

**First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 25-0356.01 Conrad Imel x2313

HOUSE BILL 25-1275

HOUSE SPONSORSHIP

Soper and Zokaie,

SENATE SPONSORSHIP

Weissman and Frizell,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MISCONDUCT BY CRIME LABORATORY EMPLOYEES, AND,**
102 **IN CONNECTION THEREWITH, REQUIRING A CRIME LABORATORY**
103 **EMPLOYEE TO REPORT MISCONDUCT, REQUIRING NOTIFYING**
104 **CRIMINAL DEFENDANTS AND VICTIMS OF MISCONDUCT, AND**
105 **CREATING A PROCESS FOR A PERSON TO SEEK POST-CONVICTION**
106 **RELIEF BASED ON A CLAIM OF MISCONDUCT BY A CRIME**
107 **LABORATORY EMPLOYEE.**

Bill Summary

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

The bill defines "knowing misconduct" as a voluntary act or omission or series of acts or omissions consciously performed by a crime laboratory employee (employee) as a result of effort or determination in which the employee is aware that the employee's conduct is improper and deceptive. The bill defines a "significant event" as an act or omission by an employee that is a gross deviation from the standard operation procedures or accreditation requirements of the crime laboratory, or requirements in law that were applicable at the time of the act or omission of the employee, that could substantially negatively affect the integrity of the crime laboratory activities.

The bill requires an employee to report witnessed or discovered knowing misconduct or a significant event (collectively, "wrongful action") to the director of the crime laboratory (director) or to the employee's immediate supervisor, who shall report it to the director. A director who receives a report shall investigate the alleged wrongful action. The bill requires a crime laboratory director to review all records of the crime laboratory to identify wrongful actions committed prior to July 1, 2025, by a current or former crime laboratory employee.

The director shall notify each district attorney who has jurisdiction over a pending case, or a case that resulted in conviction, that the employee worked on about the reported wrongful action and provide the district attorney with access to information about the wrongful action.

Upon receipt of a wrongful action report from a director, a district attorney shall notify the defendant in each case that the employee worked on about the alleged wrongful action. If the case involved a crime listed in the "Victim Rights Act", the district attorney shall also notify the victim about the alleged wrongful action, if the charges have been filed but the trial has not begun.

The bill establishes a defendant's right to counsel in matters involving an employee's wrongful action and a right to investigate the wrongful action, to request discovery related to the wrongful action, and to seek post-conviction relief based on the wrongful action. The bill permits a court to enter a protective order related to discovery requests.

The bill establishes a process for a defendant convicted in a case involving an employee's wrongful action to petition for post-conviction relief based on the wrongful action. If the defendant's petition for post-conviction relief asserts facts that, if true, demonstrate that a wrongful action was material to the case, the court shall decide the claim upon the merits after an evidentiary hearing. At the evidentiary hearing, the defendant has the burden to show that the employee committed the wrongful action and that the wrongful action is material to the case. If the defendant meets their burden, the court shall vacate the defendant's conviction and grant a new trial.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 3 to article
3 12 of title 16 as follows:

4 **PART 3**

5 **COLORADO FORENSIC SCIENCE INTEGRITY ACT**

6 **16-12-301. Short title.** THE SHORT TITLE OF THIS PART 3 IS THE
7 "COLORADO FORENSIC SCIENCE INTEGRITY ACT".

8 **16-12-302. Legislative declaration.** (1) THE GENERAL ASSEMBLY
9 FINDS AND DECLARES THAT:

10 (a) AN EFFECTIVE CRIMINAL JUSTICE SYSTEM REQUIRES THAT
11 CRIME LABORATORY EMPLOYEES ACT WITH INTEGRITY, AND THAT CRIME
12 LABORATORIES HAVE CONTROLS TO PREVENT AND DETECT KNOWING
13 MISCONDUCT AND VIOLATIONS OF PROCEDURES AND PROPERLY
14 INVESTIGATE AND REPORT MISCONDUCT WHEN IT OCCURS;

15 (b) PROSECUTORS, DEFENDANTS, AND VICTIMS DESERVE
16 TRANSPARENCY AND TO BE NOTIFIED OF MISCONDUCT BY CRIME
17 LABORATORY EMPLOYEES WHO HANDLE EVIDENCE USED IN CRIMINAL
18 CASES;

19 (c) THE CRIMINAL JUSTICE SYSTEM MUST PROVIDE AN
20 OPPORTUNITY TO TIMELY AND FAIRLY LITIGATE CASES IN WHICH THERE
21 WAS MISCONDUCT BY A CRIME LABORATORY EMPLOYEE THAT COULD
22 AFFECT, OR DID AFFECT, THE OUTCOME OF A CASE; AND

23 (d) DEFENDANTS MUST BE AFFORDED THE RIGHT TO COUNSEL, THE
24 RIGHT TO FULL DISCLOSURE OF THE MISCONDUCT, AND THE RIGHT TO AN
25 EVIDENTIARY HEARING IN ORDER TO ADEQUATELY ADDRESS THE IMPACT
26 OF MISCONDUCT BY CRIME LABORATORY EMPLOYEES.

27 (2) THE GENERAL ASSEMBLY INTENDS THAT THIS PART 3 BE

1 INTERPRETED TO ACCOMPLISH THE POLICIES DECLARED IN THIS SECTION.

2 **16-12-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "CRIME LABORATORY" MEANS A FORENSIC SERVICES PROVIDER
5 IN COLORADO THAT ASSISTS LAW ENFORCEMENT AGENCIES OR
6 PROSECUTORS BY PERFORMING SCIENTIFIC LABORATORY TESTING OR
7 EXAMINATION OF PHYSICAL EVIDENCE. "CRIME LABORATORY" DOES NOT
8 INCLUDE A LABORATORY OPERATED BY A COUNTY CORONER'S OFFICE.

9 (2) "CRIME LABORATORY DIRECTOR" OR "DIRECTOR" MEANS THE
10 SENIOR POSITION OF A CRIME LABORATORY AS DEFINED IN THE CRIME
11 LABORATORY'S POLICY.

12 (3) "CRIME LABORATORY EMPLOYEE" OR "EMPLOYEE" MEANS A
13 PERSON WHO WORKS OR HAS WORKED IN A CRIME LABORATORY,
14 INCLUDING CRIME LABORATORY CONTRACT WORKERS.

15 (4) "FINAL REPORT" MEANS THE FINAL REPORT PREPARED BY A
16 CRIME LABORATORY DIRECTOR FOLLOWING AN INVESTIGATION OF
17 ALLEGED WRONGFUL ACTION, DESCRIBED IN SECTION 16-12-305 (4)(c).

18 (5) "FORENSIC SERVICES PROVIDER" MEANS A UNIT OR SECTION OF
19 A LAW ENFORCEMENT AGENCY THAT HOLDS AN ISO/IEC 17025 FORENSIC
20 LABORATORY ACCREDITATION OR THAT PERFORMS WORK EQUIVALENT TO
21 THAT OF AN ACCREDITED FORENSIC SERVICES PROVIDER WITHOUT BEING
22 ACCREDITED.

23 (6) "KNOWING MISCONDUCT" MEANS A VOLUNTARY ACT OR
24 OMISSION OR SERIES OF ACTS OR OMISSIONS CONSCIOUSLY PERFORMED BY
25 A CRIME LABORATORY EMPLOYEE AS A RESULT OF EFFORT OR
26 DETERMINATION IN WHICH THE EMPLOYEE IS AWARE THAT THE
27 EMPLOYEE'S CONDUCT IS IMPROPER OR DECEPTIVE, AND WHICH ACT OR

1 OMISSION OR SERIES OF ACTS OR OMISSIONS INVOLVE:

2 (a) THE MISHANDLING OF PHYSICAL EVIDENCE OR DATA ELEMENTS
3 OR RESULTS;

4 (b) INCORRECTLY PERFORMING FORENSIC TESTING;

5 (c) PRESENTING MISLEADING OR FALSE RESULTS;

6 (d) CONCEALING MATERIAL INFORMATION; OR

7 (e) PRESENTING FALSE SWORN TESTIMONY ABOUT THE EVIDENCE.

8

9 (7) "SIGNIFICANT EVENT" MEANS AN ACT OR OMISSION BY A CRIME
10 LABORATORY EMPLOYEE THAT IS A GROSS DEVIATION FROM THE
11 LABORATORY STANDARD OPERATION PROCEDURES OR ACCREDITATION
12 REQUIREMENTS OF THE CRIME LABORATORY, OR REQUIREMENTS IN LAW
13 THAT WERE APPLICABLE AT THE TIME OF THE ACT OR OMISSION OF THE
14 CRIME LABORATORY EMPLOYEE, THAT COULD SUBSTANTIALLY
15 NEGATIVELY AFFECT THE INTEGRITY OF THE CRIME LABORATORY
16 ACTIVITIES.

17 (8) "WRONGFUL ACTION" MEANS KNOWING MISCONDUCT OR A
18 SIGNIFICANT EVENT.

19 **16-12-304. Duty of a crime laboratory employee to report**
20 **misconduct.** (1) A CRIME LABORATORY EMPLOYEE WHO, IN PURSUANCE
21 OF THEIR WORK OR IN THE COURSE OF AN INVESTIGATION, WITNESSES OR
22 DISCOVERS WRONGFUL ACTION MUST REPORT THAT WRONGFUL ACTION TO
23 THEIR IMMEDIATE SUPERVISOR AT THE CRIME LABORATORY OR TO THE
24 CRIME LABORATORY DIRECTOR WITHIN SEVEN DAYS AFTER WITNESSING OR
25 DISCOVERING THE WRONGFUL ACTION. A CRIME LABORATORY SUPERVISOR
26 WHO RECEIVES A REPORT SHALL NOTIFY THE CRIME LABORATORY
27 DIRECTOR WITHIN SEVENTY-TWO HOURS AFTER RECEIVING THE REPORT.

1 (2) A REPORT REQUIRED BY THIS SECTION MUST BE MADE IN
2 WRITING AND INCLUDE A DESCRIPTION OF THE WRONGFUL ACTION; THE
3 DATE, TIME, AND LOCATION THAT THE WRONGFUL ACTION WAS SEEN OR
4 DISCOVERED; THE PEOPLE PRESENT AT THE TIME; AND, IF KNOWN, ANY
5 IDENTIFYING NUMBERS OR CASE NUMBERS THAT RELATE TO THE
6 WRONGFUL ACTION.

7 (3) EACH CRIME LABORATORY SHALL DEVELOP AND IMPLEMENT
8 POLICIES AND PROCEDURES FOR REPORTING WRONGFUL ACTIONS IN
9 ACCORDANCE WITH THIS SECTION. THE POLICIES AND PROCEDURES MUST
10 IDENTIFY THE CRIME LABORATORY DIRECTOR WHO RECEIVES REPORTS OF
11 WRONGFUL ACTIONS.

12 **16-12-305. Duty of crime laboratory to investigate wrongful**
13 **action - report to prosecuting attorney - record retention.** (1) ■ A
14 CRIME LABORATORY DIRECTOR WHO, ON OR AFTER JULY 1, 2025, RECEIVES
15 A REPORT OF WRONGFUL ACTION PURSUANT TO SECTION 16-12-304 OR
16 RECEIVES OTHER INFORMATION ABOUT AN ACT OR OMISSION BY A CRIME
17 LABORATORY EMPLOYEE THAT MAY CONSTITUTE WRONGFUL ACTION
18 SHALL FORTHWITH INVESTIGATE THE CRIME LABORATORY EMPLOYEE'S
19 ACTIONS. ■ ■ ■ ■

20 (2) ■ A CRIME LABORATORY DIRECTOR'S INVESTIGATION OF
21 WRONGFUL ACTION CONDUCTED PURSUANT TO THIS SECTION MUST
22 INCLUDE, BUT IS NOT LIMITED TO:

23 (a) A REVIEW AND ANALYSIS OF ALL DATA, REPORTS, AND
24 DOCUMENTS RELEVANT TO THE ALLEGED OR ACTUAL WRONGFUL ACTION;

25 (b) TAKING STATEMENTS FROM ALL RELEVANT WITNESSES;

26 (c) AN ASSESSMENT OF THE EMPLOYEE'S COMPLIANCE WITH ALL
27 STANDARDS AND POLICIES OF THE CRIME LABORATORY RELEVANT TO THE

1 ACTIONS DESCRIBED IN THE REPORT OF WRONGFUL ACTION;

2 (d) AN ASSESSMENT OF THE LABORATORY'S COMPLIANCE WITH
3 ANY LABORATORY ACCREDITATION, CERTIFICATION, OR LICENSURE
4 REQUIREMENTS RELEVANT TO THE ACTIONS DESCRIBED IN THE REPORT OF
5 WRONGFUL ACTION; ■

6 (e) A DETERMINATION OF WHETHER WRONGFUL ACTION
7 OCCURRED; AND

8 (f) IDENTIFYING AND COMPILING A LIST OF ALL CASES THAT THE
9 CRIME LABORATORY EMPLOYEE WORKED ON IN AN OFFICIAL CAPACITY AT
10 THE CRIME LABORATORY. THE INVESTIGATION NEED NOT INCLUDE A
11 REVIEW OF THE CASE WORK ON ANY CASE INCLUDED ON THE LIST UNLESS
12 THE CRIME LABORATORY DIRECTOR DETERMINES THAT A REVIEW IS
13 WARRANTED.

14 (3) (a) WHEN AN INVESTIGATION IS OF ALLEGED WRONGFUL
15 ACTION IN A PENDING CASE, THE CRIME LABORATORY DIRECTOR SHALL,
16 WITHIN SEVEN DAYS OF BEGINNING THE INVESTIGATION, NOTIFY THE
17 DISTRICT ATTORNEY WITH JURISDICTION OVER EACH PENDING CRIMINAL
18 CASE THAT IS SUBJECT TO THE INVESTIGATION ABOUT THE INVESTIGATION.

19 (b) THE NOTICE TO THE DISTRICT ATTORNEY MUST INCLUDE:

20 (I) THE NAME OF THE CRIME LABORATORY EMPLOYEE;

21 (II) THE NATURE OF THE ALLEGATION; AND

22 (III) A LIST OF THE CASES IDENTIFIED IN THE INITIAL
23 INVESTIGATION PURSUANT TO SUBSECTION (1) OF THIS SECTION IN WHICH
24 THERE IS AN ALLEGED WRONGFUL ACTION OR THAT ARE BEING REVIEWED
25 AS PART OF INVESTIGATION INTO THE ALLEGED WRONGFUL ACTION.

26 (4) (a) WITHIN NINETY-ONE DAYS OF THE REPORT OF WRONGFUL
27 ACTION TO THE CRIME LABORATORY DIRECTOR, THE DIRECTOR SHALL

1 COMPLETE THE INVESTIGATION OF A WRONGFUL ACTION AND DETERMINE
2 WHETHER WRONGFUL ACTION OCCURRED IN A CASE IDENTIFIED IN THE
3 INITIAL INVESTIGATION NOTICE TO THE DISTRICT ATTORNEY MADE
4 PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION.

5 (b) (I) IF THE INVESTIGATION CANNOT BE COMPLETED WITHIN
6 NINETY-ONE DAYS, THE CRIME LABORATORY DIRECTOR SHALL PROVIDE
7 NOTICE OF THE INVESTIGATION TO EACH DISTRICT ATTORNEY WHO HAS
8 JURISDICTION OVER ANY CASE THE CRIME LABORATORY EMPLOYEE
9 WORKED ON IN AN OFFICIAL CAPACITY, INCLUDING CASES SUBJECT TO THE
10 NOTICE REQUIRED PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION.

11 (II) THE NOTICE TO THE DISTRICT ATTORNEY ABOUT AN ONGOING
12 INVESTIGATION MADE PURSUANT TO SUBSECTION (4)(b)(I) OF THIS
13 SECTION MUST INCLUDE:

14 (A) THE NAME OF THE CRIME LABORATORY EMPLOYEE;

15 (B) THE NATURE OF THE ALLEGATION;

16 (C) A WRITTEN UPDATE THAT ADDRESSES THE STATE OF THE
17 INVESTIGATION, THE REASON FOR THE DELAY, AND THE ANTICIPATED
18 TIMELINE FOR COMPLETING THE INVESTIGATION; AND

19 (D) THE LIST OF CASES DESCRIBED IN SUBSECTION (2)(f) OF THIS
20 SECTION.

21 (III) AFTER NOTIFYING A DISTRICT ATTORNEY ABOUT AN ONGOING
22 INVESTIGATION PURSUANT TO SUBSECTION (4)(b)(I) OF THIS SECTION, THE
23 CRIME LABORATORY DIRECTOR SHALL PROVIDE WRITTEN UPDATES ABOUT
24 THE STATUS OF THE INVESTIGATION TO THE DISTRICT ATTORNEY AT LEAST
25 EVERY THIRTY-FIVE DAYS THEREAFTER UNTIL THE INVESTIGATION IS
26 COMPLETE.

27 (c) AT THE CONCLUSION OF THE INVESTIGATION, THE CRIME

1 LABORATORY DIRECTOR SHALL PREPARE A WRITTEN FINAL REPORT
2 DESCRIBING THE INVESTIGATION AND DETERMINATIONS ON THE CASES IN
3 WHICH THERE IS AN ALLEGED WRONGFUL ACTION BY A CRIME
4 LABORATORY EMPLOYEE. IF THE INVESTIGATION DETERMINES THAT THE
5 CRIME LABORATORY EMPLOYEE ENGAGED IN WRONGFUL ACTION, THE
6 FINAL REPORT MUST INCLUDE THE LIST OF CASES DESCRIBED IN
7 SUBSECTION (2)(f) OF THIS SECTION AND THE RELEASE OF THE FINAL
8 REPORT IS GOVERNED BY SECTION 24-72-303 (4)(a.5).

9 (5) (a) IF THE INVESTIGATION DETERMINES THAT THE CRIME
10 LABORATORY EMPLOYEE DID NOT ENGAGE IN WRONGFUL ACTION, NO
11 FURTHER ACTION IS REQUIRED BY THE CRIME LABORATORY DIRECTOR;
12 EXCEPT THAT:

13 (I) THE DIRECTOR SHALL DELIVER FORTHWITH THE FINAL REPORT
14 OF THE INVESTIGATION TO EACH DISTRICT ATTORNEY WHO RECEIVED A
15 NOTICE OF THE INVESTIGATION PURSUANT TO SUBSECTIONS (3) AND (4) OF
16 THIS SECTION; AND

17 (II) THE DIRECTOR SHALL DELIVER FORTHWITH THE FINAL REPORT
18 OF THE INVESTIGATION TO EACH DISTRICT ATTORNEY WITH JURISDICTION
19 OVER ANY CASE THAT WAS SUBJECT TO INVESTIGATION PURSUANT TO
20 SUBSECTION (1) OF THIS SECTION.

21 (b) IF THE INVESTIGATION DETERMINES THAT THE CRIME
22 LABORATORY EMPLOYEE ENGAGED IN WRONGFUL ACTION, THE CRIME
23 LABORATORY DIRECTOR SHALL:

24 (I) DELIVER FORTHWITH THE FINAL REPORT OF THE
25 INVESTIGATION, WHICH INCLUDES THE LIST OF CASES DESCRIBED IN
26 SUBSECTION (2)(f) OF THIS SECTION, TO EACH DISTRICT ATTORNEY WHO
27 HAS JURISDICTION OVER ANY CASE THAT THE CRIME LABORATORY

1 EMPLOYEE WORKED ON IN AN OFFICIAL CAPACITY; AND

2 (II) PROVIDE THE DISTRICT ATTORNEY ALL MATERIALS

3 DISCOVERABLE BY THE DEFENDANT PURSUANT TO SECTION 16-12-309 ON

4 A TIMELY AND ONGOING BASIS THROUGH THE CONCLUSION OF

5 POST-CONVICTION PROCEEDINGS. THE DIRECTOR SHALL RESPOND TO ANY

6 REQUESTS FOR DISCOVERABLE MATERIAL FROM THE DISTRICT ATTORNEY

7 BY PROVIDING THE REQUESTED MATERIALS OR BY RESPONDING IN WRITING

8 WITHIN TWENTY-FOUR DAYS AFTER RECEIVING THE REQUEST THAT THE

9 REQUESTED MATERIALS DO NOT EXIST.

10 (6) A CRIME LABORATORY MUST ADOPT POLICIES AND

11 PROCEDURES GOVERNING:

12 (a) PROCEDURES NEEDED TO COMPLY WITH THE MANDATES OF THIS

13 ARTICLE 12; AND

14 (b) THE PRESERVATION OF RECORDS RELATED TO WRONGFUL

15 ACTION REPORTS RECEIVED BY THE CRIME LABORATORY DIRECTOR AND

16 THE DIRECTOR'S INVESTIGATION AND INVESTIGATORY REPORTS. THE

17 POLICIES MUST REQUIRE THAT ALL RECORDS ARE PRESERVED AT LEAST

18 THROUGH THE FINAL RESOLUTION OF LITIGATION OR POTENTIAL

19 LITIGATION IN ALL AFFECTED CASES AND ANY RELATED CIVIL CASES.

20 (7) IF AN INVESTIGATION CONCERNING WRONGFUL ACTION BY A

21 CRIME LABORATORY OCCURRED AFTER JULY 1, 2014, AND BEFORE JULY 1,

22 2025, AND THE INVESTIGATION RESULTED IN CRIMINAL ALLEGATIONS

23 FILED AGAINST THE CRIME LABORATORY EMPLOYEE OR A SUSTAINED

24 INTERNAL AFFAIRS ACTION BY THE DEPARTMENT SUPERVISING THE CRIME

25 LABORATORY EMPLOYEE, THE CRIME LABORATORY DIRECTOR SHALL, AS

26 SOON AS PRACTICABLE BUT NO LATER THAN SEPTEMBER 1, 2025, PREPARE

27 A FINAL REPORT, AS DESCRIBED IN SUBSECTION (4)(c) OF THIS SECTION,

1 AND PROVIDE THE REPORT TO ALL DISTRICT ATTORNEYS WITH
2 JURISDICTION OVER ANY CRIMINAL CASE THAT IS IDENTIFIED IN THE FINAL
3 REPORT THAT IS PENDING OR HAS RESULTED IN A CONVICTION IN THAT
4 JURISDICTION. THE REPORT MUST INCLUDE THE LIST OF CASES REQUIRED
5 IN SUBSECTION (2)(f) OF THIS SECTION.

6 (8) ALL RECORDS RELATED TO AN INVESTIGATION, INCLUDING
7 NOTICES AND REPORTS, ARE CRIMINAL JUSTICE RECORDS AS DEFINED IN
8 SECTION 24-72-302. EXCEPT AS PROVIDED IN THIS SECTION, RELEASE OF
9 THE RECORDS IS GOVERNED BY PART 3 OF ARTICLE 72 OF TITLE 24.

10 **16-12-306. Prosecution duty to notify defendants and**
11 **defendant's counsel - content of notice.** (1) A DISTRICT ATTORNEY WHO
12 RECEIVES A NOTICE FROM A CRIME LABORATORY DIRECTOR PURSUANT TO
13 SECTION 16-12-305 (3)(a) THAT AN INVESTIGATION OF WRONGFUL ACTION
14 WAS INITIATED SHALL NOTIFY THE DEFENDANT IN THE CASE THAT IS
15 SUBJECT TO THE INVESTIGATION AS SOON AS PRACTICABLE BUT NO LATER
16 THAN NINETY-ONE DAYS AFTER RECEIVING THE NOTICE OF THE INITIATION
17 OF THE INVESTIGATION, UNLESS COURT RULES, COURT ORDER, OR LAW
18 REQUIRES AN EARLIER DEADLINE FOR DISCLOSURE.

19 (2) (a) A DISTRICT ATTORNEY WHO RECEIVES A FINAL REPORT OF
20 AN INVESTIGATION PURSUANT TO SECTION 16-12-305 (5)(b) OR (7) THAT
21 DETERMINES THAT A CRIME LABORATORY EMPLOYEE ENGAGED IN
22 WRONGFUL ACTION IN A CASE SHALL NOTIFY THE DEFENDANT IN THAT
23 CASE, AND EACH DEFENDANT WHOSE CASE WAS REVIEWED AS PART OF THE
24 INVESTIGATION, OF THE DETERMINATION OF WRONGFUL ACTION IN THE
25 CASE THAT IS SUBJECT TO THE INVESTIGATION AS SOON AS PRACTICABLE
26 BUT NO LATER THAN NINETY-ONE DAYS AFTER THE RECEIPT OF THE FINAL
27 REPORT.

1 (b) THE DISTRICT ATTORNEY SHALL ALSO NOTIFY EACH
2 DEFENDANT IN A CASE IDENTIFIED BY THE CRIME LABORATORY DIRECTOR
3 IN THE LIST OF CASES DESCRIBED IN SECTION 16-12-305 (2)(f) THAT WAS
4 PROVIDED TO THE DISTRICT ATTORNEY BUT ONLY IF THE DEFENDANT'S
5 CRIMINAL CASE IS PENDING OR RESULTED IN A CONVICTION IN THAT
6 JURISDICTION. THE DISTRICT ATTORNEY SHALL NOTIFY THE DEFENDANT AS
7 SOON AS PRACTICABLE BUT NO LATER THAN NINETY-ONE DAYS AFTER
8 RECEIPT OF THE FINAL REPORT.

9 (3) IF A CRIME LABORATORY DIRECTOR'S INVESTIGATION INITIATED
10 PURSUANT TO SECTION 16-12-305 (1) IS NOT COMPLETED WITHIN ONE
11 HUNDRED TWENTY-SIX DAYS, THE DISTRICT ATTORNEY SHALL NOTIFY THE
12 DEFENDANTS IDENTIFIED BY THE CRIME LABORATORY IN THE LIST OF
13 CASES DESCRIBED IN SECTION 16-12-305 (2)(f) THAT WAS PROVIDED TO
14 THE DISTRICT ATTORNEY OF THE INVESTIGATION OF THE WRONGFUL
15 ACTION BUT ONLY WHEN THE CRIMINAL CASE IS PENDING OR RESULTED IN
16 A CRIMINAL CONVICTION. THE DISTRICT ATTORNEY SHALL NOTIFY THE
17 DEFENDANTS PURSUANT TO THIS SUBSECTION (3) AS SOON AS
18 PRACTICABLE. THE NOTICE OF AN INCOMPLETE INVESTIGATION DESCRIBED
19 IN THIS SUBSECTION (3) IS IN ADDITION TO THE NOTICE OF A FINAL REPORT
20 REQUIRED IN SUBSECTION (2) OF THIS SECTION.

21 (4) IN ADDITION TO THE INFORMATION REQUIRED IN A NOTICE
22 PURSUANT TO THIS SUBSECTION (4), THE NOTICE TO THE DEFENDANT MADE
23 PURSUANT TO SUBSECTION (2) OF THIS SECTION MUST STATE THAT THERE
24 IS A FINAL REPORT OF WRONGFUL ACTION BY A CRIME LABORATORY
25 EMPLOYEE INVOLVED IN THE DEFENDANT'S CASE. THE NOTICE MADE TO A
26 DEFENDANT PURSUANT TO THIS SECTION MUST INCLUDE: ■ ■

27 (a) THE NAME OF THE CRIME LABORATORY EMPLOYEE AND THE

1 NAME OF THE CRIME LABORATORY OR AGENCY THAT OPERATES THE CRIME
2 LABORATORY;

3 (b) THE DEFENDANT'S CASE NUMBER AND COURT THAT HAS
4 JURISDICTION OVER THE CASE;

5 (c) A STATEMENT THAT THE DEFENDANT HAS:

6 (I) A TIME-LIMITED RIGHT TO MAKE A POST-CONVICTION CLAIM
7 PURSUANT TO THE "COLORADO FORENSIC SCIENCE INTEGRITY ACT" AND
8 AN APPROPRIATE CITATION TO THE "COLORADO FORENSIC SCIENCE
9 INTEGRITY ACT";

10 (II) A RIGHT TO COUNSEL TO INVESTIGATE, FILE, AND LITIGATE
11 POST-CONVICTION CLAIMS PURSUANT TO THE "COLORADO FORENSIC
12 SCIENCE INTEGRITY ACT";

13 (III) A RIGHT TO HIRE THEIR OWN COUNSEL, AND IF THE
14 DEFENDANT CANNOT AFFORD COUNSEL, THE RIGHT TO COURT-APPOINTED
15 COUNSEL;

16 (d) INFORMATION ABOUT HOW TO CONTACT THE OFFICE OF STATE
17 PUBLIC DEFENDER OR THE COURT TO REQUEST THAT COUNSEL BE
18 APPOINTED; AND

19 (e) INFORMATION ABOUT HOW TO CONTACT THE DISTRICT
20 ATTORNEY'S OFFICE TO DETERMINE THE STATUS OF THE INVESTIGATION,
21 IF THE DEFENDANT IS PROCEEDING WITHOUT COUNSEL.

22 (5)(a) IF THE DEFENDANT'S CRIMINAL CASE IS A PENDING CASE FOR
23 WHICH NO CONVICTION HAS BEEN ENTERED, IS ON APPEAL STATUS, OR HAS
24 HAD POST-CONVICTION MOTIONS FILED THAT ARE PENDING, THE DISTRICT
25 ATTORNEY SHALL IMMEDIATELY NOTIFY THE DEFENDANT AND THE
26 DEFENDANT'S COUNSEL THROUGH DISCOVERY IN THE CASE.

27 (b) IF THE DEFENDANT WAS CONVICTED IN THE CASE AND THERE

1 IS NOT A PENDING APPEAL AND THERE ARE NO PENDING POST-CONVICTION
2 MOTIONS IN THE CASE AND:

3 (I) THE DEFENDANT IS IN CUSTODY IN JAIL OR A CORRECTIONAL
4 FACILITY, THE DISTRICT ATTORNEY SHALL NOTIFY THE DEFENDANT VIA
5 REGULAR MAIL AT THE DEFENDANT'S PLACE OF INCARCERATION AND
6 NOTIFY THE OFFICE OF THE PUBLIC DEFENDER BY EMAIL AT THE EMAIL
7 ADDRESS DESCRIBED IN SUBSECTION (5)(c) OF THIS SECTION; OR

8 (II) THE DEFENDANT IS NOT IN CUSTODY IN JAIL OR A
9 CORRECTIONAL FACILITY, THE DISTRICT ATTORNEY SHALL NOTIFY THE
10 DEFENDANT, BY PERSONAL SERVICE OR REGISTERED MAIL, AT THE
11 DEFENDANT'S LAST-KNOWN ADDRESS AND THE ADDRESS OF THE
12 DEFENDANT'S LAST-KNOWN COUNSEL OR IF THE DEFENDANT'S
13 LAST-KNOWN COUNSEL WAS THE PUBLIC DEFENDER, NOTIFY THE OFFICE OF
14 PUBLIC DEFENDER BY EMAIL AT THE EMAIL ADDRESS DESCRIBED IN
15 SUBSECTION (5)(c) OF THIS SECTION.

16 (c) THE STATE PUBLIC DEFENDER SHALL DESIGNATE AN EMAIL
17 ADDRESS TO RECEIVE NOTICES PURSUANT TO THIS SECTION AND SHALL
18 PROVIDE THE EMAIL ADDRESS TO EACH DISTRICT ATTORNEY AND THE
19 COLORADO DISTRICT ATTORNEYS' COUNCIL.

20

21 **16-12-307. Duty to notify victims.** (1) WHEN A DISTRICT
22 ATTORNEY RECEIVES A NOTICE THAT A CRIME LABORATORY EMPLOYEE
23 ENGAGED IN WRONGFUL ACTION AND A CRIMINAL CASE IDENTIFIED IN THE
24 NOTICE INVOLVES A CRIME LISTED IN SECTION 24-4.1-302 (1), THE
25 DISTRICT ATTORNEY SHALL, AS REQUIRED IN SUBSECTION (2) OF THIS
26 SECTION, NOTIFY EACH VICTIM OF THE CRIME ABOUT THE INVESTIGATION
27 AND THE NATURE OF THE ALLEGED WRONGFUL ACTION.

1 (2) THE DISTRICT ATTORNEY SHALL NOTIFY A VICTIM PURSUANT
2 TO THIS SECTION BY PERSONAL SERVICE OR REGISTERED MAIL AT THE
3 VICTIM'S LAST-KNOWN ADDRESS. THE DISTRICT ATTORNEY SHALL NOTIFY
4 VICTIMS PURSUANT TO THIS SECTION IN CASES IN WHICH CHARGES HAVE
5 BEEN FILED AGAINST THE DEFENDANT BUT A CRIMINAL TRIAL HAS NOT
6 BEGUN. THE DISTRICT ATTORNEY SHALL NOTIFY THE VICTIM AS SOON AS
7 PRACTICABLE BUT NOT LATER THAN NINETY-ONE DAYS AFTER THE
8 DISTRICT ATTORNEY RECEIVED THE NOTICE FROM THE CRIME LABORATORY
9 DIRECTOR OR PRIOR TO THE START OF THE TRIAL IF TRIAL STARTS BEFORE
10 THE NINETY-ONE DAYS ENDS.

11 **16-12-308. Defendant's right to counsel.** (1) A DEFENDANT HAS
12 THE RIGHT TO COUNSEL TO INVESTIGATE, FILE, AND LITIGATE A
13 POST-CONVICTION CLAIM ARISING FROM WRONGFUL ACTION AND APPEALS
14 ARISING FROM THE CLAIM. THE RIGHT TO COUNSEL FOR ASSISTANCE WITH
15 POST-CONVICTION CLAIMS PURSUANT TO THIS PART 3, INCLUDING THE
16 RIGHT FOR AN INDIGENT PERSON TO HAVE THE ASSISTANCE OF
17 COURT-APPOINTED COUNSEL, ATTACHES WHEN A DEFENDANT RECEIVES A
18 NOTICE PURSUANT TO SECTION 16-12-306 OR MAKES A SHOWING THAT A
19 CRIME LABORATORY EMPLOYEE WORKED ON THEIR CASE AND IS THE
20 SUBJECT OF AN INVESTIGATION OF WRONGFUL ACTION. A DEFENDANT IS
21 NOT REQUIRED TO FILE A PETITION FOR POST-CONVICTION RELIEF TO
22 RECEIVE COURT-APPOINTED COUNSEL.

23 (2) (a) A DEFENDANT MAY REQUEST COUNSEL BY FILING A
24 WRITTEN REQUEST FOR COUNSEL WITH THE COURT AND ATTACHING A
25 COPY OF THE NOTICE RECEIVED PURSUANT TO SECTION 16-12-306 OR A
26 PLEADING THAT NAMES A CRIME LABORATORY EMPLOYEE AND PROVIDES
27 SUFFICIENT INFORMATION FOR THE COURT TO FIND THAT THE CRIME

1 LABORATORY IS THE SUBJECT OF AN INVESTIGATION OF WRONGFUL
2 ACTION.

3 (b) IF A DEFENDANT FILES A PLEADING IN COURT WITHOUT
4 COUNSEL, THE COURT SHALL DETERMINE IF THE DEFENDANT IS
5 REQUESTING THE APPOINTMENT OF COUNSEL OR IF THE DEFENDANT IS
6 KNOWINGLY AND VOLUNTARILY WAIVING THEIR RIGHT TO COUNSEL.

7 (3) A PUBLIC DEFENDER WHO HAS RECEIVED A REQUEST FOR
8 ASSISTANCE FROM A DEFENDANT WHO RECEIVED A NOTICE PURSUANT TO
9 SECTION 16-12-306, OR FROM A DEFENDANT WHO CAN MAKE A SHOWING
10 THAT A CRIME LABORATORY EMPLOYEE WHO WORKED ON THEIR CASE IS
11 THE SUBJECT OF AN INVESTIGATION OF WRONGFUL ACTION, MAY REQUEST
12 APPOINTMENT BY THE COURT IF THE DEFENDANT QUALIFIES FOR
13 REPRESENTATION BY COURT-APPOINTED COUNSEL.

14 (4) UPON RECEIVING A REQUEST TO APPOINT COUNSEL FOR A
15 DEFENDANT MADE PURSUANT TO THIS SECTION, THE COURT SHALL, IN
16 ACCORDANCE WITH SECTION 21-1-103, APPOINT THE PUBLIC DEFENDER TO
17 REPRESENT THE DEFENDANT IN A POST-CONVICTION MATTER RELATED TO
18 THE WRONGFUL ACTION. IF THE PUBLIC DEFENDER NOTIFIES THE COURT OF
19 A CONFLICT OF INTEREST, THE COURT SHALL APPOINT THE OFFICE OF
20 ALTERNATE DEFENSE COUNSEL TO REPRESENT THE DEFENDANT.

21 **16-12-309. Discovery and expert witness disclosure -**
22 **procedures - construction consistent with court rules.** (1) (a) A
23 DEFENDANT HAS A RIGHT TO DISCOVERY, INCLUDING POST-CONVICTION
24 DISCOVERY, RELATED TO THE WRONGFUL ACTION:

25 (I) UPON RECEIPT OF A NOTICE OF REPORTED WRONGFUL ACTION
26 DESCRIBED IN SECTION 16-12-306; OR

27 (II) IF A COURT ORDERS DISCOVERY AFTER THE DEFENDANT FILES

1 A PLEADING THAT NAMES A CRIME LABORATORY EMPLOYEE WHO WORKED
2 ON THE DEFENDANT'S CASE WHO IS THE SUBJECT OF AN INVESTIGATION OF
3 WRONGFUL ACTION.

4 (b) A DEFENDANT MAY REQUEST DISCOVERY BY MAKING A
5 WRITTEN REQUEST TO THE DISTRICT ATTORNEY OR FILING A MOTION WITH
6 THE COURT.

7 (c) UPON RECEIVING A VALID DISCOVERY REQUEST OR A COURT
8 ORDER TO PROVIDE DISCOVERY, THE DISTRICT ATTORNEY SHALL PROVIDE
9 DISCOVERY TO THE DEFENDANT PURSUANT TO THIS SECTION AS SOON AS
10 PRACTICABLE AND ON AN ONGOING BASIS THROUGH THE CONCLUSION OF
11 POST-CONVICTION PROCEEDINGS. THE DISTRICT ATTORNEY SHALL
12 REQUEST, PURSUANT TO SECTION 16-12-305 (5)(b)(II), DISCOVERABLE
13 MATERIAL FROM A CRIME LABORATORY THAT MAY BE IN THE POSSESSION
14 OF THE CRIME LABORATORY BUT HAS NOT BEEN PROVIDED TO THE
15 DISTRICT ATTORNEY.

16 (2) WHEN DISCOVERY IS REQUIRED PURSUANT TO SUBSECTION (1)
17 OF THIS SECTION, AND UPON RECEIVING A DISCOVERY REQUEST FROM A
18 DEFENDANT, THE DISTRICT ATTORNEY SHALL PROVIDE THE DEFENDANT
19 COPIES OF THE FOLLOWING:

20 (a) ALL MATERIAL THAT WAS PREVIOUSLY DISCOVERED IN THE
21 CASE THAT IS NOT ALREADY IN THE DEFENDANT'S PRESENT COUNSEL'S
22 POSSESSION;

23 (b) ALL STATEMENTS, TRANSCRIPTS, AND REPORTS ABOUT THE
24 WRONGFUL ACTION OR INVESTIGATION OF THE WRONGFUL ACTION,
25 INCLUDING, BUT NOT LIMITED TO, STATEMENTS, TRANSCRIPTS, AND
26 REPORTS FROM THE CRIME LABORATORY, INCLUDING AN UNREDACTED
27 COPY OF THE FINAL REPORT, LAW ENFORCEMENT AGENCIES OR OFFICERS,

1 AND THIRD PARTIES CONTRACTED TO INVESTIGATE THE WRONGFUL
2 ACTION;

3 (c) ALL STATEMENTS, TRANSCRIPTS, REPORTS, OR LITIGATION
4 PACKETS ABOUT THE HANDLING, TESTING, RETESTING, EXAMINATION, OR
5 RESULTS RELATED TO THE PHYSICAL EVIDENCE IN THE DEFENDANT'S CASE;

6 (d) ALL COMMUNICATIONS, REPORTS, OR INFORMATION THAT
7 RELATES TO ACCREDITATION, CERTIFICATION, OR LICENSURE RELATED TO,
8 OR THAT MAY BE AFFECTED BY, THE WRONGFUL ACTION, WHICH INCLUDES
9 ACCREDITATION, CERTIFICATION, OR LICENSURE OF THE CRIME
10 LABORATORY OR THE CRIME LABORATORY EMPLOYEE ALLEGED TO HAVE
11 COMMITTED THE WRONGFUL ACTION;

12 (e) CRIME LABORATORY POLICIES AND PROCEDURES THAT WERE
13 APPLICABLE DURING THE TIME OF THE ALLEGED WRONGFUL ACTION THAT
14 GOVERNED THE HANDLING, TESTING, OR EXAMINATION OF THE EVIDENCE
15 HANDLED, TESTED, OR EXAMINED BY THE CRIME LABORATORY FOR WHICH
16 THE CRIME LABORATORY EMPLOYEE ALLEGED TO HAVE COMMITTED THE
17 WRONGFUL ACTION WORKED;

18 (f) ANY INFORMATION THAT TENDS TO IMPEACH THE CREDIBILITY
19 OR RELIABILITY OF THE HANDLING, TESTING, OR EXAMINATION OF THE
20 PHYSICAL EVIDENCE IN THE CASE;

21 (g) ALL MATERIALS OR INFORMATION RELATED TO THE CASE THAT
22 TENDS TO NEGATE THE GUILT OF THE ACCUSED OR WOULD REDUCE THE
23 PUNISHMENT OF THE ACCUSED; AND

24 (h) ANY OTHER MATERIAL REGARDING THE WRONGFUL ACTION
25 THAT IS REQUESTED BY THE DEFENDANT THAT MAY BE RELEVANT TO
26 DEMONSTRATING THE WRONGFUL ACTION OR MATERIALITY OF THE
27 WRONGFUL ACTION IN THE DEFENDANT'S CASE.

1 (3) ANY PARTY MAY FILE A MOTION FOR A COURT ORDER TO ASSIST
2 IN OBTAINING DISCOVERY PURSUANT TO THIS SECTION. WHEN MATERIAL
3 IS REASONABLY BELIEVED TO EXIST AND IS REQUIRED TO BE PROVIDED
4 PURSUANT TO THIS SECTION, BUT HAS NOT BEEN PROVIDED IN RESPONSE
5 TO PROPER REQUESTS, A SUBPOENA MAY BE ISSUED FOR SUCH MATERIAL.

6 (4) NOTHING IN THIS SECTION PREVENTS OR LIMITS A COURT FROM
7 ORDERING ADDITIONAL DISCOVERY PURSUANT TO A LAW OR COURT RULE
8 THAT AUTHORIZES A COURT TO ORDER DISCOVERY.

9 (5) (a) UNLESS IT IS IN CONFLICT WITH A SPECIFIC PROVISION OF
10 THIS SECTION, RULE 16 OF THE COLORADO RULES OF CRIMINAL
11 PROCEDURE APPLIES TO ANY POST-CONVICTION PROCEEDINGS UNDER THIS
12 SECTION.

13 (b) IN POST-CONVICTION PROCEEDINGS UNDER THIS SECTION, A
14 PROSECUTING ATTORNEY SHALL PERFORM THEIR OBLIGATIONS:

15 (I) PURSUANT TO SUBSECTIONS (2)(a), (2)(b), (2)(c), AND (2)(d) OF
16 THIS SECTION AS SOON AS PRACTICABLE, BUT NOT LATER THAN
17 FORTY-FIVE DAYS AFTER THE PROSECUTING ATTORNEY RECEIVES A VALID
18 DISCOVERY REQUEST OR COURT ORDER PURSUANT TO SUBSECTION (1)(c)
19 OF THIS SECTION; AND

20 (II) PURSUANT TO SUBSECTIONS (2)(e), (2)(f), (2)(g), AND (2)(h)
21 OF THIS SECTION AS SOON AS PRACTICABLE, BUT NOT LATER THAN
22 THIRTY-FIVE DAYS BEFORE THE EVIDENTIARY HEARING REGARDING THE
23 POST-CONVICTION PROCEEDING.

24 (6) (a) WITH REGARD TO ALL MATTERS OF DISCOVERY UNDER THIS
25 SECTION, THE COURT MAY ISSUE A PROTECTIVE ORDER UPON A SHOWING
26 OF CAUSE BY A PARTY OR A THIRD PARTY WHO HAS STANDING, INCLUDING
27 THE CRIME LABORATORY ANALYST ACCUSED OF WRONGFUL ACTION, SO

1 LONG AS ALL MATERIAL TO WHICH A PARTY IS ENTITLED MUST BE
2 DISCLOSED IN TIME FOR THE PARTY TO MAKE BENEFICIAL USE THEREOF.

3 (b) PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION, THE COURT
4 MAY ENTER A PROTECTIVE ORDER AT ANY TIME THAT:

5 (I) REQUIRES SPECIFIC DISCLOSURES TO BE RESTRICTED OR
6 DEFERRED;

7 (II) ASSISTS IN ENSURING MATERIALS FURNISHED IN DISCOVERY
8 ARE ONLY PROVIDED TO A PERSON TO PREPARE A CLAIM FOR
9 POST-CONVICTION RELIEF OR TO PREPARE FOR TRIAL OF A CASE;

10 (III) PROTECTS THE PRIVACY RIGHTS OF ANY PERSON; OR

11 (IV) THE COURT DEEMS NECESSARY.

12 (c) WHEN DETERMINING WHETHER TO ISSUE A PROTECTIVE ORDER
13 INVOLVING INFORMATION DISCLOSED PURSUANT TO THIS SECTION ABOUT
14 ALLEGATIONS OF WRONGFUL ACTION BY A CRIME LABORATORY EMPLOYEE
15 THAT ARE STILL UNDER INVESTIGATION OR THAT WERE NOT SUSTAINED BY
16 THE CRIME LABORATORY, THE COURT SHALL GIVE WEIGHT TO PROTECTING
17 THE CRIME LABORATORY EMPLOYEE'S PRIVACY.

18 (7) (a) IF A DEFENDANT ALLEGES A CLAIM OF INEFFECTIVE
19 ASSISTANCE OF COUNSEL AS PART OF A CLAIM BROUGHT PURSUANT TO
20 THIS SECTION, THE PROVISIONS OF SECTION 18-1-417 REGARDING WAIVER
21 OF CONFIDENTIALITY APPLY.

22 (b) THE COUNSEL OF RECORD SHALL DISCLOSE ANY MATERIALS
23 FROM A PRIOR COUNSEL FILE THAT MUST BE DISCLOSED PURSUANT TO
24 SECTION 18-1-417 AS SOON AS PRACTICABLE UPON A REQUEST FROM THE
25 PROSECUTION AND NO LATER THAN THIRTY-FIVE DAYS FROM THE REQUEST
26 OF THE PROSECUTION. THE CUSTODIAN MAY FILE A MOTION WITH THE
27 COURT AND THE COURT MAY GRANT AN EXTENSION TO MAKE THE

1 DISCLOSURE UPON A SHOWING OF GOOD CAUSE.

2 (c) AFTER MAKING A REQUEST PURSUANT TO SECTION 18-1-417
3 UPON A SHOWING OF A GOOD FAITH BELIEF THAT MATERIAL EXISTS WITHIN
4 THE SCOPE OF A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL THAT HAS
5 NOT BEEN PRODUCED, THE PROSECUTION MAY FILE A MOTION WITH THE
6 COURT SEEKING IN CAMERA REVIEW OF MATERIAL SUBJECT TO A GOOD
7 FAITH DISPUTE. THE PROSECUTION SHALL SERVE ANY SUCH REQUEST UPON
8 THE CUSTODIAN OF THE RECORDS.

9 (8) SUBJECT TO CONSTITUTIONAL LIMITATIONS, THE COURT SHALL
10 SET A DEADLINE AT LEAST THIRTY-FIVE DAYS PRIOR TO THE EVIDENTIARY
11 HEARING FOR THE PARTIES TO:

12 (a) EXCHANGE THE NAME AND ADDRESS OF EACH WITNESS A
13 PARTY MAY CALL AT THE HEARING AND TO DESIGNATE WITNESSES WHO
14 ARE LIKELY TO BE CALLED; AND

15 (b) DESIGNATE A WITNESS AS AN EXPERT AND DESIGNATE THE
16 AREA IN WHICH THE PARTY WILL SEEK TO QUALIFY THE EXPERT. SUBJECT
17 TO CONSTITUTIONAL LIMITATIONS, THE COURT SHALL ORDER THE PARTIES
18 TO PROVIDE A REPORT FROM THE DESIGNATED EXPERT OR SUMMARY OF
19 THE EXPERT'S TESTIMONY THAT ALLOWS THE OPPOSING PARTY TO PREPARE
20 TO RESPOND TO THE EXPERT'S TESTIMONY.

21 **16-12-310. Petition for post-conviction relief - petition**
22 **requirements.** (1) NOTWITHSTANDING ANY OTHER CLAIM FOR
23 POST-CONVICTION RELIEF AVAILABLE PURSUANT TO FEDERAL OR STATE
24 LAW, INCLUDING RELIEF AVAILABLE PURSUANT TO THE COLORADO RULES
25 OF CRIMINAL PROCEDURE, A DEFENDANT WHO WAS CONVICTED OF A
26 CRIMINAL OFFENSE WHO RECEIVES A NOTICE OF REPORTED WRONGFUL
27 ACTION PURSUANT TO SECTION 16-12-306 OR WHO FILES A PLEADING

1 NAMING A CRIME LABORATORY EMPLOYEE WHO WORKED ON THE
2 DEFENDANT'S CASE WHO IS SUBJECT TO AN INVESTIGATION OF WRONGFUL
3 ACTION HAS A RIGHT TO PETITION FOR RELIEF PURSUANT TO THIS PART 3.

4 (2) TO INITIATE A CLAIM FOR POST-CONVICTION RELIEF, THE
5 DEFENDANT SHALL FILE A PETITION THAT INCLUDES:

6 (a) IF NOT ALREADY FILED WITH THE COURT, A COPY OF THE
7 NOTICE RECEIVED PURSUANT TO SECTION 16-12-306 OR A STATEMENT
8 THAT NAMES A CRIME LABORATORY EMPLOYEE WHO WORKED ON THE
9 DEFENDANT'S CASE WHO IS SUBJECT TO AN INVESTIGATION OF WRONGFUL
10 ACTION;

11 (b) A STATEMENT OF THE RELEVANT PROCEDURAL HISTORY OF THE
12 DEFENDANT'S CASE, INCLUDING THE CRIMES FOR WHICH THE DEFENDANT
13 WAS CONVICTED;

14 (c) THE FACTS AND LEGAL BASIS FOR RELIEF, WHICH MUST
15 INCLUDE SUFFICIENT ALLEGATIONS THAT, IF TRUE, ENTITLE THE
16 DEFENDANT TO RELIEF; AND

17 (d) A DESCRIPTION OF THE TIME LIMIT FOR FILING THE PETITION.

18 (3) A COURT SHALL PERMIT A DEFENDANT TO SUPPLEMENT A
19 PETITION WITH RELEVANT FACTUAL ASSERTIONS AND LEGAL AUTHORITIES
20 SO LONG AS THE DISTRICT ATTORNEY HAS A FAIR NOTICE AND ABILITY TO
21 RESPOND.

22 (4) THE COURT MAY DISMISS A PETITION FOR FAILING TO
23 SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF THIS SECTION BUT
24 ONLY AFTER MAKING A FINDING OF A SUBSTANTIAL DEFECT IN THE
25 PETITION AND AFFORDING THE DEFENDANT AN OPPORTUNITY TO AMEND
26 OR SUPPLEMENT THE PETITION TO CURE THE DEFECT.

27 (5) AFTER RECEIVING A PETITION AND ANY SUPPLEMENTS OR

1 AMENDMENTS, THE COURT SHALL ORDER THE DISTRICT ATTORNEY TO
2 RESPOND TO THE PETITION WITHIN THIRTY-FIVE DAYS AND AFFORD THE
3 DEFENDANT AN OPPORTUNITY TO REPLY TO THE RESPONSE WITHIN
4 TWENTY-ONE DAYS AFTER THE DISTRICT ATTORNEY'S RESPONSE IS FILED.
5 THE DISTRICT ATTORNEY DOES NOT HAVE A DUTY TO RESPOND UNTIL
6 ORDERED TO DO SO. A COURT MAY GRANT AN EXTENSION OF TIME FOR THE
7 DISTRICT ATTORNEY TO FILE A RESPONSE OR A DEFENDANT TO FILE A
8 REPLY. THE DISTRICT ATTORNEY'S RESPONSE AND ANY REPLY BY THE
9 DEFENDANT MUST STATE FACTUAL ASSERTIONS AND LEGAL AUTHORITIES
10 THAT AFFORD THE OPPOSING PARTY FAIR NOTICE AND ABILITY TO
11 RESPOND.

12 (6) AFTER RECEIVING THE PETITION, A RESPONSE, AND ANY REPLY,
13 THE COURT MAY DISMISS A PETITION WITHOUT A HEARING IF THE PETITION
14 FAILS TO STATE SUFFICIENT ALLEGATIONS THAT, IF TRUE, ENTITLE THE
15 DEFENDANT TO RELIEF.

16 (7) THE COURT SHALL NOT DENY A CLAIM BROUGHT PURSUANT TO
17 THIS SECTION ON THE GROUNDS THAT THE WRONGFUL ACTION COULD OR
18 SHOULD HAVE BEEN DISCOVERED THROUGH THE EXERCISE OF DUE
19 DILIGENCE BEFORE THE DEFENDANT RECEIVED A NOTICE OF REPORTED
20 WRONGFUL ACTION AS DESCRIBED IN SECTION 16-12-306 (1). IT IS
21 PRESUMED THAT PRIOR TO RECEIVING A NOTICE PURSUANT TO SECTION
22 16-12-306 (1) THAT THE DEFENDANT AND THEIR COUNSEL DO NOT KNOW
23 ABOUT THE WRONGFUL ACTION BY A CRIME LABORATORY, AND THAT
24 PRESUMPTION CONSTITUTES AN OBJECTIVE FACTOR, EXTERNAL TO THE
25 DEFENSE, WHICH MADE RAISING ANY CLAIM RELATED TO THE WRONGFUL
26 ACTION IMPRACTICABLE PRIOR TO RECEIPT OF THE NOTICE.

27 (8) A CLAIM MADE PURSUANT TO THIS SECTION MUST RAISE ALL

1 GROUND FOR RELIEF RELATED TO THE WRONGFUL ACTION. AFTER A
2 COURT HAS DENIED A CLAIM MADE PURSUANT TO THIS SECTION, A COURT
3 SHALL DENY AS SUCCESSIVE ADDITIONAL CLAIMS RELYING ON THE
4 WRONGFUL ACTION UNLESS NEW EVIDENCE RELATING TO THE CLAIM IS
5 DISCOVERED THAT COULD NOT HAVE BEEN DISCOVERED THROUGH THE
6 EXERCISE OF DUE DILIGENCE BEFORE THE DENIAL OF THE PRIOR CLAIM.

7 (9) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, A
8 COURT SHALL NOT DENY A POST-CONVICTION CLAIM THAT IS UNRELATED
9 TO WRONGFUL ACTION BECAUSE IT WAS NOT BROUGHT WITH A CLAIM
10 PURSUANT TO THIS SECTION.

11 **16-12-311. Time limitation on post-conviction petition for**
12 **relief.** (1) (a) NOTWITHSTANDING THE LIMITATION IN SECTION 16-5-402,
13 A CLAIM FOR POST-CONVICTION RELIEF RELYING IN WHOLE OR IN PART ON
14 FACTS RELATED TO WRONGFUL ACTION MUST BE COMMENCED WITHIN THE
15 APPLICABLE TIME PERIOD SET FORTH IN SUBSECTION (1)(b) OF THIS
16 SECTION, WHICH BEGINS TO RUN UPON ACTUAL RECEIPT BY THE
17 DEFENDANT OF THE NOTICE OF REPORTED WRONGFUL ACTION MADE
18 PURSUANT TO SECTION 16-12-306.

19 (b) THE TIME PERIOD TO BRING A CLAIM FOR RELIEF PURSUANT TO
20 THIS PART 3 IS AS FOLLOWS:

21 ALL CLASS 1 FELONIES:	NO LIMIT
22 ALL OTHER FELONIES:	THREE YEARS
23 MISDEMEANORS:	EIGHTEEN MONTHS
24 PETTY OFFENSES:	SIX MONTHS

25 (2) A COURT MAY PERMIT A DEFENDANT TO FILE A CLAIM AFTER
26 THE TIME PERIOD DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION HAS
27 EXPIRED ONLY UPON A SHOWING OF JUSTIFIABLE EXCUSE OR EXCUSABLE

1 NEGLECT.

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3 (3) THE TIME PERIOD DESCRIBED IN SUBSECTION (1) OF THIS
4 SECTION IS TOLLED:

5 (a) IF A DEFENDANT IS ADJUDICATED TO BE INCOMPETENT, UNTIL
6 THE COURT FINDS THAT THE DEFENDANT IS RESTORED TO COMPETENCY;

7 (b) FOR ANY TIME PERIOD DURING WHICH THE TRIAL COURT LACKS
8 JURISDICTION, INCLUDING, BUT NOT LIMITED TO, ANY TIME PERIOD
9 JURISDICTION IS IN AN APPELLATE COURT DUE A PENDING APPEAL; AND

10 (c) FOR ANY TIME PERIOD DURING WHICH A DEFENDANT'S WRITTEN
11 REQUEST FOR COUNSEL MADE PURSUANT TO SECTION 16-12-308 IS
12 PENDING UNTIL COUNSEL IS APPOINTED OR THE COURT DENIES THE
13 MOTION.

14 (4) IF, PRIOR TO AN EVIDENTIARY HEARING HELD PURSUANT TO
15 SECTION 16-12-312, THE PROSECUTION RAISES THAT THE PETITION
16 INITIATING A CLAIM FOR POST-CONVICTION RELIEF WAS NOT TIMELY FILED,
17 THE COURT SHALL, PRIOR TO THE EVIDENTIARY HEARING, DETERMINE
18 WHETHER THE PETITION WAS TIMELY FILED. IF THE TIME PERIOD HAS
19 EXPIRED, THE COURT SHALL DISMISS THE PETITION. AN ORDER DISMISSING
20 THE PETITION BECAUSE THE TIME TO BRING THE PETITION EXPIRED IS A
21 FINAL APPEALABLE ORDER.

22 **16-12-312. Evidentiary hearing on post-conviction petition for**
23 **relief - procedures - standards - material to the case described.** (1) IF
24 THE DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF ASSERTS FACTS
25 THAT, IF TRUE, DEMONSTRATE THAT WRONGFUL ACTION WAS MATERIAL
26 TO THE DEFENDANT'S CASE, THE COURT SHALL DECIDE THE CLAIM UPON
27 THE MERITS AFTER AN EVIDENTIARY HEARING.

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(2) UPON THE REQUEST OF A PARTY, THE COURT MAY GRANT ADDITIONAL DISCRETIONARY DISCLOSURES TO EFFECTUATE FAIR PREPARATION AND PRESENTATION OF EVIDENCE BY THE OPPOSING PARTY. IN CASE OF LATE OR INCOMPLETE DISCLOSURE, THE COURT HAS THE DISCRETION TO ENTER ORDERS TO CURE OR REMEDY A VIOLATION OF ANY DEADLINES OR OTHER DISCOVERY REQUIREMENTS.

(3) AT THE EVIDENTIARY HEARING, THE DEFENDANT HAS THE BURDEN TO SHOW, BY A PREPONDERANCE OF THE EVIDENCE, THAT:

(a) A CRIME LABORATORY EMPLOYEE ENGAGED IN A WRONGFUL ACTION; AND

(b) THE CRIME LABORATORY EMPLOYEE'S CONDUCT DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION IS MATERIAL TO THE CASE.

(4) (a) IF THE DEFENDANT FAILS TO MEET THEIR BURDEN PURSUANT TO SUBSECTION (3) OF THIS SECTION, THE COURT SHALL DISMISS THE CLAIM.

(b) IF THE DEFENDANT MEETS THEIR BURDEN PURSUANT TO SUBSECTION (3) OF THIS SECTION, THE COURT SHALL VACATE THE CONVICTION AND GRANT A NEW TRIAL.

(5) (a) FOR THE PURPOSES OF THIS SECTION, WRONGFUL ACTION IS MATERIAL TO THE CASE IF, WHEN CONSIDERED IN THE TOTALITY OF THE CASE:

(I) THE EVIDENCE TESTED BY THE CRIME LABORATORY EMPLOYEE OR THE RESULTS OF TESTING OR TESTIMONY OF THE CRIME LABORATORY EMPLOYEE IS SIGNIFICANT AND IMPORTANT EVIDENCE IN THE CASE;

(II) (A) A FACT OR INFERENCE IN FAVOR OF GUILT THAT RESULTED FROM TESTING OR TESTIMONY ABOUT EVIDENCE TESTED BY THE CRIME

1 LABORATORY EMPLOYEE WAS NOT ALSO ESTABLISHED BY INDEPENDENT,
2 RELIABLE EVIDENCE; OR

3 (B) A FACT OR INFERENCE IN FAVOR OF INNOCENCE BASED UPON
4 ANY TESTING OR TESTIMONY ABOUT EVIDENCE TESTED BY THE CRIME
5 LABORATORY EMPLOYEE WAS NOT KNOWN OR PRESENTED PRIOR TO THE
6 CONVICTION AND COULD BE PRESENTED AT A NEW TRIAL; AND

7 (III) THERE IS A REASONABLE PROBABILITY THAT, BUT FOR THE
8 WRONGFUL ACTION, THE RESULTS OF THE PROCEEDING WOULD HAVE BEEN
9 DIFFERENT, WHICH IS SATISFIED WHEN THERE IS EVIDENCE SUFFICIENT TO
10 UNDERMINE CONFIDENCE IN THE VERDICT OR GUILTY PLEA.

11 (b) AS LONG AS THE REQUIREMENTS OF SUBSECTION (5)(a) OF THIS
12 SECTION ARE SATISFIED, WRONGFUL ACTION MAY BE MATERIAL TO THE
13 CASE IF THE WRONGFUL ACTION SIGNIFICANTLY IMPEACHES OR CASTS
14 DOUBT UPON THE ACCURACY OF PHYSICAL EVIDENCE TESTING, THE
15 PRESENTATION OF TEST RESULTS, TESTIMONY ABOUT THE TESTING OR
16 PHYSICAL EVIDENCE BY A CRIME LABORATORY EMPLOYEE OR OTHER
17 WITNESS.

18 (6) A RULING GRANTING OR A DENYING A NEW TRIAL AFTER AN
19 EVIDENTIARY HEARING IS A FINAL APPEALABLE ORDER.

20 **SECTION 2.** In Colorado Revised Statutes, 24-4.1-302.5, **add**
21 (1)(b.10) as follows:

22 **24-4.1-302.5. Rights afforded to victims - definitions.** (1) In
23 order to preserve and protect a victim's rights to justice and due process,
24 each victim of a crime has the following rights:

25 (b.10) THE RIGHT TO BE INFORMED, PURSUANT TO SECTION
26 16-12-307, OF WRONGFUL ACTION BY A CRIME LABORATORY EMPLOYEE IN
27 A CASE INVOLVING A CRIME LISTED IN SECTION 24-4.1-302 (1).

1 **SECTION 3.** In Colorado Revised Statutes, 24-72-303, add
2 (4)(a.5) as follows:

3 **24-72-303. Records of official actions required - open to**
4 **inspection - applicability.** (4) (a.5) UPON COMPLETION OF A FINAL
5 REPORT WHICH CONCLUDES A CRIME LABORATORY EMPLOYEE ENGAGED
6 IN WRONGFUL ACTION, AS DESCRIBED IN SECTION 16-12-305 (5)(b), THE
7 FINAL REPORT IS OPEN FOR PUBLIC INSPECTION, AND IF THE REQUESTER
8 REQUESTS ACCESS TO REPORT, THE CUSTODIAN SHALL PROVIDE ACCESS TO
9 THE FINAL REPORT SUBJECT TO THE PROVISIONS OF SUBSECTIONS (4)(b),
10 (4)(c), AND (4)(d) OF THIS SECTION.

11 **SECTION 4. Applicability.** This act applies to claims for relief
12 filed on or after the effective date of this act that are based on knowing
13 misconduct or a significant event, as defined in this act, that occurred
14 before, on, or after the effective date of this act.

15 **SECTION 5. Safety clause.** The general assembly finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, or safety or for appropriations for
18 the support and maintenance of the departments of the state and state
19 institutions.