Section 19. Right to bail - exceptions.

(1) All persons shall be bailable by sufficient sureties pending disposition of charges except:

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

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

(I) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on probation or parole resulting from the conviction of a crime of violence;

(II) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on bail pending the disposition of a previous crime of violence charge for which probable cause has been found;

(III) A crime of violence, as may be defined by the general assembly, alleged to have been committed after two previous felony convictions, or one such previous felony conviction if such conviction was for a crime of violence, upon charges separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony; or

(c) (Deleted by amendment, L. 94, p. 2853, effective upon proclamation of the Governor, L. 95, p. 1434, January 1, 1995.)

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

(2.5) (a) The court may grant bail after a person is convicted, pending sentencing or appeal, only as provided by statute as enacted by the general assembly; except that no bail is allowed for persons convicted of:

(I) Murder;

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

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

(IV) A crime of violence, as defined by statute enacted by the general assembly; or

(V) Any felony during the commission of which the person used a firearm.

(b) The court shall not set bail that is otherwise allowed pursuant to this subsection (2.5) unless the court finds that:

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

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

(3) This section shall take effect January 1, 1995, and shall apply to offenses committed on or after said date.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 31. **L. 82:** Entire section R&RE, p. 685, effective January 1, 1983. **L. 94:** Entire section amended, p. 2853, effective upon proclamation of the Governor, **L. 95,** p. 1434, January 19, 1995.

Editor's note: For the proclamation of the Governor, December 30, 1982, see L. 83, p. 1671.

Cross references: For considering the question of bail, see Crim. P. 46 and part 1 of article 4 of title 16; for prohibition against excessive bail, see § 20 of this article.

ANNOTATIONS

Law reviews. For article, "Some Legal Aspects of the Colorado Coal Strike", see 4 Den. B. Ass'n Rec. 22 (Dec. 1927). For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963).

Annotator's note. The following annotations include cases decided under the prior version of this section.

Purpose of bail is to insure the defendant's presence at the time of trial and not to punish a defendant before he has been convicted. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975); L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

The purpose of confining the defendant before trial is not for punishment but to insure his presence at the trial. People v. Spinuzzi, 149 Colo. 391, 369 P.2d 427 (1962).

This section confers absolute right to bail in all cases, except for capital offenses, where the proof is evident and the presumption is great that the accused committed the crime. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975); L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

This section in effect changes the common law so as to confer an absolute right to bail after indictment in all other felonies than capital cases. Proofs may be required in determining the amount of bail, but the right thereto is no longer a matter of judicial inquiry or discretion. In re Losasso, 15 Colo. 163, 24 P. 1080, 10 L.R.A. 847 (1890); Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

Bail, as a matter of right, for all but the most heinous crimes, has been recognized in Colorado. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

But bail not guaranteed to offender of law of another state. The right to bail guaranteed by this section does not apply to one charged with an offense under the laws of another state. Johnson v. District Court, 199 Colo. 458, 610 P.2d 1064 (1980).

Child does not have absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

The inquiry concerning whether an exception to the presumption of bail for juveniles should be recognized focuses primarily on the circumstances surrounding the conduct and character of the juvenile rather than on the nature of particular detention facilities. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Lack of absolute right to bail after service of governor's warrant does not mean that the court has lost its inherent power to grant bail after that time, but simply reflects a determination that the legislative intent to deny bail after service of the governor's warrant is a reasonable and appropriate limitation on that power absent the most extraordinary circumstances. Johnson v. District Court, 199 Colo. 458, 610 P.2d 1064 (1980).

Section modifies common-law rule as to bail in capital offenses. This constitutional provision modifies the common-law rule by providing, in effect, that in capital offenses, even after indictment, if upon investigation it is found that the "proof is not evident or the presumption great", bail should be allowed. In re Losasso, 15 Colo. 163, 24 P. 1080, 10 L.R.A. 847 (1890).

Section includes persons accused of any crime, before or after indictment. This constitutional provision is entirely silent as to the status of the prosecution. It does not say that upon indictment for a felony, or for a particular kind of felony, the beneficent privilege conferred is withdrawn. On the contrary, its terms are broad enough to include persons accused of any crime whatever, after as well as before indictment. In re Losasso, 15 Colo. 163, 24 P. 1080, 10 L.R.A. 847 (1890).

But bail need not be matter of right in every case. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Defendant is not entitled to bail when accused of first-degree murder. People ex rel. Dunbar v. District Court, 180 Colo. 107, 502 P.2d 420 (1972).

And bail need not be granted after conviction. People v. Roca, 17 P.3d 835 (Colo. App. 2000).

No right to trial within 90 days of revocation pursuant to § 16-4-103 (2) for defendant whose bail was denied because proof was evident and presumption great in capital offense case. People v. Avery, 736 P.2d 1233 (Colo. App. 1986).

Only exception expressly made has reference to capital offenses, but this exception is wholly inoperative if the proof of guilt be not evident and the presumption great. In re Losasso, 15 Colo. 163, 24 P. 1080 (1890).

Bail as a matter of right in capital cases is denied; but, when some competent authority ascertains by inquiry that the proof is not evident and the presumption not great, its allowance is imperatively commanded. Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

When proof is evident or presumption great, denial of bail is mandatory. People v. District Court, 187 Colo. 164, 529 P.2d 1335 (1974); Goodwin v. District Court, 196 Colo. 246, 586 P.2d 2 (1978).

Under the plain meaning of this section, a defendant convicted of a crime of violence must be denied an appeal bond until the conviction becomes final, even where defendant's conviction was reversed at the appellate court level. The conviction is not final until the defendant has exhausted all direct appeals. The bond must be denied when the defendant may ultimately be successful on appeal, acquitted upon retrial, and will have fully served the sentence. People v. Stewart, 26 P.3d 17 (Colo. App. 2000), rev'd on other grounds 55 P.3d 107 (Colo. 2002).

Historical reason for denying bail in capital case is because temptation for the defendant to leave the jurisdiction of the court and thus avoid trial is particularly great in such case. Courts should therefore proceed with extreme caution in permitting bail in a capital case and in the determination of whether the proof is evident or the presumption great. People v. Spinuzzi, 149 Colo. 391, 369 P.2d 427 (1962).

Furman v. Georgia did not deprive section of vitality. The United States supreme court decision Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed.2d 346 (1972), which prohibited the imposition of the death penalty in certain circumstances, did not deprive this section of vitality. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

Mention of one exception excludes other exceptions. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435, 11 A.L.R.3d 1380 (1965).

Although ineligibility for death penalty does not foreclose denial of bail. Fact that defendant was 16 years of age, a minor, who could not be subjected to the death penalty, would not have foreclosed the denial of bail. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Implementation of right to bail must be determined by hearing where the people's proof of guilt is presented. Orona v. District Court, 184 Colo. 55, 518 P.2d 839 (1974).

It is duty of court to determine for itself whether proof is evident or the presumption great in each case. People v. Spinuzzi, 149 Colo. 391, 369 P.2d 427 (1962); Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

Failure of court to determine for itself request for bail requires remand. While the trial court does nothing more than summarily sustain the objections of the district attorney to the request for bail, and does not determine for itself from any competent evidence that the proof is evident or the presumption great that the accused was guilty of the crime charged, the cause will be remanded to the trial court for a hearing on the matter. Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

Burden of proof on those opposing bail. Because the state constitution establishes that the right to bail is absolute except were a capital crime has been committed and "the proof is evident or the presumption great" that the one charged committed the crime, the burden of proof rests with those opposing bail. Orona v. District Court, 184 Colo. 55, 518 P.2d 839 (1974).

Burden is upon the prosecution to show that the exception to the right to bail is applicable, and only with that showing can the conditional freedom secured by bail properly be denied. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

If bail is to be denied, prosecution must show proof is evident or presumption great. If bail is to be denied, it is incumbent upon the prosecution to come forward and show that the proof is evident or the presumption great that the crime set forth was committed by the defendant. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

The people bear burden of proving that proof is evident and presumption great, and the fact that charges have been made that the offense allegedly committed by the defendant is a capital offense which meets the constitutional standard for denial of bail does not satisfy the prosecution's burden. Goodwin v. District Court, 196 Colo. 246, 586 P.2d 2 (1978).

Standard greater than probable cause. The standard which the constitution requires before bail may be denied is greater than probable cause, though less than that required for a conviction. Orona v. District Court, 184 Colo. 55, 518 P.2d 839 (1974); Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Guilt or innocence of accused is not issue in a bail hearing. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

And no need of proof enough to impose death penalty. The language, "when the proof is evident or the presumption great", pertains to proof of guilt, not to the kind of proof needed for the imposition of the death penalty. Where the state's evidence, although circumstantial in nature, was considerable, it is enough to constitute "evident proof" within the meaning of the constitution. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

Offense does not cease to be capital where evidence circumstantial. Although by statute the death penalty cannot be imposed on the basis of only circumstantial evidence, petitioner does not cease to be charged with a "capital" offense and become entitled to bail as a matter of right where the prosecution probably did not have the direct evidence necessary to seek the death penalty. The offense with which he was charged was still a capital one, even if it should later develop that the type of evidence adduced did not support a verdict imposing the death penalty. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

Hearsay evidence is admissible in bail hearings. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

But denial of bail may not be predicated upon hearsay alone although such evidence may be admitted in corroboration. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Filing of information or binding over for trial insufficient. The mere fact that an information has been filed--or that the defendant has been bound over for trial--is not equivalent to a determination that the proof of guilt is evident or the presumption great so as to warrant a denial of bail. Orona v. District Court, 184 Colo. 55, 518 P.2d 839 (1974).

As is production of evidence. The mere filing of an information or the production of evidence which would establish probable cause that the crimes charged were committed will not meet the Colorado constitutional standard for denying bail in capital cases. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Indictment may create strong presumption that prisoner is guilty of capital offense. In re Losasso, 15 Colo. 163, 24 P. 1080 (1890); Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

And burden of overcoming this presumption is cast upon prisoner. Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

If evidence is not presented by prosecution, court must set reasonable bail in compliance with Colorado constitution and the eighth amendment of the constitution of the United States. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

If evidence of the proper nature and kind is not presented by the district attorney, it is incumbent upon the court, looking to the guidelines laid down in section 16-4-105 (1)(h) and in the case of Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951), to set reasonable bail in compliance with the Colorado constitution and the eighth amendment of the

constitution of the United States. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Colorado constitution recognizes that monetary bail is constitutionally permissible. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Factors which should be considered by trial court in determining whether bail should be set, and amount of such bail, include the seriousness of the offense, the possible danger to the community, the penalty, the character and reputation of the accused and the probability of his appearing. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

While the guilt or innocence of the accused is not to be determined, the quantity and character of the proofs on this point are, for the special purpose of determining bail, necessarily considered. Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

Although an accused has a constitutional right to bail in noncapital cases, the trial court has the discretion to set the amount and conditions of bail, subject to statutory limitations. Martell v. County Court of Summit County, 854 P.2d 1327 (Colo. App. 1992).

One who enters plea of not guilty by reason of insanity at time of commission of alleged crime cannot be denied bail pending trial. The trial court was powerless to construct an exception in such a case, and the denial of bail was erroneous. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435 (1965).

Person guilty of contempt entitled to bail pending review. Where a petitioner is adjudged guilty of contempt of court for refusal to answer questions before the grand jury and is sentenced to four months in jail, refusal of the trial court to stay execution or admit the petitioner to bail pending review by the supreme court is an abuse of discretion. Smaldone v. People, 153 Colo. 208, 385 P.2d 127 (1963).

But right to bail after conviction not absolute. This section does not give a defendant an absolute right to bail after conviction and before sentence, this being a matter within the discretion of the trial court. Romeo v. Downer, 69 Colo. 281, 193 P. 559 (1920).

And requires showing of peculiar circumstances by prisoner. Accused persons, bailable before trial but having no absolute right to be admitted to bail after conviction, should be admitted to bail with great caution after conviction, only where the extraordinary or peculiar circumstances of the case render it right and proper. The burden of showing such circumstances is, of course, on the accused. Romeo v. Downer, 69 Colo. 281, 193 P. 559 (1920).

Where denial of bail not arbitrary. Where petitioner was charged with first-degree murder, punishable by death, and had previously been convicted of second-degree murder and had escaped, it is obvious under the relevant standards that the bail denial cannot be viewed as unreasonable or arbitrary, or as an infringement upon petitioner's constitutional rights. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

Due process requirements met regarding denial of bail. Where denial of bail is not arbitrary and is not based solely upon the defendant's financial condition, due process requirements are met. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Unconstitutional bail condition. The imposition of conditions, relating to the defendant's right to remain at liberty on bail, that complies with the constitution is in keeping with the recommendations of the standards for criminal justice. However, the trial judge imposed an improper and unconstitutional condition where the bail order included the following condition: "If probable cause shall be shown to this court that any of the above offenses shall have been committed by either defendant, bond for that particular defendant shall be immediately terminated". Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Order refusing bail is order that accused shall be confined. Robran v. People, 173 Colo. 378, 479 P.2d 976 (1971).

And wilfull release of prisoner in violation of order contempt. Where a sheriff knows that his prisoner has been refused bail, it is a contempt of the court refusing the bail for the sheriff wilfully to permit the prisoner to be at large. Robran v. People, 173 Colo. 378, 479 P.2d 976 (1971).

Bail bond with but one surety is sufficient. Van Gilder v. People, 75 Colo. 515, 227 P. 386 (1924).

Applied in Wesson v. Johnson, 195 Colo. 521, 579 P.2d 1165 (1978); People v. Olds, 656 P.2d 705 (Colo. 1983); People ex rel. Gallagher v. District Court, 656 P.2d 1287 (Colo. 1983); People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984).

Section 20. Excessive bail, fines or punishment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

Cross references: For right to bail and exceptions thereto, see § 19 of this article; for considering the question of bail, see Crim. P. 46 and part 1 of article 4 of title 16.

ANNOTATIONS

Law reviews. For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses recent cases relating to the death penalty and cruel and unusual punishment, see 15 Colo. Law. 1596 and 1601 (1986). For comment, "The Process of Death: Reflections on Capital Punishment Issues in the Tenth Circuit Court of Appeals", see 66 Den. U. L. Rev. 563 (1989).

Bail need not be matter of right in every case. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

The right to bail does not amount to a guarantee that every defendant who is charged with a crime will be released without bail if he is indigent. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Monetary bail is constitutionally permissible. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Bail should be reasonably sufficient to secure prisoner's presence at trial; it should not be more than will be reasonably sufficient to prevent evasion of the law by flight or concealment. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435 (1965).

Hearing may be necessary for trial court to reasonably fix bail. Proofs may be required in determining the amount of bail, but the right thereto is no longer a matter of judicial inquiry or discretion. The scope and character of the hearing envisage consideration of factors which throw light on what would be reasonable bail in order to assure the prisoner's presence at the trial. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435 (1965).

Remedy for excessive bail. Where the bond fixed by the trial court in a criminal case is so grossly excessive as to amount to a denial of the right of accused to be admitted to bail in a reasonable amount, the supreme court will direct that the accused be admitted to bail in reasonable amount. Altobella v. District Court, 153 Colo. 143, 385 P.2d 663 (1963).

If bail is set in an excessive amount, the defendant has the right to petition for reduction of bail or appeal the bail decision. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Section refers to sentencing statutes and not the sentence. This section and the eighth amendment of the United States constitution refer to statutes providing the maximum and minimum sentences for conviction of a crime, and not to the sentence. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

The constitutional prohibition against cruel and unusual punishment does not require strict proportionality between the crimes committed and the sentences imposed. Instead, such prohibition forbids only extreme sentences that are "grossly disproportionate" to the crime. People v. Mershon, 874 P.2d 1025 (Colo. 1994); People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Punishing a person who cannot, because of his or her voluntary use of intoxicating substances, distinguish right from wrong does not violate the constitutional proscription on cruel and unusual punishment. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

Power to declare what punishment may be assessed for violation of statute is legislative and not judicial. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952); Normand v. People, 165 Colo. 509, 440 P.2d 282 (1968).

The matter of punishment for commissions of crime is a matter for determination by the general assembly. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

But a defendant is entitled to a proportionality review of a statutorily mandated sentence. The crime of violence statute, § 18-1.3-406, requires the court to impose consecutive sentences if the defendant is convicted of multiple crimes of violence. Because this takes away the trial court's discretion in considering the sentence and the trial court's opportunity to conduct its own proportionality review in imposing the sentence, the defendant is entitled to have the court of appeals conduct an abbreviated proportionality review of the sentence imposed. Close v. People, 48 P.3d 528 (Colo. 2002).

The defendant's age should not be considered in determining whether to conduct an abbreviated or an extended proportionality review. Valenzuela v. People, 856 P.2d 805 (Colo. 1993).

Sentence of life imprisonment with no possibility of parole for 40 years for a juvenile offender under the automatic sentencing provisions mandated by § 16-11-103 for first degree murder was not disproportionate in violation of the eighth amendment. Valenzuela v. People, 856 P.2d 805 (Colo. 1993).

The prohibition against cruel and unusual punishment is not per se applicable to a juvenile in a delinquency proceeding, but it may nevertheless be considered in assessing whether the child has been accorded fundamental fairness under the due process clause. People v. T.S.R., 843 P.2d 105 (Colo. App. 1992).

Mitigating factors such as defendant's age are irrelevant in determining whether a punishment is proportionate to the crime. Solem v. Helm, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed.2d 637 (1983); People v. Cisneros, 855 P.2d 822 (Colo. 1993).

A defendant's age is not a relevant factor to be considered by a court in a proportionality review. People v. Anaya, 894 P.2d 28 (Colo. App. 1994).

If defendant faced with life sentence without possibility of parole, a more extensive review is required rather than a limited proportionality review to protect the defendant against cruel and unusual punishment. Under such extended proportionality review, the court should be guided by objective criteria including: (1) The gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for commission of the same crime in other jurisdictions. Solem v. Helm, 463 U.S. 277, 103 S. Ct. 3001, 77 L.Ed.2d 637 (1983); People v. Cisneros, 824 P.2d 16 (Colo. App. 1991), rev'd on other grounds, 855 P.2d 822 (Colo. 1993).

Sentence within limits fixed by constitutional statute deemed valid. If a statute is not in violation of the constitution, then any punishment assessed by a court within the limits fixed thereby cannot be adjudged excessive. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

The supreme court cannot find cruel and unusual punishment as proscribed by the United States and Colorado constitutions to be present as it affects an individual, where the sentence is within the statutory limits, and where it does not shock the conscience of the court. Normand v. People, 165 Colo. 509, 440 P.2d 282 (1968); Trujillo v. People, 178 Colo. 136, 496 P.2d 1026 (1972); People v. O'Donnell, 184 Colo. 104, 518 P.2d 945 (1974); People v. McKnight, 41 Colo. App. 372, 588 P.2d 886 (1978); People v. Nieto, 715 P.2d 1262 (Colo. App. 1985).

In determining if a sentence constitutes cruel and unusual punishment, an appellate court may not substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence; rather, it determines only if the sentence is within constitutional limits. People v. Nieto, 715 P.2d 1262 (Colo. App. 1985).

If a sentence imposed is within limits fixed by statute, it will not be disturbed on review. Harris v. People, 174 Colo. 483, 484 P.2d 1223 (1971); People v. Lutz, 183 Colo. 312, 516 P.2d 1132 (1973); People v. Fulmer, 185 Colo. 366, 524 P.2d 606 (1974).

Where procedural due process is accorded a defendant and the sentence imposed is within the statutory limits and is not of such severity as to shock the conscience of the court, it is not necessary to bring the sentence within this constitutional proscription. Wolford v. People, 178 Colo. 203, 496 P.2d 1011 (1972).

For a juvenile tried as an adult, age is not a relevant factor in conducting a proportionality review of a sentence. People v. Moya, 899 P.2d 212 (Colo. App. 1994).

Classification of felony with mandatory sentences not violative of section. The establishment of driving after judgment prohibited as a class 5 felony with mandatory sentencing does not violate the prohibition against cruel and unusual punishment. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

The sentence of a 20-year-old non-habitual offender to life imprisonment with no possibility of parole for 40 years--the minimum sentence possible under the statutory scheme--is not disproportionate to the crime of first degree murder. People v. Smith, 848 P.2d 365 (Colo. 1993).

No requirement that mitigating factors be considered in sentencing habitual criminals. The uniquely grave nature of the death penalty is the wellspring from which flows the constitutional requirement that mitigating factors be considered in sentencing, notwithstanding the number or seriousness of defendant's prior offenses; no such requirement is included within the Colorado Constitution's prohibition of cruel and unusual punishment as applied to the sentencing of habitual criminals. People v. Gutierrez, 622 P.2d 547 (Colo. 1981).

And absence of discretion in sentencing habitual offenders not violative. The absence of sentencing discretion, even when coupled with a prescribed life sentence, does not render § 16-13-101 (2) facially invalid as violative of the prohibition of cruel and unusual punishment in this section. People v. Gutierrez, 622 P.2d 547 (Colo. 1981).

Trial and appellate courts must conduct an abbreviated proportionality review of a life sentences imposed under the habitual criminal statute. Alvarez v. People, 797 P.2d 37 (Colo. 1990).

Proportionality review required upon imposition of a life sentence under the habitual criminal statute. People v. Gaskins, 825 P.2d 30 (Colo. 1992), cert. denied, 505 U.S. 1213, 112 S. Ct. 3015, 120 L.Ed.3d 888 (1992).

Where defendant was convicted of multiple crimes of violence, the court of appeals was required to conduct a proportionality review, upon the defendant's request, of the consecutive sentence imposed for the crimes of violence, even though the statute mandates that the sentences be consecutive. Because the statutory mandate strips the trial court of discretion in sentencing and removes the trial court's ability to assess the proportionality of the sentences imposed, the court of appeals must conduct a separate abbreviated proportionality review. Close v. People, 48 P.3d 528 (Colo. 2002).

Solem v. Helm three-prong analysis applied in proportionality review of life sentence under eighth amendment. People v. Gaskins, 923 P.2d 292 (Colo. App. 1996).

Request for proportionality review alleging that sentence violates the eighth amendment to the U.S. constitution is subject to the limitation period set forth in § 16-5-402. People v. Moore-El, 160 P.3d 393 (Colo. App. 2007).

Only an abbreviated form of proportionality review, consisting of a comparison of the gravity of the offense and the harshness of the penalty, is required when a defendant, in either a habitual or a non-habitual offender case, challenges the constitutionality of a life sentence. Close v. People, 48 P.3d 528 (Colo. 2002); People v. McNally, 143 P.3d 1062 (Colo. App. 2005).

Only an "abbreviated" proportionality review is needed when the crimes supporting a habitual criminal sentence include grave or serious offenses and a defendant will become eligible for parole. People v. Anaya, 894 P.2d 28 (Colo. App. 1994); People v. Merchant, 983 P.2d 108 (Colo. App. 1999).

An abbreviated proportionality review, in which only the gravity of the crime and the sentence imposed are considered, is all that is required when the offense is a serious one. Great deference must be afforded to the general assembly's authority to establish the punishments for crimes. People v. Mandez, 997 P.2d 1254 (Colo. App. 1999); People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Court of appeals could not conduct a proper proportionality review without clarification on the record regarding two counts to which the defendant's transcript and the verdict forms rendered contradictory findings of guilt. Sumpter v. People, 994 P.2d 1045 (Colo. 2000).

Where there is wide spread between minimum and maximum punishment, whether any particular sentence is "cruel or unusual" is a matter to be determined under all the facts and circumstances surrounding each offense. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

In order to impose death penalty without violating prohibition against cruel and unusual punishment, capital sentencing scheme must satisfy two requirements: (1) The discretion of the sentencing body must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action; and (2) the sentencing body must be allowed to consider any relevant mitigating evidence regarding defendant's character and background and the circumstances of the offense. People v. Tenneson, 788 P.2d 786 (Colo. 1990).

Death penalty statute provision under § 16-11-103 (2)(b)(III) held to contravene the prohibition against cruel and unusual punishment when such provision required jury to return a sentence of death for conviction of first degree murder if mitigating and aggravating factors are found to be in equipose without making a separate deliberation to determine whether death is the appropriate penalty to be imposed beyond a reasonable doubt. People v. Young, 814 P.2d 834 (Colo. 1991) (decided under law in effect prior to 1991 repeal and reenactment of § 16-11-103).

Imposition of death penalty is not in itself infliction of cruel and unusual punishment. No independent basis exists under this section on which to base a per se challenge to capital punishment. People v. Davis, 794 P.2d 159 (Colo. 1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L.Ed.2d 656 (1991).

Execution by lethal gas does not constitute cruel and unusual punishment and is not distinguishable from other permissible methods of execution. People v. Davis, 794 P.2d 159 (Colo. 1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L.Ed.2d 656 (1991).

The capital sentencing scheme under § 16-11-103 which affords discretion to the prosecutor, who determines against whom to seek a death sentence, to the jury, which determines who is to receive a sentence of death, and to the governor, who determines who shall be granted clemency, does not violate the prohibition against cruel and unusual punishment. People v. Davis, 794 P.2d 159 (Colo. 1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L.Ed.2d 656 (1991).

No constitutional infirmity in capital sentencing scheme. By requiring that the jury find both that a statutory aggravator has been proven beyond a reasonable doubt and that mitigation does not outweigh aggravation before a defendant is even eligible to receive the death penalty, Colorado's sentencing scheme is sufficiently reliable to pass constitutional muster. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Prohibition of smoking in county jail facilities does not constitute cruel and unusual punishment. Elliott v. Bd. of Weld County Comm'rs, 796 P.2d 71 (Colo. App. 1990).

Punishment held not to constitute cruel and unusual punishment. People v. Shaver, 630 P.2d 600 (Colo. 1981).

Where consecutive sentences not excessive or cruel. Consecutive sentences imposed on two counts of assault with a deadly weapon did not amount to excessive, cruel, and unusual punishment, where the two women assaulted were in two different places and were not assaulted contemporaneously or as part of one criminal transaction. Harris v. People, 174 Colo. 483, 484 P.2d 1223 (1971).

When the defendant requests a proportionality review of consecutive sentences imposed under the statute pertaining to crimes of violence, the court is required to review the proportionality of each individual sentence, not the cumulative sentence. The cumulative sentence is not reviewable in the aggregate. Since each sentence represents punishment for a distinct and separate crime, it follows that a separate proportionality review should be completed for each sentence, even though the defendant is required to serve the sentences consecutively. Close v. People, 48 P.3d 528 (Colo. 2002).

There is no constitutional right to credit of presentence jail time against sentence imposed. People v. Coy, 181 Colo. 393, 509 P.2d 1239 (1973); People v. Nelson, 182 Colo. 1, 510 P.2d 441 (1973).

And defendant's health condition is not generally basis for constitutional challenge that his sentence constitutes cruel and unusual punishment. McKnight v. People, 199 Colo. 313, 607 P.2d 1007 (1980).

Colorado supreme court precedent has determined that the crimes of burglary, attempted burglary, conspiracy to commit burglary, felony menacing, possession or sale of narcotic drugs, aggravated robbery, robbery, and accessory to first-degree murder are grave or serious. Close v. People, 48 P.3d 528 (Colo. 2002).

When the crimes listed above are involved, a sentencing court may proceed directly to the second part of an abbreviated proportionality review: A consideration of the harshness of the penalty. Close v. People, 48 P.3d 528 (Colo. 2002).

Because court precedent has determined that certain crimes are grave or serious, it is highly likely that the legislatively mandated sentence for these crimes will be constitutionally proportionate in nearly every instance. Close v. People, 48 P.3d 528 (Colo. 2002).

Thus, the ability to proceed to the second part of the abbreviated proportionality review, namely the harshness of the penalty, when a grave or serious crime is involved results in a near-certain upholding of the sentence. Close v. People, 48 P.3d 528 (Colo. 2002).

The possession and sale of narcotic drugs is a grave and serious offense and supports a sentence of life imprisonment with eligibility for parole after 40 years. People v. Cisneros, 855 P.2d 822 (Colo. 1993).

Violence is a relevant consideration but not the sole criterion by which to evaluate whether defendant's crimes, when examined in combination, are lacking in gravity or seriousness. Conviction for crimes involving sale and distribution of heroin and other drugs along with prior convictions for felonies of robbery, theft, and attempted criminal mischief justifies imposition of life sentence under habitual criminal act and does not violate this section or the eighth amendment to the U.S. Constitution. People v. Mershon, 874 P.2d 1025 (Colo. 1994).

Burglary involves violence or the potential for violence and meets the requirement of gravity or seriousness to support a life sentence with eligibility for parole after 40 years. People v. Cisneros, 855 P.2d 822 (Colo. 1993).

Assault convictions meet the requirement of grave and serious for the purpose of completing an abbreviated proportionality review. Defendant and his associates caused actual harm to the victims and the evidence clearly indicated defendant's culpability in the assaults. Close v. People, 48 P.3d 528 (Colo. 2002).

Petitioner not entitled to an extended proportionality review just because his life expectancy does not exceed the 40-year period of parole ineligibility. People v. Ates, 855 P.2d 822 (Colo. 1993); People v. Cisneros, 855 P.2d 822 (Colo. 1993).

Violation of this section does not state cause of action under federal civil rights act. The fact that defendants, acting under color of state law, may have violated this section or § 27-26-104 (repealed, see now § 17-26-104), providing for proper feeding of prisoners, is not a basis for an action under the federal civil rights act, unless the violations result in a deprivation of some right which the plaintiffs have under the federal constitution and laws. Ruark v. Schooley, 211 F. Supp. 921 (D. Colo. 1962).

And this section is binding upon all departments of government, and is a special restriction upon the courts. People ex rel. Connor v. Stapleton, 18 Colo. 568, 33 P. 167 (1893).

Administrative transfer to prison from reformatory proper. Statutes authorizing administrative boards or a court, on their petition, to transfer to the state prison or other penal institution one originally sentenced to a reformatory are valid, notwithstanding objections that they constitute a denial of due process, confer judicial powers on an administrative body, or authorize the infliction of cruel and unusual punishment, since the power conferred on the boards is one of administrative control or discipline, as distinguished from a judicial function. Where statutes conferring the power of transfer on the administrative boards are effective at the time of the sentence, the possibility of transfer is an incident impliedly annexed to sentencing by the court. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

Conviction and sentence prerequisite to justiciable question. Until some person has been convicted of a crime and a sentence has been imposed which is then asserted to be "cruel and unusual", there is no justiciable question that punishment prescribed by a statute is cruel and unusual. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

Until defendants have actually been sentenced in "cruel or unusual" manner they cannot be heard to say that they or some other person might at some future time be subjected to "cruel or unusual" punishment. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

When question properly before supreme court. Question presented by writ of error, whether the consecutive sentences constitute cruel and unusual punishment, raised for the first time in the postconviction motion is properly before supreme court. Trujillo v. People, 178 Colo. 136, 496 P.2d 1026 (1972).

Whether a punishment is "cruel and unusual" and whether a fine is "excessive" are separate concepts and different criteria are required in making the two determinations. People v. Malone, 923 P.2d 163 (Colo. App. 1995).

In determining the appropriate level of a fine, the court must consider the particular financial circumstances of the defendant, as well as the severity of the offense, the defendant's character and background, and any other appropriate circumstances. If the amount of the fine is so disproportionate to the defendant's circumstances that there can be no realistic expectation that he or she will be able to pay the fine levied, the fine is excessive. People v. Malone, 923 P.2d 163 (Colo. App. 1995); People v. Pourat, 100 P.3d 503 (Colo. App. 2004).

Imposition of the mandatory $1,000 fine imposed by § 18-21-103 for persons convicted of a class 4 felony sex offense was not unconstitutionally excessive where the trial court discussed the defendant's ability to pay the surcharge at the sentencing hearing and defendant did not object to the amount of the fine or request a reduction of the amount. People v. Bolt, 984 P.2d 1181 (Colo. App. 1999).

Municipal ordinances that provide for a fine of $2,000 per violation were not excessive where one of the ordinances provides that the fine may be up to $2,000 and the other sets forth factors that a court must consider when imposing a fine. Boulder County Apt. Ass'n v. City of Boulder, 97 P.3d 332 (Colo. App. 2004).

Insurance authority lacked standing to assert that fines imposed under former § 8-53-116 violated the provisions of this section where the authority was an "arm of the state" and where, even if the authority had standing, the $6540 fine imposed for delay in reimbursing workers' compensation claimant for medical bill was not excessive. Pueblo Sch. Dist. No. 70 v. Toth, 924 P.2d 1094 (Colo. App. 1996).

If the victim has suffered a pecuniary loss then full restitution is to be ordered regardless of the defendant's ability to pay. Ordering restitution regardless of the defendant's ability to pay is not imposing an excessive fine, because restitution is not a fine. A fine is solely a monetary penalty where restitution is to make the victim whole. People v. Stafford, 93 P.3d 572 (Colo. App. 2004); People v. Cardenas, __ P.3d __ (Colo. App. 2011).

Applied in Cardillo v. People, 26 Colo. 355, 58 P. 678 (1899); Flick v. Indus. Comm'n, 78 Colo. 117, 239 P. 1022 (1925); Chasse v. People, 119 Colo. 160, 201 P.2d 378 (1948); Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950); Bernard v. Tinsley, 144 Colo. 244, 355 P.2d 1098 (1960), cert. denied, 365 U.S. 830, 81 S. Ct. 718, 5 L. Ed.2d 708 (1961); Specht v. Tinsley, 153 Colo. 235, 385 P.2d 423 (1963); Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971); People v. Manier, 184 Colo. 44, 518 P.2d 811 (1974); People v. Morgan, 189 Colo. 256, 539 P.2d 130 (1975); Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980); L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).