursuant to this subsection (4) shall be subject to the provisions of this part 8 10.

(5) (a) Any sex offender sentenced pursuant to subsection (1) or (4) of this section and convicted of one or more additional crimes arising out of the same incident as the sex offense shall be sentenced for the sex offense and such other crimes so that the sentences are served consecutively rather than concurrently.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), if a sex offender sentenced pursuant to this part 8 10 is convicted

of a subsequent crime prior to being discharged from parole pursuant to section ~~16-13-806~~ 18-1.3-1006 or discharged from probation pursuant to section ~~16-13-808~~ 18-1.3-1008, any sentence imposed for the second crime shall not supersede the sex offender's sentence pursuant to the provisions of this part 8 10. If the sex offender commits the subsequent crime while he or she is on parole or probation and the sex offender receives a sentence to the department of corrections for the subsequent crime, the sex offender's parole or probation shall be deemed revoked pursuant to section ~~16-13-810~~ 18-1.3-1010, and the sex offender shall continue to be subject to the provisions of this part 8 10.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply if the sex offender commits a subsequent crime that is a class 1 felony.

18-1.3-1005. [Formerly 16-13-805.] Parole - intensive supervision program. (1) The department shall establish an intensive supervision parole program for sex offenders sentenced to incarceration and subsequently released on parole pursuant to this part 8 10. In addition, the parole board may require a person, as a condition of parole, to participate in the intensive supervision parole program established pursuant to this section if the person is convicted of:

(a) Indecent exposure, as described in section 18-7-302; ~~C.R.S.~~;

(b) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in section ~~16-13-803 (5) (a)~~ 18-1.3-1003 (5) (a), which attempt, conspiracy, or solicitation would constitute a class 5 felony; or

(c) Any of the offenses specified in section ~~16-13-804 (4) (b)~~ 18-1.3-1004 (4) (b).

(1.5) In addition to the persons specified in subsection (1) of this section, the parole board shall require, as a condition of parole, any person convicted of felony failure to register as a sex offender, as described in section 18-3-412.5 (4) (b) (I), ~~C.R.S.~~, who is sentenced to incarceration and subsequently released on parole, to participate in the intensive supervision parole program established pursuant to this section.

(2) The department shall require that sex offenders and any other persons in the intensive supervision parole program established pursuant to this section receive the highest level of supervision that is provided to parolees. The intensive supervision parole program may include, but is not limited to, severely restricted activities, daily contact between the sex offender or other person and the parole officer, monitored curfew, home visitation, employment visitation and monitoring, drug and alcohol screening, treatment referrals and monitoring, including physiological monitoring, and payment of restitution. In addition, the

intensive supervision parole program shall be designed to minimize the risk to the public to the greatest extent possible.

(3) The executive director of the department shall establish and enforce standards and criteria for administration of the intensive supervision parole program created pursuant to this section.

18-1.3-1006. [Formerly 16-13-806.] Release from incarceration - parole - conditions. (1) (a) On completion of the minimum period of incarceration specified in a sex offender's indeterminate sentence, less any earned time credited to the sex offender pursuant to section 17-22.5-403 or 17-22.5-405, C.R.S., the parole board shall schedule a hearing to determine whether the sex offender may be released on parole. In determining whether to release the sex offender on parole, the parole board shall determine whether the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if released under appropriate treatment and monitoring requirements and whether there is a strong and reasonable probability that the person will not thereafter violate the law. The department shall make recommendations to the parole board concerning whether the sex offender should be released on parole and the level of treatment and monitoring that should be imposed as a condition of parole. The recommendation shall be

based on the criteria established by the management board pursuant to section ~~16-13-809~~ 18-1.3-1009.

(b) If a sex offender is released on parole pursuant to this section, the sex offender's sentence to incarceration shall continue and shall not be deemed discharged until such time as the parole board may discharge the sex offender from parole pursuant to subsection (3) of this section. The period of parole for any sex offender convicted of a class 4 felony shall be an indeterminate term of at least ten years and a maximum of the remainder of the sex offender's natural life. The period of parole for any sex offender convicted of a class 2 or 3 felony shall be an indeterminate term of at least twenty years and a maximum of the remainder of the sex offender's natural life.

(c) If the parole board does not release the sex offender on parole pursuant to paragraph (a) of this subsection (1), the parole board shall review such denial at least once every three years until it determines that the sex offender meets the criteria for release on parole specified in paragraph (a) of this subsection (1). At each review, the department shall make recommendations, based on the criteria established by the management board pursuant to section ~~16-13-809~~ 18-1.3-1009, concerning whether the sex offender should be released on parole.

(2) (a) As a condition of release on parole pursuant to this section, a sex offender shall participate in the intensive supervision parole program created by the department pursuant to section ~~16-13-805~~ 18-1.3-1005. Participation in the intensive supervision parole program shall continue until the sex offender can demonstrate that he or she has successfully progressed in treatment and would not pose an undue threat to the community if paroled to a lower level of supervision, at which time the sex offender's parole officer may petition the parole board for a reduction in the sex offender's level of supervision. The sex offender's parole officer and treatment provider shall make recommendations to the parole board concerning whether the sex offender has met the requirements specified in this subsection (2) such that the level of parole supervision should be reduced. The recommendations shall be based on the criteria established by the management board pursuant to section ~~16-13-809~~ 18-1.3-1009.

(b) Following reduction in a sex offender's level of parole supervision pursuant to paragraph (a) of this subsection (2), the sex offender's parole officer may return the sex offender to the intensive supervision parole program if the parole officer determines that an increased level of supervision is necessary to protect the public safety. The parole officer shall notify the parole

board as soon as possible after returning the sex offender to the intensive supervision parole program. To subsequently reduce the sex offender's level of supervision, the parole officer may petition the parole board as provided in paragraph (a) of this subsection (2).

(3) (a) On completion of twenty years on parole for any sex offender convicted of a class 2 or 3 felony or on completion of ten years of parole for any sex offender convicted of a class 4 felony, the parole board shall schedule a hearing to determine whether the sex offender may be discharged from parole. In determining whether to discharge the sex offender from parole, the parole board shall determine whether the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if allowed to live in the community without treatment or supervision. The sex offender's parole officer and treatment provider shall make recommendations to the parole board concerning whether the sex offender has met the requirements specified in this subsection (3) such that the sex offender should be discharged from parole. The recommendations shall be based on the criteria established by the management board pursuant to section ~~16-13-809~~ 18-1.3-1009.

(b) If the parole board does not discharge the sex offender from parole pursuant to paragraph (a) of this subsection (3), the parole board shall review

such denial at least once every three years until it determines that the sex offender meets the criteria for discharge specified in paragraph (a) of this subsection (3). At each review, the sex offender's parole officer and treatment provider shall make recommendations, based on the criteria established by the management board pursuant to section ~~16-13-809~~ 18-1.3-1009, concerning whether the sex offender should be discharged.

(4) In determining whether to release a sex offender on parole, reduce the level of supervision, or discharge a sex offender from parole pursuant to this section, the parole board shall consider the recommendations of the department and the sex offender's parole officer and treatment provider. If the parole board chooses not to follow the recommendations made, it shall make findings on the record in support of its decision.

18-1.3-1007. [Formerly 16-13-807.] Probation - intensive supervision program. (1) (a) The judicial department shall establish an intensive supervision probation program for sex offenders sentenced to probation pursuant to this part 8 10. In addition, the court shall require a person, as a condition of probation, to participate in the intensive supervision probation program established pursuant to this section if the person is convicted of one of the following offenses and sentenced to probation:

(I) Indecent exposure, as described in section 18-7-302 (4); ~~E.R.S.~~;

(II) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in section ~~16-13-803 (5) (a)~~ 18-1.3-1003 (5) (a), which attempt, conspiracy, or solicitation would constitute a class 5 felony;

(III) Any of the offenses specified in section ~~16-13-804 (4) (b)~~ 18-1.3-1004 (4) (b);

(IV) Any felony offense that involves unlawful sexual behavior or any felony offense with an underlying factual basis, as determined by the court, resulting in a conviction or plea of guilty or nolo contendere on or after July 1, 2001;

(V) Sexual assault in the third degree, in violation of section 18-3-404 (2), ~~E.R.S.~~, as it existed prior to July 1, 2000.

(b) The judicial department may establish the intensive supervision probation program in any judicial district or combination of judicial districts.

(1.5) In addition to the persons specified in subsection (1) of this section, the court shall require any person convicted of felony failure to register as a sex offender, as described in section 18-3-412.5 (4) (b) (I), ~~E.R.S.~~, and sentenced to probation to participate, as a condition of probation and until further order of the court, in the intensive supervision probation program

established pursuant to this section.

(2) The judicial department shall require that sex offenders and any other persons participating in the intensive supervision probation program created pursuant to this section receive the highest level of supervision that is provided to probationers. The intensive supervision probation program may include but not be limited to severely restricted activities, daily contact between the sex offender or other person and the probation officer, monitored curfew, home visitation, employment visitation and monitoring, drug and alcohol screening, treatment referrals and monitoring, including physiological monitoring, and payment of restitution. In addition, the intensive supervision probation program shall be designed to minimize the risk to the public to the greatest extent possible.

(3) The judicial department shall establish and enforce standards and criteria for administration of the intensive supervision probation program created pursuant to this section.

(4) For the purposes of this section, "convicted" means having entered a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence under section ~~16-7-403~~ 18-1.3-102, or a plea of no contest, accepted by the court, or having received a verdict of guilty by a judge or jury.

18-1.3-1008. [Formerly 16-13-808.] Probation - conditions - release. (1) If the court sentences a sex offender to probation, in addition to any conditions imposed pursuant to section ~~16-11-204~~ 18-1.3-204, the court shall require as a condition of probation that the sex offender participate until further order of the court in the intensive supervision probation program created pursuant to section ~~16-13-807~~ 18-1.3-1007.

(1.5) If the court as a condition of probation sentences a sex offender to a residential community corrections program, following completion of the minimum period of sentence specified by the court, the community corrections program shall notify the judicial department when it determines that the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if allowed to live in the community while continuing on intensive supervision probation. The community corrections program shall base its determination on the criteria established by the management board pursuant to section ~~16-13-809~~ 18-1.3-1009. The judicial department shall file the recommendations of the community corrections program with the court. Upon order of the court, the sex offender shall be released from the community corrections program, and the court shall order the sex offender, as a condition

of probation, to participate in the intensive supervision program created in section ~~16-13-807~~ 18-1.3-1007. The sex offender shall participate in such program until further order of the court.

(2) On completion of twenty years of probation for any sex offender convicted of a class 2 or 3 felony or on completion of ten years of probation for any sex offender convicted of a class 4 felony, the court shall schedule a review hearing to determine whether the sex offender should be discharged from probation. In making its determination, the court shall determine whether the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if allowed to live in the community without treatment or supervision. The sex offender's probation officer and treatment provider shall make recommendations to the court concerning whether the sex offender has met the requirements of this section such that he or she should be discharged from probation.

(3) (a) In determining whether to discharge a sex offender from probation pursuant to this section, the court shall consider the recommendations of the sex offender's probation officer and treatment provider. The recommendations of the probation officer and the treatment provider shall be based on the criteria established by the management board pursuant to

section ~~16-13-809~~ 18-1.3-1009. If the court chooses not to follow the recommendations made, the court shall make findings on the record in support of its decision.

(b) If the court does not discharge the sex offender from probation pursuant to paragraph (a) of this subsection (3), the court shall review such denial at least once every three years until it determines that the sex offender meets the criteria for discharge as specified in paragraph (a) of this subsection (3). At each review, the sex offender's probation officer and treatment provider shall make recommendations, based on the criteria established by the management board pursuant to section ~~16-13-809~~ 18-1.3-1009, concerning whether the sex offender should be discharged.

18-1.3-1009. [Formerly 16-13-809.] Criteria for release from incarceration, reduction in supervision, and discharge. (1) On or before July 1, 1999, the management board, in collaboration with the department of corrections, the judicial department, and the parole board, shall establish:

(a) The criteria by and the manner in which a sex offender may demonstrate that he or she would not pose an undue threat to the community if released on parole or to a lower level of supervision while on parole or probation or if discharged from parole or probation. The court and the parole board may

use the criteria to assist in making decisions concerning release of a sex offender, reduction of the level of supervision for a sex offender, and discharge of a sex offender.

(b) The methods of determining whether a sex offender has successfully progressed in treatment; and

(c) Standards for community entities that provide supervision and treatment specifically designed for 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 sex offender may pose to the community.

18-1.3-1010. [Formerly 16-13-810.] Arrest of parolee or probationer - revocation. (1) (a) A sex offender paroled pursuant to section ~~16-13-806~~ 18-1.3-1006 is subject to arrest and revocation of parole as provided in sections 17-2-103 and 17-2-103.5, C.R.S. At any revocation proceeding, the sex offender's parole officer and the treatment provider shall submit written recommendations concerning the level of treatment and monitoring that should be imposed as a condition of parole if parole is not revoked or whether the sex offender poses a sufficient threat to the community that parole should be revoked. The recommendations shall be based on the criteria established by the

management board pursuant to section ~~16-13-809~~ 18-1.3-1009. If the parole board revokes the sex offender's parole, the sex offender shall continue to be subject to the provisions of this part ~~8~~ 10.

(b) At a revocation hearing held pursuant to this subsection (1), the parole board shall consider the recommendations of the parole officer and the treatment provider, in addition to evidence concerning any of the grounds for revocation of parole specified in sections 17-2-103 and 17-2-103.5, C.R.S. If the parole board chooses not to follow the recommendations made, it shall make findings on the record in support of its decision.

(2) (a) A sex offender sentenced to probation pursuant to section ~~16-13-804~~ (2) 18-1.3-1004 (2) is subject to arrest and revocation of probation as provided in sections 16-11-205 and 16-11-206, C.R.S. At any revocation proceeding, the sex offender's probation officer and the sex offender's treatment provider shall submit recommendations concerning the level of treatment and monitoring that should be imposed as a condition of probation if probation is not revoked or whether the sex offender poses a sufficient threat to the community that probation should be revoked. The recommendations shall be based on the criteria established by the management board pursuant to section ~~16-13-809~~ 18-1.3-1009. If the court revokes the sex offender's probation, the court shall

sentence the sex offender as provided in section ~~16-13-804~~ 18-1.3-1004, and the sex offender shall be subject to the provisions of this part 8 10.

(b) At a revocation hearing held pursuant to this subsection (2), the court shall consider the recommendations of the probation officer and the treatment provider, in addition to evidence concerning any of the grounds for revocation of probation specified in sections 16-11-205 and 16-11-206, C.R.S. If the court chooses not to follow the recommendations made, it shall make findings on the record in support of its decision.

18-1.3-1011. [Formerly 16-13-811.] Annual report. (1) On or before November 1, 2000, and on or before each November 1 thereafter, the department of corrections, the department of public safety, and the judicial department shall submit a report to the judiciary committees of the house of representatives and the senate and to the joint budget committee of the general assembly specifying, at a minimum:

(a) The impact on the prison population, the parole population, and the probation population in the state due to the extended length of incarceration and supervision provided for in sections ~~16-13-804, 16-13-806, and 16-13-808~~ 18-1.3-1004, 18-1.3-1006, AND 18-1.3-1008,

(b) The number of offenders placed in the intensive supervision

parole program and the intensive supervision probation program and the length of supervision of offenders in said programs;

(c) The number of sex offenders sentenced pursuant to this part 8 10 who received parole release hearings and the number released on parole during the preceding twelve months, if any;

(d) The number of sex offenders sentenced pursuant to this part 8 10 who received parole or probation discharge hearings and the number discharged from parole or probation during the preceding twelve months, if any;

(e) The number of sex offenders sentenced pursuant to this part 8 10 who received parole or probation revocation hearings and the number whose parole or probation was revoked during the preceding twelve months, if any;

(f) A summary of the evaluation instruments developed by the management board and use of the evaluation instruments in evaluating sex offenders pursuant to this part 8 10; and

(g) The availability of sex offender treatment providers throughout the state, including location of the treatment providers, the services provided, and the amount paid by offenders and by the state for the services provided, and the manner of regulation and review of the services provided by sex offender treatment providers.

18-1.3-1012. [Formerly 16-13-812.] Applicability of part. The provisions of this part 8 10 shall apply to any person who commits a sex offense on or after November 1, 1998.

PART 11

SPECIAL PROCEEDINGS - PRETRIAL MOTIONS IN CLASS 1
FELONY CASES ALLEGING THAT A DEFENDANT IS A MENTALLY
RETARDED DEFENDANT

18-1.3-1101. [Formerly 16-9-401.] Definitions. As used in this part
4 11:

(1) "Defendant" means any person charged with a class 1 felony.

(2) "Mentally retarded defendant" means any defendant with significantly subaverage general intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested and documented during the developmental period. The requirement for documentation may be excused by the court upon a finding that extraordinary circumstances exist.

18-1.3-1102. [Formerly 16-9-402.] Pretrial motion by defendant in class 1 felony case - determination whether defendant is mentally retarded - procedure. (1) Any defendant may file a motion with the trial court in which the defendant may allege that such defendant is a mentally

retarded defendant. Such motion shall be filed at least ninety days prior to trial.

(2) The court shall hold a hearing upon any motion filed pursuant to subsection (1) of this section and shall make a determination regarding such motion no later than ten days prior to trial. At such hearing, the defendant shall be permitted to present evidence with regard to such motion and the prosecution shall be permitted to offer evidence in rebuttal. The defendant shall have the burden of proof to show by clear and convincing evidence that such defendant is mentally retarded.

(3) The court shall enter specific findings of fact and conclusions of law regarding whether or not the defendant is a mentally retarded defendant as defined in section ~~16-9-401~~ 18-1.3-1101.

18-1.3-1103. [Formerly 16-9-403.] Mentally retarded defendant - death penalty not imposed thereon. A sentence of death shall not be imposed upon any defendant who is determined to be a mentally retarded defendant pursuant to section ~~16-9-402~~ 18-1.3-1102. If any person who is determined to be a mentally retarded defendant is found guilty of a class 1 felony, such defendant shall be sentenced to life imprisonment.

18-1.3-1104. [Formerly 16-9-404.] Evaluation and report. (1) When the defendant files a motion alleging that the defendant is

a mentally retarded defendant, the court shall order one or more evaluations of the defendant with regard to such motion.

(2) In ordering an evaluation of the defendant pursuant to subsection (1) of this section, the court shall specify the place where the evaluation is to be conducted and the period of time allocated for the evaluation. 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 requires designation of a different location. The court shall direct one or more psychologists who are recommended by the executive director of the department of human services pursuant to section 27-10.5-139, C.R.S., or his or her designee, to evaluate the defendant. For good cause shown, upon motion of the prosecution or the defendant or upon the court's own motion, the court may order such further or other evaluation as it deems necessary. Nothing in this section shall abridge the right of the defendant to procure an evaluation as provided in section ~~16-9-405~~ 18-1.3-1105.

(3) The defendant shall have a privilege against self-incrimination that may be invoked prior to or during the course of an evaluation under this section. A defendant's failure to cooperate with the evaluators or other

personnel conducting the evaluation may be admissible in the defendant's mental retardation hearing.

(4) To aid in the formation of an opinion as to mental retardation, it is permissible in the course of an evaluation under this section to use statements of the defendant and any other evidence, including but not limited to the circumstances surrounding the commission of the offense as well as the medical and social history of the defendant, in evaluating the defendant.

(5) A written report of the evaluation shall be prepared in triplicate and delivered to the appropriate clerk of the court. The clerk shall furnish a copy of the report to both the prosecuting attorney and the counsel for the defendant.

(6) The report of evaluation shall include, but is not limited to:

(a) The name of each expert who evaluated the defendant;

(b) A description of the nature, content, extent, and results of the evaluation and any tests conducted; and

(c) Diagnosis and an opinion as to whether the defendant is mentally retarded.

(7) Nothing in this section shall be construed to preclude the application of section 16-8-109, C.R.S.

18-1.3-1105. [Formerly 16-9-405.] Evaluation at insistence of defendant. (1) If the defendant wishes to be evaluated by an expert in mental retardation of the defendant's choice in connection with the mental retardation hearing under this part 4 11, the court, upon timely motion, shall order that the evaluator chosen by the defendant be given reasonable opportunity to conduct the evaluation.

(2) Whenever an expert is endorsed as a witness by the defendant, a copy of any report of an evaluation of the defendant shall be furnished to the prosecution within a reasonable time but not less than thirty days prior to the mental retardation hearing.

PART 12

SPECIAL PROCEEDINGS SENTENCING

IN CLASS 1 FELONIES

18-1.3-1201. [Formerly 16-11-103.] Imposition of sentence in class 1 felonies - appellate review. (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, a panel of three judges, as soon as practicable, shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission

of the offense or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 4 11 of THIS article, ~~9 of this title~~, in either of which cases, the defendant shall be sentenced to life imprisonment.

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

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

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

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

(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the panel of judges deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section, and any matters relating to the personal characteristics of the victim and the impact of the crimes on the victim's family may be presented. Any such evidence, including but not limited to the testimony of members of the victim's immediate family, as defined in section 24-4.1-302 (6), C.R.S., which the panel of judges deems to have probative

value may be received, as long as each party is given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death.

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

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

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

(I) Whether at least one aggravating factor has been proved as

enumerated in subsection (5) of this section;

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

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

(b) (I) In the event that no aggravating factors are found to exist as enumerated in subsection (5) of this section, the panel of judges shall sentence the defendant to life imprisonment.

(II) The panel of judges shall not impose a death sentence unless it unanimously finds and specifies in writing that:

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

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

(c) The sentence of the panel of judges, whether to death or to life in prison, shall be supported by specific written findings of fact based upon the circumstances as set forth in subsections (4) and (5) of this section and upon the records of the trial and the sentencing hearing.

(d) If the panel of judges cannot unanimously agree on a sentence, it

shall make a record of each judge's position and shall then sentence the defendant to life imprisonment.

(3) (Deleted by amendment, L. 95, p. 1290, § 1, effective July 1, 1995.)

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

(b) The prosecuting attorney shall provide the defendant with the following information and materials not later than five days after the verdict is returned finding the defendant guilty of a class 1 felony:

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

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

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

sentencing hearing;

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

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

and

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

(c) The defendant shall provide the prosecuting attorney with the following information and materials no later than twenty days after the verdict is returned finding the defendant guilty of a class 1 felony:

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

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

sentencing hearing;

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

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

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

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

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

(B) The report included an opinion concerning how any mental disease

or defect of the defendant or condition of mind caused by mental disease or defect of the defendant affects the mitigating factors that the defendant may raise at the sentencing hearing held pursuant to this section.

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

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

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

(h) If it is brought to the attention of the court that either the

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

(4) For purposes of this section, mitigating factors shall be the following factors:

- (a) The age of the defendant at the time of the crime; or
- (b) The defendant's capacity to appreciate wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution; or
- (c) The defendant was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution; or
- (d) The defendant was a principal in the offense which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

(e) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense for which the defendant was convicted would cause, or would create a grave risk of causing, death to another person; or

(f) The emotional state of the defendant at the time the crime was committed; or

(g) The absence of any significant prior conviction; or

(h) The extent of the defendant's cooperation with law enforcement officers or agencies and with the office of the prosecuting district attorney; or

(i) The influence of drugs or alcohol; or

(j) The good faith, although mistaken, belief by the defendant that circumstances existed which constituted a moral justification for the defendant's conduct; or

(k) The defendant is not a continuing threat to society; or

(l) Any other evidence which in the court's opinion bears on the question of mitigation.

(5) For purposes of this section, aggravating factors shall be the following factors:

(a) The class 1 felony was committed by a person under sentence of

imprisonment for a class 1, 2, or 3 felony as defined by Colorado law or United States law, or for a crime committed against another state or the United States which would constitute a class 1, 2, or 3 felony as defined by Colorado law; or

(b) The defendant was previously convicted in this state of a class 1 or 2 felony involving violence as specified in section ~~16-11-309~~ 18-1.3-406, or was previously convicted by another state or the United States of an offense which would constitute a class 1 or 2 felony involving violence as defined by Colorado law in section ~~16-11-309~~ 18-1.3-406; or

(c) The defendant intentionally killed any of the following persons while such person was engaged in the course of the performance of such person's official duties, and the defendant knew or reasonably should have known that such victim was such a person engaged in the performance of such person's official duties, or the victim was intentionally killed in retaliation for the performance of the victim's official duties:

(I) A peace officer or former peace officer as defined in section 18-1-901 (3) (I); C.R.S.; or

(II) A firefighter as defined in section 24-33.5-1202 (4), C.R.S.; or

(III) A judge, referee, or former judge or referee of any court of record in the state or federal system or in any other state court system or a judge or

former judge in any municipal court in this state or in any other state. For purposes of this subparagraph (III), the term "referee" shall include a hearing officer or any other officer who exercises judicial functions.

(IV) An elected state, county, or municipal official; or

(V) A federal law enforcement officer or agent or former federal law enforcement officer or agent; or

(d) The defendant intentionally killed a person kidnapped or being held as a hostage by the defendant or by anyone associated with the defendant; or

(e) The defendant has been a party to an agreement to kill another person in furtherance of which a person has been intentionally killed; or

(f) The defendant committed the offense while lying in wait, from ambush, or by use of an explosive or incendiary device. As used in this paragraph (f), "explosive or incendiary device" means:

(I) Dynamite and all other forms of high explosives; or

(II) Any explosive bomb, grenade, missile, or similar device; or

(III) Any incendiary bomb or grenade, fire bomb, or similar device, including any device which consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any

material which, when ignited, is capable of igniting such flammable liquid or compound, and can be carried or thrown by one individual acting alone.

(g) The defendant committed a class 1, 2, or 3 felony and, in the course of or in furtherance of such or immediate flight therefrom, the defendant intentionally caused the death of a person other than one of the participants; or

(h) The class 1 felony was committed for pecuniary gain; or

(i) In the commission of the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense; or

(j) The defendant committed the offense in an especially heinous, cruel, or depraved manner; or

(k) The class 1 felony was committed for the purpose of avoiding or preventing a lawful arrest or prosecution or effecting an escape from custody. This factor shall include the intentional killing of a witness to a criminal offense.

(l) The defendant unlawfully and intentionally, knowingly, or with universal malice manifesting extreme indifference to the value of human life generally, killed two or more persons during the commission of the same criminal episode; or

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

(n) The defendant committed the class 1 felony against the victim because of the victim's race, color, ancestry, religion, or national origin; or

(o) The defendant's possession of the weapon used to commit the class 1 felony constituted a felony offense under the laws of this state or the United States.

(6) (a) Whenever a sentence of death is imposed upon a person pursuant to the provisions of this section, the supreme court shall review the propriety of that sentence, having regard to the nature of the offense, the character and record of the offender, the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based. The procedures to be employed in the review shall be as provided by supreme court rule. The supreme court shall combine its review pursuant to this subsection (6) with consideration of any appeal that may be filed pursuant to part 2 of article 12 of this title 16, C.R.S.

(b) A sentence of death shall not be imposed pursuant to this section if the supreme court determines that the sentence was imposed under the influence of passion or prejudice or any other arbitrary factor or that the

evidence presented does not support the finding of statutory aggravating circumstances.

(7) (a) If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section, which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable.

(b) If any death sentence imposed upon a defendant pursuant to the provisions of this section and the imposition of such death sentence upon such defendant is held invalid for reasons other than unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, the case shall be remanded to the trial court to set a new sentencing hearing; except that, if the prosecutor informs the panel of judges that, in the opinion of the prosecutor, capital punishment would no longer be in the interest of justice, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment. If a death sentence imposed pursuant to this section is held invalid based on unconstitutionality of the death penalty or insufficiency of the evidence to support the sentence, said defendant shall be returned to the trial

court and shall then be sentenced to life imprisonment.

18-1.3-1202. [Formerly 16-11-401.] Death penalty inflicted by lethal injection. The manner of inflicting the punishment of death shall be by the administration of a lethal injection within the time prescribed in this part 4 12, unless for good cause the court or governor may prolong the time. For the purposes of this part 4 12, "lethal injection" means a continuous intravenous injection of a lethal quantity of sodium thiopental or other equally or more effective substance sufficient to cause death. The manner of inflicting the punishment of death shall, in all circumstances, be by the administration of a lethal injection regardless of the date of the commission of the offense or offenses for which the death penalty is imposed.

18-1.3-1203. [Formerly 16-11-401.5.] Genetic testing prior to execution. Prior to the execution of the death penalty pursuant to this part 4 12, the judicial department shall obtain the chemical testing of the convicted offender's blood to determine the genetic markers thereof.

18-1.3-1204. [Formerly 16-11-402.] Implements - sentence executed by executive director. The executive director of the department of corrections, at the expense of the state of Colorado, shall provide a suitable and efficient room or place, enclosed from public view, within the walls of the

correctional facilities at Canon City and therein at all times have in preparation all necessary implements requisite for carrying into execution the death penalty by means of the administration of a lethal injection. The execution shall be performed in the room or place by a person selected by the executive director and trained to administer intravenous injections. Death shall be pronounced by a licensed physician or a coroner according to accepted medical standards.

18-1.3-1205. [Formerly 16-11-403.] Week of execution - warrant. When a person is convicted of a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the panel of judges passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not less than ninety days nor more than one hundred twenty days from the day of passing the sentence. Said warrant shall be directed to the executive director of the department of corrections or the executive director's designee commanding said executive director or designee to execute the sentence imposed upon some day within the week of time designated in the warrant and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall proceed to the correctional facilities at Canon City and deliver the

convicted person, together with the warrant, to said executive director or designee, who shall keep the convict in confinement until infliction of the death penalty. Persons shall be permitted access to the inmate pursuant to prison rules. Such rules shall provide, at a minimum, for the inmate's attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate's family to have access to the inmate.

18-1.3-1206. [Formerly 16-11-404.] Execution - witnesses. The particular day and hour of the execution of said sentence within the week specified in said warrant shall be fixed by the executive director of the department of corrections or the executive director's designee, and the executive director shall be present thereat or shall appoint some other representative among the officials or officers of the correctional facilities at Canon City to be present in his or her place and stead. There shall also be present a physician and such guards, attendants, and other persons as the executive director or the executive director's designee in his or her discretion deems necessary to conduct the execution. In addition, there may be present such witnesses as the executive director or the executive director's designee in his or her discretion deems desirable, not to exceed eighteen persons. The executive director or the executive director's designee shall notify the governor

of the day and hour for the execution as soon as it has been fixed.

18-1.3-1207. [Formerly 16-11-405.] Record and certificate of execution. The executive director of the department of corrections or his OR HER designee shall keep a book of record, to be known as record of executions, in which shall be entered the reports specified in this section. Immediately after the execution, a postmortem examination of the body of the convict shall be made by the attending physician, who shall enter in said book of record the nature and extent of the examination and sign and certify to the same. The executive director or his OR HER designee shall also immediately make and enter in said book a report, setting forth the time of such execution and that the convict (naming him OR HER) was then and there executed in conformity to the sentence specified in the warrant of the court (naming such court) to him OR HER directed and in accordance with the provisions of this part 4 12, and shall insert in said report the names of all the persons who were present and witnessed the execution, and shall procure each of such persons to sign said report with his OR HER full name and place of residence before leaving the place of execution. The executive director or his OR HER designee shall thereupon attach his OR HER certificate to said report, certifying to the truth and correctness thereof, and shall immediately deliver a certified transcript of the

record entry to the court which sentenced the convict.

PART 13

SPECIAL PROCEEDINGS - APPLICABILITY OF PROCEDURE IN
CLASS 1 FELONY CASES FOR CRIMES COMMITTED ON OR
AFTER JULY 1, 1988, AND PRIOR TO SEPTEMBER 20, 1991

18-1.3-1301. [Formerly 16-11-801.] Applicability of procedure for the imposition of sentences in class 1 felony cases. (1) It is the expressed intention of the general assembly that there be no hiatus in the imposition of the death penalty as a sentence for the commission of a class 1 felony in the state of Colorado as a result of the holding of the Colorado supreme court in **People v. Young**, 814 P.2d 834 (Colo. 1991). Toward that end, the provisions of FORMER section 16-11-103, C.R.S., as it existed prior to the enactment of Senate Bill 78, enacted at the Second Regular Session of the Fifty-sixth General Assembly, AND AS IT CURRENTLY EXISTS AS SECTION 18-1.3-1201, to the extent such provisions were not automatically revitalized by the operation of law, are reenacted as section ~~16-11-802~~ 18-1.3-1302 and are hereby made applicable to offenses committed on or after July 1, 1988, and prior to September 20, 1991.

(2) It is the intent of the general assembly that this part 13 is independent from FORMER section 16-11-103, C.R.S., NOW SECTION

18-1.3-1201, and that if any provision of this part 13 or the application thereof to any person or circumstance is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the application of section ~~16-11-103~~ 18-1.3-1201 to any offense committed on or after September 20, 1991.

18-1.3-1302. [Formerly 16-11-802.] Imposition of sentences in class 1 felonies for crimes committed on or after July 1, 1988, and prior to September 20, 1991 - appellate review. (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, the trial court shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission of the offense, in which case the defendant shall be sentenced to life imprisonment. The hearing shall be conducted by the trial judge before the trial jury as soon as practicable. Alternate jurors shall not be excused from the case prior to submission of the issue of guilt to the trial jury and shall remain separately sequestered until a verdict is entered by the trial jury. If the verdict of the trial jury is that the defendant is guilty of a class 1 felony, the alternate jurors shall sit as alternate jurors on the issue of punishment. If, for any reason satisfactory to the court, any member or

members of the trial jury are excused from participation in the sentencing hearing, the trial judge shall replace such juror or jurors with an alternate juror or jurors. If a trial jury was waived or if the defendant pleaded guilty, the hearing shall be conducted before the trial judge.

(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the court deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, and any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section may be presented. Any such evidence which the court deems to have probative value may be received, as long as each party is given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death. For offenses committed before July 1, 1985, the jury shall be instructed that life imprisonment means life without the possibility of parole for twenty calendar years. For offenses committed on or after July 1, 1985, the jury shall be instructed that life imprisonment means life without the possibility of parole for forty calendar years.

(c) Both the prosecuting attorney and the defense shall notify each

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

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

(2) (a) After hearing all the evidence and arguments of the prosecuting attorney and the defendant, the jury shall deliberate and render a verdict based upon the following considerations:

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

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

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

imprisonment.

(b) (I) In the event that no aggravating factors are found to exist as enumerated in subsection (5) of this section, the jury shall render a verdict of life imprisonment, and the court shall sentence the defendant to life imprisonment.

(II) The jury shall not render a verdict of death unless it finds and specifies in writing that:

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

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

(c) In the event that the jury's verdict is to sentence to death, such verdict shall be unanimous and shall be binding upon the court unless the court determines, and sets forth in writing the basis and reasons for such determination, that the verdict of the jury is clearly erroneous as contrary to the weight of the evidence, in which case the court shall sentence the defendant to life imprisonment.

(d) If the jury's verdict is not unanimous, the jury shall be discharged, and the court shall sentence the defendant to life imprisonment.

(3) In all cases where the sentencing hearing is held before the court

alone, the court shall determine whether the defendant should be sentenced to death or life imprisonment in the same manner in which a jury determines its verdict under paragraphs (a) and (b) of subsection (2) of this section. The sentence of the court shall be supported by specific written findings of fact based upon the circumstances as set forth in subsections (4) and (5) of this section and upon the records of the trial and the sentencing hearing.

(4) For purposes of this section, mitigating factors shall be the following factors:

(a) The age of the defendant at the time of the crime; or

(b) The defendant's capacity to appreciate wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution; or

(c) The defendant was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution; or

(d) The defendant was a principal in the offense which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

(e) The defendant could not reasonably have foreseen that the

defendant's conduct in the course of the commission of the offense for which the defendant was convicted would cause, or would create a grave risk of causing, death to another person; or

(f) The emotional state of the defendant at the time the crime was committed; or

(g) The absence of any significant prior conviction; or

(h) The extent of the defendant's cooperation with law enforcement officers or agencies and with the office of the prosecuting district attorney; or

(i) The influence of drugs or alcohol; or

(j) The good faith, although mistaken, belief by the defendant that circumstances existed which constituted a moral justification for the defendant's conduct; or

(k) The defendant is not a continuing threat to society; or

(l) Any other evidence which in the court's opinion bears on the question of mitigation.

(5) For purposes of this section, aggravating factors shall be the following factors:

(a) The class 1 felony was committed by a person under sentence of imprisonment for a class 1, 2, or 3 felony as defined by Colorado law or United

States law, or for a crime committed against another state or the United States which would constitute a class 1, 2, or 3 felony as defined by Colorado law; or

(b) The defendant was previously convicted in this state of a class 1 or 2 felony involving violence as specified in section ~~16-11-309~~ 18-1.3-406, or was previously convicted by another state or the United States of an offense which would constitute a class 1 or 2 felony involving violence as defined by Colorado law in section ~~16-11-309~~ 18-1.3-406; or

(c) The defendant intentionally killed any of the following persons while such person was engaged in the course of the performance of such person's official duties, and the defendant knew or reasonably should have known that such victim was such a person engaged in the performance of such person's official duties, or the victim was intentionally killed in retaliation for the performance of the victim's official duties:

(I) A peace officer or former peace officer as defined in section 18-1-901 (3) (I); C.R.S.; or

(II) A firefighter as defined in section 24-33.5-1202 (4), C.R.S.; or

(III) A judge, referee, or former judge or referee of any court of record in the state or federal system or in any other state court system or a judge or former judge in any municipal court in this state or in any other state. For

purposes of this subparagraph (III), the term "referee" shall include a hearing officer or any other officer who exercises judicial functions.

(IV) An elected state, county, or municipal official; or

(V) A federal law enforcement officer or agent or former federal law enforcement officer or agent; or

(d) The defendant intentionally killed a person kidnapped or being held as a hostage by the defendant or by anyone associated with the defendant; or

(e) The defendant has been a party to an agreement to kill another person in furtherance of which a person has been intentionally killed; or

(f) The defendant committed the offense while lying in wait, from ambush, or by use of an explosive or incendiary device. As used in this paragraph (f), "explosive or incendiary device" means:

(I) Dynamite and all other forms of high explosives; or

(II) Any explosive bomb, grenade, missile, or similar device; or

(III) Any incendiary bomb or grenade, fire bomb, or similar device, including any device which consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or

compound, and can be carried or thrown by one individual acting alone.

(g) The defendant committed or attempted to commit a class 1, 2, or 3 felony and, in the course of or in furtherance of such or immediate flight therefrom, the defendant intentionally caused the death of a person other than one of the participants; or

(h) The class 1 felony was committed for pecuniary gain; or

(i) In the commission of the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense; or

(j) The defendant committed the offense in an especially heinous, cruel, or depraved manner; or

(k) The class 1 felony was committed for the purpose of avoiding or preventing a lawful arrest or prosecution or effecting an escape from custody. This factor shall include the intentional killing of a witness to a criminal offense.

(6) (a) Whenever a sentence of death is imposed upon a person pursuant to the provisions of this section, the supreme court shall review the propriety of that sentence, having regard to the nature of the offense, the character and record of the offender, the public interest, and the manner in

which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based. The procedures to be employed in the review shall be as provided by supreme court rule. The supreme court shall combine its review pursuant to this subsection (6) with consideration of any appeal that may be filed pursuant to part 2 of article 12 of this title 16, C.R.S.

(b) A sentence of death shall not be imposed pursuant to this section if the supreme court determines that the sentence was imposed under the influence of passion or prejudice or any other arbitrary factor or that the evidence presented does not support the finding of statutory aggravating circumstances.

(7) (a) If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section, which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable.

(b) If any death sentence imposed upon a defendant pursuant to the provisions of this section and the imposition of such death sentence upon such defendant is held invalid or unconstitutional, said defendant shall be returned

to the trial court and shall then be sentenced to life imprisonment.

PART 14

COMPETENCY OF PERSONS TO BE EXECUTED

18-1.3-1401. [Formerly 16-8-301.] Definitions. As used in this part 14, unless the context otherwise requires:

(1) "Colorado mental health institute" means the Colorado mental health institute at Pueblo.

(2) "Mentally incompetent to be executed" means that, due to a mental disease or defect, a person who has been sentenced to death is presently unaware that he or she is to be punished for the crime of murder or that the impending punishment for that crime is death.

18-1.3-1402. [Formerly 16-8-302.] Mental competency to be executed - presumptions. (1) A person who is sentenced to death shall not be executed so long as the person is mentally incompetent to be executed.

(2) Any convicted person who is sentenced to death is presumed mentally competent to be executed. A convicted person may be found mentally incompetent to be executed only on clear and convincing evidence of such condition. The party asserting that the convicted person is mentally incompetent to be executed bears the burden of proof regarding such condition

and the burden of producing evidence of such condition.

18-1.3-1403. [Formerly 16-8-303.] Mental incompetency to be executed - filing of motion. (1) (a) If, after a sentence of death is imposed, the executive director of the department of corrections, the convicted person's attorney, or an attorney for the state has a good faith reason to believe that the convicted person may be mentally incompetent to be executed, the executive director, the convicted person's attorney, or the state attorney may file a motion raising the issue of whether the convicted person is mentally incompetent to be executed. The motion shall be filed in the district court in the judicial district in which the convicted person was sentenced and shall be directed to the judge who presided over the convicted person's sentencing hearing. If that judge is unavailable, the chief judge of the same judicial district shall decide the motion. The motion shall be filed in both the district court clerk's office and the office of the judge who will hear the motion. On the same day the motion and accompanying materials are filed with the court, the motion and all accompanying materials shall be served upon the office of the prosecuting attorney who tried the case and the attorney general's office.

(b) If the judge who presided at the sentencing hearing has a good faith reason to believe that the convicted person may be mentally incompetent

to be executed, the judge shall so advise the convicted person's attorney or shall appoint an attorney to investigate the issue and file any motions the attorney deems appropriate under this part 3 14.

(2) (a) A motion filed pursuant to subsection (1) of this section shall set forth the facts relating to the convicted person's conviction and sentence and the facts giving rise to the belief that the convicted person may be mentally incompetent to be executed and shall request the district court to order that the convicted person be examined for mental incompetency to be executed. The motion shall be accompanied by the names and addresses of any mental health experts who have examined the convicted person with respect to the issue of whether the convicted person is mentally incompetent to be executed and the results of those examinations, as well as any records of any other mental health examinations, treatment, or reports that are not privileged and are available to the moving party or in the moving party's possession. If the moving party has any question regarding whether any such report is privileged, the report shall be submitted to the court ex parte and the court shall make a determination as to release of the report. If the moving party is the convicted person's attorney, the convicted person shall be deemed to have waived any claim of confidentiality or privilege as to communications made by the convicted person

to any physician, psychiatrist, or psychologist in the course of examination or treatment for any mental health condition for which the convicted person has received treatment, and the moving party shall include any records of any other mental health examinations, treatment, or reports.

(b) On receipt of a motion raising the issue of whether a convicted person is mentally incompetent to be executed, the clerk of the district court shall transmit copies of the motion to the supreme court. The clerk of the district court shall transmit copies of all subsequent filings to the supreme court as they are received.

18-1.3-1404. [Formerly 16-8-304.] Mental incompetency to be executed - examination. (1) (a) On receipt of a motion filed pursuant to section ~~16-8-303~~ 18-1.3-1403, the district court shall determine whether the motion is timely, as prescribed by section ~~16-8-305~~ 18-1.3-1405, and whether it presents reasonable grounds for ordering an examination. Prior to making any determinations, the district court shall ensure that the prosecution has an opportunity to respond to the motion and to submit any additional information for consideration. The district court shall also provide an opportunity for the executive director of the department of corrections, the convicted person's attorney, or an attorney for the state to respond to the motion and to submit

additional information for consideration. All responses and additional submissions shall be filed with the court within three days following the filing of the motion. Within five days following the filing of the motion, the district court shall determine whether there are reasonable grounds for ordering the examination, based on the motion and any supporting information, any information submitted by the prosecuting attorney or any other responding party, and the record in the case, including transcripts of previous hearings and orders.

(b) The district court shall issue a stay of execution upon a showing of reasonable grounds for granting the stay. A stay of execution may be requested only by the convicted person's attorney, the executive director of the department of corrections, or an attorney for the state.

(2) (a) If the court finds there are no reasonable grounds for the requested examination, the court shall dismiss the motion. If the court finds the motion is timely and there are reasonable grounds for ordering an examination, the court may order the convicted person to submit to physical, neurological, psychiatric, psychological, or other examinations or evaluations that are reasonably necessary to adequately determine whether the convicted person is mentally incompetent to be executed.

(b) The Colorado mental health institute shall create and maintain a list of licensed, qualified psychiatrists and psychologists who shall be available to perform the examinations required pursuant to this part 3 14.

(c) If the court determines an examination is necessary, the court shall appoint one or more licensed psychiatrists to observe and examine the convicted person. In making such appointment, the court may select one or more licensed psychiatrists from the list prepared by the Colorado mental health institute pursuant to paragraph (b) of this subsection (2) or appoint another qualified, licensed psychiatrist. If requested in the motion for competency examination or by motion of the executive director of the department of corrections, the prosecution, or the attorney for the convicted person or by request of the appointed psychiatrist, and for good cause shown, the court may order further examinations, including the services of licensed psychologists, licensed physicians, or psychiatrists. All examinations shall be completed and reports filed with the court within thirty days following the court's initial appointment of experts.

(3) (a) Any examination ordered pursuant to this section shall be conducted at a department of corrections facility.

(b) At the time of appointment of experts, the parties shall disclose

to the appointed experts and to each other the names and addresses of any other previously undisclosed mental health experts who have examined the convicted person and the results of the examinations, as well as any and all records of any other previously undisclosed mental health examinations, treatment, or reports that are not privileged. If the party has any question regarding whether any such records are privileged, the records shall be submitted to the court ex parte and the court shall make a determination as to release of the record. The appointed experts shall make copies of their reports available to all of the parties at the time of filing the reports with the court. The experts' reports shall indicate whether the convicted person has a mental disease or defect which renders the convicted person mentally incompetent to be executed.

(4) The convicted person shall submit to and cooperate in all examinations or evaluations ordered by the court, regardless of which party selects the examining mental health expert. The district court shall consider any relevant evidence concerning the issue of the convicted person's competency to be executed, including but not limited to the convicted person's refusal to be examined or evaluated.

(5) (a) After the examinations are completed and reports are filed, the court shall conduct a hearing within five days following the court's receipt of all

reports from appointed experts. The hearing shall be limited to the sole issue of whether the convicted person is mentally incompetent to be executed. At the hearing, all parties may present evidence, cross-examine witnesses, and present argument or, by stipulation, may submit the matter for the court's determination on the basis of the experts' reports or other evidence.

(b) The Colorado rules of evidence shall apply to each hearing held pursuant to this section. The transcript of the hearing shall be forwarded to the Colorado supreme court within three days following the conclusion of the hearing.

(6) (a) Within three days following the conclusion of the hearing held pursuant to subsection (5) of this section, the district court, either on the record or by written ruling, shall specifically state its findings on the motion raising the issue of whether the convicted person is mentally incompetent to be executed. If the ruling is in written form, it shall be transmitted by facsimile or electronic mail to all parties and the Colorado supreme court on the same day of its issuance.

(b) If the court finds the convicted person is not mentally incompetent to be executed, the court shall immediately remand the convicted person to the custody of the executive director of the department of corrections who shall

execute the judgment as specified in the warrant issued pursuant to section ~~16-11-403~~ 18-1.3-1205. If the week specified in the warrant has passed, the district court shall issue a new warrant designating a week of time within which the sentence shall be executed.

(c) If the court finds the convicted person is mentally incompetent to be executed, the court shall stay the execution and shall immediately transmit a copy of its order to the Colorado supreme court.

(7) The time frames specified in this section shall apply only if the motion filed pursuant to section ~~16-8-303~~ 18-1.3-1403 is filed within one hundred twenty days prior to the convicted person's execution date. In all other cases, the court shall establish time frames for filing of responses and additional submissions and for completion of the examinations and shall hear and rule on the motion as expeditiously as possible.

18-1.3-1405. [Formerly 16-8-305.] Mentally incompetent to be executed - untimely or successive motions. (1) A motion raising the issue of whether a convicted person is mentally incompetent to be executed that is filed pursuant to section ~~16-8-304~~ 18-1.3-1404 fewer than thirty days before the scheduled execution is untimely and shall not be considered by the court unless it is accompanied by both of the following:

(a) At least one affidavit from a licensed physician, licensed psychiatrist, or licensed psychologist who has examined the convicted person that states the physician's, psychiatrist's, or psychologist's opinion that the convicted person is mentally incompetent to be executed; and

(b) A statement that establishes good cause for the failure to file the motion in a timely manner.

(2) (a) Except as provided in paragraph (b) of this subsection (2), if the court has determined, pursuant to section ~~16-8-304 or 16-8-306~~ (3) 18-1.3-1404 OR 18-1.3-1406 (3), that a convicted person is not mentally incompetent to be executed, no further consideration of the convicted person's mental incompetence to be executed may be granted by the court.

(b) A successive motion raising the issue of whether a convicted person is mentally incompetent to be executed may be filed only if the successive motion is accompanied by an affidavit from a licensed physician, licensed psychiatrist, or licensed psychologist who has examined the convicted person that shows a substantial change of circumstances since the previous motion was denied or the prior determination of restoration to competency to be executed was made and the showing is sufficient to raise a significant question regarding whether the convicted person is mentally incompetent to be

executed.

18-1.3-1406. [Formerly 16-8-306.] Persons mentally incompetent to be executed - restoration to competency. (1) The court may order a restoration hearing at any time on its own motion, on motion of an attorney for the state, or on motion of the convicted person's attorney. The court shall order a hearing if the executive director of the department of corrections files a report that the convicted person is no longer mentally incompetent to be executed.

(2) At the hearing, if the question is contested, the burden of submitting evidence and the burden of proof by clear and convincing evidence shall be upon the party asserting that the convicted person is mentally competent to be executed.

(3) At the hearing, the court shall determine whether the convicted person is mentally competent to be executed and, if so, shall order that the execution be conducted according to the original warrant issued pursuant to section ~~16-11-403~~ 18-1.3-1205, if unexpired, or shall issue a new warrant appointing a time for execution of the judgment.

18-1.3-1407. [Formerly 16-8-307.] Appeal of determination of mental incompetency to be executed. (1) Within five working days after the district court rules on a motion raising the issue of whether a convicted person

is mentally incompetent to be executed filed pursuant to this part 3 14, a party may file with the Colorado supreme court a petition to obtain a review of the district court's decision and requesting a stay of execution pending the review.

(2) The supreme court shall expedite its review of the district court's decision and, if the designated week of execution in an existing warrant of conviction has not passed, shall not take more than five working days to render its decision.

SECTION 3. Repeal of provisions being relocated in this act. 16-7-401, 16-7-402, 16-7-403, 16-7-403.7, part 3 of article 8 of title 16, part 4 of article 9 of title 16, 16-11-101, 16-11-102.5, 16-11-103, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-204.5, 16-11-204.6, 16-11-212, 16-11-213, 16-11-302, 16-11-302.5, 16-11-303, 16-11-304, 16-11-306, 16-11-309, 16-11-311, parts 4, 5, 7, and 8 of article 11 of title 16, 16-11.5-103, 16-11.5-104, part 1 of article 13 of title 16, 16-13-201, 16-13-203, 16-13-204, 16-13-205, 16-13-206, 16-13-207, 16-13-208, 16-13-209, 16-13-210, 16-13-211, 16-13-212, 16-13-213, 16-13-214, 16-13-215, part 8 of article 13 of title 16, 16-18.5-103, 17-26-128, 17-27-105, 17-27.8-102, 17-27.9-103, 18-1-105, 18-1-106, 18-1-107, 18-1-108, 18-1-109, 18-1-110, and 18-4-202.1, Colorado Revised Statutes, are repealed.

SECTION 4. 1-2-228, Colorado Revised Statutes, is amended to read:
1-2-228. Residence - false information - penalty. Any person who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 5. 1-13-104, Colorado Revised Statutes, is amended to read:

1-13-104. Perjury. Any person, having taken any oath or made any affirmation required by this code, who swears or affirms willfully, corruptly, and falsely in a matter material to the issue or point in question or who suborns any other person to swear or affirm as aforesaid commits perjury in the second degree as set forth in section 18-8-503, C.R.S., and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 6. 1-13-105, Colorado Revised Statutes, is amended to read:

1-13-105. False certificates by officers. Any notary public or any officer authorized by law to administer oaths who knowingly makes a false certificate in regard to a matter connected with an election held under the laws of this state commits a class 1 misdemeanor and shall be punished as provided

in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 7. 1-13-106, Colorado Revised Statutes, is amended to read:

1-13-106. Forgery. Any person who falsely makes, alters, forges, or counterfeits any ballot before or after it has been cast, or who forges any name of a person as a signer or witness to a petition or nomination paper, or who forges any letter of acceptance, declination, or withdrawal, or who forges the name of a registered elector to an absentee voter's ballot commits forgery as set forth in section 18-5-102, C.R.S., and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 8. 1-13-109 (2), Colorado Revised Statutes, is amended to read:

1-13-109. False statements relating to candidates or questions submitted to electors - penalty. (2) Any person who knowingly violates any provision of this section commits a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 9. 1-13-709.5, Colorado Revised Statutes, is amended to read:

1-13-709.5. Residence - false information - penalty. Any person

who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 10. 4-9-629 (e), Colorado Revised Statutes, is amended to read:

4-9-629. Secured party's liability when taking possession after default - legislative declaration - fund. (e) Any person who knowingly falsifies a repossession bond application or misrepresents information contained therein commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 11. 6-1-114, Colorado Revised Statutes, is amended to read:

6-1-114. Criminal penalties. Upon a first conviction any person who promotes a pyramid promotional scheme in this state or who violates any provision of section 6-1-701 is guilty of a class 1 misdemeanor, as defined in section ~~18-1-106~~ 18-1.3-501, C.R.S., and upon a second or subsequent conviction is guilty of a class 6 felony, as defined in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 12. 6-1-305 (1) (a) and (1) (b), Colorado Revised Statutes,

are amended to read:

6-1-305. Penalties. (1) In addition to the remedies available under sections 6-1-110, 6-1-112, and 6-1-113:

(a) Any person who, after receiving written notice of noncompliance from the attorney general or a district attorney, conducts business as a commercial telephone seller without having registered with the attorney general as required by section 6-1-303 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.;

(b) Any commercial telephone seller who knowingly engages in any unlawful telemarketing practice as defined in section 6-1-304 (1) (b) to (1) (h) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 13. 6-1-409, Colorado Revised Statutes, is amended to read:

6-1-409. Fraudulent acts. Any manufacturer, dealer, or lessor that engages in conduct to delay making a final repair that is required as a consequence of the enforcement of warranties or duties under this part 4 with the intention of requiring payment of the cost of such repair to be made by a publicly funded program of public assistance, medical assistance, or

rehabilitation assistance commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., if the crime is classified as a felony, or section ~~18-1-106~~ 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor.

SECTION 14. 6-1-508, Colorado Revised Statutes, is amended to read:

6-1-508. Fraudulent acts. Any manufacturer, dealer, or lessor that engages in conduct to delay making a final repair that is required as a consequence of the enforcement of warranties or duties under this part 5 with the intention of requiring payment of the cost of such repair to be made by a publicly funded program of public assistance, medical assistance, or rehabilitation assistance commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., if the crime is classified as a felony, or section ~~18-1-106~~ 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor.

SECTION 15. 6-4-117 (2), Colorado Revised Statutes, is amended to read:

6-4-117. Enforcement - criminal proceedings. (2) Any natural person who violates section 6-4-104, 6-4-105, or 6-4-106 commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 16. 8-1-144, Colorado Revised Statutes, is amended to read:

8-1-144. Penalty for false statements. If, for the purpose of obtaining any order, benefit, or award under the provisions of this article, either for himself OR HERSELF or for any other person, anyone willfully makes a false statement or representation, he OR SHE commits a class 5 felony, as defined in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 17. 8-2-106, Colorado Revised Statutes, is amended to read:

8-2-106. Armed guards - when lawful. Any person who hires, aids, abets, or assists in hiring, through agencies or otherwise, persons to guard with arms or deadly weapons of any kind other persons or property in this state, or any person who enters this state armed with deadly weapons of any kind for any such purpose, without a permit in writing from the governor of this state commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~

18-1.3-401, C.R.S. Nothing in sections 8-2-104 to 8-2-107 shall be construed to interfere with the right of any person, company, corporation, society, association, or organization to guard or protect its private property or private interests as is now provided by law. Sections 8-2-104 to 8-2-107 shall be construed only to apply in cases where workmen are brought into this state, or induced to go from one place to another in this state by any false pretenses, false advertising, or deceptive representations, or brought into this state under arms, or removed from one place to another in this state under arms.

SECTION 18. 8-3-108 (1) (c) (V), Colorado Revised Statutes, is amended to read:

8-3-108. What are unfair labor practices. (1) It is an unfair labor practice for an employer, individually or in concert with others, to:

(c) (V) No officer or employee of the division shall disclose the names of any signers to a petition or disclose how any person voted in an election to any person outside the division except pursuant to a court order or subpoena issued by a governmental authority or a court, and any such officer or employee who violates such nondisclosure provisions or who refuses to call an election pursuant to this paragraph (c) or prevents or conspires to prevent such call of an election commits a class 2 misdemeanor and shall be punished as provided in

section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 19. 8-20.5-105 (2), Colorado Revised Statutes, is amended to read:

8-20.5-105. Confidentiality. (2) Any person making such confidential records available to any person or organization without authorization from the affected operator or owner commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 20. 8-43-402, Colorado Revised Statutes, is amended to read:

8-43-402. False statement - felony. If, for the purpose of obtaining any order, benefit, award, compensation, or payment under the provisions of articles 40 to 47 of this title, either for self-gain or for the benefit of any other person, anyone willfully makes a false statement or representation material to the claim, such person commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and shall forfeit all right to compensation under said articles upon conviction of such offense.

SECTION 21. 8-44-113 (1) (a), Colorado Revised Statutes, is amended to read:

8-44-113. Data from insurance carriers and self-insured employers related to workers' compensation - studies related to workers' compensation system. (1) (a) The director shall work with the commissioner of insurance, who shall promulgate rules for the purpose of collecting data and statistics regarding the workers' compensation system of Colorado and insurance companies covering such risk. These regulations shall be promulgated no later than December 31, 1991. The regulations shall provide for the collection of statistics from licensed insurance carriers and the Colorado compensation insurance authority concerning the costs of providing benefits pursuant to articles 40 to 47 of this title. The data collected pursuant to this paragraph (a) shall be for the confidential use of the commissioner and employees of the division of insurance. Any person who releases confidential data obtained under this paragraph (a) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 22. 9-1-106, Colorado Revised Statutes, is amended to read:

9-1-106. Loss of life - penalty. If any lives are lost by reason of the willful negligence and failure to observe the provisions of this article, the person through whose default such loss of life was occasioned commits a class 6 felony

and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 23. 9-6-103, Colorado Revised Statutes, is amended to read:

9-6-103. Violation - penalty. Any person who knowingly violates any of the provisions of sections 9-6-101 and 9-6-102 commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 24. 9-6-104, Colorado Revised Statutes, is amended to read:

9-6-104. Death by negligence. When the death of any person is caused by the explosion of any of the articles or substances named in section 9-6-101 while the same is being delivered to any carrier or while the same is being transported or is being removed from the vehicle on which it has been transported or conveyed or on which it has been placed for transportation, every person who knowingly and unlawfully placed, or aided, or permitted the placing of such article or substance on such vehicle, or delivered the same, or caused the same to be delivered contrary to the provisions of sections 9-6-101 to 9-6-104, commits a class 4 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 25. 10-3-810 (1), Colorado Revised Statutes, is amended

to read:

10-3-810. Criminal proceedings - civil penalties. (1) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this part 8, the commissioner may cause criminal proceedings to be instituted in the district court for the county in which the principal office of the insurer is located or, if such insurer has no such office in this state, in the district court for the city and county of Denver against such insurer or the responsible director, officer, employee, or agent thereof. Any insurer which willfully violates this part 8 commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Any individual who willfully violates this part 8 commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 26. 10-4-1007, Colorado Revised Statutes, is amended to read:

10-4-1007. Penalty. Any person who violates any of the provisions of this part 10 commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 27. 10-6-128.5 (4), Colorado Revised Statutes, is amended

to read:

10-6-128.5. Penalties. (4) Any director, trustee, officer, agent, or employee of a captive insurance company or any other person who knowingly or willfully makes any materially false certificate, entry, or memorandum upon any of the books or papers of any captive insurance company or upon any statement filed or offered to be filed in the division of insurance or used in the course of any examination, inquiry, or investigation with the intent to deceive the commissioner or any person appointed by the commissioner to make such examination commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 28. 10-15-118 (1), Colorado Revised Statutes, is amended to read:

10-15-118. Violation. (1) Any person who violates any provision of this article commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person who violates the trust fund provisions of this article or any other misappropriation of funds commits theft pursuant to section 18-4-401, C.R.S.

SECTION 29. 11-2-122, Colorado Revised Statutes, is amended to read:

11-2-122. Statements derogatory to state banks - penalty. Any person who willfully makes, circulates, or transmits to another any false statement, written or oral, which is directly or by inference derogatory to the financial condition of any state bank and which results in an extraordinary withdrawal of funds from such bank or which results in impairing public confidence in such bank and any person who shall counsel, aid, procure, or induce another to start, transmit, or circulate any such statement knowing the statement to be false commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 30. 11-11-108 (1) (b), Colorado Revised Statutes, is amended to read:

11-11-108. Unlawful acts or omissions - penalties. (1) Any person responsible for an act or omission expressly declared to be a criminal offense by this code:

(b) If the act or omission was intended to defraud, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 31. 11-20-117, Colorado Revised Statutes, is amended to read:

11-20-117. Penalty. Any person who willfully or knowingly fails to

perform any act required, and as required by section 11-2-106 (10) or 11-2-115, or who commits any act in violation of said sections commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 32. 11-22-109 (15), Colorado Revised Statutes, is amended to read:

11-22-109. Subject to corporation laws - powers of banking board - examinations by commissioner - reports by industrial banks. (15) Any person who willfully makes, circulates, or transmits to another any false statement, written or oral, which is directly or by inference derogatory to the financial condition of any industrial bank and which results in an extraordinary withdrawal of funds from such bank or which results in impairing public confidence in such bank and any person who shall counsel, aid, procure, or induce another to start, transmit, or circulate any such statement knowing the statement to be false commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 33. 11-22-114 (2) and (3), Colorado Revised Statutes, are amended to read:

11-22-114. Criminal offenses. (2) Any person responsible for any

act or omission expressly declared in subsection (1) of this section to be a criminal offense commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(3) It is a criminal offense for any officer, director, shareholder, or employee of a bank to directly or indirectly embezzle, abstract, or misapply, or cause to be embezzled, abstracted, or misapplied, any of the funds, securities, or other property of, or under the control of, such bank with the intent to deceive, injure, or defraud any person. If the amount of funds, securities, or other property embezzled, abstracted, or misapplied is less than five thousand dollars in total, a person commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. If the amount of funds, securities, or other property embezzled, abstracted, or misapplied is five thousand dollars or more in total, a person commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Any person found guilty of a criminal offense under this subsection (3) shall be required to make restitution or repayment of any funds, securities, or other property embezzled, abstracted, or misapplied.

SECTION 34. 11-22-117, Colorado Revised Statutes, is amended to read:

11-22-117. Certain violations. Any person willfully or knowingly violating any of the provisions of this article for which no other punishment is provided commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 35. 11-30-106 (8) (b) (IV), Colorado Revised Statutes, is amended to read:

11-30-106. Examinations - reports - powers of commissioner.
(8) (b) (IV) Any person who performs any duty or exercises any power of a credit union after receipt of a suspension or removal order under paragraph (a) of this subsection (8) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 36. 11-37.5-213 (2), Colorado Revised Statutes, is amended to read:

11-37.5-213. Confidentiality - supervisory agency personnel - penalty for violation. (2) A person who knowingly violates subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 37. 11-37.5-215, Colorado Revised Statutes, is amended to read:

11-37.5-215. Unlawful disclosure of financial record - criminal penalties. (1) A director, executive officer, controlling person, or employee of a foreign capital depository who discloses a financial record in violation of any provision of this part 2 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. This subsection (1) imposes strict liability.

(2) A director, executive officer, controlling person, or employee of a foreign capital depository or an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in violation of any provision of this part 2 commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 38. 11-37.5-503 (1) and (2), Colorado Revised Statutes, are amended to read:

11-37.5-503. Criminal penalties. (1) Except for the penalties for wrongful disclosure provided for in section 11-37.5-215, a person who knowingly operates a foreign capital depository without a charter, in violation of the terms or conditions of a charter, or in violation of parts 1 and 2 of this article or any rule adopted pursuant to said parts, the terms or conditions of a charter, or an order of the department, commissioner, or board or a person who

knowingly makes any false statements or representations in an application, report, or other document filed or maintained as required by parts 1 and 2 of this article or any rule adopted pursuant to said parts commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent offense under subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 39. 11-41-127 (1), Colorado Revised Statutes, is amended to read:

11-41-127. Violations - penalties. (1) Any officer, director, agent, or employee of any savings and loan association who, directly or indirectly or by indirection, commits or causes the commission of theft, abstraction, or misapplication of any of the funds or securities or other property of or under the control of any savings and loan association, with intent to deceive, injure, cheat, wrong, or defraud any person, commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 40. 11-43-101, Colorado Revised Statutes, is amended to read:

11-43-101. Restrictions on foreign associations. No foreign savings and loan association which conducts a savings and loan business as defined in section 11-40-103 shall operate an office in this state in order to sell its shares or accounts or make new loans in this state. Violation of this section is a class 2 misdemeanor which shall subject the offender and its officers, agents, and representatives, upon conviction thereof, to the penalties which are authorized in section ~~18-1-106~~ (1), C.R.S., and each separate business transaction in violation of this section shall constitute a separate offense; but nothing in this section shall be construed to prohibit a foreign association from transacting business in respect to executory contracts in force on May 17, 1939.

SECTION 41. 11-44-106.5 (2) (c), Colorado Revised Statutes, is amended to read:

11-44-106.5. Suspension or removal of directors, officers, or employees. (2) (c) Any person who performs any duty or who exercises any power of a domestic savings and loan association after receipt of a suspension or removal order under subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 42. 11-51-603 (1) and (2), Colorado Revised Statutes, are

amended to read:

11-51-603. Criminal penalties. (1) Any person who willfully violates the provisions of section 11-51-501 commits a class 3 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(2) Any person who willfully violates any of the provisions of this article, except section 11-51-501, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 43. 11-53-204 (1), Colorado Revised Statutes, is amended to read:

11-53-204. Criminal penalties - statute of limitations. (1) Any person who willfully violates any provision of this article, except section 11-53-108, or who willfully violates section 11-53-108 when the person knows or should know that the statement the person makes in violation of section 11-53-108 is false or misleading in any material respect commits a class 3 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 44. 11-55-105, Colorado Revised Statutes, is amended to read:

11-55-105. Violation and penalty. Any person who with intent to

defraud uses on a public security or an instrument of payment: A facsimile signature, or any reproduction of it, of any authorized officer; or any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, institutions, or other instrumentalities, or of any of its political subdivisions, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 45. 11-59-115 (1) and (2), Colorado Revised Statutes, are amended to read:

11-59-115. Criminal and civil penalties and damages. (1) Any person who willfully violates the provisions of section 11-59-112 commits a class 3 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(2) Any person who willfully violates any of the provisions of this article, other than section 11-59-112, or any rule or order under this article commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S., and any second violation of this section shall be punishable by a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars.

SECTION 46. 12-2-129, Colorado Revised Statutes, is amended to

read:

12-2-129. Misdemeanors - penalties. Any person who violates any provision of this article or violates a cease and desist order issued pursuant to section 12-2-126 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 47. 12-6-121, Colorado Revised Statutes, is amended to read:

12-6-121. Penalty. Any person who willfully violates any of the provisions of this part 1 or who willfully commits any offense in this part 1 declared to be unlawful commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.; except that any person who violates the provisions of section 12-6-120 (2) commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars for each separate offense; except that, if the violator is a corporation, the fine shall be not less than five hundred dollars or more than two thousand five hundred dollars for each separate offense. A second conviction shall be punished by a fine of two thousand five hundred dollars.

SECTION 48. 12-6-210, Colorado Revised Statutes, is amended to

read:

12-6-210. Penalty. Any person who violates any of the provisions of this part 2, any person who is a party to any agreement or understanding, or to any contract prescribing any condition, prohibited by this part 2, and any employee, agent, or officer of any such person who participates, in any manner, in making, executing, enforcing, or performing, or in urging, aiding, or abetting in the performance of, any such contract, condition, agreement, or understanding and any person who pays or gives or contracts to pay or give any thing or service of value prohibited by this part 2, and any person who receives or accepts or contracts to receive or accept any thing or service of value prohibited by this part 2 commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Each day's violation of this provision shall constitute a separate offense.

SECTION 49. 12-8-127 (1), Colorado Revised Statutes, is amended to read:

12-8-127. Penalty. (1) Any person practicing barbering or cosmetology, or any of the practices thereof, or acting in any capacity wherein a license is required without a license provided for in this article; any person knowingly employing a barber or cosmetologist who has not obtained such

license; any person who falsely pretends to be qualified to practice such occupation; any person who permits anyone in such person's employ or under his or her supervision or control to practice barbering or cosmetology without a license issued by the director; any person who obtains or attempts to obtain a license for money other than the required fee or other thing of value commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 50. 12-9-114, Colorado Revised Statutes, is amended to read:

12-9-114. Penalties for violation. Every licensee and every officer, agent, or employee of the licensee and every other person or corporation who willfully violates or who procures, aids, or abets in the willful violation of this article commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 51. 12-10-110 (2), Colorado Revised Statutes, is amended to read:

12-10-110. Violations. (2) Criminal penalties. Any person who engages in a willful violation of this article commits a class 2 misdemeanor and shall be subject to prosecution by the attorney general or the district

attorney of the district in which the violation is alleged to have occurred and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 52. 12-11-109 (1) and (2), Colorado Revised Statutes, are amended to read:

12-11-109. Violation of sections - penalty. (1) Except as otherwise provided in this article, any person, company, or corporation violating any provisions of this article commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(2) Except as otherwise provided in this article, any person, company, or corporation which violates any provision of this article within three years after a previous violation of any provision of this article by that same person, company, or corporation commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 53. 12-11-110 (3), Colorado Revised Statutes, is amended to read:

12-11-110. Records required - unlawfully slaughtering of another's animals - penalty. (3) In cases where the animals of another have been butchered unlawfully, such person commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 54. 12-14-129, Colorado Revised Statutes, is amended to read:

12-14-129. Criminal penalties. Any person who violates any provision of section 12-14-128 (1), (2), (3), or (4) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 55. 12-14.5-110 (1), Colorado Revised Statutes, is amended to read:

12-14.5-110. Criminal penalties and injunctive relief. (1) Any person who violates any provision of this article commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Violating any provision of this article with respect to any buyer shall constitute a class 1 public nuisance subject to the provisions of part 3 of article 13 of title 16, C.R.S.

SECTION 56. 12-16-116 (1) and (2), Colorado Revised Statutes, are amended to read:

12-16-116. Penalties. (1) Any person who violates any of the provisions of section 12-16-115 (1) (a), (1) (b), (1) (c), (1) (d), or (1) (e) commits a class 6 felony and shall be punished as provided in section

~~18-1-105~~ 18-1.3-401, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (f) or (1) (j) commits theft, as defined in section 18-4-401, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (g), (1) (h), (1) (i), (1) (l), or (1) (m) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (k) commits fraud by check, as defined in section 18-5-205, C.R.S.

(2) Any person who violates any other provision of this part 1 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 57. 12-16-222 (1) and (2), Colorado Revised Statutes, are amended to read:

12-16-222. Penalties. (1) Any person who violates any of the provisions of section 12-16-221 (1) (a), (1) (b), (1) (c), (1) (d), (1) (e), or (1) (j) commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Any person who violates any of the provisions of section 12-16-221 (1) (f) commits theft, as defined in section 18-4-401, C.R.S. Any person who violates any of the provisions of section 12-16-221 (1) (g), (1) (h), or (1) (i) commits a class 1 misdemeanor and shall be punished as provided in

section ~~18-1-106~~ 18-1.3-501, C.R.S.

(2) Any person who violates any other provision of this part 2 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 58. 12-22-127, Colorado Revised Statutes, is amended to read:

12-22-127. Penalty for violations. Any person who violates any of the provisions of this part 1 commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.; and any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 59. 12-23-118 (5) (c), Colorado Revised Statutes, is amended to read:

12-23-118. Violations - citations - settlement agreements - hearings - fines. (5) (c) Any person who does not comply with a citation, a stipulated settlement agreement, or an order issued pursuant to an administrative hearing and who has exhausted any remedy available pursuant to this section or section 12-23-120 commits a class 1 misdemeanor and shall pay a fine as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 60. 12-23-119 (2), Colorado Revised Statutes, is amended to read:

12-23-119. Unlawful acts. (2) Any person who violates any provision of this section commits a class 1 misdemeanor and shall pay a fine as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 61. 12-25-105 (7), Colorado Revised Statutes, is amended to read:

12-25-105. Unlawful practice - penalties - enforcement. (7) Any individual, partnership, professional association, joint stock company, limited liability company, or corporation who violates any of the provisions of this part 1 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 62. 12-25-205 (4), Colorado Revised Statutes, is amended to read:

12-25-205. Unlawful practice - penalties - enforcement. (4) Any individual who violates any of the provisions of this part 2 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. In case of damage to others caused by such misdemeanor, the court of jurisdiction shall consider restitution in each case.

SECTION 63. 12-26.1-101 (4), Colorado Revised Statutes, is amended to read:

12-26.1-101. Background checks at gun shows - penalty. (4) Any person violating the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 64. 12-26.1-102 (2), Colorado Revised Statutes, is amended to read:

12-26.1-102. Records - penalty. (2) Any individual who gives false information in connection with the making of such records commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 65. 12-26.1-104 (2), Colorado Revised Statutes, is amended to read:

12-26.1-104. Posted notice - penalty. (2) Any person violating the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 66. 12-28-110, Colorado Revised Statutes, is amended to read:

12-28-110. Violations - penalty. Any person who violates any

provision of this article commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 67. 12-29.5-108, Colorado Revised Statutes, is amended to read:

12-29.5-108. Criminal penalties. (1) Any person who violates any of the provisions of section 12-29.5-106 (1) (a) to (1) (i) commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person who subsequently violates any provision of said paragraphs within three years after the date of a conviction for any violation of the said paragraphs commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(2) Any person who violates the provision of section 12-29.5-106 (1) (j) by engaging in sexual contact with a patient during the course of patient care commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(3) Any person who violates the provisions of section 12-29.5-106 (1) (j) by engaging in sexual intrusion or sexual penetration with a patient during the course of patient care commits a class 4 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 68. 12-30-106 (2), Colorado Revised Statutes, is amended to read:

12-30-106. Failure to comply with request of department.

(2) Any individual, person, firm, association, or other entity that fails to comply with any of the provisions of this article, or with any order of the department validly issued under this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-109~~ or 18-1.3-505, C.R.S.

SECTION 69. 12-30-107 (2), Colorado Revised Statutes, is amended to read:

12-30-107. Unlawful acts. (2) It is a misdemeanor for any

individual, person, firm, association, or other entity willfully and falsely to represent a device, substance, or treatment as being of a value in the treatment, alleviation, or cure of cancer. Nothing in this section shall abridge the existent rights of the press. Any person who is convicted of a third or any subsequent violation of this article commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 70. 12-32-109 (1) and (1.5), Colorado Revised Statutes, are amended to read:

12-32-109. Violations - penalties - exemptions. (1) Except as provided in subsections (1.5), (5), (6), and (7) of this section, if any person, association, or corporation practices podiatry within this state without complying with the provisions of this article, or if any person, association, or corporation otherwise violates any provision of this article, such person or any officer or director of any such association or corporation commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Each day's failure to comply with, or each day's violation of, the provisions of this article shall constitute a separate offense.

(1.5) Any person who presents as his OR HER own the diploma, license, certificate, or credentials of another, or who gives either false or forged evidence of any kind to the Colorado podiatry board, or any member thereof, in connection with an application for a license to practice podiatry, or who practices podiatry under a false or assumed name, or who falsely impersonates another licensee of a like or different name commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 71. 12-32-117 (1), Colorado Revised Statutes, is amended to read:

12-32-117. Division of fees. (1) If any person holding a license

issued by the Colorado podiatry board divides any fee or compensation received or charged for services rendered by him OR HER as such licensee or agrees to divide any such fee or compensation with any person, firm, association, or corporation as pay or compensation to such other person for sending or bringing any patient or other person to such licensee, or for recommending such licensee to any person, or for being instrumental in any manner in causing any person to engage such licensee in his OR HER professional capacity; or if any such licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to such licensee for examination or treatment, or for recommending such licensee to any person, or for being instrumental in causing any person to engage such licensee in his OR HER professional capacity; or if any such licensee, in his OR HER professional capacity and in his OR HER own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, such licensee commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 72. 12-33-120, Colorado Revised Statutes, is amended

to read:

12-33-120. Penalty. Any person who violates any of the provisions of this article commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 73. 12-35-132 (1), Colorado Revised Statutes, is amended to read:

12-35-132. Penalty for violation - injunction. (1) Any person who violates any of the provisions of this article commits a class 3 misdemeanor and shall be liable to prosecution by the attorney general or the district attorney of the district in which the violation is alleged to have occurred and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 74. 12-36-125 (1) (a), Colorado Revised Statutes, is amended to read:

12-36-125. Division of fees - independent advertising or marketing agent. (1) (a) If any person holding a license issued by the board or by the state board of medical examiners as constituted under any prior law of this state divides any fee or compensation received or charged for services rendered by him OR HER as such licensee or agrees to divide any such fee or compensation with any person, firm, association, or corporation as pay or compensation to

such other person for sending or bringing any patient or other person to such licensee, or for recommending such licensee to any person, or for being instrumental in any manner in causing any person to engage such licensee in his OR HER professional capacity; or if any such licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to such licensee for examination or treatment, or for recommending such licensee to any person, or for being instrumental in causing any person to engage such licensee in his OR HER professional capacity; or if any such licensee, in his OR HER professional capacity and in his OR HER own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, such licensee commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 75. 12-36-127, Colorado Revised Statutes, is amended to read:

12-36-127. Liability of persons other than licensee. If any person, firm, association, or corporation receives, either directly or indirectly, any pay or compensation given or paid in violation of section 12-36-125, such person,

firm, association, or corporation, and the officers and directors thereof, commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 76. 12-36-129 (1), (2), and (2.5), Colorado Revised Statutes, are amended to read:

12-36-129. Violation - penalties. (1) Except as provided in subsections (2) and (2.5) of this section, if any person, association, or corporation practices medicine within this state without complying with the provisions of this article or if any person, association, or corporation otherwise violates any provision of this article, such person or any officer or director of any such association or corporation commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.; and any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(2) Any person who presents as his OR HER own the diploma, license, certificate, or credentials of another, or who gives either false or forged evidence of any kind to the board, or any member thereof, in connection with an application for a license to practice medicine, or who practices medicine under a false or assumed name, or who falsely impersonates another licensee of a like

or different name commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(2.5) Any person who violates section 12-36-117 (1) (w) commits a class 5 felony, and any person committing a second or subsequent violation commits a class 3 felony; and such persons shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 77. 12-36-135 (1), Colorado Revised Statutes, is amended to read:

12-36-135. Injuries to be reported - penalty for failure to report - immunity from liability. (1) It shall be the duty of every licensee who attends or treats a bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person, or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence, to report such injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located. Any licensee who fails to make a report as required by this section commits a class 2 petty offense, as defined by section ~~18-1-107~~

18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

SECTION 78. 12-37-108, Colorado Revised Statutes, is amended to read:

12-37-108. Criminal penalties. Any person who practices or offers or attempts to practice direct-entry midwifery without first complying with the registration requirements of section 12-37-103 and the disclosure requirements of section 12-37-104 commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, such person commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 79. 12-37.5-106 (1) (a) and (3), Colorado Revised Statutes, are amended to read:

12-37.5-106. Penalties - damages - defenses. (1) Any person who performs or attempts to perform an abortion in willful violation of this article:

(a) Commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501 C.R.S.; and

(3) Any person who counsels, advises, encourages or conspires to

induce or persuade any pregnant minor to furnish any physician with false information, whether oral or written, concerning the minor's age, marital status, or any other fact or circumstance to induce or attempt to induce the physician to perform an abortion upon such minor without providing written notice as required by this article commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 80. 12-38-123 (2), Colorado Revised Statutes, is amended to read:

12-38-123. Unlawful acts. (2) Any person who violates the provisions of this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person who subsequently violates any provision of this section within three years after the date of the first conviction commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 81. 12-38.1-118 (2), Colorado Revised Statutes, is amended to read:

12-38.1-118. Unlawful acts. (2) Any person who violates the provisions of subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S., and any

person committing a subsequent offense commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 82. 12-39-116 (2), Colorado Revised Statutes, is amended to read:

12-39-116. Unlawful practices. (2) Any person who violates the provisions of this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person who subsequently violates any provision of this section within three years after the date of the first conviction commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 83. 12-40-124, Colorado Revised Statutes, is amended to read:

12-40-124. Penalty for violation. Any person who violates any of the provisions of this article commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person committing a second offense commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person committing a subsequent offense commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 84. 12-41-121 (2), Colorado Revised Statutes, is amended to read:

12-41-121. Unlawful acts - criminal penalties. (2) Any person who commits any act specified in subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 85. 12-41.5-109 (2) (b) (I) (A), Colorado Revised Statutes, is amended to read:

12-41.5-109. Grounds for action - disciplinary proceedings.
(2) The director has the power to revoke, suspend, deny, or refuse to renew a license, place on probation a licensee, or issue a cease and desist order or letter of admonition to a licensee in accordance with subsections (3), (4), (5), and (6) of this section upon proof that such person:

(b) (I) Has been convicted of or has entered and had accepted by a court a plea of guilty or nolo contendere to:

(A) A felony pursuant to section ~~18-1-105~~ 18-1.3-401, C.R.S.; or of any judicial district in Colorado in accordance with section 24-4-105 (5), C.R.S.

SECTION 86. 12-41.5-112 (2), Colorado Revised Statutes, is

amended to read:

12-41.5-112. Prohibited acts. (2) A person who violates any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.; except that imprisonment shall not be imposed for any such violation.

SECTION 87. 12-42-119 (2), Colorado Revised Statutes, is amended to read:

12-42-119. Violations - penalties. (2) Such person shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 88. 12-43-226 (2), Colorado Revised Statutes, is amended to read:

12-43-226. Unlawful acts. (2) Any person who violates any provision of subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person who subsequently violates any provision of subsection (1) of this section within three years after the date of a conviction for a violation of subsection (1) of this section commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 89. 12-43-702.5 (3), Colorado Revised Statutes, is

amended to read:

12-43-702.5. Data base of unlicensed psychotherapists - violation - penalty - data collection. (3) On and after July 1, 1998, no unlicensed person may practice psychotherapy if such person is not included in the data base required by this section. Any person who violates the provisions of this subsection (3) commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Notwithstanding the requirements of this section, no unlicensed psychotherapist may use the term "registered", "regulated", "certified", "clinical", "state-registered", "state-approved", or any other term, abbreviation, or symbol that would falsely give the impression that the psychotherapist or the service that is being provided is recommended or approved by the state, based solely on inclusion in the data base.

SECTION 90. 12-44-102, Colorado Revised Statutes, is amended to read:

12-44-102. Defrauding an innkeeper. Any person who, with intent to defraud, procures food or accommodations from any public establishment, without making payment therefor in accordance with his or her agreement with such public establishment, is guilty of a misdemeanor if the total amount

due under such agreement is five hundred dollars or less and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment; and, if the amount due under such agreement is more than five hundred dollars, such person commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 91. 12-44.5-107, Colorado Revised Statutes, is amended to read:

12-44.5-107. Violations - penalty. Any person who knowingly violates any of the provisions of section 12-44.5-105 or 12-44.5-106 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 92. 12-47-901 (5) (n) (II), Colorado Revised Statutes, is amended to read:

12-47-901. Unlawful acts - exceptions. (5) It is unlawful for any person licensed to sell at retail pursuant to this article:

(n) (II) Any person who violates any provision of this paragraph (n) is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 93. 12-47-903 (2) and (3), Colorado Revised Statutes, are amended to read:

12-47-903. Violations - penalties. (2) Any person violating any of the provisions of section 12-47-901 (1) (a), (1) (f), (1) (g), (1) (i), (1) (k), (1) (l), (5) (a) (1), or (5) (b) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(3) Any person violating any of the provisions of section 12-47-901 (1) (b) or (1) (c) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. For the second conviction and for all subsequent convictions of violating the provisions of section 12-47-901 (1) (b) or (1) (c), the court shall impose at least the minimum fine and shall have no discretion to suspend any fine so imposed; except that the court may provide for the payment of such fine as provided in subsection (4) of this section.

SECTION 94. 12-47.1-527 (4) (a), Colorado Revised Statutes, is amended to read:

12-47.1-527. Records - confidentiality - exceptions. (4) (a) Any person who discloses confidential records or information in violation of the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any criminal prosecution

pursuant to the provisions of this section must be brought within five years from the date the violation occurred.

SECTION 95. 12-47.1-603 (1) , Colorado Revised Statutes, is amended to read:

12-47.1-603. Violations of taxation provisions - penalties. (1) Any person who:

(a) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this article commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.;

(b) Fails to pay tax due under this article within thirty days after the date the tax becomes due commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.;

(c) Fails to file a return required by this article within thirty days after the date the return is due commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.;

(d) Violates either paragraph (b) or (c) two or more times in any twelve-month period commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.;

(e) Willfully aids or assists in, or procures, counsels, or advises the

preparation or presentation under or in connection with any matter arising under any title administered by the commission or a return, affidavit, claim, or other document which is fraudulent or is false as to any material fact, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 96. 12-47.1-802, Colorado Revised Statutes, is amended to read:

12-47.1-802. False statement on application - violations of rules or provisions of article as felony. Any person who knowingly makes a false statement in any application for a license or in any statement attached to the application, or who provides any false or misleading information to the commission or the division, or who fails to keep books and records to substantiate the receipts, expenses, or uses resulting from limited gaming conducted under this article as prescribed in rules or regulations promulgated by the commission, or who falsifies any books or records which relate to any transaction connected with the holding, operating, and conducting of any limited card games or slot machines, or who knowingly violates any of the

provisions of this article or any rule or regulation adopted by the commission or any terms of any license granted under this article, commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 97. 12-47.1-803 (1) (b), Colorado Revised Statutes, is amended to read:

12-47.1-803. Slot machines - shipping notices. (1) (b) Any person violating any provision of this section commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 98. 12-47.1-809 (4), Colorado Revised Statutes, is amended to read:

12-47.1-809. Age of participants - violation as misdemeanor - applicability. (4) Any person violating any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 99. 12-47.1-817 (2), Colorado Revised Statutes, is amended to read:

12-47.1-817. Failure to pay winners. (2) Any person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 100. 12-47.1-822 (3), Colorado Revised Statutes, is amended to read:

12-47.1-822. Cheating. (3) Any person issued a license pursuant to this article violating any provision of this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and any other person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. If the person is a repeating gambling offender the person commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 101. 12-47.1-823 (2), Colorado Revised Statutes, is amended to read:

12-47.1-823. Fraudulent acts. (2) Any person issued a license pursuant to this article violating any provision of this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and any other person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. If the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~

18-1.3-401, C.R.S.

SECTION 102. 12-47.1-824 (2), Colorado Revised Statutes, is amended to read:

12-47.1-824. Use of device for calculating probabilities. (2) Any person issued a license pursuant to this article violating any provision of this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and any other person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. If the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 103. 12-47.1-825 (8), Colorado Revised Statutes, is amended to read:

12-47.1-825. Use of counterfeit or unapproved chips or tokens or unlawful coins or devices - possession of certain unlawful devices, equipment, products, or materials. (8) Any person violating any provision of this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.; except that, if the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished

as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 104. 12-47.1-826 (2), Colorado Revised Statutes, is amended to read:

12-47.1-826. Cheating game and devices. (2) Any person violating any provision of this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.; except that, if the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 105. 12-47.1-827 (4), Colorado Revised Statutes, is amended to read:

12-47.1-827. Unlawful manufacture, sale, distribution, marking, altering, or modification of equipment and devices associated with limited gaming - unlawful instruction. (4) Any person issued a license pursuant to this article violating any provision of this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and any other person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. If the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~

18-1.3-401, C.R.S.

SECTION 106. 12-47.1-828 (3), Colorado Revised Statutes, is amended to read:

12-47.1-828. Unlawful entry by excluded and ejected persons. (3) Any person violating the provisions of this section commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 107. 12-47.1-830 (2), Colorado Revised Statutes, is amended to read:

12-47.1-830. Failure to display operator and premises licenses. (2) Any person violating this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 108. 12-47.1-832, Colorado Revised Statutes, is amended to read:

12-47.1-832. Violations of article as misdemeanors. Any person violating any of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S., except as may otherwise be specifically provided in this article.

SECTION 109. 12-47.1-838 (2), Colorado Revised Statutes, is

amended to read:

12-47.1-838. Personal pecuniary gain or conflict of interest.

(2) Any person violating any of the provisions of this section commits a class 3 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 110. 12-47.1-839 (2), Colorado Revised Statutes, is amended to read:

12-47.1-839. False or misleading information - unlawful. (2) Any person violating any of the provisions of this section commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 111. 12-55.5-107.5 (1), Colorado Revised Statutes, is amended to read:

12-55.5-107.5. Violations - penalties - distribution of fines collected. (1) Any person who violates section 12-55.5-103 (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Upon a second or subsequent conviction, such person commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~

18-1.3-401, C.R.S.

SECTION 112. 12-56-104 (3) (b), (4), and (5), Colorado Revised Statutes, are amended to read:

12-56-104. Prohibited acts - penalties. (3) (b) A pawnbroker who violates the terms of a contract for purchase involving a fixed price as set forth in section 12-56-101 (2) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(4) Except as otherwise provided in this section, any pawnbroker who violates any of the provisions of this article commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S., and upon a second or subsequent conviction for a violation of this article within three years of the date of a prior conviction, a pawnbroker commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(5) Any customer who knowingly gives false information with respect to the information required by section 12-56-103 (1) commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 113. 12-58-116 (2), Colorado Revised Statutes, is amended to read:

12-58-116. Violations - penalty. (2) Any person who violates any

provision of this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 114. 12-60-703.5 (2) (b), Colorado Revised Statutes, is amended to read:

12-60-703.5. Limitations on pari-mutuel wagering. (2) (b) Any person who violates paragraph (a) of this subsection (2) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 115. 12-60-801 (1), Colorado Revised Statutes, is amended to read:

12-60-801. Criminal penalties. (1) Except as provided in section 12-60-601, any person who commits any of the acts enumerated in section 12-60-507 (1) other than those which also constitute crimes under the "Colorado Criminal Code", title 18, C.R.S., commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 116. 12-61-407, Colorado Revised Statutes, is amended to read:

12-61-407. Violation - penalty. Any person who fails to register as a developer in violation of this part 4 commits a class 6 felony and shall be

punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the developer unless such developer was duly registered under the provisions of this part 4 when such agreement or contract was made.

SECTION 117. 12-61-612, Colorado Revised Statutes, is amended to read:

12-61-612. Penalty for violation. Any person who knowingly violates any provision of this part 6 commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Each instance of violation shall be considered a separate offense.

SECTION 118. 12-61-712 (2), Colorado Revised Statutes, is amended to read:

12-61-712. Unlawful acts. (2) Any person who violates any provision of subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person who subsequently violates any provision of subsection (1) of this section within three years after the date of a conviction for a violation of subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in

section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 119. 12-64-114 (2), Colorado Revised Statutes, is amended to read:

12-64-114. Enforcement. (2) Any person who practices veterinary medicine without a license commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Each act of such unlawful practice shall constitute a distinct and separate offense.

SECTION 120. 13-1-128 (4), Colorado Revised Statutes, is amended to read:

13-1-128. Confidentiality of decisions of courts of record - violations - penalties. (4) Any person who knowingly violates the provisions of subsection (1) of this section commits a class 6 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 121. 13-10-113 (6), Colorado Revised Statutes, is amended to read:

13-10-113. Fines and penalties. (6) Whenever the judge in a municipal court of record imposes a fine for a nonviolent municipal ordinance or code offense, if the person who committed the offense is unable to pay the fine at the time of the court hearing or if he OR SHE fails to pay any fine

imposed for the commission of such offense, in order to guarantee the payment of such fine, the municipal judge may compel collection of the fine in the manner provided in section ~~18-1-110~~ 18-1.3-506, C.R.S. For purposes of this subsection (6), "nonviolent municipal ordinance or code offense" means a municipal ordinance or code offense which does not involve the use or threat of physical force on or to a person in the commission of the offense.

SECTION 122. 13-22-103 (1), Colorado Revised Statutes, is amended to read:

13-22-103. Minors - consent for medical, dental, and related care.

(1) Except as otherwise provided in sections ~~16-11-311(4.5)~~ 18-1.3-407 (4.5), 18-6-101, 25-4-402, and 12-34-103 (1), C.R.S., a minor eighteen years of age or older, or a minor fifteen years of age or older who is living separate and apart from his or her parent, parents, or legal guardian, with or without the consent of his or her parent, parents, or legal guardian, and is managing his or her own financial affairs, regardless of the source of his or her income, or any minor who has contracted a lawful marriage may give consent to organ or tissue donation or the furnishing of hospital, medical, dental, emergency health, and surgical care to himself or herself. Such consent shall not be subject to disaffirmance because of minority, and, when such consent is given, said minor shall have the

same rights, powers, and obligations as if he or she had obtained majority. Consent to organ or tissue donation may be revoked pursuant to section 12-34-107, C.R.S.

SECTION 123. 13-45-114, Colorado Revised Statutes, is amended to read:

13-45-114. Avoiding writ - penalty. Anyone having a person in his OR HER custody or under his OR HER restraint, power, or control for whose relief a writ of habeas corpus is issued who, with the intent to avoid the effect of such writ, transfers such person to the custody, or places him OR HER under the control, of another or conceals him OR HER or changes the place of his OR HER confinement with intent to avoid the operation of such a writ or with intent to remove him OR HER out of this state commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. In any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of habeas corpus had issued at the time of the removal, transfer, or concealment therein mentioned if it is proved that the acts therein forbidden were done with the intent to avoid the operation of such writ.

SECTION 124. 13-71-111, Colorado Revised Statutes, is amended to read:

13-71-111. Contents of juror summons. The juror summons shall state: Whether the anticipated service is that of a trial or grand juror; the beginning date of the juror service; the name, address, hour, and room number, if any, of the courthouse or office to which the juror shall report on the first day of service; the fact that a knowing failure to obey the summons without justifiable excuse is a class 3 misdemeanor punishable as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.; and such other information and instructions as are deemed appropriate by the state court administrator or the jury commissioner. Every prospective juror shall also receive, with the summons, notice of the qualifications for juror service.

SECTION 125. 13-71-115 (1), Colorado Revised Statutes, is amended to read:

13-71-115. Juror questionnaires. (1) On or before the first day of the term of trial or grand juror service, each juror shall be given a juror questionnaire requesting the following information about the juror: Name, sex, date of birth, age, residence, and marital status; the number and ages of children; educational level and occupation; whether the juror is regularly employed, self-employed, or unemployed; spouse's occupation; previous juror service; present or past involvement as a party or witness in a civil or criminal

proceeding; and such other information as the jury commissioner deems appropriate after consulting with the judges in the judicial district. The questionnaire shall contain a declaration by the juror that the information supplied is, to the best of the juror's knowledge, true and an acknowledgment that a willful misrepresentation of a material fact is a class 3 misdemeanor punishable as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Immediately below the declaration, the questionnaire shall contain a place for the signature of the juror. A notice that the completed questionnaire is not a public record shall appear prominently on its face.

SECTION 126. 13-71-134 (2), Colorado Revised Statutes, is amended to read:

13-71-134. Penalties and enforcement remedies for harassment by employer. (2) Any employer who willfully violates this section commits willful harassment of a juror by an employer, as defined in section 18-8-614, C.R.S., which is a class 2 misdemeanor punishable as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 127. 13-90-107 (1) (a) (II), Colorado Revised Statutes, is amended to read:

13-90-107. Who may not testify without consent. (1) There are

particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a) (II) The privilege described in this paragraph (a) does not apply to class 1, 2, or 3 felonies as described in section ~~18-1-105 (1) (a) (IV) and (1) (a) (V)~~ 18-1.3-401 (1) (a) (IV) AND (1) (a) (V), C.R.S. In this instance, during the marriage or afterward, a husband shall not be examined for or against his wife as to any communications intended to be made in confidence and made by one to the other during the marriage without his consent, and a wife shall not be examined for or against her husband as to any communications intended to be made in confidence and made by one to the other without her consent.

SECTION 128. 15-18-113 (1), (2), (3), and (4), Colorado Revised Statutes, are amended to read:

15-18-113. Penalties. (1) Any person who willfully conceals, defaces, damages, or destroys a declaration of another, without the knowledge and consent of the declarant, commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(2) Any person who falsifies or forges a declaration of another commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~

18-1.3-401, C.R.S.

(3) Any person who falsifies or forges a declaration of another, and the terms of the declaration are carried out, resulting in the death of the purported declarant, commits a class 2 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(4) Any person who willfully withholds information concerning the revocation of the declaration of another commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 129. 16-4-101 (2), Colorado Revised Statutes, is amended to read:

16-4-101. Bailable offenses. (2) For purposes of this section, "crime of violence" shall have the same meaning as that set forth in section ~~16-11-309(2)~~ 18-1.3-406 (2), C.R.S.

SECTION 130. 16-4-108 (2), Colorado Revised Statutes, is amended to read:

16-4-108. Exoneration from bond liability. (2) Upon entry of an order for deferred prosecution or deferred judgment as authorized in sections ~~16-7-401 and 16-7-403~~ 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.

SECTION 131. 16-4-201 (2), Colorado Revised Statutes, is amended to read:

16-4-201. Bail after conviction. (2) After conviction, a defendant who is granted probation pursuant to section ~~16-11-202~~ 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.

SECTION 132. 16-4-201.5 (1) (d), Colorado Revised Statutes, is amended to read:

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:

(d) A crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406,

C.R.S.;

SECTION 133. 16-5-301 (1) (a) and (1) (b) (I), Colorado Revised Statutes, are amended to read:

16-5-301. Preliminary hearing or waiver - dispositional hearing.

(1) (a) Every person accused of a class 1, 2, or 3 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 ~~16-11-309~~ 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 by direct information or felony complaint, except those which require mandatory sentencing or which are crimes of violence as defined in section ~~16-11-309~~ 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.

SECTION 134. 16-5-501, Colorado Revised Statutes, is amended to read:

16-5-501. Prosecuting attorney - incarceration - legal representation and supporting services at state expense. Except as otherwise provided, in any criminal prosecution for class 2 and class 3 misdemeanors, petty offenses, class 1 and class 2 misdemeanor traffic offenses, or municipal or county ordinance violations, the prosecuting attorney may, at any time during the prosecution, state in writing whether or not he OR SHE will seek incarceration as part of the penalty upon conviction of an offense for which the defendant has been charged. If the prosecuting attorney does not seek

incarceration as part of such penalty, legal representation and supporting services need not thereafter be provided for the defendant at state expense, and no such defendant shall be incarcerated if found guilty of the charges against him OR HER, but the defendant shall be subject to all alternatives available to the court under section ~~16-11-502~~ 18-1.3-702, C.R.S., and to alternatives available to each municipality under its municipal ordinances for failure to pay fines and costs.

SECTION 135. 16-7-301 (2) (d) and (2) (e), Colorado Revised Statutes, are amended to read:

16-7-301. Propriety of plea discussions and plea agreements.

(2) The district attorney may agree to one or more of the following, depending upon the circumstances of the individual case:

(d) To consent to deferred prosecution, as provided in section ~~16-7-401~~ 18-1.3-101, C.R.S.;

(e) To consent to deferred sentencing, as provided in section ~~16-7-403~~ 18-1.3-102, C.R.S.

SECTION 136. 16-8-103.6 (1) (a) and (2) (a), Colorado Revised Statutes, are amended to read:

~~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, raising the question of incompetency to proceed pursuant to section 16-8-110, or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section ~~16-11-103 or 16-11-802~~ 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 ~~16-11-103 or 16-11-802~~ 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.

(2) (a) A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, raising the question of incompetency to proceed pursuant to section 16-8-110, or disclosing witnesses who may provide evidence concerning the defendant's

mental condition during a sentencing hearing held pursuant to section ~~16-11-103~~ 18-1.3-1201, C.R.S., or, for offenses committed on or after July 1, 1999, by seeking to introduce evidence concerning his or her mental condition pursuant to section 16-8-107 (3) waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for such mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to section ~~16-11-103~~ 18-1.3-1201, C.R.S. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for such mental condition.

SECTION 137. 16-8-106 (2), (3) (a), and (3) (b), Colorado Revised Statutes, are amended to read:

16-8-106. Examinations and report. (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 and other personnel conducting the examination may be admissible in the defendant's trial on the issues of insanity, competency, or impaired mental condition and in any sentencing hearing held pursuant to

section ~~16-11-103~~ or ~~16-11-802~~ 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 and other personnel conducting the examination may be admissible in the defendant's trial on the issues of insanity or competency and in any sentencing hearing held pursuant to section ~~16-11-103~~ 18-1.3-1201, C.R.S. This paragraph (b) shall apply to offenses committed on or after July 1, 1995, but prior to July 1, 1999.

(c) The defendant shall cooperate with psychiatrists and other personnel conducting any examination ordered by the court pursuant to this section. Statements made by the defendant in the course of such examination shall be protected as provided in section 16-8-107. If the defendant does not cooperate with psychiatrists and other personnel conducting the examination, the court shall not allow the defendant to call any psychiatrist or other expert witness to provide evidence at the defendant's trial concerning the defendant's mental condition including, but not limited to, providing evidence on the issues of insanity or competency, or at any sentencing hearing held pursuant to section ~~16-11-103~~ 18-1.3-1201, C.R.S. In addition, the fact of the defendant's

noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial to rebut any evidence introduced by the defendant with regard to the defendant's mental condition including, but not limited to, the issues of insanity and competency, and in any sentencing hearing held pursuant to section ~~16-11-103~~ 18-1.3-1201, 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 and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section ~~16-11-103 or 16-11-802~~ 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, impaired mental condition, or competency to proceed and in any sentencing hearing held pursuant to section ~~16-11-103 or 16-11-802~~ 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 and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists or other personnel based upon such

confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section ~~16-11-103~~ 18-1.3-1201, C.R.S. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity, eligibility for release, or competency to proceed and in any sentencing hearing held pursuant to section ~~16-11-103~~ 18-1.3-1201, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

SECTION 138. 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado Revised Statutes, are amended to read:

16-8-107. Evidence. (1) (b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental

processes during the course of a court-ordered examination under section 16-8-108 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing hearing held pursuant to section ~~16-11-103~~ or ~~16-11-802~~ 18-1.3-1201 OR 18-1.3-1302, C.R.S., only to prove the existence or absence of any mitigating factor.

(c) If the defendant testifies in his or her own behalf upon the trial of the issues raised by the plea of not guilty or at a sentencing hearing held pursuant to section ~~16-11-103~~ or ~~16-11-802~~ 18-1.3-1201 OR 18-1.3-1302, C.R.S., the provisions of this section shall not bar any evidence used to impeach or rebut the defendant's testimony.

(1.5) (b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination under section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing hearing held pursuant to section ~~16-11-103~~ 18-1.3-1201, C.R.S., only to prove the existence or absence of any mitigating factor.

SECTION 139. 16-11-101.6 (1), Colorado Revised Statutes, is amended to read:

16-11-101.6. Collection of fines and fees - methods - charges. (1) If

the defendant does not pay all amounts assessed at the time that an order for payment of a fine or costs under section ~~16-11-501~~ 18-1.3-701, C.R.S., is entered, the defendant shall pay to the clerk of the court an additional time payment fee of twenty-five dollars. Such time payment fee may be assessed once per case. In addition, there may be assessed against a defendant a late penalty fee of ten dollars each time a payment of a fine or fee 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.

SECTION 140. 16-11-101.7 (2) (b), Colorado Revised Statutes, is amended to read:

16-11-101.7. Repayment of crime stopper reward - crime stopper reward reimbursement fund - created. (2) (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 ~~16-11-204 (2.5)~~ 18-1.3-204 (2.5), C.R.S.

SECTION 141. 16-11-102 (1.7), (4), (5), and (6), Colorado Revised

Statutes, are amended to read:

16-11-102. Presentence or probation investigation. (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 ~~16-11-501 (5) (b)~~ 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 ~~16-11-501 (5) (a)~~ 18-1.3-701 (5) (a), C.R.S. The financial information obtained from the offender shall be submitted in writing and under oath.

(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 ~~16-18.5-103 (2)~~ 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 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 ~~18-1-105~~ 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 ~~16-13-102~~ 18-1.3-802, C.R.S.

SECTION 142. 16-11-102.3 (1) (b), Colorado Revised Statutes, is amended to read:

16-11-102.3. Genetic testing of convicted offenders. (1) As used in this section, unless the context otherwise requires, "convicted offender" means a person who is not required to submit to a chemical testing of the person's blood to determine the genetic markers thereof pursuant to any other provision and who is convicted of, or pleads guilty to any of the following

offenses:

(b) A crime of violence, as listed in section ~~16-11-309(2)~~ 18-1.3-406 (2), C.R.S.;

SECTION 143. 16-11-104 (1) (a) (II) (A), Colorado Revised Statutes, is amended to read:

16-11-104. Genetic testing. (1) (a) (II) An offender shall submit to and pay for a chemical testing of the offender's blood to determine the genetic markers thereof if the offender is sentenced directly to incarceration in a county jail or to a community corrections facility pursuant to article 27 of title 17, C.R.S., for the conviction of or entry of a guilty or nolo contendere plea to any of the following offenses occurring on or after July 1, 2000:

(A) A crime of violence, as listed in section ~~16-11-309(2)~~ 18-1.3-406 (2), C.R.S.;

SECTION 144. 16-11-204.3 (1) (b) (I), Colorado Revised Statutes, is amended to read:

16-11-204.3. Genetic testing as a condition of probation. (1) (b) The offender shall submit to and pay for a chemical testing of the offender's blood to determine the genetic markers thereof as a condition of probation for the conviction of any of the following offenses occurring on or

after July 1, 1999:

(I) A crime of violence, as defined in ~~16-11-309 (2)~~ 18-1.3-406 (2), C.R.S.;

SECTION 145. 16-11-214 (1), Colorado Revised Statutes, is amended to read:

16-11-214. Fund created - probation services. (1) 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 ~~16-11-204 (2) (a) (V)~~ 18-1.3-204 (2) (a) (V) or ~~section~~ 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.

SECTION 146. 16-11-308 (4.5) (a) (I), Colorado Revised Statutes, is amended to read:

16-11-308. Custody of department of corrections - procedure.

(4.5) (a) While confined in the diagnostic center, the following offenders shall submit to a chemical testing of the offender's blood to determine the genetic markers:

(I) Any offender sentenced on or after July 1, 2000, as a habitual offender pursuant to the provisions of section ~~16-13-101~~ 18-1.3-801, C.R.S.; and

SECTION 147. 16-11.5-102 (3) (b) (I), Colorado Revised Statutes, is amended to read:

16-11.5-102. Substance abuse assessment - standardized procedure - repeal. (3) (b) (I) On and after January 1, 2001, the plan developed pursuant to paragraph (a) of this subsection (3) may include provisions to implement the deferred sentencing demonstration program created in section ~~16-7-403.7~~ 18-1.3-103, C.R.S.

SECTION 148. 16-11.5-105 (1) and (2), Colorado Revised Statutes, are amended to read:

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 ~~16-11.5-103~~ 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 ~~16-11.5-103~~ 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.

SECTION 149. 16-11.7-103 (4) (e), Colorado Revised Statutes, is amended to read:

16-11.7-103. Sex offender management board - creation - duties - repeal. (4) The board shall carry out the following duties:

(e) Pursuant to section ~~16-13-809~~ 18-1.3-1009, C.R.S., on or before July 1, 1999, the board, in collaboration with the department of corrections, the judicial department, and the state board of parole shall develop criteria for measuring a sex offender's progress in treatment. Such criteria shall assist the court and the state board of parole in determining whether a sex offender may appropriately be released from incarceration pursuant to section ~~16-13-806 (1)~~ 18-1.3-1006 (1), C.R.S., or whether the sex offender's level of supervision may be reduced pursuant to section ~~16-13-806 (2) (a) or 16-13-808~~ 18-1.3-1006 (2) (a) OR 18-1.3-1008, C.R.S., or whether the sex offender may appropriately be discharged from probation or parole pursuant to section ~~16-13-806 or 16-13-808~~

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 sex offender would pose an undue threat to 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.

SECTION 150. 16-12-202 (3), Colorado Revised Statutes, is amended to read:

16-12-202. Unitary procedure for appeals - scope and applicability. (3) This part 2 shall apply to any class 1 felony conviction for which the death penalty is imposed as punishment, regardless of whether the sentence is imposed pursuant to section ~~16-11-103~~ or ~~16-11-802~~ 18-1.3-1201 OR 18-1.3-1302, C.R.S., which death sentence is imposed on or after the date upon which the supreme court adopts rules implementing the unitary system of review established by this part 2.

SECTION 151. 16-12-204 (1), Colorado Revised Statutes, is amended to read:

16-12-204. Stay of execution - postconviction review. (1) The three-judge panel or the trial court, whichever is applicable, upon the

imposition of a death sentence, shall set the time of execution pursuant to section ~~16-11-403~~ 18-1.3-1205, C.R.S., and enter an order staying execution of the judgment and sentence until receipt of an order from the Colorado supreme court. The trial court shall direct the clerk of the trial court to mail to the Colorado supreme court, within seven days after the date upon which the sentence of death is imposed, a copy of the judgment, sentence, and mittimus.

SECTION 152. 16-13-216, Colorado Revised Statutes, is amended to read:

16-13-216. Powers and duties of the board. (1) (a) Within six months after a person is committed pursuant to section ~~16-13-203~~ 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 ~~16-13-203~~ 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 ~~16-13-203~~ 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 ~~16-13-203~~ 18-1.3-904, C.R.S.

(5) The board is authorized to issue an absolute release to any person committed pursuant to section ~~16-13-203~~ 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 ~~16-13-203~~ 18-1.3-904, C.R.S.

SECTION 153. 16-15.7-104 (2) (b), Colorado Revised Statutes, is amended to read:

16-15.7-104. In camera review - confidentiality - records and

information - criminal penalty. (2) (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 ~~18-1-106~~ 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.

SECTION 154. 16-18.5-104 (1), Colorado Revised Statutes, is amended to read:

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 ~~16-18.5-103~~ 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.

SECTION 155. 16-19-129 (2), Colorado Revised Statutes, is amended to read:

16-19-129. Security for costs - default - fees. (2) For purposes of

this section, reasonable costs incurred by the district attorney include but are not limited to those in section ~~16-11-501~~ 18-1.3-701, C.R.S., as well as attorney fees and support staff costs.

SECTION 156. 17-1-102 (7.5) (b) (II) and (7.5) (b) (III), Colorado Revised Statutes, are amended to read:

17-1-102. Definitions. As used in this title, unless the context otherwise requires:

(7.5) (b) Notwithstanding the provisions of paragraph (a) of this subsection (7.5), "special needs offender" does not include a person who:

(II) Has ever been convicted of a crime of violence as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S.; or

(III) Is or has ever been a sex offender as defined in section ~~16-13-803(4)~~ 18-1.3-1003 (4), C.R.S.

SECTION 157. 17-1-206.5 (2) (a) and (2) (b), Colorado Revised Statutes, are amended to read:

17-1-206.5. Preparole release and revocation facility. (2) The prison described in subsection (1) of this section shall contain at least three hundred beds and incarcerate any of the following:

(a) Inmates who have not been convicted of a crime of violence as

defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., and who have no more than nineteen months remaining until such inmate's parole eligibility date;

(b) Inmates who have been convicted of a crime of violence as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., and who have no more than nine months remaining until such inmate's parole eligibility date; or

SECTION 158. 17-2-103 (11) (b) (II) (B), Colorado Revised Statutes, is amended to read:

17-2-103. Arrest of parolee - revocation proceedings.

(11) (b) (II) If the board determines that the parolee has violated any condition of parole other than commission of a crime, the board may:

(B) Revoke parole for a period not to exceed one hundred eighty days and request the sheriff of the county in which the hearing is held to transport the parolee to a community corrections program pursuant to section ~~17-27-105(3)~~ 18-1.3-301 (3), C.R.S., a place of confinement within the department of corrections, or any private facility that is under contract to the department of corrections; or

SECTION 159. 17-2-201 (4) (a), (5) (a), (5) (b), and (5) (c) (II) (D), Colorado Revised Statutes, are amended to read:

17-2-201. State board of parole. (4) The board has the following

powers and duties:

(a) To meet as often as necessary every month to consider all applications for parole. The board may parole any person who is sentenced or committed to a correctional facility when such person has served his or her minimum sentence, less time allowed for good behavior, and there is a strong and reasonable probability that the person will not thereafter violate the law and that release of such person from institutional custody is compatible with the welfare of society. If the board refuses an application for parole, the board shall reconsider the granting of parole to such person within one year thereafter, or earlier if the board so chooses, and shall continue to reconsider the granting of parole each year thereafter until such person is granted parole or until such person is discharged pursuant to law; except that, if the person applying for parole was convicted of a class 1 or class 2 crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., any class 3 sexual offense described in part 4 of article 3 of title 18, C.R.S., a habitual criminal offense as defined in section ~~16-13-101 (2.5)~~ 18-1.3-801 (2.5), C.R.S., or of any offense subject to the requirements of section ~~16-13-203~~ 18-1.3-904, C.R.S., the board need only reconsider granting parole to such person once every three years, until the board grants such person parole or until such person is

discharged pursuant to law.

(5) (a) As to any person sentenced for conviction of a felony committed prior to July 1, 1979, or of a misdemeanor and as to any person sentenced for conviction of an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, as defined in section 18-3-412.5 (1), C.R.S., committed prior to July 1, 1996, or a class 1 felony and as to any person sentenced as a habitual criminal pursuant to section ~~16-13-101~~ 18-1.3-801, C.R.S., the board has the sole power to grant or refuse to grant parole and to fix the condition thereof and has full discretion to set the duration of the term of parole granted, but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court or five years, whichever is less.

(b) Conditions imposed for parole may include, but are not limited to, requiring that the offender pay reasonable costs of supervision of parole or placing the offender on home detention as defined in section ~~17-26-128 (1.1)~~ 18-1.3-106 (1.1), C.R.S.

(c) (II) If the offender fails to pay the restitution, he or she may be returned to the board and, upon proof of failure to pay, the board shall:

(D) Revoke parole for a period not to exceed one hundred eighty days

and request the sheriff of the county in which the hearing is held to transport the parolee to a community corrections program pursuant to section ~~17-27-105~~ (3) 18-1.3-301 (3), C.R.S., a place of confinement within the department of corrections, or any private facility that is under contract with the department of corrections; or

SECTION 160. 17-2-213, Colorado Revised Statutes, is amended to read:

17-2-213. Application of part. Effective July 1, 1979, the provisions of this part 2 relating to the power of the state board of parole to grant parole and to establish the duration of the term of parole shall apply only to persons sentenced for conviction of a felony committed prior to July 1, 1979, persons sentenced for conviction of a misdemeanor, persons sentenced for conviction of a sex offense, as defined in section ~~16-13-202(5)~~ 18-1.3-903 (5), C.R.S., or a class 1 felony, and persons sentenced as habitual criminals pursuant to section ~~16-13-101~~ 18-1.3-801, C.R.S. Parole for persons sentenced for conviction of a class 2, class 3, class 4, or class 5 felony committed on or after July 1, 1979, shall be as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and article 22.5 of this title.

SECTION 161. 17-10-103 (1), Colorado Revised Statutes, is

amended to read:

17-10-103. Action for reimbursement of cost of care. (1) When any person has been sentenced to confinement in a local jail or a correctional facility or to home detention or has been granted probation or has been placed on parole by the state board of parole and the sentencing court has not entered an order pursuant to section ~~16-11-501~~ 18-1.3-701, C.R.S., requiring such person to pay the full cost of care incurred during such person's sentence, the state, the appropriate prosecuting attorney, the department of corrections, the judicial department, or any government agency which has incurred cost of care of such person may file an action for reimbursement for cost of care.

SECTION 162. 17-22.5-104 (2) (d), Colorado Revised Statutes, is amended to read:

17-22.5-104. Parole - regulations. (2) (d) (I) No inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 1990, shall be eligible for parole. No inmate imprisoned under a life sentence pursuant to section ~~16-13-101(2)~~, C.R.S., as it existed prior to July 1, 1993, for a crime committed on or after July 1, 1990, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(II) This paragraph (d) shall not apply to any inmate sentenced pursuant to section ~~16-13-101(2)~~ 18-1.3-801 (2), C.R.S., for any crime committed on or after July 1, 1993, and any such inmate shall be eligible for parole in accordance with section 17-22.5-403.

(III) No inmate imprisoned under a life sentence pursuant to section ~~16-13-101(2.5)~~ 18-1.3-801 (2.5), C.R.S., and no inmate imprisoned under a life sentence pursuant to section ~~16-13-101(1)~~ 18-1.3-801 (1), C.R.S., on and after July 1, 1994, for a crime committed on and after that date, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

SECTION 163. 17-22.5-303 (2), (3), (4), (6), and (7), Colorado Revised Statutes, are amended to read:

17-22.5-303. Parole. (2) As to any person sentenced for a class 2, class 3, class 4, or class 5 felony committed on or after July 1, 1981, and before July 1, 1984, the division of adult parole shall provide a one-year period of parole supervision and assistance in securing employment, housing, and such other services as may effect the successful reintegration of such offender into the community while recognizing the need for public safety; except that the

state board of parole may discharge an offender at any time during the year upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision. The conditions of parole for any such person shall be subject to section 17-2-201 (5) (b) and (5) (c) prior to his OR HER release from incarceration; but in no event shall any such person whose initial parole has not been revoked spend more than one year under parole supervision, as provided in this section. Upon a determination that the conditions of parole have been violated in any such parole revocation proceeding, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, or revoke the parole and order the return of the offender to the institution in which he OR SHE was originally received for a period of not more than two years; but in no event shall any period of reincarceration, subsequent term of parole, and sentence actually served exceed the sentence imposed pursuant to section ~~18-1-105~~ 18-1.3-401, C.R.S. The good time deduction authorized by section 17-22.5-301 shall apply to periods of reincarceration provided for in this section.

(3) The state board of parole, working in conjunction with the department, shall adopt risk assessment guidelines, based upon risk of violence

to the general population, to be utilized for determining whether any person sentenced pursuant to the provisions of section ~~18-1-105~~ 18-1.3-401, C.R.S., for committing a class 2, class 3, class 4, or class 5 felony committed on or after July 1, 1984, but before July 1, 1985, may be suitable for release on his OR HER parole eligibility date or shall be subject to extended parole of up to three years. Such guidelines shall include provisions which take into consideration the progress toward rehabilitation made by the individual as well as the necessity of guarding the welfare of the community.

(4) As to any person sentenced for a class 2, class 3, class 4, or class 5 felony committed on or after July 1, 1984, but before July 1, 1985, the division of adult parole shall either release an offender on his OR HER parole eligibility date, pursuant to the determination made by the state board of parole, or shall provide up to three years of parole for any offender who is determined by the state board of parole to present a high risk to the general population upon release from incarceration. For persons who are provided parole, the division of adult parole shall provide a period of up to three years of parole supervision and assistance in securing employment, housing, and such other services as may effect the successful reintegration of such offender into the community while recognizing the need for public safety. The

conditions for parole for any such offender under this subsection (4) shall be established pursuant to section 17-2-201 (5) (b) and (5) (c) by the state board of parole prior to his OR HER release from incarceration. Upon a determination that the conditions of parole have been violated in a parole revocation proceeding, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, or revoke the parole and order the return of the offender to the institution in which he OR SHE was originally received for a period of not more than five years. In no event shall any period of reincarceration, subsequent term of parole, and sentence actually served exceed the sentence imposed pursuant to section ~~18-1-105~~ 18-1.3-401, C.R.S. The state board of parole may discharge an offender granted parole under this section at any time during the term of parole upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision. The good time deduction authorized by section 17-22.5-301 shall apply to periods of reincarceration provided for in this section.

(6) Any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony committed on or after July 1, 1985, shall be eligible for parole after such person has served the sentence imposed less any time authorized for good

time earned pursuant to section 17-22.5-301 and for earned time pursuant to section 17-22.5-302. Upon an application for parole, the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine whether or not to grant parole and, if granted, the length of the period of parole, which may be for a period of up to five years. If an application for parole is refused by the state board of parole, the state board shall reconsider within one year thereafter the granting of parole to such person and shall continue the reconsideration each year thereafter until such person is granted parole or until such person is discharged pursuant to law; except that, if the person applying for parole was convicted of a class 1 or class 2 crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., any class 3 sexual offense described in part 4 of article 3 of title 18, C.R.S., a habitual criminal offense as defined in section ~~16-13-101 (2.5)~~ 18-1.3-801 (2.5), C.R.S., or of any offense subject to the requirements of section ~~16-13-203~~ 18-1.3-904, C.R.S., the board need only reconsider granting parole to such person once every three years, until the board grants such person parole or until such person is discharged pursuant to law.

(7) For persons who are granted parole pursuant to subsection (6) of

this section, the division of adult parole shall provide a period of up to five years of parole supervision and assistance in securing employment, housing, and such other services as may effect the successful reintegration of such offender into the community while recognizing the need for public safety. The conditions for parole for any such offender under this subsection (7) shall be established pursuant to section 17-22.5-404 by the state board of parole prior to such offender's release from incarceration. Upon a determination that the conditions of parole have been violated in a parole revocation proceeding, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the parole and order the return of the offender to a place of confinement designated by the executive director for a period of not more than five years. In computing the period of reincarceration for an offender other than an offender sentenced for a nonviolent felony offense, as defined in section 17-22.5-405 (5), the time between the offender's release on parole and the revocation of such parole shall not be considered to be any part of the term of the sentence. In no event shall any period of reincarceration and sentence actually served exceed the sentence imposed pursuant to section ~~18-1-105~~ 18-1.3-401, C.R.S. The state board of

parole may discharge an offender granted parole under this section at any time during the term of parole upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision.

SECTION 164. 17-22.5-403 (2), (3), (5), (7) (a), (7) (b), (8) (a), (8) (b), and (9) (a), Colorado Revised Statutes, are amended to read:

17-22.5-403. Parole eligibility. (2) Notwithstanding subsection (1) of this section, any person convicted and sentenced for second degree murder, first degree assault, first degree kidnapping unless the first degree kidnapping is a class 1 felony, first or second degree sexual assault, first degree arson, first degree burglary, or aggravated robbery, which person has previously been convicted of a crime which would have been a crime of violence as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., shall be eligible for parole after such person has served seventy-five percent of the sentence imposed upon such person, less any time authorized for earned time granted pursuant to section 17-22.5-405.

(3) Notwithstanding subsection (1) or (2) of this section, any person convicted and sentenced for any crime enumerated in subsection (2) of this section, who has twice previously been convicted for a crime which would

have been a crime of violence as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., shall be eligible for parole after such person has served seventy-five percent of the sentence served upon such person, at which time such person shall be referred by the department to the state board of parole which may place such person on parole for a period of time which does not exceed the time remaining on such person's original sentence. For offenses committed on or after July 1, 1993, such person shall be placed on parole for the period of time specified in section ~~18-1-105 (1) (a) (V)~~ 18-1.3-401 (1) (a) (V), C.R.S. Section 17-22.5-402 (2) shall not apply to any such offender.

(5) For any offender who is incarcerated for an offense committed prior to July 1, 1993, upon application for parole, the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine whether or not to grant parole and, if granted, the length of the period of parole. The state board of parole may set the length of the period of parole for any time period up to the date of final discharge as determined in accordance with section 17-22.5-402. If an application for parole is refused by the state board of parole, the state board of parole shall reconsider within one year thereafter whether such inmate should be granted parole. The state board of parole shall continue such reconsideration

each year thereafter until such inmate is granted parole or until such inmate is discharged pursuant to law; except that, if the inmate applying for parole was convicted of a class 1 or class 2 crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., any class 3 sexual offense described in part 4 of article 3 of title 18, C.R.S., a habitual criminal offense as defined in section ~~16-13-101 (2.5)~~ 18-1.3-801 (2.5), C.R.S., or of any offense subject to the requirements of section ~~16-13-203~~ 18-1.3-904, C.R.S., the board need only reconsider granting parole to such inmate once every three years, until the board grants such inmate parole or until such inmate is discharged pursuant to law.

(7) (a) For any offender who is incarcerated for an offense committed on or after July 1, 1993, upon application for parole, the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine whether or not to grant parole. The state board of parole, if it determines that placing an offender on parole is appropriate, shall set the length of the period of parole at the mandatory period of parole established in section ~~18-1-105 (1) (a) (v)~~ 18-1.3-401 (1) (a) (V), C.R.S. If an application for parole is refused by the state board of parole, the state board of parole shall reconsider within one year

thereafter whether such inmate should be granted parole. The state board of parole shall continue such reconsideration each year thereafter until such inmate is granted parole or until such inmate is discharged pursuant to law; except that, if the inmate applying for parole was convicted of a class 1 or class 2 crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., any sex offense, as defined in section ~~16-13-803 (5)~~ 18-1.3-1003 (5), C.R.S., a habitual criminal offense as defined in section ~~16-13-101 (2.5)~~ 18-1.3-801 (2.5), C.R.S., or of any offense subject to the requirements of section ~~16-13-203~~ 18-1.3-904, C.R.S., the board need only reconsider granting parole to such inmate once every three years, until the board grants such inmate parole or until such inmate is discharged pursuant to law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), for any sex offender, as defined in section ~~16-13-803 (4)~~ 18-1.3-1003 (4), C.R.S., who is sentenced pursuant to the provisions of part 8 of article 13 of title 16, C.R.S., for commission of a sex offense committed on or after November 1, 1998, the state board of parole shall determine whether or not to grant parole as provided in section ~~16-13-806~~ 18-1.3-1006, C.R.S. If the state board of parole determines that placing a sex offender on parole is appropriate, it shall set an indeterminate period of parole as provided in section ~~16-13-806~~

18-1.3-1006, C.R.S. If the state board of parole does not release a sex offender on parole, it shall reconsider release on parole at least once every three years until the state board of parole determines the sex offender meets the criteria for parole specified in section ~~16-13-806 (1)~~ 18-1.3-1006 (1), C.R.S.

(8) (a) For persons who are granted parole pursuant to paragraph (a) of subsection (7) of this section, the division of adult parole shall provide parole supervision and assistance in securing employment, housing, and such other services as may affect the successful reintegration of such offender into the community while recognizing the need for public safety. The conditions for parole for any such offender under this paragraph (a) shall be established pursuant to section 17-22.5-404 by the state board of parole prior to such offender's release from incarceration. Upon a determination that the conditions of parole have been violated in a parole revocation proceeding, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the parole and order the return of the offender to a place of confinement designated by the executive director for any period of time up to the period remaining on such person's mandatory period of parole established in section ~~18-1-105 (1) (a) (v)~~

18-1.3-401 (1) (a) (V), C.R.S. Any offender who has been reincarcerated due to a parole revocation pursuant to this paragraph (a) shall be eligible for parole at any time during such reincarceration. The state board of parole may discharge an offender granted parole under this section at any time during the term of parole upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision. In making any such determination, the state board of parole shall make written findings as to why such offender is no longer in need of parole supervision.

(b) For sex offenders, as defined in section ~~16-13-803 (4)~~ 18-1.3-1003 (4), C.R.S., who are convicted of an offense committed on or after November 1, 1998, and who are granted parole pursuant to paragraph (b) of subsection (7) of this section, the division of adult parole shall provide parole supervision and assistance in securing employment, housing, and such other services as may affect the successful reintegration of the sex offender into the community while recognizing the need for public safety. The conditions for parole for any sex offender shall be established pursuant to section ~~16-13-806~~ 18-1.3-1006, C.R.S., and section 17-22.5-404 by the state board of parole prior to the sex offender's release from incarceration. Upon a determination in a parole revocation

proceeding that the sex offender has violated the conditions of parole, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the parole and order the return of the sex offender to a place of confinement designated by the executive director for any period of time up to the remainder of the sex offender's natural life. The revocation hearing shall be held and the state board of parole shall make its determination as provided in section ~~16-13-810~~ 18-1.3-1010, C.R.S. Following reincarceration, the sex offender's eligibility for parole shall be determined pursuant to section ~~16-13-806~~ 18-1.3-1006, C.R.S. The state board of parole may discharge a sex offender from parole as provided in section ~~16-13-806 (3)~~ 18-1.3-1006 (3), C.R.S.

(9) (a) The provisions of this subsection (9) shall apply to any offender who is paroled for a class 2, 3, 4, or 5 felony or a class 6 felony that is the offender's second or subsequent felony offense committed on or after July 1, 1998, and is subsequently reincarcerated pursuant to subsection (8) of this section. Following reincarceration, the offender may apply for parole and the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine

whether to grant parole. If the state board of parole determines that placing the offender on parole is appropriate, it shall set the length of the period of parole at any time remaining on the offender's mandatory period of parole established in section ~~18-1-105 (1) (a) (V)~~ 18-1.3-401 (1) (a) (V), C.R.S.; except that, if the offender's remaining mandatory period of parole is less than twelve months, the state board of parole shall release the offender to twelve months of supervision and the offender shall not be required to serve the remaining mandatory period of parole. If an application for parole is refused by the state board of parole, the state board of parole shall reconsider within one year thereafter whether the offender should be granted parole. The state board of parole shall continue such reconsideration each year thereafter, except as otherwise provided for the crimes specified in subsection (7) of this section, until the board grants the offender parole or releases the offender on supervision or until the offender completes the mandatory period of parole in incarceration. If the offender completes the mandatory period of parole in incarceration, he or she shall be released to a twelve-month period of supervision.

SECTION 165. 17-22.5-405 (5) (a) and (5) (b), Colorado Revised Statutes, are amended to read:

17-22.5-405. Earned time. (5) (a) Notwithstanding subsections (1),

(2), and (3) of this section, no offender who is sentenced and paroled for a felony offense other than a nonviolent felony committed on or after July 1, 1993, shall be eligible to receive any earned time while such offender is on parole or while such offender is reincarcerated after a revocation of the mandatory period of parole pursuant to section ~~18-1-105 (1) (a) (V)~~ 18-1.3-401 (1) (a) (V), C.R.S. An offender who is sentenced and paroled for a nonviolent felony offense committed on or after July 1, 1993, shall be eligible to receive any earned time while such offender is on parole but shall not be eligible for earned time while such offender is reincarcerated after a revocation of the mandatory period of parole pursuant to section ~~18-1-105 (1) (a) (V)~~ 18-1.3-401 (1) (a) (V), C.R.S.

(b) As used in this subsection (5), unless the context otherwise requires, a "nonviolent felony offense" means a felony offense other than a crime of violence as defined in section ~~16-11-309 (2)~~ 18-1.3-406 (2), C.R.S., any of the felony offenses set forth in section 18-3-104, 18-4-203, or 18-4-301, C.R.S., or any felony offense committed against a child as set forth in articles 3, 6, and 7 of title 18, C.R.S.

SECTION 166. 17-26-104.5 (1), Colorado Revised Statutes, is amended to read:

17-26-104.5. Medical visits - charge to persons in custody. (1) A county jail may assess a medical treatment charge against any person who receives while being held in custody medical treatment performed by a physician, dentist, nurse, or licensed hospital or as a result of a sick call or for whom a prescription is filled. The county jail may assess any such medical treatment charge against the person's jail account. In addition, the county jail may assess a reasonable medical treatment charge for each visit by a person in custody to an institutional or noninstitutional physician, dentist, or optometrist; except that a medical treatment charge shall not be assessed for any visit required by the county jail during the intake process, an annual physical examination, any visit to a physician, dentist, or optometrist that results from a referral by a nurse, physician's assistant, or physician, or any emergency treatment or follow-up visit initiated by a medical professional. In no case shall a person's inability to pay be the basis for not providing treatment by any medical personnel. Any medical treatment charge that remains unpaid shall constitute a cost of care that the person may be ordered to pay pursuant to section ~~16-11-501~~ 18-1.3-701, C.R.S., and that may be collected by the county pursuant to the provisions of section 16-11-101.6, C.R.S.

SECTION 167. 17-26-129, Colorado Revised Statutes, is amended to

read:

17-26-129. Applicability of provisions. The provisions of sections 17-26-107 and 17-26-108 shall not be applicable to any prisoner who is employed or detained outside of the jail under the provisions of section ~~17-26-128~~ 18-1.3-106, C.R.S.

SECTION 168. 17-27-104 (9), Colorado Revised Statutes, is amended to read:

17-27-104. Community corrections programs operated by units of local government, state agencies, or nongovernmental agencies.

(9) The administrator of any community corrections program shall document the number of days of residential placement completed by each offender sentenced directly to the community corrections program by the court and the time credits granted to such offender pursuant to section ~~17-27-105 (1) (i)~~ 18-1.3-301 (1) (i), C.R.S. If any such offender is rejected after acceptance by the community corrections board or the community corrections program, the program administrator shall provide a written summary of the residential days completed by such offender to the referring agency. If the offender is thereafter committed to the department of corrections, such summary shall be reported to the department of corrections to facilitate the calculation of any

time credits pursuant to part 3 or part 4 of article 22.5 of this title.

SECTION 169. 17-27-105.5 (1) (a), Colorado Revised Statutes, is amended to read:

17-27-105.5. Community corrections program agents - duties - arrest powers. (1) For purposes of this section:

(a) "Offender" means an inmate assigned to residential and nonresidential community corrections programs as those programs are set forth in articles 27, 27.5, and 27.7 of this title and an offender who is in phase III of the youthful offender system as set forth in section ~~16-11-311~~ 18-1.3-407, C.R.S.; and

SECTION 170. 17-27-106 (1) (b) (I), Colorado Revised Statutes, is amended to read:

17-27-106. Escape from custody from a community corrections program. (1) (b) (I) In addition to the forfeiture of all reductions in sentence authorized by part 2 of article 22.5 of this title, any person convicted of escape from custody from a community correction program in violation of paragraph (a) of this subsection (1) shall also forfeit all reductions in sentence authorized by section ~~17-27-105 (1) (i)~~ 18-1.3-301 (1) (i), C.R.S.

SECTION 171. 17-27.5-101 (2), Colorado Revised Statutes, is

amended to read:

17-27.5-101. Authority to establish intensive supervision programs for parolees and community corrections offenders. (2) The department may place in an intensive supervision program authorized pursuant to subsection (1) of this section any offender who has been referred to a community corrections program pursuant to section ~~17-27-105 (2) (b)~~ 18-1.3-301 (2) (b), C.R.S., and approved for placement in the program pursuant to section 17-27-103 (5) or section 17-27-104 (3) if the placement will not increase the overall vacancy rate as of June 30, 1995, for the community corrections program.

SECTION 172. 17-27.7-103 (1), Colorado Revised Statutes, is amended to read:

17-27.7-103. Regimented inmate training program - eligibility of offenders. (1) The executive director may assign an inmate to a regimented inmate training program pursuant to section 17-40-102 (2). The executive director shall assign to a regimented inmate training program only those inmates who are nonviolent offenders thirty years of age or younger who are not serving a sentence, and have not served a previous sentence, in a correctional facility for a violent offense as described in section ~~16-11-309~~ 18-1.3-406,

C.R.S., or who are not presently serving a sentence for a nonviolent offense which was reduced from a violent offense as a result of a plea agreement. Any offender assigned to the program shall be free of any physical or mental defect which could jeopardize his OR HER ability to complete the program. The department may eliminate any offender from the program upon a determination by the department that a physical or mental defect will prevent full participation in the program by such offender. The department is absolved of liability for participation in the program.

SECTION 173. 17-27.8-103 (1), Colorado Revised Statutes, is amended to read:

17-27.8-103. Home detention program - contracted by department of public safety. (1) The division of criminal justice in the department of public safety is hereby authorized to contract with private entities to develop, administer, and operate home detention programs which may be utilized by any sentencing judge pursuant to section ~~17-27.8-102 (1)~~ 18-1.3-105 (1), C.R.S.

SECTION 174. 17-27.8-104 (1), Colorado Revised Statutes, is amended to read:

17-27.8-104. Home detention program - operated by the judicial department. (1) The judicial department is hereby authorized to develop,

administer, and operate a home detention program which may be utilized by any sentencing judge pursuant to section ~~17-27-8-102~~(1) 18-1.3-105 (1), C.R.S., or to contract with the division of criminal justice of the department of public safety for the utilization of home detention programs contracted for by that division.

SECTION 175. 17-31-103 (1) (f) and (1) (g), Colorado Revised Statutes, are amended to read:

17-31-103. Volunteers - rehabilitation and transition - programs.

(1) Each division shall facilitate, where practicable, the use of volunteers to assist and participate in the development and implementation of programs for the rehabilitation and transition of and growth of support groups and systems for adult and juvenile offenders in the following institutions and programs:

(f) Any work release or education release program pursuant to section ~~16-11-212~~ 18-1.3-207, C.R.S.;

(g) Any intensive supervision probation program, established by the judicial department pursuant to section ~~16-11-213~~ 18-1.3-208, C.R.S.;

SECTION 176. 18-1-103 (1), Colorado Revised Statutes, is amended to read:

18-1-103. Scope and application of code. (1) Except as otherwise

expressly provided by section ~~18-1-108~~ SECTIONS 18-1.3-402 AND 18-1.3-504, or unless the context otherwise requires, the provisions of this code govern the construction of and punishment for any offense defined in any statute of this state, whether in this title or elsewhere, and which is committed on or after July 1, 1972, as well as the construction and application of any defense to a prosecution for such an offense.

SECTION 177. 18-1-104 (2), Colorado Revised Statutes, is amended to read:

18-1-104. "Offense" defined - offenses classified - common-law crimes abolished. (2) Each offense falls into one of eleven classes. There are six classes of felonies as defined in section ~~18-1-105~~ 18-1.3-401, three classes of misdemeanors as defined in section ~~18-1-106~~ 18-1.3-501, and two classes of petty offenses as defined in section ~~18-1-107~~ 18-1.3-503.

SECTION 178. 18-1-404 (1) and (2) (a), Colorado Revised Statutes, are amended to read:

18-1-404. Preliminary hearing or waiver - dispositional hearing.

(1) Every person accused of a class 1, 2, or 3 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 has been 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 ~~16-11-309, C.R.S.~~, 18-1.3-406, or is a sexual offense under part 4 of article 3 of this title, 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 rule of the supreme court of the state of Colorado. A failure to observe and substantially comply with such rule is a waiver of the right to a preliminary hearing.

(2) (a) No person accused of a class 4, 5, or 6 felony by direct information or felony complaint, except those which require mandatory sentencing or which are crimes of violence as defined in section ~~16-11-309, C.R.S.~~, 18-1.3-406, or which are sexual offenses under part 4 of article 3 of this title, 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.

SECTION 179. 18-1-409 (1), Colorado Revised Statutes, is amended to read:

18-1-409. Appellate review of sentence for a felony. (1) When sentence is imposed upon any person following a conviction of any felony, other than a class 1 felony in which a death sentence is automatically reviewed pursuant to section ~~16-11-103 (6), C.R.S., or section 16-11-802 (6), C.R.S.~~, 18-1.3-1201 (6) OR 18-1.3-1302 (6), the person convicted shall have the right to one appellate review of the propriety of the sentence, having regard to the nature of the offense, the character of the offender, and the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based; except that, if the sentence is within a range agreed upon by the parties pursuant to a plea agreement, the defendant shall not have the right of appellate review of the propriety of the sentence. The procedures to be employed in the review shall be as provided by supreme court rule.

SECTION 180. 18-1-606 (3), Colorado Revised Statutes, is amended to read:

18-1-606. Criminal liability of corporations. (3) Every offense committed by a corporation prior to July 1, 1985, which would be a felony if committed by an individual shall subject the corporation to the payment of a fine of not less than one thousand dollars nor more than fifteen thousand dollars. For such offenses committed on or after July 1, 1985, the corporation shall be subject to the payment of a fine within the presumptive ranges authorized by section ~~18-1-105 (1) (a) (HH)~~ 18-1.3-401 (1) (a) (III). Every offense committed by a corporation which would be a misdemeanor or petty offense if committed by an individual shall subject the corporation to the payment of a fine within the minimum and maximum fines authorized by sections ~~18-1-106~~ 18-1.3-501 and ~~18-1-107~~ 18-1.3-503 for the particular offense of which the corporation is convicted.

SECTION 181. 18-1-901 (3) (I) (III), Colorado Revised Statutes, is amended to read:

18-1-901. Definitions. (3) (I) (III) "Peace officer, level II," means an inspector of the state licensing authority under the "Colorado Beer Code" or the liquor enforcement division under section 12-47-904, C.R.S., or part 5 of article 35 of title 24, C.R.S.; an authorized investigator of the state lottery division pursuant to section 24-35-205 (3) or 24-35-206 (7), C.R.S.; any

authorized investigator and the director of the division of gaming and the executive director of the department of revenue pursuant to section 12-47.1-204, C.R.S.; any fire arson investigator appointed by the chief of any fire department and approved by the sheriff or the chief of police of the jurisdiction in which such fire arson investigator performs duties; any officer, guard, or supervisory employee within the department of corrections, except the inspector general and any investigators appointed pursuant to section 17-1-103.8, C.R.S., employed by the department of corrections; a security guard employed by the state of Colorado; a security officer as defined in section 24-7-101, C.R.S.; a district wildlife manager, special district wildlife manager, or parks and recreation officer defined as a peace officer pursuant to section 33-1-102, C.R.S., and acting under the authority of a peace officer pursuant to sections 33-6-101 and 33-15-101, C.R.S.; an investigator for the division of racing events and the investigator's supervisors, including the director of the division of racing events pursuant to section 12-60-203, C.R.S., or a railroad employee defined as a peace officer pursuant to section 40-32-104.5, C.R.S., who shall have access to Colorado bureau of investigation fugitive and stolen property records. "Peace officer, level II," has the authority to enforce all the 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, and ~~section 18-1-106 (1.5) and section~~ SECTIONS 18-1.3-501 (1.5) AND 18-3-107 shall apply to "peace officer, level II".

SECTION 182. 18-2-101 (3.5), Colorado Revised Statutes, is amended to read:

18-2-101. Criminal attempt. (3.5) Criminal attempt to commit any crime for which a court is required to sentence a defendant for a crime of violence in accordance with section ~~16-11-309, C.R.S.~~, 18-1.3-406 is itself a crime of violence for the purposes of that section.

SECTION 183. 18-2-201 (4.5), Colorado Revised Statutes, is amended to read:

18-2-201. Conspiracy. (4.5) Conspiracy to commit any crime for which a court is required to sentence a defendant for a crime of violence in accordance with section ~~16-11-309, C.R.S.~~, 18-1.3-406 is itself a crime of violence for the purposes of that section.

SECTION 184. 18-3-103 (4), Colorado Revised Statutes, is amended to read:

18-3-103. Murder in the second degree. (4) A defendant convicted pursuant to subsection (1) of this section shall be sentenced by the court in accordance with the provisions of section ~~16-11-309, C.R.S.~~, 18-1.3-406.

SECTION 185. 18-3-107 (3), Colorado Revised Statutes, is amended to read:

18-3-107. First degree murder of a peace officer or firefighter - legislative declaration. (3) A person convicted of first degree murder of a peace officer or firefighter shall be punished by life imprisonment without the possibility of parole for the rest of his or her natural life, unless a panel of judges imposes a death sentence pursuant to the procedure set forth in section ~~16-11-103, C.R.S.~~ 18-1.3-1201. Nothing in this subsection (3) shall be construed as limiting the power of the governor to grant reprieves, commutations, and pardons pursuant to section 7 of article IV of the Colorado constitution.

SECTION 186. 18-3-202 (2) (c), Colorado Revised Statutes, is amended to read:

18-3-202. Assault in the first degree. (2) (c) If a defendant is convicted of assault in the first degree pursuant to subsection (1) of this section, the court shall sentence the defendant in accordance with the provisions of section ~~16-11-309, C.R.S.~~ 18-1.3-406.

SECTION 187. 18-3-203 (2) (c), Colorado Revised Statutes, is amended to read:

18-3-203. Assault in the second degree. (2) (c) If a defendant is convicted of assault in the second degree pursuant to paragraph (b), (c), (d), or (g) of subsection (1) of this section or paragraph (b.5) of this subsection (2), except with respect to sexual assault in the first degree, the court shall sentence the defendant in accordance with the provisions of section ~~16-11-309, C.R.S.~~ 18-1.3-406. A defendant convicted of assault in the second degree pursuant to paragraph (b.5) of this subsection (2) with respect to sexual assault in the first degree shall be sentenced in accordance with section ~~18-1-105-(9)-(e)~~ 18-1.3-401 (9) (e).

SECTION 188. 18-3-302 (4) (b), Colorado Revised Statutes, is amended to read:

18-3-302. Second degree kidnapping. (4) (b) A defendant convicted pursuant to this subsection (4) shall be sentenced by the court in accordance with the provisions of section ~~16-11-309, C.R.S.~~ 18-1.3-406.

SECTION 189. 18-3-402 (5) (b) (I), Colorado Revised Statutes, is amended to read:

18-3-402. Sexual assault. (5) (b) (I) If a defendant is convicted of sexual assault pursuant to this subsection (5), the court shall sentence the defendant in accordance with section ~~18-1-105-(9)-(e)~~ 18-1.3-401 (9) (e). A

person convicted solely of sexual assault pursuant to this subsection (5) shall not be sentenced under the crime of violence provisions of section ~~16-11-309-(2), C.R.S.~~ 18-1.3-406 (2). Any sentence for a conviction under this subsection (5) shall be consecutive to any sentence for a conviction for a crime of violence under section ~~16-11-309, C.R.S.~~ 18-1.3-406.

SECTION 190. 18-3-404 (3), Colorado Revised Statutes, is amended to read:

18-3-404. Unlawful sexual contact. (3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to subsection (1.5) or (2) of this section, the court shall sentence the defendant in accordance with the provisions of section ~~16-11-309, C.R.S.~~ 18-1.3-406; except that this subsection (3) shall not apply to paragraph (g) of subsection (1) of this section as it applies to subsection (2) of this section.

SECTION 191. 18-3-405 (3), Colorado Revised Statutes, is amended to read:

18-3-405. Sexual assault on a child. (3) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraphs (a) to (d) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section ~~16-11-309, C.R.S.~~ 18-1.3-406.

SECTION 192. 18-3-405.3 (4), Colorado Revised Statutes, is amended to read:

18-3-405.3. Sexual assault on a child by one in a position of trust.

(4) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section ~~16-11-309~~; C.R.S. 18-1.3-406.

SECTION 193. 18-3-412 (2) and (5), Colorado Revised Statutes, are amended to read:

18-3-412. Habitual sex offenders against children - indictment or information - verdict of the jury. (2) Every person convicted in this state of an unlawful sexual offense who has been previously convicted upon charges prior to the commission of the present act, which were separately brought, either in this state or elsewhere, of an unlawful sexual offense or who has been previously convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an unlawful act that, if committed within this state, would be an unlawful sexual offense shall be adjudged an habitual sex offender against children. If the second or subsequent unlawful sexual offense for which a defendant is convicted constitutes a felony,

the sentence imposed shall not be less than three times the upper limit of the presumptive range for that class felony as set out in section ~~18-1-105~~ 18-1.3-401. If the second or subsequent unlawful sexual offense for which a defendant is convicted constitutes a misdemeanor, the sentence imposed shall not be less than three times the maximum sentence for that class misdemeanor as set out in section ~~18-1-106~~ 18-1.3-501.

(5) The procedures specified in section ~~16-13-103~~, C.R.S., 18-1.3-803 shall govern in a trial to which the provisions of this section are alleged to apply based on a previous conviction or convictions for an unlawful sexual offense as set out in the complaint, indictment, or information.

SECTION 194. 18-3-412.5 (3.6) (a) (III) (B) and (4) (b) (I), Colorado Revised Statutes, are amended to read:

18-3-412.5. Sex offenders - duty to register - penalties.

(3.6) (a) The Colorado bureau of investigation shall post a link on the state of Colorado homepage on the internet to a list containing the name, address, and physical description, including but not limited to sex, height, weight, and any identifying characteristics of, and a digitized photograph or image of, and a description of the offense or offenses committed by, certain offenders. The list shall specifically exclude any reference to any victim or victims of the offense

or offenses. The list shall include the following offenders:

(III) Any offender who is required to register pursuant to subsection (1) or (3.5) of this section and who has been convicted as an adult of two or more of the following offenses:

(B) A crime of violence as defined in section ~~16-11-309, C.R.S.~~ 18-1.3-406; or

(4) (b) (I) Failure to register as a sex offender is a class 6 felony if the person was convicted of felony unlawful sexual behavior or adjudicated for an offense that would constitute felony unlawful sexual behavior if committed by an adult; except that any second or subsequent offense of failure to register as a sex offender by such person is a class 5 felony. Any person convicted of felony failure to register as a sex offender shall be sentenced pursuant to the provisions of section ~~18-1-105~~ 18-1.3-401. If such person is sentenced to probation, the court shall require, as a condition of probation, that the person participate until further order of the court in an intensive supervision probation program established pursuant to section ~~16-13-807, C.R.S.~~ 18-1.3-1007. If such person is sentenced to incarceration and subsequently released on parole, the parole board shall require, as a condition of parole, that the person participate in an intensive supervision parole program established pursuant to

section ~~16-13-805, C.R.S.~~ 18-1.3-1005.

SECTION 195. 18-3-415.5 (5) (b), Colorado Revised Statutes, is amended to read:

18-3-415.5. Acquired immune deficiency syndrome testing for persons charged with certain sexual offenses - mandatory sentencing.

(5) (b) If the court determines that the person tested pursuant to subsection (2) of this section had notice of his or her HIV infection prior to the date the offense was committed, the judge shall sentence said person to a mandatory term of incarceration of at least three times the upper limit of the presumptive range for the level of offense committed, up to the remainder of the person's natural life, as provided in section ~~16-13-804, C.R.S.~~ 18-1.3-1004.

SECTION 196. 18-4-102 (3), Colorado Revised Statutes, is amended to read:

18-4-102. First degree arson. (3) A defendant convicted of committing first degree arson by the use of any explosive shall be sentenced by the court in accordance with the provisions of section ~~16-11-309, C.R.S.~~ 18-1.3-406.

SECTION 197. 18-4-302 (4), Colorado Revised Statutes, is amended to read:

18-4-302. Aggravated robbery. (4) If a defendant is convicted of aggravated robbery pursuant to paragraph (b) of subsection (1) of this section, the court shall sentence the defendant in accordance with the provisions of section ~~16-11-309, C.R.S.~~ 18-1.3-406.

SECTION 198. 18-6-401 (7.5), Colorado Revised Statutes, is amended to read:

18-6-401. Child abuse. (7.5) If a defendant is convicted of the class 2 or class 3 felony of child abuse under subparagraph (I) or (III) of paragraph (a) of subsection (7) of this section, the court shall sentence the defendant in accordance with section ~~18-1-105 (9) (d)~~ 18-1.3-401 (9) (d).

SECTION 199. 18-6-401.2 (2) and (5), Colorado Revised Statutes, are amended to read:

18-6-401.2. Habitual child abusers - indictment or information - verdict of the jury. (2) Every person convicted in this state of an act of child abuse who has been previously convicted upon charges prior to the commission of the present act, which were separately brought, either in this state or elsewhere, of an act of child abuse or who has been previously convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an unlawful act which, if committed within

this state, would be an act of child abuse shall be adjudged an habitual child abuser. If the second or subsequent act of child abuse for which a defendant is convicted constitutes a class 3 felony under section 18-6-401 (7) (a) (II) or a class 4 felony under section 18-6-401 (7) (a) (IV), the sentence imposed shall not be less than the upper limit of the presumptive range for that class felony as set out in section ~~18-1-105~~ 18-1.3-401. If the second or subsequent act of child abuse for which a defendant is convicted constitutes a misdemeanor, the sentence imposed shall not be less than the maximum sentence for that class misdemeanor as set out in section ~~18-1-106~~ 18-1.3-501.

(5) The procedures specified in section ~~16-13-103, C.R.S.~~ 18-1.3-803 shall govern in a trial to which the provisions of this section are alleged to apply based on a previous conviction or convictions for an act of child abuse as set out in the complaint, indictment, or information.

SECTION 200. 18-6-801 (4) and (7), Colorado Revised Statutes, are amended to read:

18-6-801. Domestic violence - sentencing. (4) No person accused or convicted of a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), shall be eligible for home detention in the home of the

victim pursuant to section ~~17-26-128 or 17-27-8-102~~ C.R.S., 18-1.3-105 OR 18-1.3-106 or for deferred prosecution pursuant to section ~~16-7-401, C.R.S.~~ 18-1.3-101. Nothing in this subsection (4) is intended to prohibit a court from ordering a deferred sentence for a person accused or convicted of a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1).

(7) In the event a person is convicted in this state on or after July 1, 2000, of any offense which would otherwise be a misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence as defined in section 18-6-800.3 (1), and that person has been three times previously convicted, upon charges separately brought and tried and arising out of separate and distinct criminal episodes, of a felony or misdemeanor or municipal ordinance violation, the underlying factual basis of which was found by the court on the record to include an act of domestic violence, the prosecuting attorney may petition the court to adjudge the person an habitual domestic violence offender, and such person shall be convicted of a class 5 felony. If the person is adjudged an habitual domestic violence offender, the court shall sentence the person pursuant to the presumptive range set forth in section ~~18-1-105~~ 18-1.3-401 for a class 5 felony. The former

convictions and judgments shall be set forth in apt words in the indictment or information.

SECTION 201. 18-6.5-103 (4), Colorado Revised Statutes, is amended to read:

18-6.5-103. Crimes against at-risk adults and at-risk juveniles - classifications. (4) Any person who commits robbery, as such crime is described in section 18-4-301 (1), and the victim is an at-risk adult or an at-risk juvenile, commits a class 3 felony. If the offender is convicted of robbery of an at-risk adult or an at-risk juvenile, the court shall impose at least the presumptive sentence under section ~~18-1-105~~ 18-1.3-401 (1).

SECTION 202. 18-8-208 (9), Colorado Revised Statutes, is amended to read:

18-8-208. Escapes. (9) The minimum sentences provided by sections ~~18-1-105~~ 18-1.3-401, ~~18-1-106~~ 18-1.3-501, and ~~18-1-107~~ 18-1.3-503, respectively, for violation of the provisions of this section shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part; except that the court may grant a suspended sentence if the court is sentencing a person to the youthful offender system pursuant to section ~~16-11-311, C.R.S.~~ 18-1.3-407.

SECTION 203. 18-8-208.1 (5) and (6), Colorado Revised Statutes, are amended to read:

18-8-208.1. Attempt to escape. (5) The sentences imposed by subsections (1) and (2) of this section and the minimum sentences imposed by subsections (3) and (4) of this section shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part; except that the court may grant a suspended sentence if the court is sentencing a person to the youthful offender system pursuant to section ~~16-11-311, C.R.S.~~ 18-1.3-407.

(6) A person who participates in a work release program, a home detention program, as defined in section ~~17-26-128 (1.1), C.R.S.~~ 18-1.3-106 (1.1), a furlough, an intensive supervision program, or any other similar authorized supervised or unsupervised absence from a detention facility, as defined in section 18-8-203 (3), and who is required to report back to the detention facility at a specified time shall be deemed to be in custody.

SECTION 204. 18-9-202 (2) (b), Colorado Revised Statutes, is amended to read:

18-9-202. Cruelty to animals - neglect of animals - offenses - repeal. (2) (b) In the case of any person incurring a second or subsequent

conviction under the provisions of paragraph (a) of this subsection (2), a sentence of imprisonment within the minimum and maximum terms for a class 1 misdemeanor as provided in section ~~18-1-106~~ 18-1.3-501 shall be mandatory and shall not be subject to suspension, nor shall such person be eligible for probation or parole for any part of such period. A plea of nolo contendere accepted by the court shall be considered a conviction for the purposes of this section.

SECTION 205. 18-9-204 (2), Colorado Revised Statutes, is amended to read:

18-9-204. Animal-fighting - penalty. (2) Any person who violates the provisions of this section commits a class 5 felony and, in addition to the punishment provided in section ~~18-1-105~~ 18-1.3-401, may be punished by a fine of up to one thousand dollars. Any person committing a second or subsequent violation of this section commits a class 4 felony and, in addition to the punishment provided in section ~~18-1-105~~ 18-1.3-401, may be punished by a fine of up to five thousand dollars.

SECTION 206. 18-9-204.5 (3) (e) (II), Colorado Revised Statutes, is amended to read:

18-9-204.5. Unlawful ownership of dangerous dog. (3) (e) (II) Any

owner involved in a second or subsequent violation under this paragraph (e) commits a class 2 misdemeanor. The minimum fine specified in section ~~18-1-106~~ 18-1.3-501 for a class 2 misdemeanor shall be mandatory.

SECTION 207. 18-9-207 (3), Colorado Revised Statutes, is amended to read:

18-9-207. Tampering or drugging of livestock. (3) Any person who violates the provisions of this section commits a class 1 misdemeanor. However, in lieu of the fine provided in section ~~18-1-106~~ 18-1.3-501, the court may impose a fine of not less than one thousand dollars or more than one hundred thousand dollars.

SECTION 208. 18-12-108 (6) (b), Colorado Revised Statutes, is amended to read:

18-12-108. Possession of weapons by previous offenders. (6) (b) Any written stipulation for deferred judgment and sentence entered into by a defendant pursuant to section ~~16-7-403, C.R.S.~~; 18-1.3-102 shall contain a written advisement of the prohibited acts and penalties specified in this section. The written advisement, at a minimum, shall include the written statement specified in paragraph (c) of this subsection (6).

SECTION 209. 18-12-108.7 (2) (a), Colorado Revised Statutes, is

amended to read:

18-12-108.7. Unlawfully providing or permitting a juvenile to possess a handgun - penalty - unlawfully providing a firearm other than a handgun to a juvenile - penalty. (2) (a) Any person who intentionally, knowingly, or recklessly provides a handgun to a juvenile or permits a juvenile to possess a handgun, even though such person is aware of a substantial risk that such juvenile will use a handgun to commit a felony offense, or who, being aware of such substantial risk, fails to make reasonable efforts to prevent the commission of the offense, commits the crime of unlawfully providing or permitting a juvenile to possess a handgun. A person shall be deemed to have violated this paragraph (a) if such person provides a handgun to or permits the possession of a handgun by any juvenile who has been convicted of a crime of violence, as defined in section ~~16-11-309, C.R.S.~~ 18-1.3-406, or any juvenile who has been adjudicated a juvenile delinquent for an offense which would constitute a crime of violence, as defined in section ~~16-11-309, C.R.S.~~ 18-1.3-406, if such juvenile were an adult.

SECTION 210. 18-13-122 (2) (b), Colorado Revised Statutes, is amended to read:

18-13-122. Illegal possession or consumption of ethyl alcohol by an

underage person. (2) (b) Illegal possession or consumption of ethyl alcohol by an underage person shall be punished by a fine of not more than one hundred dollars. The court, upon sentencing a defendant pursuant to this paragraph (b), may, in addition to any fine, order that the defendant perform up to twenty-four hours of useful public service, subject to the conditions and restrictions of section ~~16-11-701~~, C.R.S. 18-1.3-507, and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program at such defendant's own expense.

SECTION 211. The introductory portion to 18-17-105 (1), Colorado Revised Statutes, is amended to read:

18-17-105. Criminal penalties. (1) Any person convicted of engaging in activity in violation of the provisions of section 18-17-104 commits a class 2 felony and, upon conviction thereof, shall, in addition to the penalty provided for in section ~~18-1-105~~ 18-1.3-401:

SECTION 212. 18-18-405 (3) (a) (I), (3) (a) (II), (3) (a) (III), and (3) (b), Colorado Revised Statutes, are amended to read:

18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession. (3) (a) Except as otherwise provided in section 18-18-407

relating to special offenders, any person convicted pursuant to paragraph (a) of subsection (2) of this section for knowingly manufacturing, dispensing, selling, distributing, possessing, or possessing with intent to manufacture, dispense, sell, or distribute, or inducing, attempting to induce, or conspiring with one or more other persons, to manufacture, dispense, sell, distribute, possess, or possess with intent to manufacture, dispense, sell, or distribute an amount that is or has been represented to be:

(I) At least twenty-five grams or one ounce but less than four hundred fifty grams of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in section 18-18-203 or 18-18-204 shall be sentenced to the department of corrections for at least the minimum term of incarceration in the presumptive range provided for such offense in section ~~18-1-105 (1) (a)~~ 18-1.3-401 (1) (a);

(II) At least four hundred fifty grams or one pound but less than one thousand grams of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in section 18-18-203 or 18-18-204 shall be sentenced to the department of corrections for a term of at least the midpoint of the presumptive range but not more than twice the maximum presumptive range provided for such offense in section ~~18-1-105~~

~~(1)(a)~~ 18-1.3-401 (1) (a);

(III) One thousand grams or one kilogram or more of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in section 18-18-203 or 18-18-204 shall be sentenced to the department of corrections for a term greater than the maximum presumptive range but not more than twice the maximum presumptive range provided for such offense in section ~~18-1-105 (1) (a)~~ 18-1.3-401 (1) (a).

(b) In addition to any other penalty imposed under this subsection (3), upon conviction, a person who violates this subsection (3) shall be fined not less than one thousand dollars but not more than five hundred thousand dollars. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section ~~18-1-105 (1) (a) (HH)~~ 18-1.3-401 (1) (a) (III).

SECTION 213. 18-18-406 (3) (a) (I), (7) (a), (7) (b), and (7) (c), Colorado Revised Statutes, are amended to read:

18-18-406. Offenses relating to marihuana and marihuana concentrate. (3) (a) (I) Any person who openly and publicly displays, consumes, or uses not more than one ounce of marihuana commits a class 2

petty offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars or, at a maximum, by a fine of not more than one hundred dollars and, notwithstanding the provisions of section ~~18-1-107~~ 18-1.3-503, by fifteen days in the county jail.

(7) (a) Any provision of this article to the contrary notwithstanding, any person eighteen years of age or older who transfers or dispenses more than one ounce of marihuana for consideration to any person under eighteen years of age but at least fifteen years of age or any amount of marihuana concentrate, with or without consideration, to another person under eighteen years of age commits a class 4 felony and, in addition to the punishment prescribed in section ~~18-1-105~~ 18-1.3-401, shall be punished by a fine of not more than five thousand dollars. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section ~~18-1-105 (1) (a) (HH)~~ 18-1.3-401 (1) (a) (III).

(b) Any person eighteen years of age or older who transfers or dispenses any amount of marihuana, with or without consideration, to any person under the age of fifteen years commits a class 4 felony and, in addition to the punishment provided in section ~~18-1-105~~ 18-1.3-401, shall be punished by a fine of not more than five thousand dollars. For offenses committed on or

after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section ~~18-1-105 (1)(a)(III)~~ 18-1.3-401 (1) (a) (III).

(c) Any person commits a class 3 felony, if the violation is committed subsequent to a prior conviction for a violation to which this subsection (7) applies, and, in addition to the punishment provided in section ~~18-1-105~~ 18-1.3-401, shall be punished by a fine of not more than ten thousand dollars, and the court shall have no jurisdiction to suspend the sentence of imprisonment or to grant probation to such person. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section ~~18-1-105 (1)(a)(III)~~ 18-1.3-401 (1) (a) (III).

SECTION 214. 18-18-407 (2) (a), Colorado Revised Statutes, is amended to read:

18-18-407. Special offender. (2) (a) A defendant shall be a special offender if the defendant is convicted of selling, distributing, or possessing with intent to distribute any controlled substance in violation of section 18-18-405 to any person either within or upon the grounds of any public or private elementary, middle, junior high, or high school, vocational school, or public housing development, or within one thousand feet of the perimeter of any such school or public housing development grounds on any street, alley, parkway,

sidewalk, public park, playground, or other area or premises that is accessible to the public, or within any private dwelling that is accessible to the public for the purpose of the sale, distribution, use, or exchange of controlled substances in violation of this article, or in any school bus as defined in section 42-1-102 (88), C.R.S., while such school bus is engaged in the transportation of persons who are students at any public or private elementary, middle, junior high, or high school. The court is required in addition to imposing the sentence to imprisonment required by subsection (1) of this section, to fine the defendant without suspension at least twice the minimum fine provided for in section ~~18-1-105 (1)(a)(III)~~ 18-1.3-401 (1) (a) (III) if the defendant's offense is a felony or in section ~~18-1-106 (1)~~ 18-1.3-501 (1) if the defendant's offense is a misdemeanor.

SECTION 215. 18-18-415 (2) (a) and (2) (b), Colorado Revised Statutes, are amended to read:

18-18-415. Fraud and deceit. (2) Any person who violates any provision of this section commits:

- (a) A class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401; or
- (b) A class 4 felony, if the violation is committed subsequent to a prior

conviction for a violation to which this subsection (2) applies and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401.

SECTION 216. 18-18-432 (1) (a), (2) (b), and (3), Colorado Revised Statutes, are amended to read:

18-18-432. Drug offender public service and rehabilitation program. (1) As used in this section, unless the context otherwise requires:

(a) "Convicted" and "conviction" mean a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence under section ~~16-7-403~~; C.R.S. 18-1.3-102, or a verdict of guilty by a judge or jury, and includes a plea of no contest accepted by the court.

(2) (b) The provisions of this subsection (2) relating to the performance of useful public service are also applicable to any drug offender who receives a deferred prosecution in accordance with section ~~16-7-401~~; C.R.S., 18-1.3-101 or who receives a deferred sentence in accordance with section ~~16-7-403~~, C.R.S., 18-1.3-102 and the completion of any stipulated amount of useful public service hours to be completed by the drug offender shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the drug offender.

(3) Upon a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence under section ~~16-7-403~~, C.R.S., 18-1.3-102 or a verdict of guilty by the court or a jury, to any offense under this article, or upon entry of a deferred prosecution pursuant to section ~~16-7-401~~, C.R.S., 18-1.3-101 for any offense under this article, the court shall order the drug offender to immediately report to the sheriff's department in the county where the drug offender was charged, at which time the drug offender's fingerprints and photographs shall be taken and returned to the court, which fingerprints and photographs shall become a part of the court's official documents and records pertaining to the charges against the drug offender and the drug offender's identification in association with such charges. On any trial for a violation of any criminal law of this state, a duly authenticated copy of the record of former convictions and judgments of any court of record for any of said crimes against the drug offender named in said convictions and judgments shall be prima facie evidence of such convictions and may be used in evidence against the drug offender. Identification photographs and fingerprints that are part of the record of such former convictions and judgments of any court of record or which are part of the record at the place of the drug offender's incarceration after sentencing for any of such former convictions and judgments shall be prima

facie evidence of the identity of the drug offender and may be used in evidence against such drug offender. Any drug offender who fails to immediately comply with the court's order to report to the sheriff's department, to furnish fingerprints, or to have photographs taken may be held in contempt of court.

SECTION 217. 18-19-102 (1), Colorado Revised Statutes, is amended to read:

18-19-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Convicted" and "conviction" means a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence under section ~~16-7-403, C.R.S.~~ 18-1.3-102, or a verdict of guilty by a judge or jury, and includes a plea of no contest accepted by the court.

SECTION 218. The introductory portion to 18-19-103 (1) and 18-19-103 (2), Colorado Revised Statutes, are amended to read:

18-19-103. Source of revenues - allocation of moneys. (1) For offenses committed on and after July 1, 1996, each drug offender who is convicted, or receives a deferred sentence pursuant to section ~~16-7-403, C.R.S.~~ 18-1.3-102, shall be required to pay a surcharge to the clerk of the court in the county in which the conviction occurs or in which the deferred sentence is

entered. Such surcharge shall be in the following amounts:

(2) Each drug offender convicted of a violation of section 18-18-406 (1), or who receives a deferred sentence pursuant to section ~~16-7-403, C.R.S.~~ 18-1.3-102 for a violation of section 18-18-406 (1), shall be assessed a surcharge of one hundred dollars.

SECTION 219. 18-21-102 (1), Colorado Revised Statutes, is amended to read:

18-21-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Convicted" and "conviction" means a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence under section ~~16-7-403, C.R.S.~~ 18-1.3-102 or a verdict of guilty by a judge or jury, and includes a plea of no contest accepted by the court.

SECTION 220. The introductory portion to 18-21-103 (1), Colorado Revised Statutes, is amended to read:

18-21-103. Source of revenues - allocation of moneys. (1) On and after July 1, 1992, each person who is convicted of a sex offense, or receives for such offense a deferred sentence pursuant to section ~~16-7-403, C.R.S.~~ 18-1.3-102, shall be required to pay a surcharge to the clerk of the court in

which the conviction occurs or in which the deferred sentence is entered. Such surcharge shall be in the following amounts:

SECTION 221. 18-22-102 (1) and (3), Colorado Revised Statutes, are amended to read:

18-22-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Convicted" and "conviction" means a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence under section ~~16-7-403~~; ~~C.R.S.~~; 18-1.3-102 or a verdict of guilty by a judge or jury, and includes a plea of no contest accepted by the court.

(3) "Violent crime" means a felony enumerated as a crime of violence pursuant to section ~~16-11-309~~, ~~C.R.S.~~; 18-1.3-406 or a felony involving a weapon or firearm.

SECTION 222. 19-1-304 (5), Colorado Revised Statutes, is amended to read:

19-1-304. Juvenile delinquency records. (5) Direct filings - arrest and criminal records open. Whenever a petition filed in juvenile court alleges that a juvenile between the ages of twelve to eighteen years has committed an offense that would constitute unlawful sexual behavior, as

defined in section 18-3-412.5 (1) (b), C.R.S., or a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., if committed by an adult or whenever

charges filed in district court allege that a juvenile has committed such an offense, then the arrest and criminal records information, as defined in section

24-72-302 (1), C.R.S., and including a juvenile's physical description, concerning such juvenile shall be made available to the public. The information

is available only from the investigative law enforcement agency, the agency responsible for filing a petition, and the court, and shall not include records of

investigation as such records are described in section 24-72-305 (5), C.R.S. Basic identification information, as defined in section 24-72-302 (2), C.R.S.,

along with the details of the alleged delinquent act or offense, shall be provided immediately to the school district in which the juvenile is enrolled. Such

information shall be used by the board of education for purposes of section 22-33-105 (5), C.R.S., but information made available to the school district and

not otherwise available to the public shall remain confidential.

SECTION 223. 19-1-306 (7) (b), Colorado Revised Statutes, is amended to read:

19-1-306. Expungement of juvenile delinquent records. (7) The following persons are not eligible to petition for the expungement of any

juvenile record:

(b) Any person who has been adjudicated for an offense that would constitute a crime of violence under section ~~16-11-309~~ 18-1.3-406, C.R.S., had the person been an adult at the time the offense was committed;

SECTION 224. 19-1-307 (2) (k), Colorado Revised Statutes, is amended to read:

19-1-307. Dependency and neglect records and information.

(2) **Records and reports - access to certain persons - agencies.** Except as otherwise provided in section 19-1-303, only the following persons or agencies shall be given access to child abuse or neglect records and reports:

(k) The state central registry of child protection, when requested in writing by any operator of a facility or agency that is licensed by the department of human services pursuant to section 26-6-107, C.R.S., to check the state central registry of child protection for the purpose of screening an applicant for employment or a current employee. Any such operator who requests such information concerning an individual who is neither a current employee nor an applicant for employment commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Within ten days of the operator's request, the central registry shall provide the incident

date, the location of investigation, the type of abuse and neglect, and the county which investigated the incident contained in the confirmed reports of child abuse and neglect. Any such operator who releases any information obtained under this paragraph (k) to any other person shall be deemed to have violated the provisions of section 19-3-313 (10) and shall be subject to the penalty therefor.

SECTION 225. 19-2-107 (1), Colorado Revised Statutes, is amended to read:

19-2-107. Right to jury trial. (1) In any action in delinquency in which a juvenile is alleged to be an aggravated juvenile offender, as described in section 19-2-516, or is alleged to have committed an act that would constitute a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., if committed by an adult, the juvenile or the district attorney may demand a trial by a jury of not more than six persons except as provided in section 19-2-601 (3) (a), or the court, on its own motion, may order such a jury to try any case brought under this title, except as provided in subsection (2) of this section.

SECTION 226. 19-2-508 (3) (a) (III) (A), Colorado Revised Statutes, is amended to read:

19-2-508. Detention and shelter - hearing - time limits - findings

- review - confinement with adult offenders - restrictions. (3) (a) (III) With respect to this section, the court may further detain the juvenile if the court is satisfied from the information provided at the hearing that the juvenile is a danger to himself or herself or to the community. Any information having probative value shall be received regardless of its admissibility under the rules of evidence. In determining whether a juvenile requires detention, the court shall consider any record of any prior adjudications of the juvenile. There shall be a rebuttable presumption that a juvenile is a danger to himself or herself or to the community if:

(A) The juvenile is alleged to have committed a felony enumerated as a crime of violence pursuant to section ~~16-11-309~~ 18-1.3-406, C.R.S.; or

SECTION 227. 19-2-516 (3) and (4) (a) (II), Colorado Revised Statutes, are amended to read:

19-2-516. Petitions - special offenders. (3) Violent juvenile offender. A juvenile is a violent juvenile offender if he or she is adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence as defined in section ~~16-11-309~~ 18-1.3-406 (2), C.R.S.

(4) **Aggravated juvenile offender.** (a) A juvenile offender is an aggravated juvenile offender if he or she is:

(II) Adjudicated a juvenile delinquent for a delinquent act that constitutes a felony and either is subsequently adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406 (2), C.R.S., or has his or her probation revoked for a delinquent act that constitutes a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406 (2), C.R.S.; or

SECTION 228. 19-2-517 (1) (a) (II) (A), (1) (a) (III), (3) (a) (II), and (3) (a) (III), Colorado Revised Statutes, are amended to read:

19-2-517. Direct filing - repeal. (1) (a) A juvenile may be charged by the direct filing of an information in the district court or by indictment only when:

(II) The juvenile is fourteen years of age or older and:

(A) Is alleged to have committed a felony enumerated as a crime of violence pursuant to section ~~16-11-309~~ 18-1.3-406, C.R.S.; or

(III) The juvenile has, within the two previous years, been adjudicated a juvenile delinquent for a delinquent act that constitutes a felony, is sixteen years of age or older, and allegedly has committed a crime defined by section ~~18-1-105~~ 18-1.3-401, C.R.S., as a class 3 felony, except felonies defined by section 18-3-402 (1) (d), C.R.S., or section 18-3-403 (1) (e), C.R.S., as it existed

prior to July 1, 2000; or

(3) (a) Whenever criminal charges are filed by information or indictment in the district court pursuant to this section, the district judge shall sentence the juvenile as follows:

(II) To the youthful offender system in the department of corrections in accordance with section ~~16-11-311~~ 18-1.3-407, C.R.S., if the juvenile is convicted of an offense described in subparagraph (II) or (V) of paragraph (a) of subsection (1) of this section; except that a juvenile shall be ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

(A) A class 1 felony;

(B) A class 2 felony as a result of a plea agreement in cases where the juvenile is charged with a class 1 felony;

(C) A class 2 felony and the juvenile has one or more prior convictions for a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., or prior adjudications for an offense that would constitute a crime of violence if committed by an adult;

(D) A class 2 felony and the juvenile is sixteen years of age or older;

(E) Any ~~sexual offense~~ described in section 18-6-301 or 18-6-302, C.R.S., or part 4 of article 3 of title 18, C.R.S.; or

(F) A second or subsequent offense described in said subparagraph (II) or (V), if such person received a sentence to the department of corrections or to the youthful offender system for the prior offense; or

(III) Pursuant to the provisions of this article, if the juvenile is less than sixteen years of age at the time of commission of the crime and is convicted of an offense other than a class 1 or class 2 felony, a crime of violence as defined under section ~~16-11-309~~ 18-1.3-406, C.R.S., or an offense described in subparagraph (V) of paragraph (a) of subsection (1) of this section and the judge makes a finding of special circumstances.

SECTION 229. 19-2-518 (1) (a) (I) (A), (1) (d) (I), (1) (d) (II), (1) (e), (4) (b) (X), and (4) (b) (XII), Colorado Revised Statutes, are amended to read:

19-2-518. Transfers. (1) (a) The juvenile court may enter an order certifying a juvenile to be held for criminal proceedings in the district court if:

(I) A petition filed in juvenile court alleges the juvenile is:

(A) Twelve or thirteen years of age and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a class 1 or class 2 felony or a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S.; or

(d) (I) Except as otherwise provided in subparagraph (II) of this

paragraph (d), in cases in which criminal charges are transferred to the district court pursuant to the provisions of this section, the judge of the district court shall sentence the juvenile pursuant to the provisions of section ~~18-1-105~~ 18-1.3-401, C.R.S., if the juvenile is:

- (A) Convicted of a class 1 felony;
- (B) Convicted of a crime of violence, as defined in section ~~16-1-309~~ 18-1.3-406, C.R.S.; or
- (C) Convicted of any other criminal charge specified in paragraph (a) of this subsection (I) and the juvenile was previously adjudicated a mandatory sentence offender, a violent juvenile offender, or an aggravated juvenile offender.

(II) In cases in which criminal charges are transferred to the district court pursuant to the provisions of this section, the judge of the district court may sentence to the youthful offender system created in section ~~16-11-311~~ 18-1.3-407, C.R.S., any juvenile who would otherwise be sentenced pursuant to the provisions of subparagraph (I) of this paragraph (d); except that a juvenile shall be ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

- (A) A class 1 felony;

(B) A class 2 felony as a result of a plea agreement in cases where the juvenile is charged with a class 1 felony;

(C) A class 2 felony and the juvenile has one or more prior convictions for a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., or prior adjudications for an offense that would constitute a crime of violence if committed by an adult;

(D) A class 2 felony and the juvenile is sixteen years of age or older;

(E) Any sexual offense described in section 18-6-301 or 18-6-302, C.R.S., or part 4 of article 3 of title 18, C.R.S.

(e) Whenever a juvenile under the age of fourteen years is sentenced pursuant to section ~~18-1-105~~ 18-1.3-401, C.R.S., as provided in paragraph (d) of this subsection (1), the department of corrections shall contract with the department of human services to house and provide services to the juvenile in a facility operated by the department of human services until the juvenile reaches the age of fourteen years. On reaching the age of fourteen years, the juvenile shall be transferred to an appropriate facility operated by the department of corrections for the completion of the juvenile's sentence.

(4) (b) In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following

factors:

(X) That the juvenile was previously adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S.;

(XII) That the juvenile is sixteen years of age or older at the time of the offense and the present act constitutes a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S.;

SECTION 230. The introductory portion to 19-2-705 (1) and 19-2-705 (1.5) (a), Colorado Revised Statutes, are amended to read:

19-2-705. Preliminary hearing - dispositional hearing. (1) The district attorney or a juvenile who is accused in a petition of a delinquent act that constitutes a class 1, 2, or 3 felony may demand and receive a preliminary hearing to determine if there is probable cause to believe that the delinquent act alleged in the petition was committed by the juvenile. In addition, the district attorney or a juvenile who is accused in a petition of only those delinquent acts that constitute class 4, 5, or 6 felonies which felonies require mandatory sentencing or which constitute crimes of violence as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., or which constitute sexual offenses under part 4 of article 3 of title 18, C.R.S., may demand and receive a preliminary hearing

to determine if there is probable cause to believe that the delinquent act alleged in the petition was committed by the juvenile. A preliminary hearing may be heard by a judge of the juvenile court or by a magistrate and shall be conducted as follows:

(1.5) (a) The district attorney and the juvenile who is accused in a petition of a delinquent act that constitutes a class 4, 5, or 6 felony, except those that require mandatory sentencing or which constitute crimes of violence as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., or which constitute sexual offenses under part 4 of article 3 of title 18, C.R.S., shall not have the right to demand or receive a preliminary hearing but shall participate in a dispositional hearing for the purposes of case evaluation and potential resolution. Such dispositional hearing may be heard by a judge of the juvenile court or by a magistrate.

SECTION 231. 19-3-304 (4) (a), Colorado Revised Statutes, is amended to read:

19-3-304. Persons required to report child abuse or neglect.
(4) Any person who willfully violates the provisions of subsection (1) of this section or who violates the provisions of subsection (3.5) of this section:

(a) Commits a class 3 misdemeanor and shall be punished as provided

in section ~~18-1-106~~ 18-1.3-501, C.R.S.;

SECTION 232. 19-3-313 (10), Colorado Revised Statutes, is amended to read:

19-3-313. Central registry - repeal. (10) Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this part 3 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 233. 22-33-105 (5) (a), Colorado Revised Statutes, is amended to read:

22-33-105. Suspension, expulsion, and denial of admission.
(5) (a) Whenever a petition filed in juvenile court alleges that a child at least twelve years of age but under eighteen years of age has committed an offense that would constitute unlawful sexual behavior, as defined in section 18-3-412.5 (1) (b), C.R.S., or a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., if committed by an adult or whenever charges filed in district court allege that a child has committed such an offense, basic identification information concerning such child and the details of the alleged delinquent act or offense shall be provided immediately to the school district

in which the child is enrolled in accordance with the provisions of section 19-1-304 (5), C.R.S. Upon receipt of such information, the board of education of the school district or its designee shall determine whether the student has exhibited behavior that is detrimental to the safety, welfare, and morals of the other students or of school personnel in the school and whether educating the student in the school may disrupt the learning environment in the school, provide a negative example for other students, or create a dangerous and unsafe environment for students, teachers, and other school personnel. The determination may be made in executive session to the extent allowed by section 24-6-402 (4) (h), C.R.S. If the board of education or its designee, in accordance with the provisions of this subsection (5), makes a determination that the student should not be educated in the school, it may proceed with suspension or expulsion in accordance with subsection (2) of this section and section 22-33-106. Alternatively, the board of education or its designee may determine that it will wait until the conclusion of the juvenile proceedings to consider the expulsion matter, in which case it shall be the responsibility of the district to provide the student with an appropriate alternate education program, including but not limited to an on-line program authorized pursuant to section 22-33-104.6, or a home-based education program during the period pending the

resolution of the juvenile proceedings. Information made available to the school district and not otherwise available to the public pursuant to the provisions of section 19-1-304, C.R.S., shall remain confidential.

SECTION 234. 22-33-106.5 (2), Colorado Revised Statutes, is amended to read:

22-33-106.5. Information concerning offenses committed by students. (2) Upon adjudication or conviction of a person under the age of eighteen years for an offense that constitutes a crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S., or for an offense involving controlled substances, or, for a person under eighteen years of age but at least twelve years of age, for an offense that would constitute unlawful sexual behavior, as defined in section 18-3-412.5 (1) (b) C.R.S., if committed by an adult the adjudicating or convicting court shall notify the school district in which the person is enrolled of the person's adjudication or conviction.

SECTION 235. 22-33-107.5 (1) (b), Colorado Revised Statutes, is amended to read:

22-33-107.5. Notice of failure to attend. (1) Except as otherwise provided in subsection (2) of this section, a school district shall notify the appropriate court or parole board if a student fails to attend all or any portion

of a school day, where the school district has received notice from the court or parole board:

(b) Pursuant to section ~~16-11-204 (2.3)~~, 17-22.5-404 (4.5), 18-1.3-204 (2.3), 19-2-907 (4), 19-2-925 (5), or 19-2-1002 (1) or (3), C.R.S., that the student is required to attend school as a condition of or in connection with any sentence imposed by the court, including a condition of probation or parole; or

SECTION 236. 22-80-108, Colorado Revised Statutes, is amended to read:

22-80-108. Interest in contracts - penalty. Neither the commissioner of education nor any treasurer, superintendent, or other officer or agent shall be directly or indirectly interested in any contract or other agreement for building, repairing, furnishing, or supplying said school, and no drawbacks or secret discounts whatever shall be given to or received by any such person on account of any articles or materials furnished to or labor done for said school. Any person violating the provisions of this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 237. 23-1-108 (9), Colorado Revised Statutes, is amended to read:

23-1-108. Duties and powers of the commission with regard to

systemwide planning. (9) The state-supported institutions of higher education shall provide the commission with such data as the commission deems necessary upon its formal request. Data for individual students or personnel shall not be divulged or made known in any way by the director of the commission or by any commission employee, except in accordance with judicial order or as otherwise provided by law. Any person who violates this subsection (9) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Such person shall, in addition thereto, be subject to removal or dismissal from public service on grounds of malfeasance in office.

SECTION 238. 23-2-105, Colorado Revised Statutes, is amended to read:

23-2-105. Violation. Any person, partnership, corporation, company, society, association, or agent thereof doing business or maintaining a place of business in the state of Colorado who violates the provisions of section 23-2-103 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 239. 24-4.1-119 (1) (a), (1) (c), (2), and (3), Colorado Revised Statutes, are amended to read:

24-4.1-119. Costs levied on criminal actions and traffic offenses.

(1) (a) Except as provided in paragraphs (c) and (d) of this subsection (1), a cost of one hundred twenty-five dollars for felonies, sixty dollars for misdemeanors, and thirty-five dollars for a class 1 misdemeanor traffic offense and twenty-five dollars for a class 2 misdemeanor traffic offense is hereby levied on each criminal action resulting in a conviction or in a deferred judgment and sentence, as provided for in section ~~16-7-403~~ 18-1.3-102, C.R.S., which criminal action is charged pursuant to state statute. These costs shall be paid to the clerk of the court by the defendant. Each clerk shall transmit the costs so received to the court administrator of the judicial district in which the offense occurred for credit to the crime victim compensation fund established in that judicial district.

(c) A cost of twenty-five dollars is hereby levied on every criminal action resulting in a conviction or in a deferred judgment and sentence, as provided for in section ~~16-7-403~~ 18-1.3-102, C.R.S., of a violation of section 42-4-1301 (1) or (2), C.R.S. This cost shall be paid to the clerk of the court, who shall deposit same in the victim compensation fund established in section 24-4.1-117.

(2) For purposes of determining the order of priority for payments

required of a defendant pursuant to section ~~16-11-204 (2.5)~~ 18-1.3-204 (2.5), C.R.S., the payments to the victim compensation fund required under this part 1 shall be the first obligation of the defendant.

(3) The provisions of sections ~~16-11-501 and 16-11-502~~ 18-1.3-701 AND 18-1.3-702, C.R.S., shall be applicable as to the collection of costs levied pursuant to this part 1.

SECTION 240. 24-4.1-302.5 (1) (g), Colorado Revised Statutes, is amended to read:

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

(g) The right to be present at the sentencing hearing, including any hearing conducted pursuant to section ~~16-11-103~~ 18-1.3-1201, C.R.S., for cases involving class 1 felonies, of any person convicted of a crime against such victim, and to inform the district attorney or the court, in writing, by a victim impact statement, or in person by an oral statement, of the harm that the victim has sustained as a result of the crime;

SECTION 241. 24-4.2-104 (1) (a) (I), (1) (a) (II) (A), and (2), Colorado Revised Statutes, are amended to read:

24-4.2-104. Surcharges levied on criminal actions and traffic offenses. (1) (a) (I) A surcharge equal to thirty-seven percent of the fine imposed for each felony, misdemeanor, or class 1 or class 2 misdemeanor traffic offense, or a surcharge of one hundred twenty-five dollars for felonies, sixty dollars for misdemeanors, thirty-five dollars for class 1 misdemeanor traffic offenses, and twenty-five dollars for class 2 misdemeanor traffic offenses, whichever amount is greater, except as otherwise provided in paragraph (b) of this subsection (1), is hereby levied on each criminal action resulting in a conviction or in a deferred judgment and sentence, as provided in section ~~16-7-403~~ 18-1.3-102, C.R.S., which criminal action is charged pursuant to state statute, or upon each petition alleging that a child is delinquent that results in a finding of guilty pursuant to part 8 of article 2 of title 19, C.R.S., or a deferral of adjudication pursuant to section 19-2-709, C.R.S. These surcharges shall be paid to the clerk of the court by the defendant. Each clerk shall transmit the moneys to the court administrator of the judicial district in which the offense occurred for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district.

(II) (A) In addition to any other surcharge provided for in this section, a surcharge of one thousand dollars shall be levied on each criminal action

resulting in a conviction or in a deferred judgment and sentence, as provided in section ~~16-7-403~~ 18-1.3-102, C.R.S., which criminal action is charged pursuant to the statutes listed in sub-subparagraph (B) of this subparagraph (II). These surcharges shall be paid to the clerk of the court by the defendant. Any moneys collected by the clerk pursuant to this subparagraph (II) shall be transmitted to the court administrator of the judicial district in which the offense occurred for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district.

(2) The provisions of sections ~~16-11-501 and 16-11-502~~ 18-1.3-701 AND 18-1.3-702, C.R.S., shall be applicable to the collection of costs levied pursuant to this section.

SECTION 242. 24-22-110, Colorado Revised Statutes, is amended to read:

24-22-110. Personal profit on state moneys unlawful - penalty. Any person holding the office of state treasurer or any person employed in the department of the treasury who, directly or indirectly, accepts or receives from any person, for himself OR HERSELF or otherwise than on behalf of the state, any fee, reward, or compensation, either in money or other property or thing of value, in consideration of the deposit or investment of state moneys with any

such person or in consideration of any agreement or arrangement touching upon the use of state moneys commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 243. 24-22-111, Colorado Revised Statutes, is amended to read:

24-22-111. Unlawful acts of other persons - penalty. Any person who, directly or indirectly, pays or gives to any person holding the office of state treasurer or to any person employed in the treasury department under the supervision of the state treasurer any fee, reward, or compensation, either in money or other property or thing of value, in consideration of the deposit or investment of state moneys with any person or in consideration of any agreement or arrangement touching upon the use of state moneys commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 244. 24-30-202 (15) and (16), Colorado Revised Statutes, are amended to read:

24-30-202. Procedures - vouchers and warrants - rules - penalties. (15) Any person holding the office of state treasurer or controller or any other state officer or employee who, directly or indirectly, receives from any person,

body of persons, association, or corporation, for himself OR HERSELF or otherwise than in behalf of the state, any reward, compensation, or profit, either in money or other property or thing of value, in consideration of the loan to or deposit with any such person, body of persons, association, or corporation of any public money or other property belonging to the state or in the consideration of the approval or payment of any claim against the state or any other agreement or arrangement touching the use of such money or uses or knowingly permits the use of any such money for any purposes not authorized by law commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(16) Any person who, directly or indirectly, pays or gives to anyone holding the office of state treasurer or controller or to any other state officer or employee or other person any reward or compensation, either in money or other property or things of value, in consideration of the loan to or deposit with any such person, body of persons, association, or corporation of any public money belonging to the state or for which the state is responsible or in consideration of the approval or payment of any claim against the state or of any other agreement or arrangement touching the use of such money commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401,

C.R.S.

SECTION 245. 24-30-1111 (2), Colorado Revised Statutes, is amended to read:

24-30-1111. Postage meters - penalty for private use. (2) Any person who uses a state-installed postage meter for private purposes commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 246. 24-30-1406, Colorado Revised Statutes, is amended to read:

24-30-1406. Criminal liability. (1) Any person, other than a bona fide employee working solely for a person providing professional services, who offers, agrees, or contracts to solicit or secure for any other person state agency contracts for professional services and who, in so doing, receives any fee, commission, gift, or other consideration contingent upon or resulting from the making of the contract commits a class 3 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(2) Any person providing professional services who offers to pay or does pay any fee, commission, gift, or other consideration contingent upon or resulting from the making of a contract for professional services with a state

agency commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(3) Any state agency official or employee who solicits or secures or offers to solicit or secure a contract for professional services with a state agency and who is paid any fee, commission, gift, or other consideration contingent upon the making of such contract commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 247. 24-30-1604 (2) (b), Colorado Revised Statutes, is amended to read:

24-30-1604. Powers of the executive director - penalty for breach of confidentiality. (2) (b) Any person who violates the provisions of paragraph (a) of this subsection (2) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. In addition, such person shall be subject to removal or dismissal from state employment on grounds of malfeasance in office.

SECTION 248. 24-32-2503, Colorado Revised Statutes, is amended to read:

24-32-2503. False claims - penalties. Any person who fraudulently or willfully makes a misstatement of fact in connection with an application for

financial assistance under this part 25 and who thereby receives assistance to which such person is not entitled commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 249. 24-33.5-219 (2), Colorado Revised Statutes, is amended to read:

24-33.5-219. Badges - uniforms - unauthorized use. (2) All officers of the Colorado state patrol, when on duty, shall be dressed in full distinctive uniform and display the official badge of their office except when they are authorized by the chief to work in plain clothes. Neither the chief nor any other person shall issue a badge or like uniform to any person who is not a duly authorized, classified, and regularly paid officer of the Colorado state patrol. Any person who, without authority, wears the badge of a member of the Colorado state patrol or in any manner attempts to duplicate the official uniform or equipment with the intent of representing himself OR HERSELF as a member of the Colorado state patrol commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 250. 24-33.5-226 (2.5) (b), Colorado Revised Statutes, is amended to read:

24-33.5-226. Athletic or special events - closure of highways by

patrol or municipality or county - payment of costs. (2.5) (b) Any person who conducts an athletic or special event on a state highway when a permit for said event has not been issued or any person conducting said event who violates the terms of a permit which has been issued for an athletic or special event commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 251. 24-33.5-415.5, Colorado Revised Statutes, is amended to read:

24-33.5-415.5. Sex offender identification - fund. There is hereby created in the state treasury the sex offender identification fund, referred to in this section as the "fund". Moneys in the fund shall consist of payments for genetic testing received from offenders pursuant to sections 16-11-104, 16-11-204.3 (1) (a), ~~16-11-311~~ 18-1.3-407, 19-2-924.5, and 19-2-925.5, C.R.S. The fund shall also include any additional moneys that may be appropriated thereto by the general assembly to fund the costs incurred in genetic testing of sex offenders. Subject to annual appropriations by the general assembly, the executive director and the state court administrator are authorized to expend moneys in the fund to pay for genetic testing of offenders pursuant to sections 16-11-104, 16-11-204.3 (1) (a), ~~16-11-311~~ 18-1.3-407,

19-2-924.5, and 19-2-925.5, C.R.S. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

SECTION 252. 24-33.5-424 (10) (b), Colorado Revised Statutes, is amended to read:

24-33.5-424. National instant criminal background check system - state point of contact - grounds for denial of firearm transfer - appeal - rule-making - unlawful acts - repeal. (10) (b) Any person who violates the provisions of paragraph (a) of this subsection (10) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 253. 24-33.5-1206.5, Colorado Revised Statutes, is amended to read:

24-33.5-1206.5. Unlawful acts - criminal penalties. (1) Any person who violates any of the provisions of section 24-33.5-1206.1 commits a class 3 misdemeanor and, if a natural person, shall, upon conviction thereof, be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S., and, if a corporation, shall be punished by a fine of not more than five thousand dollars. Any natural person who violates any provision of section 24-33.5-1206.1

subsequent to a prior conviction for such a violation commits a class 2 misdemeanor and shall, upon conviction thereof, be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(2) Any person who knowingly and willfully makes any false statement whatsoever or who conceals a material fact in any application, form, claim, advertisement, contract, warranty, guarantee, or statement, either written or oral, with the intent to influence the actions or decisions of any owner or contractor negotiating or contracting for the installation, alteration, or repair of any fire suppression system, or to any bonding agent, commits a class 1 misdemeanor and shall, upon conviction thereof, be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 254. 24-34-804 (2), Colorado Revised Statutes, is amended to read:

24-34-804. Violations - penalties. (2) Any person who violates any provision of subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 255. 24-35-215 (1), (3), and (4), Colorado Revised Statutes, are amended to read:

24-35-215. Penalties. (1) In addition to any other penalties which

may apply, any person violating any of the provisions of section 24-35-214 commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(3) Any person issuing, suspending, revoking, or renewing contracts pursuant to section 24-35-205 or licenses pursuant to section 24-35-206 for any personal pecuniary gain or any thing of value as defined in section 18-1-901 (3) (r), C.R.S., or any person violating any of the provisions of section 24-35-209, commits a class 3 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(4) Any person violating any of the provisions of this part 2 relating to disclosure by providing any false or misleading information commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 256. 24-48.5-102 (4), Colorado Revised Statutes, is amended to read:

24-48.5-102. Small business assistance center. (4) Any person who provides information developed by the center and charges any fee for such information shall disclose in at least ten-point type, before any obligation is incurred, that such information is available at no cost from the center. Any

person who knowingly fails to make the disclosure required by this subsection (4) commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 257. 24-70-220, Colorado Revised Statutes, is amended to read:

24-70-220. Penalty for bribe. Any person who offers to pay any money or other valuable thing to induce another not to bid for a contract under this part 2 or as a recompense for not having bid for such contract or for abandoning a bid made commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Any person who accepts any money or other valuable thing for not bidding for a contract under this part 2 or for abandoning a bid MADE by him ~~made~~ OR HER or who withholds a bid in consideration of a promise for the payment of money or other valuable thing commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 258. 24-72-305.3 (2) (b) (II), Colorado Revised Statutes, is amended to read:

24-72-305.3. Private access to criminal history records of volunteers and employees of charitable organizations. (2) (b) For the

purpose of implementing the provisions of the "Volunteers for Children Act", contained in Public Law 105-251, as amended, on and after July 1, 2000, each qualified entity in the state may contact an authorized agency for the purpose of determining whether a provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. Such crimes shall include, but need not be limited to:

(II) A crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S.;

SECTION 259. 24-80-902, Colorado Revised Statutes, is amended to read:

24-80-902. Punishment for illegal use. Any person who illegally uses or affixes the seal of this state to any written or printed document whatever, or fraudulently forges, defaces, corrupts, or counterfeits the same, or affixes said forged, defaced, corrupted, or counterfeited seal to any commission, deed, warrant, pardon, certificate, or other written or printed instrument, or has in his OR HER possession or custody any such seal, knowing it to be falsely made and counterfeited, and willfully conceals the same, commits a class 5 felony and

shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 260. 24-80-1305, Colorado Revised Statutes, is amended to read:

24-80-1305. Violation and penalty. (1) Any person who knowingly disturbs an unmarked human burial in violation of this part 13 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(2) Any person who has knowledge that an unmarked human burial is being unlawfully disturbed and fails to notify the local law enforcement agency with jurisdiction in the area where the unmarked human burial is located commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 261. 24-90-117, Colorado Revised Statutes, is amended to read:

24-90-117. Theft or mutilation of library property. Any person who takes, without complying with the appropriate check-out procedures, or who willfully retains any property belonging to any publicly-supported library for thirty days after receiving notice in writing to return the same, given after the expiration of the time that by the rules of such institution such property

may be kept, or who mutilates such property commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 262. 25-1-114 (5) (b) (I) and (5) (b) (II), Colorado Revised Statutes, are amended to read:

25-1-114. Unlawful acts - penalties. (5) (b) (I) Any person, association, or corporation, or the officers thereof, who tampers with a public water system or with drinking water after its withdrawal for or treatment by a public water system commits a class 3 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(II) Any person, association, or corporation, or the officers thereof, who attempts to tamper or threatens to tamper with a public water system or with drinking water after its withdrawal for or treatment by a public water system commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 263. 25-1-122 (6), Colorado Revised Statutes, is amended to read:

25-1-122. Named reporting of certain diseases and conditions - access to medical records - confidentiality of reports and records. (6) Any officer or employee or agent of the state department of public health and

environment or local department of health who violates this section by releasing or making public confidential public health reports or records or by otherwise breaching the confidentiality requirements of subsection (4) or (5) of this section commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106 (1)~~ 18-1.3-501 (1), C.R.S.

SECTION 264. 25-3.5-306, Colorado Revised Statutes, is amended to read:

25-3.5-306. Violation - penalty. Any person who violates any provision of this part 3 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 265. 25-4-713 (1), Colorado Revised Statutes, is amended to read:

25-4-713. Penalty for violations - assessments. (1) Any person who violates any of the provisions of this part 7 is guilty of a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 266. 25-4-1705 (5) (e) (III) (A) and (5) (e) (III) (B), Colorado Revised Statutes, are amended to read:

25-4-1705. Department of public health and environment - powers and duties. (5) The board of health, in consultation with the medical services

board in the state department of health care policy and financing, and such other persons, agencies, or organizations that the board of health deems advisable, shall formulate, adopt, and promulgate rules governing the implementation and operation of the infant immunization program. Such rules shall address the following:

(e) (III) (A) Any officer, employee, agent of the department, or any other person who violates this section by releasing or making public confidential immunization records or epidemiological information in the immunization tracking system or by otherwise breaching the confidentiality requirements of subparagraph (II) of this paragraph (e) or releasing such information without authorization commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106 (1)~~ 18-1.3-501 (1), C.R.S. The unauthorized release of each record shall constitute a separate offense pursuant to this subparagraph (III).

(B) Any natural person who in exchange for money or any other thing of value violates this section by wrongfully releasing or making public confidential immunization records or epidemiological information in the immunization tracking system or by otherwise breaching the confidentiality requirements of subparagraph (II) of this paragraph (e) or releasing such

information without authorization commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106 (1)~~ 18-1.3-501 (1), C.R.S.

SECTION 267. 25-4-1813, Colorado Revised Statutes, is amended to read:

25-4-1813. Criminal penalties. Any person who violates any of the provisions of section 25-4-1808 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106 (1)~~ 18-1.3-501 (1), C.R.S.

SECTION 268. 25-5-707 (4), Colorado Revised Statutes, is amended to read:

25-5-707. Orders - enforcement. (4) Any area operator who operates a passenger tramway which has not been licensed by the board or the license of which has been suspended, or who fails to comply with an order issued under this section or section 25-5-716, commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Fines collected pursuant to this section shall be deposited in the general fund of the state.

SECTION 269. The introductory portion to 25-10-113 (1), Colorado Revised Statutes, is amended to read:

25-10-113. Penalties. (1) Any person who commits any of the following acts or violates any of the provisions of this article commits a class 1 petty offense, as defined in section ~~18-1-107~~ 18-1.3-503, C.R.S.:

SECTION 270. 25-15-211, Colorado Revised Statutes, is amended to read:

25-15-211. Violation - criminal penalty. Any person who violates any provision of this part 2 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. Each day of violation shall be deemed a separate offense under this section. Except in regard to matters of statewide concern as expressed in section 25-15-200.2 (1), nothing in this part 2 shall preclude or preempt a county, a city, a city and county, or an incorporated town from the enforcement of its local resolutions or ordinances or of its land use plans, policies, or regulations.

SECTION 271. 25-15-513, Colorado Revised Statutes, is amended to read:

25-15-513. Violation - criminal penalty. Any person who violates any provision of this part 5 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 272. 26-1-127 (1), (2) (a), and (3), Colorado Revised

Statutes, are amended to read:

26-1-127. Fraudulent acts. (1) Any person who obtains or any person who willfully aids or abets another to obtain public assistance or vendor payments or medical assistance as defined in this title to which the person is not entitled or in an amount greater than that to which the person is justly entitled or payment of any forfeited installment grants or benefits to which the person is not entitled or in a greater amount than that to which the person is entitled, by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device, commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., if the crime is classified as a felony, or section ~~18-1-106~~ 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor. To the extent not otherwise prohibited by state or federal law, any person violating the provisions of this subsection (1) is disqualified from participation in any public assistance program under article 2 of this title for one year for a first offense, two years for a second offense, and permanently for a third or subsequent offense. Such disqualification is mandatory and is in addition to any other penalty imposed by law.

(2) (a) If, at any time during the continuance of public assistance under this title, the recipient thereof acquires any property or receives any increase in income or property, or both, in excess of that declared at the time of determination or redetermination of eligibility or if there is any other change in circumstances affecting the recipient's eligibility, it shall be the duty of the recipient to notify the county department within thirty days in writing or take steps to secure county assistance to prepare such notification in writing of the acquisition of such property, receipt of such income, or change in such circumstances; and any recipient of such public assistance who knowingly fails to do so commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. If such property or income is received infrequently or irregularly and does not exceed a total value of ninety dollars in any calendar quarter, such property or income shall be excluded from the thirty-day written reporting requirement but shall be reported at the time of the next redetermination of eligibility of a recipient.

(3) Any recipient or vendor who falsifies any report required under this title commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 273. 26-2-305 (1) (a) and (2), Colorado Revised Statutes,

are amended to read:

26-2-305. Fraudulent acts - penalties. (1) (a) Any person who obtains, or any person who aids or abets another to obtain, food stamp coupons or authorization to purchase cards or an electronic benefits transfer card or similar credit card-type device through which food stamp benefits may be delivered to which the person is not entitled, or food stamp coupons or authorization to purchase cards or an electronic benefits transfer card or similar credit card-type device through which food stamp benefits may be delivered the value of which is greater than that to which the person is justly entitled by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device with intent to defeat the purposes of the food stamp program commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., if the crime is classified as a felony, or section ~~18-1-106~~ 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor. Any person violating the provisions of this subsection (1) is disqualified from participation in the food stamp program for one year for a first offense, two years for a second offense, and permanently for a third or subsequent offense. Any person convicted of trafficking in food

stamp coupons as described in this subsection (1) having a value of five hundred dollars or more shall be permanently disqualified from the food stamp program.

(2) If, at any time during the continuance of participation in the food stamp program, the recipient of food stamp coupons or authorization to purchase cards knowingly acquires any property or receives any increase in income or property, or both, in excess of that declared at the time of determination or redetermination of eligibility or if there is any other change in circumstances affecting the recipient's eligibility or the amount of food stamp coupons or authorization to purchase cards to which he OR SHE is entitled, it is the duty of the recipient to notify the county department, or the state department in food stamp districts administered by the state department, of any such acquisition, receipt, or change in accordance with state department regulations; and any recipient of food stamp coupons or authorization to purchase cards who knowingly fails to do so, and who by such failure receives benefits in excess of those to which he OR SHE was in fact entitled, commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 274. 26-2-306 (2), Colorado Revised Statutes, is amended to read:

26-2-306. Trafficking in food stamps. (2) Trafficking in food

stamps is:

(a) A class 3 misdemeanor under section ~~18-1-106~~ 18-1.3-501, C.R.S., if the value of the food stamps is less than one hundred dollars;

(b) A class 2 misdemeanor under section ~~18-1-106~~ 18-1.3-501, C.R.S., if the value of the food stamps is one hundred dollars or more but less than five hundred dollars;

(c) A class 4 felony under section ~~18-1-105~~ 18-1.3-401, C.R.S., if the value of the food stamps is five hundred dollars or more but less than fifteen thousand dollars;

(d) A class 3 felony under section ~~18-1-105~~ 18-1.3-401, C.R.S., if the value of the food stamps is fifteen thousand dollars or more.

SECTION 275. 26-4-504 (8) (e), Colorado Revised Statutes, is amended to read:

26-4-504. Personal needs benefits - amount - patient personal needs trust fund required - funeral and burial expenses - penalty for illegal retention and use. (8) (e) Any person who is convicted of violating this subsection (8) may not own or operate a nursing facility that receives medical assistance pursuant to this article. For the purposes of this paragraph (e), "convicted" means the entry of a plea of guilty, including a plea of guilty

entered pursuant to a deferred sentence under section ~~16-7-403~~ 18-1.3-102, C.R.S., the entry of a plea of no contest accepted by the court, or the entry of a verdict of guilty by a judge or jury.

SECTION 276. 26-4-530, Colorado Revised Statutes, is amended to read:

26-4-530. Care of inmates and infants born to female inmates - waiver. The department of health care policy and financing may seek from the appropriate federal authorities or agencies any waivers necessary to allow for eligibility for medical assistance under this article for individuals who are sentenced to the custody of the executive director of the department of corrections and are confined in a state correctional facility and shall seek from the appropriate federal authorities or agencies any waivers necessary to allow for eligibility for medical assistance for infants born to females who are in the custody of the executive director of the department of corrections. An inmate's estate, as defined in section ~~16-11-501(5)(b)~~ 18-1.3-701 (5) (b), C.R.S., shall not be counted as income for purposes of determining eligibility of an inmate for medical assistance under this article; however, any moneys collected pursuant to an order to reimburse the department of corrections for the cost of care pursuant to section ~~16-11-501~~ 18-1.3-701, C.R.S., or section 17-10-103, C.R.S.,

that are attributable to medical care shall be used to reimburse the state for the state's financial participation for medical assistance.

SECTION 277. 26-6-104 (7) (a) (I) (B), Colorado Revised Statutes, is amended to read:

26-6-104. Licenses - out-of-state notices and consent.

(7) (a) (I) No license or certificate to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential child care facility, or a child placement agency shall be issued by the state department, a county department or a child placement agency licensed under the provisions of this part 1 if the person applying for such a license or certificate has been convicted of:

(B) A crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S.;

SECTION 278. 26-8.3-105 (3), Colorado Revised Statutes, is amended to read:

26-8.3-105. Violations - penalty. (3) On and after October 1, 1979, any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 279. 26-15-112, Colorado Revised Statutes, is amended to read:

26-15-112. Penalties. Any person who represents that any medical service is reimbursable or subject to payment under this article when he OR SHE knows that it is not and any person who represents that he OR SHE is eligible for assistance under this article when he OR SHE knows that he OR SHE is not commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 280. 27-1-110 (7) (b) (I), Colorado Revised Statutes, is amended to read:

27-1-110. Employment of personnel - screening of applicants - disqualifications from employment. (7) (b) Except as otherwise provided in paragraph (d) of this subsection (7), a person shall be disqualified from employment either as an employee or as a contracting employee regardless of the length of time that may have passed since the discharge of the sentence imposed for any of the following criminal offenses:

(I) A crime of violence, as defined in section ~~16-11-309~~ 18-1.3-406, C.R.S.;

SECTION 281. 27-10.5-139, Colorado Revised Statutes, is amended

to read:

27-10.5-139. Evaluations to determine whether a defendant is mentally retarded for purposes of class 1 felony trials. Upon request of the court, the executive director, or his or her designee, shall recommend specific professionals who are qualified to perform an evaluation to determine whether a defendant is mentally retarded, as defined in section ~~16-9-401~~ 18-1.3-1101, C.R.S. Any professional who is recommended shall be licensed as a psychologist in the state of Colorado and shall have experience in and shall have demonstrated competence in determination and evaluation of persons with mental retardation. The executive director shall convene a panel of not fewer than three individuals with expertise in mental retardation who shall assess the qualifications of licensed psychologists and make recommendations to the executive director.

SECTION 282. 28-3-701, Colorado Revised Statutes, is amended to read:

28-3-701. Misuse of property and funds by military personnel - penalty. Any officer or enlisted man who refuses to account for and to surrender up any moneys or any uniforms or equipment or other military property for which he OR SHE is responsible or accountable, or who

appropriates the same to his OR HER own use, or who knowingly makes a false payroll or signs a false certificate which is the basis for the payment of moneys under this article, or who aids or abets another in any of these acts commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 283. 28-3.1-312 (1), Colorado Revised Statutes, is amended to read:

28-3.1-312. Refusal to appear or testify. (1) Any person not subject to this code who has been subpoenaed to appear as a witness or to produce books and records before a military court or before a military or civil officer designated to take a deposition to be read in evidence before such a court and who willfully neglects or refuses to appear, refuses to qualify as a witness, refuses to testify, or refuses to produce any evidence commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 284. 29-22-107 (2) (c) (III), Colorado Revised Statutes, is amended to read:

29-22-107. Legislative finding - hazardous substance listing required. (2) (c) (III) The person who, without the express written consent required in subparagraph (II) of this paragraph (c), releases information

required to be provided by this subsection (2) commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 285. 29-22-108, Colorado Revised Statutes, is amended to read:

29-22-108. Criminal penalties. (1) Any person who intentionally causes or substantially contributes to the occurrence of a hazardous substance incident in violation of the provision of this article commits a class 4 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(2) Any person who willfully, recklessly, or with criminal negligence as defined in section 18-1-501, C.R.S., causes or substantially contributes to the occurrence of a hazardous substance incident in violation of the provisions of this article commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 286. 30-1-116(3), Colorado Revised Statutes, is amended to read:

30-1-116. Officers shall collect fees in advance. (3) No officer shall collect fees in advance in any collection action initiated pursuant to section ~~18-1-110~~ 18-1.3-506, C.R.S.

SECTION 287. 30-10-619 (4), Colorado Revised Statutes, is

amended to read:

30-10-619. Conflicts of interest of county coroners. (4) Any person who knowingly violates subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 288. 30-15-102 (1) and (2), Colorado Revised Statutes, are amended to read:

30-15-102. Violations - penalties. (1) Any violation of any provision of a county resolution adopted pursuant to this part 1 not involving bodily injury to any person shall be a class 2 petty offense, and, notwithstanding the provisions of section ~~18-1-107~~ 18-1.3-503, C.R.S., punishable, upon conviction, by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment for each separate offense. If authorized by the county resolution, the penalty assessment procedure provided in section 16-2-201, C.R.S., may be followed by an animal control officer or any arresting law enforcement officer for any such violation. As part of said county resolution authorizing the penalty assessment procedure, the board of county commissioners may adopt a graduated fine schedule for violations of said resolution not involving bodily injury to any

person. Such graduated fine schedule may provide for increased penalty assessments for repeat offenses by the same individual.

(2) Any offense involving bodily injury to any person by a dog or other pet animal shall be a class 2 misdemeanor, and any violator shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S., for each separate offense.

SECTION 289. 31-2-225 (2), Colorado Revised Statutes, is amended to read:

31-2-225. Unlawful acts - penalty. (2) Any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 290. 32-14-109 (2) (b), Colorado Revised Statutes, is amended to read:

32-14-109. Records of board - audits - legislative oversight - powers and duties of state auditor. (2) (b) In conducting an audit pursuant to paragraph (a) of this subsection (2), the state auditor or his OR HER designated representative shall have access at all times, except as otherwise provided in sections 39-1-116, 39-4-103, and 39-5-120, C.R.S., to all of the books, accounts, reports, including confidential reports, vouchers, or other

records or information of the district. Nothing in this paragraph (b) shall be construed as authorizing or permitting the publication of information prohibited by law. Any director, employee, or agent who fails or who interferes in any way with such examination commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 291. 32-15-109 (2) (b), Colorado Revised Statutes, is amended to read:

32-15-109. Records of board - audits - legislative oversight - powers and duties of state auditor. (2) (b) In conducting an audit pursuant to paragraph (a) of this subsection (2), the state auditor or the state auditor's designated representative shall have access at all times, except as otherwise provided in sections 39-1-116, 39-4-103, and 39-5-120, C.R.S., to all of the books, accounts, reports, including confidential reports, vouchers, or other records or information of the district. Nothing in this paragraph (b) shall be construed as authorizing or permitting the publication of information prohibited by law. Any director, employee, or agent who fails or who interferes in any way with such examination commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 292. 33-4-101 (11) (b), Colorado Revised Statutes, is

amended to read:

33-4-101. License agents - reports - board of claims - penalty for failure to account. (11) Any license agent who fails, upon demand of the division, to account for licenses or who fails to pay over to the division or its authorized representative moneys received from the sales of licenses and all donations received as provided in section 33-4-102 (8.5):

(b) When the amount in question is two hundred dollars or more, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., which punishment shall include a fine in an amount set out in section ~~18-1-105(1)(a)(HH)~~ 18-1.3-401 (1) (a) (III), C.R.S.

SECTION 293. 33-4-101.3 (6), Colorado Revised Statutes, is amended to read:

33-4-101.3. Black bears - declaration of intent - spring season hunting prohibited - prohibited means of taking - penalty. (6) Any person who violates any provision of this section is guilty of a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. In addition, persons convicted pursuant to this section shall have their wildlife license privileges suspended for five years and persons convicted of a second or subsequent offense pursuant to this section shall have

their wildlife license privileges suspended permanently.

SECTION 294. 33-6-113 (2) (a), Colorado Revised Statutes, is amended to read:

33-6-113. Illegal sale of wildlife. (2) Any person who violates this section:

(a) With respect to big game, endangered species, or eagles, commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Upon such conviction, the commission may suspend any or all wildlife license privileges of the person for a minimum of one year to life.

SECTION 295. 33-6-117 (1) (a), Colorado Revised Statutes, is amended to read:

33-6-117. Willful destruction of wildlife - legislative intent. (1) Except as is otherwise provided in articles 1 to 6 of this title or by rule or regulation of the commission, it is unlawful for any person to hunt or take, or to solicit another person to hunt or take, any wildlife and detach or remove, with the intent to abandon the carcass or body, only the head, hide, claws, teeth, antlers, horns, internal organs, or feathers or any or all of such parts or to kill and abandon any wildlife. Any person who violates this subsection (1), with respect to:

(a) Big game, eagles, and endangered species, commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and, in addition, shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section ~~18-1-105 (1) (a) (III)~~ 18-1.3-401 (1) (a) (III), C.R.S. Upon such conviction, the commission may permanently suspend all wildlife license privileges of the person convicted.

SECTION 296. 33-12-104 (11) (b), Colorado Revised Statutes, is amended to read:

33-12-104. Pass and registration agents - reports - board of claims - unlawful acts. (11) Any pass or registration agent who fails, upon demand of the division or its authorized representative, to account for passes and registrations or who fails to pay over to the division or its authorized representative moneys received from the sale of passes and registrations:

(b) When the amount in question is two hundred dollars or more, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., which punishment shall include a fine in an amount set out in section ~~18-1-105 (1) (a) (III)~~ 18-1.3-401 (1) (a) (III), C.R.S.

SECTION 297. 33-13-108.1 (12) (f), Colorado Revised Statutes, is amended to read:

33-13-108.1. Operating a motorboat or sailboat while under the influence. (12) (f) For the purposes of this subsection (12), "alcohol and drug driving safety education or treatment" shall have the same meaning as that set forth in section 42-4-1301 (10), C.R.S., and the alcohol and drug driving safety program and the presentence alcohol and drug evaluations authorized therein shall be utilized for the purposes of this subsection (12). The presentence alcohol and drug evaluation shall be conducted on all persons convicted of a violation of subsection (1) of this section; except that this requirement shall not apply to persons who are not residents of Colorado at the time of sentencing. Any defendant sentenced to level I or level II education or treatment programs shall be instructed by the court to meet all financial obligations of such programs. If such financial obligations are not met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence. In addition to any other penalties, fines, fees, or costs prescribed in this section, the court shall assess an amount, not to exceed the amount established in section 42-4-1301 (10), C.R.S., upon any person convicted of a violation of subsection (1) of this section. Such amount shall be

used only to pay for the costs authorized in section 42-4-1301 (10), C.R.S. The court shall consider the alcohol and drug evaluation prior to sentencing. The provisions of this paragraph (f) are also applicable to any defendant who receives a deferred prosecution in accordance with section ~~16-7-401~~ 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section ~~16-7-403~~ 18-1.3-102, C.R.S.

SECTION 298. 33-15-109, Colorado Revised Statutes, is amended to read:

33-15-109. Damage to state property. It is unlawful for any person to damage, alter, or destroy any real or personal property or property under the control of the division. Any person who violates this section commits of a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. In addition, the court may require the defendant to reimburse the division for damages.

SECTION 299. 33-32-107 (1), (2), and (4) (b), Colorado Revised Statutes, are amended to read:

33-32-107. River outfitters - prohibited operations - penalties.

(1) No river outfitter shall operate a river-outfitting business without a valid license as prescribed by section 33-32-104, and without insurance as provided

in section 33-32-105 (1) (b). Any river outfitter which violates the provisions of this subsection (1) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. If the river outfitter is a corporation, violation of the provisions of this subsection (1) shall result in the officers of said corporation jointly and severally committing a class 2 misdemeanor, and said officers shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(2) It is unlawful for any river outfitter, guide, trip leader, or guide instructor to:

(a) Violate the safety equipment provisions of section 33-13-106. Any person who violates the provisions of this paragraph (a) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars; except that any person who fails to have one personal flotation device for each person on board as required by section 33-13-106 (3) (a) commits a class 3 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(b) Operate a vessel in a careless or imprudent manner without due regard for river conditions or other attending circumstances, or in such a manner as to endanger any person, property, or wildlife. Any person who

violates the provisions of this paragraph (b) is guilty of a class 3 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(c) Operate a vessel with wanton or willful disregard for the safety of persons or property. Any person who violates the provisions of this paragraph (c) is guilty of a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(4) (b) Any person who violates this subsection (4) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 300. 34-32-112 (9), Colorado Revised Statutes, is amended to read:

34-32-112. Application for reclamation permit - changes in permits - fees - notice. (9) Information provided the board or the office in an application for a reclamation permit relating to the location, size, or nature of the deposit or information required by subsection (5) of this section and marked confidential by the operator shall be protected as confidential information by the board and the office and not be a matter of public record in the absence of a written release from the operator or until such mining operation has been

terminated. A person who willfully and knowingly violates the provisions of this subsection (9) or section 34-32-113 (3) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 301. 34-32.5-112 (8), Colorado Revised Statutes, is amended to read:

34-32.5-112. Application for reclamation permit - changes in permits - fees - notice. (8) The information provided in an application for a reclamation permit that relates to the location, size, or nature of the deposit or information required by subsection (4) of this section and that is marked confidential by the operator shall be protected by the board and the office as confidential information. Such information shall not be a matter of public record in the absence of a written release from the operator or until the mining operation has been terminated. A person who willfully and knowingly violates this subsection (8) or section 34-32.5-113 (3) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 302. 34-46-105, Colorado Revised Statutes, is amended to read:

34-46-105. Penalty. Any person who violates any provision of this article commits a class 6 felony and shall be punished as provided in section

~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 303. 34-53-104, Colorado Revised Statutes, is amended

to read:

34-53-104. Failure to account - penalty. The owner, manager, or agent of any species of quartz mill, arastra mill, furnace, or cupel, employed in extracting gold from quartz, pyrites, or other minerals, who neglects or refuses to account for, or pay over and deliver, all the proceeds thereof to the owner of such quartz, pyrites, or other mineral, excepting such portion of said proceeds as he OR SHE is entitled to in return for his OR HER services, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 304. 35-9-123(3), Colorado Revised Statutes, is amended

to read:

35-9-123. Embargo. (3) Any person who removes or disposes of such detained or embargoed pesticide or device by sale or otherwise, without prior permission, or removes or alters the tag or marking commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. In addition, such person may be subjected to appropriate administrative proceedings.

SECTION 305. 35-9-125 (2), (3), and (4), Colorado Revised Statutes,

are amended to read:

35-9-125. Criminal penalties. (2) Any person who violates any of the provisions of section 35-9-120 (1) (a), (1) (b), (1) (c), (1) (e), (1) (f), (1) (h), (1) (j), (1) (k), (2) (a), (2) (b), (2) (c), or (2) (g) or 35-9-123 (3) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(3) Any person who violates section 35-9-120 (1) (g), (2) (d), or (2) (f) ~~of this article~~ commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(4) Any person who violates any of the provisions of section 35-9-120 (2) (e) commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 306. 35-10-123 (2) and (3), Colorado Revised Statutes, are amended to read:

35-10-123. Criminal penalties. (2) Any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (e), (1) (g), (2) (a), (2) (b), (2) (c), (2) (d), (3) (a), or (4) (a) commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(3) Any person who violates any of the provisions of section 35-10-117 (1) (f), (2) (f), (2) (g), (4) (b), and (5) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 307. 35-11-115 (1), Colorado Revised Statutes, is amended to read:

35-11-115. Penalties. (1) On and after January 1, 1990, any person utilizing chemigation without a permit commits a class 6 felony and shall be punished as provided in section ~~18-1-105 (1) (a) (IV)~~ 18-1.3-401 (1) (a) (IV), C.R.S., and by a fine not to exceed one thousand dollars.

SECTION 308. 35-14-132 (1), Colorado Revised Statutes, is amended to read:

35-14-132. Criminal penalties. (1) Any person who willfully makes, installs, sells or offers to sell, or uses or allows to be used on his OR HER weights or measures any counterfeit seal, or seal of the commissioner without proper authority, commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 309. 35-25-111, Colorado Revised Statutes, is amended to read:

35-25-111. Penalties. In addition to civil penalties which may be imposed pursuant to section 35-25-103 (5), any person violating any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for the first offense and, for any offense thereafter, is guilty of a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 310. 35-26-109 (1), Colorado Revised Statutes, is amended to read:

35-26-109. Penalties. (1) Any person who intentionally violates any provision of this article or the rules or regulations promulgated pursuant to this article commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 311. The introductory portion to 35-27-113 (6), Colorado Revised Statutes, is amended to read:

35-27-113. Prohibitions. (6) A person commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S., when such person:

SECTION 312. 35-27.5-107, Colorado Revised Statutes, is amended to read:

35-27.5-107. Penalties. Any person who intentionally violates any provision of this article or the rules or regulations promulgated pursuant to section 35-27.5-103 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 313. 35-31-104 (2), Colorado Revised Statutes, is amended to read:

35-31-104. Penalty. (2) As a condition of any sentence imposed pursuant to subsection (1) of this section, the court shall order in addition to any other penalty, that any person convicted of a violation of this article shall make restitution to any victim of such a violation. The amount and any conditions of such a restitution order shall be determined in the same manner as a restitution order imposed pursuant to the provisions of section ~~16-11-204.5~~ 18-1.3-205, C.R.S.

SECTION 314. 35-33-204 (2), Colorado Revised Statutes, is amended to read:

35-33-204. Sale of adulterated or diseased meat. (2) (a) Any person who violates paragraph (a) of subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(b) Any person who violates paragraph (b) of subsection (1) of this section commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 315. 35-33-302 (12), Colorado Revised Statutes, is amended to read:

35-33-302. Advertisements. (12) Any person violating the terms of this section commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 316. 35-33-401 (3), Colorado Revised Statutes, is amended to read:

35-33-401. License required - application. (3) Any person who operates a food plant, locker plant, or meat processing facility without a valid license therefor commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 317. 35-33-406, Colorado Revised Statutes, is amended to read:

35-33-406. Penalty for violation. Any person who violates the provisions of this article or any rule or regulation promulgated under this article commits a class 2 misdemeanor and shall be punished as provided in section

~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 318. 35-41.5-115, Colorado Revised Statutes, is amended

to read:

35-41.5-115. Criminal penalties. Any person who violates any of the provisions of section 35-41.5-109 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~(~~1~~) 18-1.3-501 (1), C.R.S.

SECTION 319. 35-42.5-101 (3), Colorado Revised Statutes, is amended to read:

35-42.5-101. Duties and restrictions relating to shelters and pounds - legislative declaration. (3) Any person who violates the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 320. 35-43-116, Colorado Revised Statutes, is amended

to read:

35-43-116. Wrongful branding - penalty. If any person, association, or corporation willfully and knowingly brands, or causes to be branded, an animal which is the property of another with his OR HER brand or any brand which is not the recorded brand of the owner or willfully and knowingly effaces, defaces, or obliterates any brand or mark upon such an

animal, such person or any officer or director of any such association or corporation commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 321. 35-43-128, Colorado Revised Statutes, is amended to read:

35-43-128. Theft of certain animals - penalty. Any person who commits theft of, or knowingly kills, sells, drives, leads, transports, or rides away, or in any manner deprives the owner of the immediate possession of any cattle, horses, mules, sheep, goats, swine, or asses, either live or slaughtered, or any portion of the slaughtered carcass thereof, or any person who commits theft of, or knowingly kills, sells, drives, leads, transports, or rides away, or in any manner applies to the person's own use any cattle, horses, mules, goats, sheep, asses, or swine, either live or slaughtered, or any portion of the slaughtered carcass thereof, the owner of which is unknown, or any person who knowingly purchases from anyone not having the lawful right to sell and dispose of the same any cattle, horses, mules, sheep, goats, swine, or asses, either live or slaughtered, or any portion of the slaughtered carcass thereof, commits a class 4 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 322. 35-43-130 (2), Colorado Revised Statutes, is amended to read:

35-43-130. Cattle in feedlots. (2) Any lessee, lessor, commercial feedlot owner, or established livestock owner who violates any of the provisions of this section commits a class 1 petty offense and shall be punished as provided in section ~~18-1-107~~ 18-1.3-503, C.R.S. For a second or subsequent violation, such person described in this subsection (2) commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 323. 35-44-108, Colorado Revised Statutes, is amended to read:

35-44-108. Who may take up estrays. It is unlawful for any person other than an authorized inspector of the state board of stock inspection commissioners to take into custody or retain possession of any stray, except as provided in section 35-44-107. Any person who takes into custody and retains possession of any stray without notifying the state board of stock inspection commissioners within the time as provided in this article is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 324. 35-44-111, Colorado Revised Statutes, is amended to read:

35-44-111. Concealing stray - penalty. Any person who conceals any stray found or taken into his OR HER custody, or effaces or changes any mark or brand thereon, or carries the same beyond the limits of the county where found, or knowingly permits the same to be done, or neglects to notify or give information of estrays to the state board of stock inspection commissioners is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 325. 35-53-112 (1), Colorado Revised Statutes, is amended to read:

35-53-112. Shipping prior to inspection - penalty. (1) Any person, firm, association, partnership, or corporation, or any employee thereof, who willfully violates any provision of sections 35-53-101 to 35-53-112, except as otherwise provided in said sections, or who moves or causes to be moved any single head or any herd of cattle, horses, or mules within this state or beyond the boundaries of this state without having had the same inspected and cleared by a Colorado brand inspector is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor

more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. Upon conviction of a second violation of this section, such person shall be fined not less than five hundred dollars nor more than one thousand dollars and imprisoned in the county jail for not less than ninety days nor more than one year. Neither such fine nor imprisonment shall be suspended by the court, nor shall such person be granted probation by the court. Any person who commits a third or subsequent violation of this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Nothing in sections 35-53-101 to 35-53-112 shall be construed as repealing the laws now in force respecting the theft of livestock.

SECTION 326. 35-53-129 (1), Colorado Revised Statutes, is amended to read:

35-53-129. Permanent permit for rodeo and other horses.

(1) Competition horses, other than contractor-owned bucking horses, that are used in rodeo and horse show competitions, registered breed show horses, racehorses, special drill and pleasure horses, and Colorado farm or ranch work or saddle horses shall be eligible to receive a permanent transportation permit that shall be valid for both interstate and intrastate movement if positive proof

of ownership is established to the state board of stock inspection commissioners or a duly authorized Colorado brand inspector. Upon completion of an application form, approved by the state board of stock inspection commissioners, which shall give a thorough physical description showing all brands, no brands, tattoos, or other characteristics carried by the horse, accompanied by a copy of the brand inspection certificate and a transportation permit fee regulated by the board of not more than twenty dollars made payable to the state board of stock inspection commissioners, a permanent hauling transportation permit shall be issued that shall be good for the life of the horse unless a change of ownership takes place, in which case the permit will become void. The new owner may make application for permit by the same full compliance as the prior owner. Any person fraudulently using a transportation permit issued under this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 327. 35-53-130 (1), Colorado Revised Statutes, is amended to read:

35-53-130. Annual transportation permit for cattle or alternative livestock. (1) Bovine livestock, as defined in section 35-41-100.3 (1.4), and alternative livestock, as defined in section 35-41.5-102 (1), shall be eligible to

receive an annual transportation permit that shall be valid for both interstate and intrastate movement if positive proof of ownership is established to the state board of stock inspection commissioners or a duly authorized Colorado brand inspector. Upon completion of an application form, approved by the state board of stock inspection commissioners, which shall give a thorough physical description showing all brands, no brands, tattoos, or other characteristics carried by the animal, accompanied by a copy of the brand inspection certificate and a transportation permit fee regulated by the board of not more than twenty dollars made payable to the state board of stock inspection commissioners, an annual hauling transportation permit shall be issued that shall be good for one year from the date of issuance unless a change of ownership takes place, in which case the permit will become void. The new owner may make application for permit by the same full compliance as the prior owner. Any person fraudulently using a transportation permit issued under this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 328. 35-55-117, Colorado Revised Statutes, is amended to read:

35-55-117. Penalty. Any person, partnership, or corporation who

violates any provision or requirement of this article or any rule or regulation adopted by the state board of stock inspection commissioners is guilty of a class 3 misdemeanor, and any person, partnership, or corporation who commits a second or subsequent violation of any provision or requirement of this article or any rule or regulation adopted by the state board of stock inspection commissioners commits a class 1 misdemeanor and any such offender shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. It is the duty of the district attorney of the district in which such offense is committed, upon complaint of any private person, or of a sanitary or brand inspector, or of the state board of stock inspection commissioners, to prosecute the same if, after investigation, he OR SHE believes a violation has occurred. The state board of stock inspection commissioners, upon its own initiative, or upon complaint of any person, through the attorney general may bring an action in the district court of the district where such offense is committed in the name of the people of this state for an injunction against any person violating any of the provisions of this article or of any rule or regulation adopted by the state board of stock inspection commissioners.

SECTION 329. 35-59-113, Colorado Revised Statutes, is amended to read:

35-59-113. Wrongful use of inedible meat - penalty. It is unlawful for any person to knowingly add to, mix with, or otherwise substitute any inedible meat for food intended to be used for human consumption or to knowingly give, serve, sell, or offer for sale or to knowingly cause to be given, served, sold, or offered for sale any inedible meat intended to be used for human consumption. Any person who violates this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 330. 35-80-114, Colorado Revised Statutes, is amended to read:

35-80-114. Criminal penalties. Any person who violates the provisions of section 35-80-108 (1) (a), (1) (b), (1) (c), (1) (f), or (1) (m) commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 331. 36-20-123 (2) (b), Colorado Revised Statutes, is amended to read:

36-20-123. Legal recourse - liability - damages. (2) (b) The director may order any person who is found to be conducting a weather modification operation without a permit to cease and desist from said

operation. Any person who fails to obey said order commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 332. 36-20-126 (1) (a), Colorado Revised Statutes, is amended to read:

36-20-126. Penalties. (1) (a) Any person responsible for conducting a weather modification operation without first having procured the required permit and any person who contracts with or pays another person known to be without a permit to conduct a weather modification operation commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 333. 37-7-104, Colorado Revised Statutes, is amended to read:

37-7-104. Penalty for fraud. The making of profit, directly or indirectly, by any officer of any district organized under articles 1 to 8 of this title or by any other public officer within the state out of any contracts entered into by the district or the use of any money belonging to the district by loaning it or otherwise using it or by depositing the same in any manner contrary to law or by removal of any money by any such officer or with his OR HER consent and placing it elsewhere than is prescribed either by law or by the official acts of the

board of directors for the purpose of profit is prohibited. Any person who violates this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and the officer offending shall be liable personally and upon his OR HER official bond for all losses to such district and for all profits realized by such unlawful use of moneys.

SECTION 334. 37-24-107, Colorado Revised Statutes, is amended to read:

37-24-107. No officer interested in contract. No director or officer of a district shall be interested directly or indirectly in any contract awarded or to be awarded by the board or in the profits thereof, nor shall he OR SHE receive any gratuity or bribe. For any violation of this provision, such officer or director commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and such conviction shall work a forfeiture of his OR HER office.

SECTION 335. 37-31-123, Colorado Revised Statutes, is amended to read:

37-31-123. No director interested in contract. No director or officer of the district shall be interested directly or indirectly, in any manner, in any contract awarded or to be awarded by the board or in the profits thereof,

nor shall he OR SHE receive any gratuity or bribe; and for any violation of this provision such officer commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., and such conviction shall work a forfeiture of his OR HER office.

SECTION 336. 37-41-108, Colorado Revised Statutes, is amended to read:

37-41-108. Directors - secretary - salaries. Each member of the board of directors may receive compensation at the rate of twenty-five dollars per day while attending meetings and shall be reimbursed for his OR HER actual and necessary expenses while engaged in official business. No director or officer named in this article shall be interested, directly or indirectly, in any manner, in any contract awarded or to be awarded by the board or in the profits to be derived therefrom, nor shall he OR SHE receive any bonds, gratuity, or bribe. For any violation of this section, such officer commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. He OR SHE shall also forfeit his OR HER office upon conviction.

SECTION 337. 37-42-110(6), Colorado Revised Statutes, is amended to read:

37-42-110. Directors to organize - powers. (6) Any officer who

violates this section commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. He OR SHE shall also forfeit his OR HER office upon conviction.

SECTION 338. 37-44-142, Colorado Revised Statutes, is amended to read:

37-44-142. Officers' compensation. The directors shall receive a salary at the rate of four dollars per day while attending meetings and for each day necessarily spent in attending to the business of the district and their actual and necessary expenses while engaged in official business. The salary of the secretary shall not exceed fifteen hundred dollars per annum. No director or any officer named in this article shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board or in the profits to be derived therefrom, nor shall he OR SHE receive any bonds, gratuity, or bribe; and for the violation of this provision such officer commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. He OR SHE shall also forfeit his OR HER office upon conviction.

SECTION 339. 38-29-118 (1), Colorado Revised Statutes, is amended to read:

~~38-29-118.~~ Surrender and cancellation of certificate - purge of

certificate - penalty for violation. (1) The owner of any manufactured home for which a Colorado certificate of title has been issued, upon the destruction or dismantling of said manufactured home or upon its being sold or otherwise disposed of as salvage, shall surrender his OR HER certificate of title thereto to the director with the request that such certificate of title be cancelled; and, upon said owner's procuring the consent thereto of the holders of any mortgages noted on the certificate of title and shown to be unreleased in the office of the director, such certificate may thereupon be cancelled. Any person who violates any of the provisions of this subsection (1) commits a class 1 petty offense and, upon conviction thereof, shall be punished as provided in section ~~18-1-107~~ 18-1.3-503, C.R.S.

SECTION 340. 38-29-121, Colorado Revised Statutes, is amended to read:

38-29-121. Altering or using altered certificate. Any person who alters or forges or causes to be altered or forged any certificate of title issued by the director pursuant to the provisions of this article, or any written transfer thereof, or any other notation placed thereon by the director or under his OR HER authority respecting the mortgaging of the manufactured home therein described or who uses or attempts to use any such certificate for the transfer thereof,

knowing the same to have been altered or forged, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 341. 38-36-192, Colorado Revised Statutes, is amended to read:

38-36-192. Theft of certificate. Certificates of title and duplicate certificates entered or issued under this article shall be subjects of theft, and anyone stealing any such certificate commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 342. 38-36-194, Colorado Revised Statutes, is amended to read:

38-36-194. Fraudulently procuring certificate a felony. Whoever fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the register of titles or other book kept in the office of the registrar of titles, or of any erasure or alteration in any entry in any such book or in any instrument authorized by this article, or whoever knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401,

C.R.S.

SECTION 343. 38-36-195, Colorado Revised Statutes, is amended to read:

38-36-195. Forging seal or signature a felony. Whoever forges, or procures to be forged, or assists in forging the seal of the registrar, or the name, signature, or handwriting of any officer of the registry office, in cases where such officer is expressly or impliedly authorized to affix his OR HER signature; or forges, or procures to be forged, or assists in forging the name, signature, or handwriting of any person whomsoever to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 344. 38-39-105 (2), Colorado Revised Statutes, is amended to read:

38-39-105. Removal of improvements from encumbered property.
(2) Any person who violates the provisions of subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section

~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 345. 39-5-203 (3) (b), Colorado Revised Statutes, is amended to read:

39-5-203. Mobile homes - determination of value. (3) (b) A person who knowingly fails to provide an itemized list of household furnishings as required by this subsection (3) commits a class 2 petty offense and, upon conviction thereof, shall be fined two hundred dollars; except that, upon conviction of a second or subsequent such offense, such person commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 346. 39-11-151 (3), Colorado Revised Statutes, is amended to read:

39-11-151. County officials and employees may not acquire a tax lien or property by sale of a tax lien. (3) Any county official, county employee, or member of the immediate family of any such person, or the agent of any such county official or employee, who knowingly purchases any tax lien or receives a conveyance of property in violation of the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 347. 39-21-112 (7) (b), Colorado Revised Statutes, is amended to read:

39-21-112. Duties and powers of executive director. (7) (b) Any officer or employee who violates any of the provisions of paragraph (a) of this subsection (7) is guilty of a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. The court may in its discretion award out of any fine imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, in any such case who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured.

SECTION 348. 39-21-118 (1), (2), (4), and (5), Colorado Revised Statutes, are amended to read:

39-21-118. Criminal penalties. (1) Any person who willfully attempts in any manner to evade or defeat any tax administered by the department or the payment thereof, in addition to other penalties provided by law, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment,

together with the costs of prosecution.

(2) Any person required under any title administered by the department to collect, account for, or pay over any tax, who willfully fails to collect or truthfully account for or pay over such tax, in addition to other penalties provided by law, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

(4) Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he OR SHE does not believe to be true and correct as to every material matter, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

(5) Any person who willfully aids or assists in, or procures, counsels,

or advises the preparation or presentation under, or in connection with any matter arising under any title administered by the department, or a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

SECTION 349. 39-22-114 (5) (c), Colorado Revised Statutes, is amended to read:

39-22-114. Residential energy credit. (5) (c) Any person who violates the provisions of this subsection (5) commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 350. 39-22-120 (10), Colorado Revised Statutes, is amended to read:

39-22-120. Legislative declaration - state sales tax refund - offset against state income tax. (10) The department of revenue shall identify any

qualified individual who has been convicted of a felony and who, at the time of filing for a refund pursuant to this section, is incarcerated in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to a correctional facility pursuant to section 16-11-308, C.R.S. The department of revenue shall transfer the amount of any refund owed to said qualified individual to the department of corrections. The department of corrections shall transmit the amount of said refund to the clerk of the district court which issued an order for payment of restitution entered pursuant to section 16-11-101.5, C.R.S., or an order for costs pursuant to section ~~16-11-501~~ 18-1.3-701, C.R.S. Such refund shall be credited in the priority specified in section 16-11-101.6 (1), C.R.S.

SECTION 351. 39-22-2003 (9), Colorado Revised Statutes, is amended to read:

39-22-2003. State sales tax refund - offset against state income tax - qualified individuals. (9) The department of revenue shall identify any qualified individual who has been convicted of a felony and who, at the time of filing for a refund pursuant to this section, is incarcerated in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to a correctional facility pursuant

to section 16-11-308, C.R.S. The department of revenue shall transfer the amount of any refund owed to said qualified individual to the department of corrections. The department of corrections shall transmit the amount of said refund to the clerk of the district court that issued an order for payment of restitution entered pursuant to section 16-11-101.5, C.R.S., or an order for costs pursuant to section ~~16-11-501~~ 18-1.3-701, C.R.S. Such refund shall be credited in the priority specified in section 16-11-101.6 (1), C.R.S.

SECTION 352. 39-23-150, Colorado Revised Statutes, is amended to read:

39-23-150. Officers or employees taking fees or reward. Any executive director or any inheritance or gift tax analyst or other employee of the department of revenue who takes or demands for his OR HER own use any fees or reward, other than such as are authorized by law, from any person, association, or corporation, is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 353. 39-26-103 (4), Colorado Revised Statutes, is amended to read:

39-26-103. Licenses - fee - revocation. (4) The executive director, after reasonable notice and a full hearing, may revoke the license of any person

found by him OR HER to have violated any provision of this article. Any person engaged in the business of selling at retail in this state without securing a license therefor commits a class 3 misdemeanor and shall be punished according to section ~~18-1-106~~ 18-1.3-501, C.R.S. Any person who engages in the business of selling at retail in this state without a license may also be subject to a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars. Such penalty shall be assessed by the executive director or his or her authorized agent and shall be waived or reduced if such failure to obtain such license is due to reasonable cause and not willful neglect or intent to defraud.

SECTION 354. 39-27-104 (3), Colorado Revised Statutes, is amended to read:

39-27-104. License and deposit - exception. (3) In addition to all other applicable penalties and fines set forth in this part 1, each day on which any person engages in the business of a distributor, supplier, importer, exporter, carrier, or blender within this state without a license as required by this part 1 shall constitute a separate offense, and for each such offense, such person commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 355. 40-7-106, Colorado Revised Statutes, is amended to read:

40-7-106. Violations by agents - penalty. Every officer, agent, or employee of any public utility who violates or fails to comply with or who procures, aids, or abets any violation by any public utility of any provision of the constitution of this state or of articles 1 to 7 of this title, or who fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, or who procures, aids, or abets any public utility in its failure to obey, observe, and comply with any such order, decision, rule, direction, demand, or requirement or any part or provision thereof in a case in which a penalty has not been provided for such officer, agent, or employee commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 356. 40-7-108, Colorado Revised Statutes, is amended to read:

40-7-108. Violations by individuals - penalty. Every person who, either individually or acting as an officer, agent, or employee of a corporation other than a public utility, violates any provision of articles 1 to 7 of this title or

who fails to observe, obey, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or portion thereof, or who procures, aids, or abets any such public utility in its violation of articles 1 to 7 of this title or in its failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or requirement or any part or portion thereof in a case in which a penalty has not been provided for such person commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 357. 40-10-113, Colorado Revised Statutes, is amended to read:

40-10-113. Penalty for violations of article. Every motor vehicle carrier, and every officer, agent, or employee of any motor vehicle carrier, and every other person who violates or fails to comply with or who procures, aids, or abets in the violating of any provisions of this article, or who fails to obey, observe, or comply with any order, decision, rule, or regulation of the commission, or who procures, aids, or abets any person in such failure to obey or observe such order, decision, rule, or regulation commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 358. 40-11-111, Colorado Revised Statutes, is amended to read:

40-11-111. Violation - penalty. Every contract carrier by motor vehicle and every officer, agent, or employee of any contract carrier by motor vehicle and every other person who violates or fails to comply with or who procures, aids, or abets in the violating of any provision of this article, or who fails to obey, observe, or comply with any order, decision, rule, or regulation of the commission, or who procures, aids, or abets any person in such failure to obey or observe such order, decision, rule, or regulation commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. The investigative personnel of the commission have all the powers conferred by law upon peace officers to make arrests and to serve warrants and other process in any county or city and county of this state.

SECTION 359. 40-13-110(2), Colorado Revised Statutes, is amended to read:

40-13-110. Enforcement - violations - penalties - powers. (2) Any towing carrier who operates a towing vehicle upon a public way in this state without holding a valid permit therefor commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 360. 40-27-101, Colorado Revised Statutes, is amended to read:

40-27-101. Owner driving stock on track. If the owner of any stock drives any stock on the line of the track of any railway company or corporation, with intent to injure such company or corporation, and if said stock is killed or injured, the owner shall not receive any damages from the railroad company or corporation therefor, and shall be liable to such company or corporation for all damage such company or corporation may suffer in consequence of said act, and commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.; but nothing in this section shall be construed to prevent any person from allowing his OR HER stock to pasture on the lands adjacent to the line of such railroads or to drive his OR HER stock over or across any such track at suitable times and places.

SECTION 361. 41-2-102 (7) (b) and (7) (g), Colorado Revised Statutes, are amended to read:

41-2-102. Operating an aircraft under the influence - operating an aircraft with excessive alcoholic content - tests - penalties - useful public service program. (7) (b) The provisions of this subsection (7) relating to the performance of useful public service are also applicable to any defendant who

receives a deferred prosecution in accordance with section ~~16-7-401~~ 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section ~~16-7-403~~ 18-1.3-102, C.R.S., and the completion of any stipulated amount of useful public service hours to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

(g) In addition to any other penalty provided by law, the court may sentence a defendant who is convicted pursuant to this section to a period of probation for purposes of treatment not to exceed two years. As a condition of probation, the defendant shall be required to make restitution in accordance with the provisions of section ~~16-11-204-5~~ 18-1.3-205, C.R.S.

SECTION 362. 42-2-126.3 (3), Colorado Revised Statutes, is amended to read:

42-2-126.3. Tampering with an ignition interlock device. (3) Any person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 363. 42-2-136 (6) (b), Colorado Revised Statutes, is amended to read:

42-2-136. Unlawful possession or use of license. (6) (b) Any person

who violates any provision of subsection (5.5) of this section commits a class 3 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 364. 42-2-206 (1) (a) (II) and (1) (b) (II), Colorado Revised Statutes, are amended to read:

42-2-206. Driving after revocation prohibited.

(1) (a) (II) Notwithstanding the provisions of section ~~18-1-106~~ 18-1.3-501, C.R.S., any person convicted of violating subparagraph (I) of this paragraph (a) shall be sentenced to a mandatory minimum term of imprisonment in the county jail for thirty days, or a mandatory minimum fine of three thousand dollars, or both. The minimum jail sentence and fine required by this subparagraph (II) shall be in addition to any other penalty provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. The court may suspend all or a portion of the mandatory jail sentence or fine if the defendant successfully completes no less than forty hours, and no greater than three hundred hours, of useful public service. In no event shall the court sentence the convicted person to probation. Upon the defendant's successful completion of the useful public service, the court shall vacate the suspended sentence. In the event the defendant fails or refuses to complete the useful public service ordered, the court shall impose the

jail sentence, fine, or both, as required under this subparagraph (II).

(b) (II) Aggravated driving with a revoked license is a class 6 felony, punishable as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 365. 42-2-310, Colorado Revised Statutes, is amended to read:

42-2-310. Violation. Any person who violates any of the provisions of this part 3 commits a class 3 misdemeanor, as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 366. The introductory portion to 42-4-412 (1) (a), Colorado Revised Statutes, is amended to read:

42-4-412. Air pollution violations. (1) (a) A person commits a class 2 petty offense, as specified in section ~~18-1-107~~ 18-1.3-503, C.R.S., if the person causes or permits the emission into the atmosphere from:

SECTION 367. 42-4-510 (12) (b), Colorado Revised Statutes, is amended to read:

42-4-510. Permits for excess size and weight and for manufactured homes. (12) (b) Any person who violates the provisions of subparagraph (IV) of paragraph (b) of subsection (2) of this section commits a class 2 petty offense and, upon conviction thereof, shall be fined two hundred dollars; except that,

upon conviction of a second or subsequent such offense, such person commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 368. 42-4-1301 (9) (c), (9) (h), and (10) (g), Colorado Revised Statutes, are amended to read:

42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - tests - penalties - useful public service program - alcohol and drug driving safety program. (9) (c) The provisions of this subsection (9) relating to the performance of useful public service are also applicable to any defendant who receives a deferred prosecution in accordance with section ~~16-7-401~~ 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section ~~16-7-403~~ 18-1.3-102, C.R.S., and the completion of any stipulated amount of useful public service hours to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

(h) In addition to any other penalty provided by law, the court may sentence a defendant who is convicted pursuant to this section to a period of probation for purposes of treatment not to exceed two years. As a condition of

probation, the defendant shall be required to make restitution in accordance with the provisions of section ~~16-11-204.5~~ 18-1.3-205, C.R.S. In addition to any other penalty provided by law, the court may sentence a defendant to attend and pay for one appearance at a victim impact panel approved by the court, for which the fee assessed to the defendant shall not exceed twenty-five dollars.

(10) (g) The provisions of this subsection (10) are also applicable to any defendant who receives a deferred prosecution in accordance with section ~~16-7-401~~ 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section ~~16-7-403~~ 18-1.3-102, C.R.S., and the completion of any stipulated alcohol evaluation, level I or level II education program, or level I or level II treatment program to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

SECTION 369. 42-4-1409 (4) (c), Colorado Revised Statutes, is amended to read:

42-4-1409. Compulsory insurance - penalty - repeal. (4) (c) In addition to the penalties prescribed in paragraphs (a) and (b) of this subsection (4), any person convicted pursuant to this section may, at the discretion of the court, be sentenced to perform not less than forty hours of community service,

subject to the provisions of section ~~16-11-701~~ 18-1.3-507, C.R.S.

SECTION 370. 42-4-1701 (3)(a)(II)(B), Colorado Revised Statutes, is amended to read:

42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule. (3) (a) (II) (B) Any person convicted of a class 1 or class 2 misdemeanor traffic offense shall be required to pay restitution as required by article 18.5 of title 16, C.R.S., and may be sentenced to perform a certain number of hours of community or useful public service in addition to any other sentence provided by sub-subparagraph (A) of this subparagraph (II), subject to the conditions and restrictions of section ~~16-11-701~~ 18-1.3-507, C.R.S.

SECTION 371. 42-4-1812, Colorado Revised Statutes, is amended to read:

42-4-1812. Penalty. Unless otherwise specified in this part 18, any person who knowingly violates any of the provisions of this part 18 commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 372. 42-5-102, Colorado Revised Statutes, is amended to read:

42-5-102. Stolen motor vehicle parts - buying, selling - removed or altered motor vehicle parts - possession. (1) Any person who buys, sells, exchanges, trades, receives, conceals, or alters the appearance of a motor vehicle or any motor vehicle part, equipment, attachment, accessory, or appurtenance which is the property of another or any person who aids or abets in the commission or attempted commission of any such act, knowing or having reasonable cause to know and believe that such motor vehicle or motor vehicle part, equipment, attachment, accessory, or appurtenance is stolen property, commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

(2) Except as necessary to effect legitimate repairs, any person who intentionally removes, changes, alters, or obliterates the vehicle identification number, manufacturer's number, or engine number of a motor vehicle or motor vehicle part or who possesses a motor vehicle or a motor vehicle part and knows or has reasonable cause to know that it contains such a removed, changed, altered, or obliterated vehicle identification number, manufacturer's number, or engine number commits a class 5 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S. Any person who commits any of said acts for the purpose of legitimately repairing the motor vehicle shall provide

evidence of such legitimate repair to the investigating law enforcement agency. Such evidence shall include, but need not be limited to, preresearch and postrepair photographs of the affected motor vehicle part and vehicle identification number and a signed affidavit describing the required repairs.

SECTION 373. 42-5-106, Colorado Revised Statutes, is amended to read:

42-5-106. Duties of dealers - assembled motor vehicles. It is the duty of every dealer and of every proprietor of a garage to examine, without charge, the engine or vehicle identification number of every motor vehicle bought, taken in trade, repaired, or stored by them. Such dealer shall not be required to examine the engine or vehicle identification number of the same motor vehicle more than once in the same calendar year when such dealer knows that the person in possession of such motor vehicle is the lawful owner thereof. It is the further duty of the dealer, proprietor of a garage, or his or her agent, promptly and without delay, to report to or notify in person, or by telephone or telegraph, or by special messenger the nearest police station or peace officer if the engine or vehicle identification number of said motor vehicle has been altered, changed, or so obliterated as to make the number indecipherable or if the engine or vehicle identification number or the state

registration license number of said motor vehicle does not correspond with the engine or vehicle identification number of the motor vehicle state registration certificate of the driver of said motor vehicle. Any person violating any of the provisions of this section commits a class 1 petty offense and shall be punished as provided in section ~~18-1-107~~ 18-1.3-503, C.R.S.

SECTION 374. 42-5-108, Colorado Revised Statutes, is amended to read:

42-5-108. Penalty. Any person violating any of the provisions of this part 1, unless otherwise specifically provided for in this part 1, commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 375. 42-6-136 (1), Colorado Revised Statutes, is amended to read:

42-6-136. Surrender and cancellation of certificate - penalty for violation. (1) The owner of any motor vehicle for which a Colorado certificate of title has been issued, upon the destruction or dismantling of said motor vehicle, upon its being changed in such manner that it is no longer a motor vehicle, or upon its being sold or otherwise disposed of as salvage, shall surrender the certificate of title to the motor vehicle to the director or the

director's authorized agent to be canceled or notify the director or the director's authorized agent on director approved forms indicating the loss, destruction or dismantling, or sale for salvage; and, upon said owner's procuring the consent of the holders of any mortgages noted on or recorded as part of the certificate of title and shown to be unreleased in the office of the director, such certificate shall be canceled. Any person who violates any of the provisions of this section commits a class 1 petty offense and shall be punished as provided in section ~~18-1-107~~ 18-1.3-503, C.R.S.

SECTION 376. 42-6-143, Colorado Revised Statutes, is amended to read:

42-6-143. Altering or using altered certificate. Any person who alters or forges or causes to be altered or forged any certificate of title issued by the director pursuant to the provisions of this part 1, or any written transfer thereof, or any other notation placed thereon by the director or under the director's authority respecting the mortgaging of the motor vehicle therein described or who uses or attempts to use any such certificate for the transfer thereof, knowing the same to have been altered or forged, commits a class 6 felony and shall be punished as provided in section ~~18-1-105~~ 18-1.3-401, C.R.S.

SECTION 377. 42-6-146 (2), Colorado Revised Statutes, is amended to read:

42-6-146. Repossession of motor vehicle - owner must notify law enforcement agency - penalty. (2) A reposessor who violates subsection (1) of this section is guilty of a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 378. 42-7-401 (1), Colorado Revised Statutes, is amended to read:

42-7-401. Proof required on judgments. (1) The director shall also suspend the license issued to any person upon receiving an affidavit from the judgment creditor that such person has failed for a period of thirty days to satisfy any final judgment in amounts and upon a cause of action as stated in this article, or, in a criminal proceeding arising from the use or operation of a motor vehicle, has failed to comply with the terms of any order of restitution made as a condition of probation pursuant to section ~~16-11-204.5~~ 18-1.3-205, C.R.S.

SECTION 379. 42-7-606 (2), Colorado Revised Statutes, is amended to read:

42-7-606. Disclosure of insurance information - penalty. (2) Any person or agency who knowingly discloses information from the database for a

purpose or to a person other than those authorized in this section commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 380. 42-13-105, Colorado Revised Statutes, is amended to read:

42-13-105. Release of impounded vehicles - penalty. Any owner, operator, or employee of any garage or service station or any appointed custodian who releases any vehicle impounded or ordered held by an officer of the Colorado state patrol without a release from an officer of the Colorado state patrol or a bona fide court order commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 381. 42-20-109 (1) and (2), Colorado Revised Statutes, are amended to read:

42-20-109. Penalty for violations. (1) Any person who violates a rule or regulation promulgated by the chief pursuant to section 42-20-104 commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

(2) Any person who violates a rule or regulation promulgated by the chief pursuant to section 42-20-108 commits a class 3 misdemeanor and shall

be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 382. 42-20-111, Colorado Revised Statutes, is amended to read:

42-20-111. Additional penalties. Any person, corporation, partnership, or other entity which intentionally or knowingly authorizes, solicits, requests, commands, conspires in, or aids and abets in the violation of any of the provisions of part 1, 2, or 3 of this article commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 383. 42-20-113 (4), Colorado Revised Statutes, is amended to read:

42-20-113. Hazardous materials spill - abandonment of vehicle containing hazardous material - penalty. (4) Any person who violates the provisions of subsection (3) of this section commits a class 3 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 384. 42-20-204 (1) and (3), Colorado Revised Statutes, are amended to read:

42-20-204. Permit violations - penalties. (1) Any person who transports hazardous materials without a permit in violation of any of the

provisions of section 42-20-201 commits a misdemeanor traffic offense and shall be assessed a penalty of two hundred fifty dollars in accordance with the procedure set forth in section 42-20-105 (2). Any person who intentionally transports hazardous materials without a permit in violation of any of the provisions of section 42-20-201 commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. For the purposes of this subsection (1), if any person who previously has acknowledged guilt or has been convicted of a misdemeanor pursuant to this subsection (1) subsequently transports hazardous materials without a permit in violation of any of the provisions of section 42-20-201, a permissive inference is created that such subsequent transportation without a permit was intentional.

(3) Any person who knowingly violates any of the terms and conditions of an annual or single trip hazardous materials transportation permit commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 385. 42-20-405 (1), Colorado Revised Statutes, is amended to read:

42-20-405. Violations - criminal penalties. (1) Notwithstanding the provisions of section 40-7-107, C.R.S., any person who violates any provision

of this part 4 or part 5 of this article or rule or regulation promulgated by the chief pursuant to this part 4 and part 5 of this article commits a class 2 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S. No conviction pursuant to this section shall bar enforcement by the commission of any provision of title 40, C.R.S., with respect to violations by persons subject to said title.

SECTION 386. 43-2-201.1 (1), Colorado Revised Statutes, is amended to read:

43-2-201.1. Closure of public highways extending to public lands - penalty. (1) Any person, other than a governing body of a municipality or county acting pursuant to part 3 of this article, who intentionally blocks, obstructs, or closes any public highway, as described in section 43-2-201, that extends to any public land, including public land belonging to the federal government, thereby closing public access to public lands, without good cause therefor, commits a class 1 misdemeanor and shall be punished as provided in section ~~18-1-106~~ 18-1.3-501, C.R.S.

SECTION 387. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

DRAFT

Bill E

Colorado Legislative Council Staff

STATE
FISCAL IMPACT

Drafting Number: LLS 02-0093
Prime Sponsor(s): Rep. Lee
Sen. Windels

Date: November 27, 2001
Bill Status: Interim Committee on Criminal
Sentencing
Fiscal Analyst: Geoff Barsch (303-866-4102)

TITLE: CONCERNING THE RELOCATION OF CERTAIN EXISTING CRIMINAL SENTENCING STATUTES TO A NEW ARTICLE IN TITLE 18, C.R.S.

Fiscal Impact Summary	FY 2002/03	FY 2003/2004
State Revenues General Fund	\$0	\$0
State Expenditures General Fund	\$40,851	\$0
FTE Position Change	0.7 FTE (Contract Services)	0.0 FTE
Other State Impact: None		
Effective Date: July 1, 2002		
Appropriation Summary for FY 2002/2003: \$40,851 GF - Judicial Department		
Local Government Impact: None		

Summary of Legislation

This bill relocates the provisions of certain criminal sentencing statutes in Titles 16, 17, and 18, C.R.S., to a new article in Title 18, C.R.S., and repeals most, but not all, of the current statutes containing the relocated provisions.

State Expenditures

This bill requires an appropriation of \$40,851 for the Judicial Department in Fiscal Year 2002-03. The expenditures are necessary for programming changes to the Integrated Colorado Online Network (ICON). The ICON Law Table is used by all district and county courts in Colorado and contains all valid criminal violations. Maintaining the ICON Law Table ensures that court staff throughout the state enter criminal charge information correctly.

Bill E

The bill's effective date of July 1, 2002 requires the Judicial Department to expedite the programming changes using contract staff. It is estimated that changes will require three contract staff 90 days to complete the changes, annualized as 0.75 FTE.

State Appropriations

This fiscal note indicates that the Judicial Department will require a General Fund appropriation of \$40,851 for FY 2002-03.

Departments Contacted

Corrections Human Services Judicial Public Safety Revenue