

District Court, Weld County, State of Colorado Court Address: 901 9 th Avenue, Greeley, CO 80631 Mailing Address: P.O. Box 2038, Greeley, CO 80632-2038	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
ADMINISTRATIVE ORDER NO. 14-05 Effective Date: November 1, 2014	
	Case Number: 2014 CV 01 Division 1
ORDER REQUIRING RIGHT TO COUNSEL ADVISEMENT TO BE INCLUDED ON DISTRICT ATTORNEY'S JUVENILE VOLUNTARY PROMISE TO APPEAR FORMS, AND AUTHORIZING USE OF A PROMISE TO APPEAR FORM BY LAW ENFORCEMENT AS ALTERNATIVE TO TAKING A JUVENILE INTO TEMPORARY CUSTODY	

Juvenile delinquency proceedings are an area of great local and statewide interest and the Weld County District Attorney's Office, local law enforcement agencies, the court, Youth and Family Connections, the defense bar, and various other state and local agencies and individuals have worked collaboratively over the years to improve the juvenile justice system.

The Weld County District Attorney's Office met with local law enforcement officials and separately with the Court several months ago, and thereafter the District Attorney drafted a Voluntary Promise to Appear form and implemented procedures that have been utilized by police agencies for approximately the past year. The purposes for using the Voluntary Promise to Appear procedure were to: (1) reduce the number of juveniles taken into temporary custody by law enforcement; (2) streamline the process for investigation reports to be provided by police officers to the District Attorney, which allows the District Attorney to more quickly determine whether charges will be filed; (3) shorten the period of time between the initial contact with law enforcement and the juvenile's first appearance in court; and (4) increase the number of persons participating in the District Attorney's Juvenile Diversion Program.

The Voluntary Promise to Appear procedure being utilized in Weld County differs from the promise to appear procedure set forth in C.R.S. § 19-2-507(5). The primary differences include the Voluntary Promise to Appear used in Weld County does not require personal service or by certified mail upon a juvenile's parent, guardian, or legal custodian, and the Voluntary Promise to Appear form is neither a charging document nor a legally binding document. The Voluntary Promise to Appear form specifically states that it does not restrain the juvenile or his/her parent, guardian, or legal custodian in any way, and therefore the District Attorney's Office cannot, and does not, request a warrant if a juvenile fails to appear on his/her promised date of appearance. Instead, upon a failure to appear on a Promise to Appear, the District Attorney must either request service of a summons to appear or file a motion and affidavit for an arrest warrant establishing probable cause for the underlying offense.

After a juvenile is provided with the Voluntary Promise to Appear, the District Attorney's Office reviews the case prior to the court date and decides whether the juvenile will be offered diversion, whether a delinquency petition will be filed against the juvenile, or whether charges will not be brought. If charges are filed, the juvenile appears before the court on the first appearance date for an advisement of rights. The juvenile may elect to enter a guilty plea on that date or the case can be continued over to another court date. Under the current procedure,

unless the juvenile and his or her parent, guardian, or legal custodian have hired private counsel, the juvenile is not represented by a lawyer at the first court appearance.

The Colorado General Assembly recently amended C.R.S. § 19-2-507(5), requiring an advisement of the right to legal counsel to be included on promises to appear that are issued pursuant to that subsection. The undersigned Chief Judge recently met with Magistrate Mark Gonzales and Chief Deputy District Attorney Anthea Carrasco to discuss the Voluntary Promise to Appear procedure in place in Weld County, and whether changes should be made to Weld County's Voluntary Promise to Appear form, in light of the statutory revisions to C.R.S. § 19-2-507(5). The Voluntary Promise to Appear form currently being used does not contain, for example, an advisement of the juvenile's right to be represented by an attorney. Although the Promise to Appear form used by law enforcement in Weld County does not necessarily fall within the provisions of C.R.S. § 19-2-507(5), this Court, after meeting with Ms. Carrasco and Magistrate Gonzales and considering the recent amendment to C.R.S. § 19-2-507(5), concludes that the following advisement must be included with a Voluntary Promise to Appear form issued to a juvenile and his/her parent, legal custodian, or guardian:

You have the right to the assistance of a lawyer. A lawyer can be appointed if the juvenile and the juvenile's parent, guardian, or legal custodian lack adequate resources to retain a lawyer, or if the juvenile's parent, guardian, or legal custodian refuses to retain a lawyer for the juvenile. To determine if the juvenile is eligible for a court-appointed lawyer, or to apply for a court-appointed lawyer, the juvenile's parent, guardian, or legal custodian is advised to call the office of the state public defender at (970) 353-8224, or visit the public defender's office at 822 7th Street, Suite 300, Greeley, CO 80631, or visit the state public defender's web site at: pdweb.coloradodefenders.us. To avoid delay in obtaining a lawyer, the juvenile's parent, guardian, or legal custodian is advised to apply for court-appointed counsel at least five days before the juvenile's appearance date.

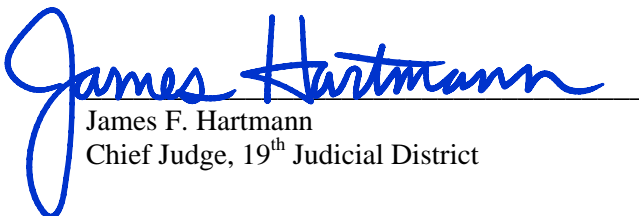
Including a written advisement of the right to counsel on the Voluntary Promise to Appear form will inform the juvenile and his/her parent, guardian, or legal custodian of these important constitutional rights prior to the juvenile's first appearance in court, which was clearly the intent of the legislature when enacting the amendment to C.R.S. § 19-2-507(5).

The Court is aware that many law enforcement agencies printed blank Voluntary Promise to Appear forms prior to the date the statutory revisions were enacted and these pre-printed forms do not contain the advisement of rights regarding legal representation as set forth above. The Court understands that these agencies may incur significant expense if they cannot use the forms they have already printed, but instead were required to reorder new forms containing the additional advisement. To alleviate this financial burden, law enforcement agencies may attach a separate sheet of paper containing the advisement to the written Voluntary Promise to Appear form.

This administrative order shall take effect on November 1, 2014.

Date: October 14, 2014.

BY THE COURT:


James F. Hartmann
Chief Judge, 19th Judicial District