

Juvenile Delinquency **Benchbook**

Created by Magistrate (now Judge) William
Alexander

Updated September, 2013 by Carol M. Haller and M. Kyle Sauer, State
Court Administrator's Office

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Purpose of the Juvenile System

(C.R.S. 19-2-102)

The intent of article 19 of the C.R.S. known as the juvenile code is to protect, restore, and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law and, in certain cases, will also provide the opportunity to bring together affected victims, the community and the juvenile offenders for restorative purposes. Further, while holding paramount the public safety, the juvenile justice system shall take into consideration the best interests of the juvenile, the victim, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.

The public has the right to safe and secure homes and communities and that when a delinquent act occurs, such safety and security is compromised; and the result is harm to the victim, the community, and the juvenile offender. The juvenile justice system should seek to repair such harm and that victims and communities should be provided with the opportunity to elect to participate actively in a restorative process that would hold the juvenile offender accountable for his or her offense.

Jurisdiction of Juvenile Court

(C.R.S. 19-2-104)

Juvenile Court has **exclusive** jurisdiction in the following proceedings:

- Proceedings involving juvenile ten (10) years or older who have violated one of the following:
 - i. Any federal or state law **except**:
 - Non-felony state traffic
 - Game and fish
 - Parks and recreation
 - Laws concerning tobacco pursuant to C.R.S. 18-13-121
 - Laws concerning the minors in possession of ethyl alcohol pursuant C.R.S. 18-13-122
 - Offenses concerning marijuana pursuant to C.R.S. 18-18-406 (5)(a)(I), (5)(b)(I), and (5)(b)(II) (Effective Oct 1, 2013)
 - ii. Any county or municipal ordinance **except** traffic ordinances, that carry a possibility penalty of ten or more days in jail; or
 - iii. Any order of the court made under the juvenile code title 19 of the C.R.S.

The court has **limited** jurisdiction in cases that are direct filed pursuant to C.R.S. 19-2-517.

The court subject to its approval, **may exercise jurisdiction** on traffic offenses for a juvenile under sixteen (16) years of age if his or her case is transferred from county court to the juvenile court.

Court has **concurrent** jurisdiction with the county court on the following matters for juveniles who are under eighteen (18) years old: (If the juvenile court accepts jurisdiction over such a juvenile the county court terminates jurisdiction)

- iv. Minor in possession pursuant to C.R.S. 18-13-122
- v. Possession of marijuana pursuant to C.R.S. 18-18-406 (5)(a)(I), (5)(b)(I), and (5)(b)(II) (Effective Oct 1, 2013)
- vi. Possession of drug paraphernalia pursuant to C.R.S. 18-18-428
- vii. Sale of drug paraphernalia pursuant to C.R.S. 18-18-429
- viii. Advertisement of drug paraphernalia pursuant to C.R.S. 18-18-430

ix. Driving under the influence pursuant to C.R.S. 42-4-1301

Juvenile court may retain jurisdiction over a juvenile until all orders have been fully complied with, pending cases have been completed, or statute of limitations has run regardless whether the juvenile has turned eighteen (18) years old and regardless of the age of the juvenile.

Venue

(C.R.S. 19-2-105)

- The court has venue for alleged violations of law, ordinances, or court orders that took place within a county within its jurisdiction.
- Change of venue may be ordered by the court:
 - Based on written findings that a change of venue is necessary ensure the juvenile receives a fair trial; and
 - If the juvenile resides in a different county then where the petition was filed, the court may transfer venue to the court of the county where the juvenile resides for the purpose of supervision after sentencing and entry of any order for restitution.
- Change of venue may not be rejected except where venue is improper.
- A juvenile in the department of human services custody is deemed to reside in the county in which the juvenile's legal custodian is located, even if the juvenile is physically living in a residential facility in a different county.
 - The court shall not transfer venue during the period when the juvenile is in custody of the department of human services to any other county other than the county in which the juvenile's legal custodian is located.
- Upon transfer of venue, receiving court shall set a date not more than thirty (30) days following the date upon which the change of venue is ordered for the juvenile and his or her parent to appear.

Jurisdiction of Magistrate

(C.R.S. 19-1-108)

- Magistrates in juvenile court have jurisdiction to hear any case or matter under the court's jurisdiction except:
 - When a jury trial has been requested pursuant to C.R.S. 19-2-107; and
 - In transfer hearings held pursuant to C.R.S. 19-2-518
- Magistrates must advise the party that he or she has the right to a hearing before a district judge in the first instance, and can waive this right and be heard by a magistrate, but once right waived he or she is bound by the findings of the magistrate.
 - The exceptions where a party cannot request a district judge include:
 - Advisement hearings pursuant to C.R.S. 19-2-706;
 - Detention hearing pursuant to C.R.S. 19-2-507 and C.R.S. 19-2-508;
 - Preliminary hearing pursuant to C.R.S. 19-2-705;
 - Temporary custody hearing pursuant to C.R.S. 19-3-403;
 - Proceeding held pursuant to article 4 of title 19, the Uniform Parentage Act;
 - Support proceedings held pursuant to article 6 of title 19.
 - ❖ For proceedings held pursuant to article 4 or 6 of title 19, contested final orders regarding allocation of parental responsibility may only be heard by the magistrate when all parties consent.

Speedy Trial

(C.R.S. 19-2-108)

- A juvenile's trial for a non jury trial case must be held within sixty days of an entry of a plea of not guilty pursuant to C.R.S. 19-2-708.
- The court may grant a continuance with regard to any of the deadlines specified in subsection (2) of C.R.S. 19-2-108 upon making a finding of good cause. (C.R.S. 19-2-108 (3))
 - This applies to all time frames except jury trial covered under C.R.S. 18-1-405.
- Juveniles right to a speedy trial governed by C.R.S. 18-1-405 for jury trials, so upon a plea of not guilty the trial must be held within six (6) months of entry of plea of not guilty.
 - A continuance may be granted going over the six (6) months by request of the prosecuting attorney without consent of the defendant if: (C.R.S. 18-1-405 (6)(g)(I-II)), (Colo. Crim. P. 48(b)(6)(VII)(A), and People v. Grenemeyer, 827 P.2d 603, 605 (Colo. Ct. App. 1992).
 - I. The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that this evidence will be available at the later date; or
 - II. The continuance is granted to allow the prosecuting attorney additional time in felony cases to prepare the state's case and additional time is justified because of exceptional circumstances of the case and the court enters specific findings with respect to the justification.
- Any juvenile who is held without bail or whose bail or bail bond is revoked or increased any time after the initial detention hearing and who remains in custody or detention, must be tried on the charges on which the bail is denied or the bail or bail bond is revoked or increased within sixty (60) days after the entry of such order or within sixty (60) days after the juvenile's entry of a plea, whichever date is earlier. (C.R.S. 19-2-509)
 - Exception to this is if the juvenile requests a jury trial pursuant to section 19-2-107, then C.R.S. 18-1-405 governs and it is six (6) months for speedy trial.

Right to a Jury Trial

(C.R.S. 19-2-107)

- Jury Trials are not allowed for juveniles except if the juvenile is charged:
 - As an aggravated juvenile offender pursuant to C.R.S. 19-2-516 (4); or
 - A jury of six (6) shall be granted unless the juvenile makes a written request for a jury of twelve (12) pursuant to C.R.S. 19-2-601 (3)(a) and in that case the jury of twelve (12) shall be granted.
 - With a crime of violence pursuant to C.R.S. 18-1.3-406 the juvenile has a right to a jury of six (6).
- The court on its own motion may require a jury of six (6) in any case other than a misdemeanor, petty offense, violation of a municipal or county ordinance, or a violation of a court order.
- Unless a jury trial is specifically requested it shall be deemed waived.
- By requesting a jury trial the juvenile has waived his or her right to an adjudicatory hearing within sixty (60) days as required by C.R.S. 19-2-708, and instead will be governed by C.R.S. 18-1-405 which requires the hearing to be within six (6) months.

Advisements

Initial Delinquency Appearance Advisement

(C.R.S. 19-2-706 and Colorado Rules of Juvenile Procedure Rule 3)

The court is going to start today by giving an advisement of rights for juveniles charged with delinquent acts, crimes, and probation or deferred adjudication violations. Both the juvenile charged and his or her parents should listen and pay attention to this advisement as it outlines the rights a juvenile has with regards to his or her case.

Juveniles charged:

You have the right to remain silent and not talk about your case. If you give up your right to remain silent, anything you say to anyone can be used against you in court.

You have the right to have a lawyer. If you cannot afford to hire a lawyer and you qualify under the Supreme Court guidelines, the court will appoint a lawyer to represent you free.

If you are in custody, you may have the right to bail as determined by the court. (C.R.S. 19-2-508 & 19-2-509)

If you are charged with a delinquent act or crime, that is a Class 1,2, or 3 felony, a felony which carries with it mandatory sentencing upon conviction (C.R.S. 19-2-705 & 19-2-516), a crime of violence (C.R.S. 18-1.3-406(2)), or a sexual offense (C.R.S. 18-3-400 – C.R.S. 18-3-417), you have the right to a preliminary hearing to determine if there is probable cause to believe you committed the delinquent act or crime charged. (C.R.S. 19-2-705) In all other felony cases, you do not have a right to a preliminary hearing unless you are in custody. (C.R.S. 19-2-705 (1.5)(b))

If the court does not set a preliminary hearing in your case you will be able to have a pre-trial conference to discuss your case.

If you are charged with a delinquent act or crime, you have the right to plead not guilty and to have a trial in front of me a juvenile court magistrate, or a district court judge. Only those juveniles charged with a crime of violence and those juveniles alleged to be aggravated juvenile offenders can demand a jury trial. (C.R.S. 19-2-107) A jury trial must be held within six months of saying, "not guilty." (C.R.S. 19-2-107 (4)). A non-jury trial must be held within sixty days of saying, "not guilty."

If you are charged with a crime of violence as defined by the Colorado Revised Statutes (C.R.S. 18-1.3-406) it will be in front of a jury of six (6). If you are alleged to be an aggravated juvenile offender or if you are ultimately charged as an adult in adult district court it will be in front of a jury of twelve (12). (C.R.S. 19-2-601)

At a trial, you have the right to be presumed innocent. You do not have to prove anything. To adjudicate or convict you of the delinquent act or crime charged, the district attorney would have to prove beyond a reasonable doubt that you are guilty of the charges against you.

At a trial, you or your lawyer has the right to cross examine or question the witness that is against you. You have the right to testify or **not** to testify on your own behalf. No one can force you to testify or not to testify. If you testify, the prosecution will be allowed to cross examine or question you. If you do not testify, the jury will be told that is your right and that nothing bad can be assumed because you did not testify. (C.R.S. 19-2-802)

You have the right to present evidence on your own behalf. If you have prior felony adjudications or convictions, the prosecution is entitled to ask you about them and then the court and/or jury will know about it. The jury can and will be told to consider your prior record of adjudication or conviction only to decide if you are credible or truthful. You have the right to subpoena or force witnesses to appear and testify for you. You have the right to appeal to a higher court any decision that was made at the trial. (C.R.S. 19-2-802)

You may also waive or give up your right to trial and plead guilty. Any plea of guilty must be knowing, voluntary and not the result of undue influence or coercion on the part of anyone, including your parents. (Juvenile Procedure Rule 3)

Parents and juveniles are advised at this time, that there is a mandatory restraining order in effect against you until this case is finalized, terminated or until further order of the court. You are ordered to be restrained from harassing, molesting, intimidating, retaliating against or tampering with any witness to or victim of the delinquent act or crime charged. If you violate this order, you may be charged with a new crime, punished for contempt of court and sentenced to detention for forty-five (45) days or charged with a violation of a restraining order. (C.R.S. 19-2-707)

If you are convicted of the charges against you or you plead guilty several things can happen.

You can be placed on formal probation for a period up to two (2) years. As part of probation, you could be sentenced to up to forty-five (45) days in detention (C.R.S. 19-2-925), and be fined up to \$300.00 (C.R.S. 19-2-917). If you are out of control of your parents, you can

be placed in a group home, foster home, or to the custody of the department of social services as a condition of probation. You can also be required to be in school full time, and may be ordered to get your G.E.D. and have full time employments.

You can be sentenced to the Department of Youth Corrections, which is prison for kids, for a period up to seven (7) years with minimum mandatory parole. (C.R.S. 19-2-921) You can be ordered to pay fines and costs as well as restitution in all your matters.

If you are eighteen (18) years of age or older at the time you are sentenced for a delinquent act or crime you can be sentenced to the county jail or community corrections, in some cases for up to two years. (C.R.S. 19-2-908)

In some circumstances, your case may be transferred to the criminal division of the district court where you may be tried as an adult and subject to adult sentencing guidelines. (C.R.S. 19-2-518)

You may have the right to petition the court to expunge your records, but a person may file a petition with the court for expungement of his or her record only once during any twelve (12) month period. (19-1-306)

Petitions for expungement may be obtained from the clerk of the court and no filing fee is required. (C.R.S. 19-1-306)

Parents need to understand that at least one parent or guardian must be present at all court appearances. (C.R.S. 19-2-109 (6)) Should a parent or guardian fail to appear at all court appearances this court will issue a bench warrant for your arrest. Parents also need to understand that pursuant to the protective orders of the court and the sentencing powers of the court you as parents can be ordered into drug and alcohol treatment, individual and family therapy, and other treatment modalities that are deemed appropriate by the court. (C.R.S. 19-2-113 (2)(b)(I-VII)). Parents also need to understand that the court can order them to complete community service work or attend a parental responsibility program as well as pay restitution in amounts of up to \$25,000. (C.R.S. 19-2-919)

Parent Advisement

Parents, guardian, or legal custodians need to understand that at least one parent, guardian, or legal custodian must be present at all court appearances. (C.R.S. 19-2-109 (6)) If the juvenile is in the custody of the Department of Human Services, and the juvenile has a guardian ad litem, the parent, guardian or legal custodian need not be present if the guardian ad litem is at the juvenile's hearing. Should a parent or guardian fail to appear at all court appearances, this court will issue a bench warrant for your arrest. Parents also need to understand that, pursuant to the protective orders of the court and the sentencing powers of the court, you as parents can be ordered into drug and alcohol treatment, individual and family therapy, and other treatment modalities that are deemed appropriate by the court. (C.R.S. 19-2-113 (2)(b)(I-VII)). Parents also need to understand that the court can order them to complete community service work or attend a parental responsibility program as well as pay restitution in amounts of up to \$25,000. (C.R.S. 19-2-919(2)(a))

Curtis Advisement

(C.R.S. 19-2-802(3))

- ❖ To be given to the juvenile prior to him or her resting their case outside the presence of the jury or to be given before he or she testifies.

The court is going to give you an advisement of your rights before you finish your case today. You should listen and pay attention to this advisement as it outlines the rights a juvenile has with regards to his or her case.

You have the right to testify on your own behalf.

If you want to testify, no one can prevent you from doing so, including your attorney.

If you testify, the prosecution will be allowed to cross examine or question you.

If you have prior felony adjudications or convictions. The prosecution is entitled to ask you about them and thereby disclose it to the court and/or jury.

If felony adjudications or convictions are disclosed to the court and/or the jury, the court and/or the jury can and will be instructed to consider it only as it bears upon your credibility.

You have the right to not testify.

If you chose to not testify, the court and/or jury can and will be instructed that this is not to be considered in any manner to create an inference of guilt or be used against you in any other manner.

Do you understand what I have said? Do you have any questions about it?

Have you spoken to your lawyer about this (if applicable)? Do you want to talk to your lawyer about it any further?

Is any record the lawyer would like to make?

What is your decision? Is this what you want to do? Are you sure?

Finding requirements: voluntarily, knowingly and intelligently.

Charging Advisement

1. Upon approaching the podium, make a record as to everybody present.
2. Verify the juvenile and parent can read and understand the English language. If not, appoint an interpreter. You may need to continue the matter to have an interpreter present.
3. Verify the juvenile and parent heard and understood the advisement of rights. If not, pass the matter until you need to advise a group who have not heard the advisement.
4. Verify the juvenile and parent/s has received a copy of the charging document. Read the charges to the juvenile. Verify the juvenile and parent/s understands the nature of the charges.
5. Advise the juvenile and parent/s as to the juvenile's right to have a lawyer. Does the juvenile want to hire a lawyer or apply for a free lawyer from the public defender's office? It is the juvenile that decides, not the parents. Parents can be forced to pay for a lawyer for the juvenile in many situations.
6. Lawyer:
 - a. If the juvenile wants to hire a lawyer, verify with the parent the hiring of a lawyer, find out how long it will take and continue the matter accordingly. If the juvenile wants to apply for a free lawyer from the public defender's office, give the juvenile an application (waive the fee at your discretion) or give the juvenile a set of public defender application instructions. Either pass the matter to allow the juvenile to fill out the application and talk to the public defender in court or continue the matter accordingly to allow the application process to take place.
 - b. If the juvenile is in the department of social service's custody or qualifies for the public defender, appoint the public defender.
7. No Lawyer:
 - a. If the juvenile or parent does not want a lawyer to represent him/her, advise the juvenile of his/her right to set the matter for trial and the other option of continuing the matter to allow a meeting with the D.A. to possibly resolve the case. Advise the juvenile he/she can change his/her mind about representing him/herself at anytime by notifying the court.
 - b. If the juvenile wants to set the matter for trial, advise the juvenile of the various options available regarding a trial (magistrate, judge or jury). If the juvenile

wants a court trial with magistrate, set the trial date. If the juvenile wants a court trial with a judge or a jury trial, continue the matter for an appearance in the district court. If the juvenile wants to an opportunity to meet with the D.A., continue the matter accordingly and advise the juvenile and parent that both of them must be present when meeting with the D.A.

8. Continue the matter accordingly and order both the juvenile and parent to return on the next court date.
9. Findings: knowingly, voluntarily and intelligently.

Juvenile Delinquency Plea/Admission for Delinquent Acts and Violations of Probation or Deferred Adjudication Advisement

Before I accept your plea or admission, I need to give you what is called an advisement of rights. The advisement of rights is specifically for juveniles intending to plead guilty to a delinquent act or crime and juveniles intending to admit to probation or deferred adjudication violations.

Both the juvenile charged and his or her parents are asked to listen and pay attention to this advisement as it outlines the rights a juvenile has with regards to his or her case.

The nature of the plea agreement is as follows: (state the plea agreement and get all of the minor details).

Is this your understanding of the plea agreement (juvenile, parents, D.A., probation officer, Guardian ad litem, and any other interested party)?

Do you believe pleading guilty and agreeing to this plea bargain is the right thing to do?

Has anybody else made any promises or guarantees to get you to plead guilty or admit violating the terms and conditions of your probation or deferred adjudication?

Do you understand that the court will not be bound by any promises or guarantees made to you unless it is in this written plea agreement or mentioned here in court now?

How old are you? What school are you in? Do you have a job?

Have you had any alcohol, drugs, medication or anything else that affects your ability to understand what is happening here today?

Do you think you understand what is happening here today and how it will affect you?

The nature of the charge/violation is that you (read the charge/violation). Is this the charge/violation you are willing to plead guilty/admit to?

There are several elements and definitions that you need to be aware of (read the elements and definitions). Did you understand the elements and definitions?

Before you enter a plea of guilty/admit violating the terms and conditions of your probation or deferred adjudication there are several very important rights that you will be giving up that you should be aware of.

You have the right to remain silent and not talk about your case. If you plead guilty or admit violating the terms and conditions of your probation or deferred adjudication, you will be giving up that right. Is that what you want to do?

You have the right to have a lawyer.

(Go on to 1 if the juvenile has a lawyer and 2 if the juvenile does not have a lawyer)

1. You do have a lawyer. How many times have you discussed your case with your lawyer?

Are you satisfied with your lawyer's assistance and advice?

2. You do not have a lawyer now. You may hire your own lawyer, if you cannot afford to hire a lawyer you may request the court to appoint a lawyer for you or you may represent yourself. It is entirely your choice. Do you want to have a lawyer?

Why do you want to proceed without a lawyer?

You have the right to plead not guilty/deny the violations and have a trial/or hearing. At a trial/hearing, you have the right to be presumed innocent. You do not have to prove anything. To find you guilty/in violation of your probation or deferred adjudication, the district attorney would have to prove:

- For delinquent act or crime: Beyond a reasonable doubt
- For violation of probation or deferred adjudication: By a preponderance of the evidence (which means that it is more likely than not), that you have violated the conditions of your probation or deferred adjudication. If the nature of a probation or deferred adjudication violation is a new delinquent act or crime, the district attorney would have to prove beyond a reasonable doubt that you are guilty of the new delinquent act or crime for you to be found in violation of your probation or deferred adjudication. (C.R.S. 16-11-206)

Do you know what a trial/hearing is?

What is a trial/hearing?

At a trial/hearing, you or your lawyer has the right to cross-examine or question the witnesses that are against you. You have the right to testify or not testify. You have the right to present evidence on your behalf. You have the right to subpoena or force witnesses to appear and testify for you. You have the right to appeal to a higher court any decision that was made at a trial hearing.

Do you understand the rights just mentioned?

Do you have any questions about those rights?

Who made the final decision that you would plead guilty/admit violating the conditions of your probation or deferred adjudication?

Is anybody forcing you to do this?

Is this what you want to do?

Have you talked to your parents about this decision?

Are they making you plead guilty/admit the violations?

The district attorney and you or your lawyer have reached a plea agreement in this case which includes several guarantees (state the guarantees). You should understand that I have not personally discussed this case with the district attorney or you or your lawyer and I have not agreed to accept these guarantees yet. If after reading the pre-sentence report and hearing other information provided to the court I should decide not to accept the guarantees in the plea agreement, you would have the right to withdraw your plea/admission and set this matter for a trial/hearing. (C.R.S. 16-7-302)

Do you understand what I just explained? Do you have any questions about it?

If you are adjudicated or convicted of the delinquent acts or crimes charged you can be placed on formal probation for up to two (2) years. As part of probation, you can be sentenced up to forty-five (45) days in the detention (C.R.S. 19-2-925), and be fined up to \$300.00 (C.R.S. 19-2-917).

You can be sentenced to the department of youth corrections, which is prison for kids for a period up to seven (7) years with minimum mandatory parole. (C.R.S. 19-2-909; C.R.S. 19-2-921)

You can be ordered to pay fines and costs as well as restitution in all your matters.

You may have the right to petition the court to expunge your records, but a person may file a petition with the court for expungement of his or her record only once during any twelve (12) month period. (19-1-306)

Petitions for expungement may be obtained from the clerk of the court and no filing fee is required. (C.R.S. 19-1-306)

After hearing all that I have said and understanding all of the rights you would be giving up and understanding the possible sentences, do you still want to:

- Plead guilty to the charge (state the charge and level of offense)? What is your plea guilty or not guilty? What did you do that makes you guilty? (Factual basis may be waived by juvenile if plea entered as a result of a plea agreement)
- Admit the violating the terms and conditions of your probation/deferred adjudications? What did you do to violate the terms and conditions of your probation/deferred adjudication?

The court finds that you have knowingly, intelligently and voluntarily waived your right to a trial/hearing and that there is a factual basis for your plea/admission.

The court will thus find you:

- Guilty. The court will adjudicate/defer adjudicating you a juvenile delinquent.
- Have violated the terms and conditions of your probation/deferred adjudication.

We will proceed to immediate sentencing/continue the sentencing until (state the sentencing date and time). You and your parents are ordered to appear on that date.

You and your parents are ordered to take the probation order/terms and conditions to the probation office before leaving this building today. You are also both ordered to fully cooperate with the probation department in any and all matters relating to this case including the preparation of nay pre-sentence investigation report.

Do you have any questions about anything we have done here today?

Good luck to your Mr. (state juvenile's name).

Waiver of Right to Counsel Advisement

- Parents who are not lawyers cannot represent their children as counsel in court, at trial or otherwise!

Do you understand that you have the right to have a lawyer?

Do you understand that if you cannot afford to hire a lawyer and you qualify under the Supreme Court guidelines, the court will appoint a lawyer to represent you free?

Do you understand that I will appoint a lawyer for you if you want one?

Do you understand the charge pending against you is (state the charge and level of offense) and it carries a possible sentence of (state the possible sentence)?

(Ask the parents) Do you understand everything I have just asked the juvenile and believe it is the right choice to have the juvenile not be represented by a lawyer?

Have you ever had any legal training?

How much school have you completed?

Have you had any alcohol, drugs, or medication which affects your ability to understand what is happening here today? Do you think you do understand what is happening?

Would like to talk or consult with the public defender before you make this decision?

Do you understand criminal law is a complicated area, and that a lawyer trained in this field could be of great help in preparing and representing your defense?

Do you understand that you have the right to remain silent and that anything you say could be used against you in court?

You should understand that you have the right to represent yourself, but by doing so, you take a great risk of not properly presenting your case?

Do you understand you have the right to confront and cross examine the witness against you?

Do you understand that you have the right to subpoena and force witnesses to appear and testify for you?

Findings: Knowingly, voluntarily, and intelligently.

Runaway Advisement for out of state juvenile

Mr. (state the juvenile's name), you are in the custody of the detention center because it was determined that you are a runaway from the state or county of (name the state or county). You may be held in shelter care or an appropriate facility for up to seven (7) days, during which time arrangements shall be made for returning you to the state of your residence. (C.R.S. 19-3-403 (3.7))

Do you understand what I have just explained? Do you have any questions about it?

District Court Review Advisement of Magistrate

(To be given after any findings or rulings)

(C.R.S. 19-1-108 (5.5))

All parties are advised they have a right to petition the district court to review this court's rulings.

[Decisions under Articles 2, 4, and 6 (Delinquency, Parentage, Support)]: A petition for district court review of this court's rulings must be filed within fifteen (15) days of the ruling in question.

[Decisions under Article 3 (Dependency & Neglect)]: A petition for district court review of this court's rulings must be filed within five (5) days of the ruling in question

A petition for district court review is required before any appeal can be filed in the Colorado Court of Appeals or the Colorado Supreme Court with regards to the issue rules upon by this court.

Consent To Magistrate Advisement

(C.R.S. 19-1-108 (3)(a.5))

Mr. (state the juvenile's name), the hearing you are requesting is called a (state the type of hearing).

The procedures for that hearing include (state the procedures for conducting that type of hearing). The possible results are (state the possible results).

You have the right to have a hearing heard by me, a juvenile court magistrate or by a district court judge or a jury (where applicable).

The choice is entirely yours.

If you have the hearing heard by me, a juvenile court magistrate, you will be waiving your right to have that hearing heard by a district court judge or a jury (where applicable). You will be bound by the findings, rulings and recommendations of me, a juvenile court magistrate, subject to a petition for district court review. Once you set it here, you are here and there is no changing it.

Do you understand what I have just explained? Do you have any questions about it?

After hearing all I have said and understanding the rights I have just explained, would you like to have that hearing heard by me, a juvenile court magistrate or heard by a district court judge or jury (where applicable).

Findings: knowingly, voluntarily and intelligently.

Acceptance of a Plea of a Deferred Adjudication

Advisement

The plea agreement reached in your case involves what is called a deferred adjudication. A deferred adjudication means you plead guilty to the charge against you. If you successfully complete all the conditions of your deferred adjudication the charges against you from this case will be dismissed and you will never be adjudicated or convicted of the delinquent act or crime you plead guilty to today.

To adjudicate or convict you of a delinquent act or crime requires two (2) things. First there needs to be a finding of guilt. Second, there needs to be a final judgment and sentence entered.

The first part of your plea agreement requires you to plead guilty today to the charge of (name charge). If you plead guilty to that charge, the finding of guilt will be complete, because you will be admitting you are guilty.

The second part of your plea agreement requires that I do not enter a final judgment and sentence yet, so you will not be adjudicated or convicted of a delinquent act or crime yet.

If you follow all of the conditions of the deferred adjudication, this entire case will be dismissed and you will never be adjudicated or convicted of a delinquent act or crime you plead guilty to.

If the district attorney or the probation department feel that you have violated the conditions of the deferred adjudication, you will be given notice to come back into court. You will have a right to a hearing in front of a juvenile court magistrate, or in front of a district court judge to determine whether you have violated the conditions of your deferred adjudication. (C.R.S. 19-2-709)

If the court determines you have violated the conditions of your deferred adjudication, the court will revoke your deferred adjudication and enter a final judgment and sentence. If that happens, you will then be adjudicated or convicted of the delinquent act or crime you plead guilty to. (C.R.S. 19-2-709) If that happens, you could receive any sentence you could have gotten in the first place, including commitment to the department of youth corrections or detention.

Do you think you understand what I have said about deferred adjudications? Do you have any questions?

Findings: knowingly, voluntarily and intelligently understand.

Guidelines for appointment of counsel to use generally (not as a substitute for application for counsel)

INCOME ELIGIBILITY GUIDELINES						
(amended January, 2013)						
Family Size	Monthly Income*	Monthly Income plus 10%	Monthly Income plus 75%	Yearly Income*	Yearly Income plus 10%	Yearly Income plus 75%
1	\$1,197	\$1,317	\$2,095	\$14,363	\$15,799	\$25,134
2	\$1,616	\$1,777	\$2,827	\$19,388	\$21,326	\$33,928
3	\$2,034	\$2,238	\$3,560	\$24,413	\$26,854	\$42,722
4	\$2,453	\$2,698	\$4,293	\$29,438	\$32,381	\$51,516
5	\$2,872	\$3,159	\$5,026	\$34,463	\$37,909	\$60,309
6	\$3,291	\$3,620	\$5,759	\$39,488	\$43,436	\$69,103
7	\$3,709	\$4,080	\$6,491	\$44,513	\$48,964	\$77,897
8	\$4,128	\$4,541	\$7,224	\$49,538	\$54,491	\$86,691
* 125% of poverty level as determined by the Department of Health and Human Services						
For family units with more than eight members, add \$335 per month to "monthly income" or \$4,020 per year to "yearly income" for each additional family member.						
Source: FEDERAL REGISTER (78FR5182, 01/24/2013)						

Information About Taking a Juvenile into Custody

(C.R.S. 19-2-502)

- A law enforcement officer may take a juvenile into custody when:
 - Without order of the court there are reasonable grounds to believe that he or she has committed a delinquent act; and
 - Executing a warrant pursuant to C.R.S. 19-2-503.
- A probation officer may take a juvenile into custody when:
 - Without order of the court there are reasonable grounds to believe that he or she has committed a delinquent act; and
 - The juvenile has violated the conditions of his or her probation and is still under the continuing jurisdiction of the court.
- An adult other than law enforcement may take the juvenile into custody when:
 - The juvenile has committed or is committing a delinquent act in the presence of such adult.
 - Any adult detaining a juvenile shall notify without unnecessary delay, a law enforcement officer, who shall assume custody of the juvenile.

Juvenile's Competency

(C.R.S. 19-2-1302)

- If question about a juvenile's competency is raised.
 - a. Court should make a preliminary finding whether the juvenile is competent or not to proceed.
 - b. If the court feels there is inadequate information to make such a finding the court should order a competency examination.
- The court must notify the prosecution and defense of the findings.
 - a. Prosecution or defense may request a hearing on preliminary findings in writing within 10 days of findings.
 - i. Time may be extended by the court for good cause.
 - ii. At a competency hearing the "party asserting the incompetency of the juvenile" has the burden of evidence and the burden of proof by a preponderance of the evidence.
 - b. If neither requests a hearing, the preliminary findings become final.
- If the juvenile's competency is raised after a jury has been impaneled or after the court as finder of fact begins hearing evidence, and the court determines the juvenile is incompetent to proceed or refers the juvenile to a competency examination, the court may declare mistrial.
 - a. If the court declares a mistrial the juvenile is not deemed in jeopardy for these charges.
 - b. The juvenile may be tried and sentenced if adjudicative for, the same charges after he or she has been found to be restored of competency.
- A competency evaluation is by a license psychiatrist, psychologist with expertise in clinical forensic competency assessments, or forensic psychology; and the evaluation must include an opinion of whether the juvenile is competent to proceed pursuant to C.R.S. 16-8.5-101 (4).
 - a. If the court orders a competency evaluation, the court must order that the evaluation be conducted in the least-restrictive environment, taking into account the public safety and best interests of the juvenile.
- If evaluation finds incompetency, the evaluator must recommend if juvenile may be restored to competency level and the appropriate services to restore competency to the juvenile.
- The evaluator must submit evaluation within thirty days if juvenile is in detention, and within forty-five days if juvenile is not in detention.

Detentions

Steps to a Detention Hearing

1. Begin with initial delinquency advisement
2. Take care of status offenders first.
 - a. The juvenile cannot be detained beyond the detention hearing, unless
 - i. The court determines the juvenile is danger to themselves/community pursuant to (C.R.S. 19-2-508 (3)(a)(III))
 - ii. The juvenile admits contempt; or
 - iii. A motion to impose a previously suspended sentence; or
 - iv. If the juvenile requires a screen for a 72 hour evaluation at the state hospital C.R.S. 19-3-506
 - 1) If so order the screen is to be completed, and if the juvenile is not certified to the state hospital, he/she has to be returned to detention hearing the next day for an order of the court. The order is from the bench. (19-3-506 (4)(a))
 - b. If the crisis center recommends sheriff's transport, fill that in on the order. If not the Department of Human Services has to transport the juvenile.
 - c. If the juvenile is found not to be appropriate for evaluation, order the he/she be released to Department of Human Services (or whomever else is appropriate) as soon as the negative results are received.
3. The court attorney will often file a contempt citation or a motion to impose at the detention hearing.
 - a. If either of these happens advise the juvenile of the right to counsel and the right to a hearing.
 - i. If the juvenile requests counsel;
 - 1) Appoint counsel from the bench (non-contract); and
 - 2) Admonish the juvenile; and
 - 3) Set a date; and
 - 4) Release to the Department of Human Services
 - ii. On the other hand, if the juvenile admits the charges;
 - 1) Sentence the juvenile immediately; and
 - 2) Fill out a mittimus on the bench.
4. Continue on with delinquency hearings.

General Information for Detention Hearings

(C.R.S. 19-2-507, 19-2-508)

1. Magistrates can hear detention hearings without any consent. (C.R.S. 19-1-108)
2. Detention Notifications
 - a. When a juvenile is taken into temporary custody screening team has to notify parent that the juvenile is detained and has a right to a prompt hearing. (C.R.S. 19-2-507)
 - i. If the screening team is unable to make the notification, it may be made by any law enforcement officer, juvenile probation officer, detention center counselor, or common jailor in whose physical custody the juvenile is placed. (C.R.S. 19-2-507)
 - b. Alternative to a juvenile being detained is the court allowing for promise to appear at hearing be signed by the juvenile and delivered to the juvenile and the juvenile's parents or guardian. (C.R.S. 19-2-507(5))
 - i. If the juvenile fails to appear in this situation a bench warrant may be issued for the parent/guardian, the juvenile, or both. (C.R.S. 19-2-515 (3)(a))
3. If the juvenile is in custody the detention hearing must be within forty-eight (48) hours of being in custody. (C.R.S. 19-2-508 (2))
 - a. This time excludes Sat., Sun., and legal holidays. (C.R.S. 19-2-508 (2))
 - b. The forty-eight hour time limit can be extended for a reasonable time by order of the court upon good cause shown. (C.R.S. 19-2-508(3)(A)(I))
4. Hearings to determine probable cause for warrantless arrests must be held within forty-eight (48) hours of arrest. County of Riverside v. McLaughlin, 500 U.S. 44, 56 (U.S. 1991)
 - a. If the hearing is not held within forty-eight (48) hours the district attorney must show emergency or extraordinary circumstances. Id at 57.
 - b. Weekends do not count as emergencies. Id at 57.
5. If the district attorney chooses to file a petition in delinquency on any juvenile who receives a detention hearing, he/she shall file said petition within seventy-two hours after the detention hearing. (C.R.S. 19-2-512)
6. If any deadlines are not met the juvenile is to be released.
7. When determining if the juvenile should be detained further, the court may hear any information having probative value regardless of admissibility under Colorado Rule of Evidence as well; the court shall consider prior adjudications in the decision. (C.R.S. 19-2-508 (3)(a)(III))
8. Court may choose to detain the juvenile further if it believes from the information provided at the hearing that: (C.R.S. 19-2-508 (3)(a)(III))

- a. Juvenile’s immediate welfare or protection of the community requires the juvenile to be detained. (C.R.S. 19-2-507 (2))
 - i. When making this determination the court should look the guidelines laid out in C.R.S. 19-2-212.
 - b. There shall be a rebuttable presumption that a juvenile is a danger to himself or herself or to the community if the juvenile is alleged to:
 - i. The juvenile is alleged to have committed a crime of violence under C.R.S. 18-1.3-406; or
 - ii. The juvenile alleged to have used/possessed and threatened to use a firearm during the commission of a felony against a person C.R.S. 18-3-et. Seq.
 - iii. Be in possession of a dangerous/illegal weapon as to C.R.S. 18-12-102
 - iv. Be in possession of a defaced firearm as to C.R.S. 18-12-103
 - v. Be unlawfully carrying a concealed weapon as to C.R.S. 18-12-105
 - vi. concealed weapon on school grounds as to C.R.S. 18-12-105.5
 - vii. Prohibited use of weapons C.R.S. 18-12-106
 - viii. Illegally discharging a firearm C.R.S. 18-12-107.5
 - ix. Illegally possessing a handgun by a juvenile C.R.S. 18-12-108.5
9. If the court orders further detention, the order shall specifically find whether: (C.R.S. 19-2-508 (3)(A)(VII))
- a. Placement of the juvenile out of his or her home would be in the juvenile's and the community's best interests; and
 - b. Reasonable efforts have been made to prevent or eliminate need for removal of the juvenile from the home; or whether such efforts are unnecessary due to the existence of an emergency situation that requires immediate removal of the juvenile from his or her home; or whether such efforts are not required due to circumstances described in C.R.S. 19-1-115 (7); and
 - c. Whether procedural safeguards to preserve parental rights have been applied in connection with:
 - i. The removal of the juvenile from the home; or
 - ii. Any change in the juvenile's placement in a community placement; or
 - iii. Any determination affecting parental visitation of the juvenile.
10. Unless the D.A. consent, no juvenile charged or accused of having committed a delinquent act that constitutes a felony or class (1) misdemeanor shall be released without bond or on a personal recognizance bond if the juvenile: (C.R.S. 19-2-509 (1))
- a. Has been found guilty of a delinquent act constituting a felony or a class one (1) misdemeanor within one year prior to his/her detention; or
 - b. Is currently at liberty on another bond of any time; or
 - c. Has a delinquency petition alleging a felony pending in any district or juvenile court for which probable cause has been established.
11. At the end of the detention hearing the court shall either: (C.R.S. 19-2-508 (3)(a)(IV))
- a. Release the juvenile to the parent/guardian/legal custodian without bond; or
 - b. Place the juvenile in a shelter; or

- c. Set bail for the juvenile according to (C.R.S. 19-2-509) and have the juvenile be released upon posting of bail.
 - i. Conditions of every bond shall be that the released juvenile; (C.R.S. 19-2-509 (4))
 - 1. Shall not commit any delinquent acts; and
 - 2. Shall not harass, intimidate, or threaten any potential witness; and
 - 3. May be subject to any conditions the court may set that it feels is necessary for protection of the juvenile and the community.
 - ii. The parent/legal guardian responsible for the juvenile or any other person who secures a personal recognizance bond may petition the court prior to forfeiture or exoneration of the bond, to revoke the bond and remand the juvenile into custody if the parent/legal guardian determines that he/she is unable to control the juvenile. (C.R.S. 19-2-509 (7))
 - d. Set without bail upon a finding that the juvenile is a danger to themselves/community and detain the juvenile.
 - e. Set without bail upon a finding that the juvenile is a danger to themselves/community and place the juvenile in a pre-adjudication service program as setup in C.R.S. 19-2-302.
 - f. Any juvenile who is held without bond, whose bond is revoked, or increased under an order entered at any time after the initial detention hearing, and who remains in custody must be tried on the charges for which the bail is being denied, revoked, or increased after the entry of such an order, or within sixty (60) days after the juvenile's entry of a pleas, whichever date is earlier, unless a jury trial is requested. (C.R.S. 19-2-509 (4)(b))
12. After the detention hearing a juvenile who is to be tried as an adult shall not be held in a juvenile facility unless the district court finds, after a hearing, that an adult jail is the appropriate place of confinement. (C.R.S. 19-2-508 (3)(c)(II)) If the juvenile is held in an adult facility, the juvenile shall be physically segregated from adult offenders. (C.R.S. 19-2-508 (4)(b))
13. Any juvenile arrested and detained for an alleged violation of any article of title 42, C.R.S., or for any alleged violation of a municipal or county ordinance, and not released on bond, shall be taken before a judge with jurisdiction of such violation within forty-eight (48) hours for the fixing of bail and conditions of bond. (C.R.S. 19-2-508 (4)(d)(I))
14. A juvenile can be placed in to an adult holding facility as such as jail, or confinement but only for up to six (6) hours and then must be detained with juveniles. (C.R.S. 19-2-508 (4)(d)(I)).

Parent Requirements

(C.R.S. 19-2-113)

1. Parents, guardians, or legal custodians are required to attend proceedings or face contempt sanctions of court. (C.R.S. 19-2-113 (1)(a)) and (C.R.S. 19-2-109 (6))
 - ❖ If the parent or guardian or person with whom the child resides, if other than the parent or guardian, without good cause, fails to appear at any proceeding the court shall order a bench warrant for them. (C.R.S. 19-1-114 (5)(b))
2. The court may proceed without the presence of a parent or guardian if they cannot be found. (C.R.S. 19-2-514 (3)(a))
3. While a parent or guardian would be preferred at the juvenile's trial the juvenile does not have an absolute right to have his/her parent present at any proceeding in which the juvenile is present. (C.R.S. 19-2-515 (3)(g))
4. The court may specify its expectations for the parent, if parent is a party to the proceedings. (C.R.S. 19-2-113 (1)(b))
5. Legislative intent is that parents cooperate and participate significantly in assessment and treatment planning. (C.R.S. 19-2-113 (2)(a))
6. Any treatment plan may include requirements imposed upon the parent, if the parent is a party including: maximum involvement in sentencing orders, parental responsibility training, cooperate with treatment plans, performance of public service, cost of care, supervision, or any other provision court deems in the best interest of juvenile, parent's other children, or the community. Violations result in contempt. Court may exclude parent from any involvement. (C.R.S. 19-2-113 (2)(b)(I-VII))
7. The court may order the juvenile or the juvenile's parent to make such payments toward the cost of care as are appropriate under the circumstances. (C.R.S. 19-2-114 (1)(a))
 - ❖ The burden is on the juvenile and his or her parents to submit financial information in order for the court to calculate the amount of payment under

C.R.S. 19-2-114. Therefore the department of human services is under no duty to present estate information about the juvenile or his or her parents. People ex rel. M.L.M., 104 P.3d 324, 326 (Colo. Ct. App. 2004).

8. Sentences may require performance of public service designed to contribute to the rehabilitation of the juvenile or to the ability of the parent to provide parental care and supervision of the juvenile; parental responsibility training; perform services for the victim; and restitution up to \$25000.00 for any one delinquent act if the parent has not made diligent good faith efforts to prevent or discourage the juvenile from engaging in delinquent activity. (C.R.S. 19-2-919) Any sentence may include parent conditions. (C.R.S. 19-2-907 (3))

9. The court can issue an order of protection in assistance of, or as a condition of any decree issued under Title 19. It can set forth reasonable conditions of behavior to be observed for a specific period of time by the parent including: staying away from the juvenile, abstain from offensive conduct, give proper attention/care, cooperate with other agencies, to refrain from acts of omission or commission that tend to make a home an improper place for the child, and perform legal obligation of support. (C.R.S. 19-1-114)

Preliminary Hearings

General Information on Preliminary Hearings

(C.R.S. 19-2-705)

1. Preliminary hearing should be held for the limited purpose of determining that probable cause exists to believe that a crime was committed and that the defendant committed it. People v. Quinn, 516 P.2d 420, 422 (Colo. 1973)
2. Only entitled to preliminary hearings in the following:
 - a. Class 1, 2, or 3 felonies (C.R.S. 19-2-705 (1))
 - b. Class 4, 5, or 6 felonies which carry with it mandatory sentencing. (C.R.S. 19-2-705 (1))
 - c. Class 4, 5, or 6 felonies if the juvenile is in custody. (C.R.S. 19-2-705 (1.5)(b))
 - d. Crimes of violence pursuant to C.R.S. 18-1.3-406(2). (C.R.S. 19-2-705 (1))
 - e. Sexual offense pursuant to C.R.S. 18-3-400 – C.R.S. 18-3-417. (C.R.S. 19-2-705 (1))
3. The D.A. or the juvenile may demand by written motion a preliminary hearing within ten (10) days of the advisement. (C.R.S. 19-2-705 (1)(a))
 - a. If the juvenile is detained the preliminary hearing shall be set within thirty (30) days of the motion being filed. (C.R.S. 19-2-705 (1)(b))
 - b. If the juvenile is not detained the preliminary hearing shall be set as promptly as the calendar of the court permits. (C.R.S. 19-2-705 (1)(b))
4. At the hearing the Juvenile should not be called upon to plead, although the juvenile may cross-examine witnesses and may introduce evidence. (C.R.S. 19-2-705 (1)(c))
 - a. Once a witness has been called by the prosecution at a preliminary hearing, a defendant has a right to conduct reasonable cross-examination of the witness on the issue of probable cause. Harris v. District Court of Denver, 843 P.2d 1316, 1319 (Colo. 1993)
5. The court may temper the Colorado Rules of Evidence in exercise of sound judicial discretion. (C.R.S. 19-2-705 (1)(c))
 - a. Rules of evidence (other than with respect to privileges) do not apply in preliminary hearings. (C.R.E. 1101 (d)(3))

6. Evidence is to be taken in the light most favorable to the prosecution, but the prosecution has to satisfy every element of the charge. People v. District Court, 926 P.2d 567, 570 (Colo. 1996).
7. Because of the limited nature of preliminary hearing, defendant may not conduct discovery prior to preliminary hearing. Harris v. District Court of Denver, 843 P.2d 1316, 1319 (Colo. 1993)
8. The standard for finding probable cause requires only that the prosecution present evidence sufficient to induce a person of ordinary prudence and caution to entertain a reasonable belief that the defendant committed the crime charged. People v. District Court, 926 P.2d 567, 570 (Colo. 1996).
9. At a preliminary hearing, the prosecution may not rely solely upon hearsay evidence to establish probable cause when a perceiving witness is available to testify. However, hearsay evidence may constitute the great bulk of the prosecution's evidence in preliminary hearings. People v. Horn, 772 P.2d 108, 109 (Colo. 1989)
 - a. The admission of hearsay evidence at preliminary hearings is constitutionally permissible and does not violate a juvenile's right to fundamental fairness. People v. Juvenile Court, 893 P.2d 81, 96 (Colo. 1995)
10. Section 13-25-129(1) applies to trial proceedings but not to such probable cause proceedings such as a preliminary hearing. People v. Jensen, 765 P.2d 1028, 1031 (Colo. 1988)
11. Where an eyewitness is available in court during a preliminary hearing, and where the prosecution is relying almost completely on hearsay testimony, it is an abuse of discretion to prohibit the defense from calling the witness. Harris v. District Court of Denver, 843 P.2d 1316, 1319 (Colo. 1993)
12. It is not required that the prosecution produce all or even the best witnesses at a preliminary hearing, although the process is best served when at least one witness is called whose direct perception of the criminal episode is subject to evaluation by the judge at the preliminary hearing. Blevins v. Tihonovich, 728 P.2d 732, 734 (Colo. 1986)
13. A defendant is not entitled to compel the victim of an alleged offense to testify at a preliminary hearing. Harris v. District Court of Denver, 843 P.2d 1316, 1319 (Colo. 1993)

14. If probable cause is found have the accused enter not guilty pleas that day, and set for trial. If probable cause is not found the court shall dismiss the delinquency petition. (C.R.S. 19-2-705 (1)(d))
15. Magistrates can hear preliminary hearings without any consent. (C.R.S. 19-1-108)
16. Request of review of Magistrates rulings on preliminary hearings must be made within fifteen days. (C.R.S. 19-1-108 (5.5))

Preliminary Hearing Findings

C.R.S. 16-5-301

1. State the Case #, People in interest of juvenile, and concerning respondents.
2. This is a preliminary hearing pursuant to C.R.S. 16-5-301.
3. The charge reads as follows: (Read Charge)
4. Read the following:

A preliminary hearing is a screening device to determine whether there is probable cause to believe that the juvenile charged in the petition committed the delinquent act charged in the petition.

The probable cause standard requires evidence sufficient to induce a person of ordinary prudence, and caution conscientiously to entertain a reasonable belief that an accused juvenile committed a particular delinquent act.

The evidence must be viewed in the light most favorable to the people. Any inferences drawn must be drawn in favor of the people. People v. Williams, 628 P.2d 1011, 1014 (Colo. 1981).

At a preliminary hearing, the prosecution may not rely solely upon hearsay evidence to establish probable cause when a perceiving witness is available to testify. However, hearsay evidence may constitute the great bulk of the prosecution's evidence in preliminary hearings. People v. Horn, 772 P.2d 108, 109 (Colo. 1989)

Minor in **Possession**

Information about Illegal Possession or Consumption of Ethyl Alcohol by an Underage Person and Effect on Vehicle and License Statutes

(C.R.S. 18-13-122)

1. Any person under twenty-one (21) years of age who possesses or consumes ethyl alcohol anywhere in the state of Colorado commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense. (C.R.S. 18-13-122(2)(a))
2. Upon conviction of a:
 - i. First offense, illegal possession or consumption of ethyl alcohol by an underage person shall be punished by a fine of not more than two hundred fifty dollars. The court, upon sentencing a defendant pursuant to this paragraph (b), may, in addition to any fine, order that the defendant perform up to twenty-four hours of useful public service, subject to the conditions and restrictions of section 18-1.3-507, and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program at such defendant's own expense. (C.R.S. 18-13-122(2)(b)(I))
 - ii. Second offense, illegal possession or consumption of ethyl alcohol by an underage person shall be punished by a fine of not more than five hundred dollars, and the court shall order the defendant to submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program, at the defendant's own expense. The court may further order the defendant to perform up to twenty-four hours of useful public service, subject to the conditions and restrictions specified in section 18-1.3-507. ((C.R.S. 18-13-122(2)(b)(II))
 - iii. Third or subsequent offense, illegal possession or consumption of ethyl alcohol by an underage person shall be a class 2 misdemeanor, and the court, in addition to sentencing the defendant pursuant to the provisions of section 18-1.3-501, shall order the defendant to submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program, at the defendant's own expense. ((C.R.S. 18-13-122(2)(b)(III))

3. The department of revenue shall immediately revoke the license or permit of any driver or minor driver upon receiving a record showing that such driver has been convicted of:
 - i. Possession or consumption of ethyl alcohol under the age of twenty-one (21) pursuant to C.R.S. 18-13-122 (2); or
 - ii. Obtaining or attempting to obtain alcohol beverages by misrepresenting his or her age in any place where alcohol is sold when under twenty-one (21) years of age pursuant to C.R.S. 12-47-901 (1)(b); or
 - iii. Possessing alcohol beverages in or on: any store, public place, public street, alley, road, highway, property owned by the state of Colorado, or vehicles when such a person is under twenty-one years of age pursuant to C.R.S. 12-47-901 (1)(c).

AND

- iv. Has failed to complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program ordered by the court in connection with the conviction; or
- v. Has a previous conviction for C.R.S. 18-13-122(2), 12-47-901(1)(b) or 12-47-901(1)(c).

(C.R.S. 42-2-125 (1)(m))

4. Any Person who has his/her license revoked pursuant to C.R.S. 42-2-125 (1)(m) shall be subject to a revocation period that shall continue for the period of time described hereafter: (C.R.S. 42-2-125 (6)(a))
 - i. After a first conviction and failure to complete an ordered evaluation, assessment, or program, three months;
 - ii. After two convictions, six months;
 - iii. After any third or subsequent conviction, one year.
5. Upon revoking the license as required by C.R.S. 42-2-125, the departments shall immediately notify the licensee pursuant to C.R.S. 42-2-119 (2). Where a minor driver's license is revoked, such revocation shall not run concurrently with any previous or subsequent suspension, revocation, cancellation, or denial that is provided by law. (C.R.S. 42-2-125(3))

Steps to Process Minor in Possession

1. Read minor in possession advisement
2. Call all minor in possession cases to stand up at the same time in courtroom in order of the docket.
3. Ask each juvenile how they would like to plead.
4. Deal with juveniles who plead not guilty first.
 - a. Advise these juveniles that by pleading not guilty they will be set for a trial date and are giving up their right to the plea agreement offered to them by the District Attorney.
 - b. Explain the plea agreement they are waiving.
 - c. Ask them again if they would like to plead not guilty.
 - d. Set the matter for trial and set a date for motions to be due.
5. Next deal with juveniles who are pleading guilty to the charge.
6. Ask each juvenile if they understand what a trial is one at a time and wait for each individual to answer.
 - a. Ask them all together if they understand by pleading guilty they are giving up this right.
 - b. Have each individually respond.
7. State possible sentencing which could occur by pleading guilty to all the juveniles.
 - a. Go around to each individual juvenile and ask if after hearing all that you have stated they still wish to plead guilty.
8. Go around to each juvenile individually and state his or her sentence.

Rules
Regarding
Evidence

General Evidence Rules

(C.R.S. 19-2-802)

- All evidence statutes and rules of Colorado that apply in adult criminal proceedings shall apply to proceedings brought under title 19.
- In any juvenile case, the credibility of any witness may be challenged because of his or her prior adult felony convictions and juvenile felony adjudications. The fact of such conviction or adjudication may be proved either by the witness through testimony or by other competent evidence.
- Defendants due process is controlled by C.R.S. 19-2-802 (3) the Curtis Advisement – See Section entitled Curtis Advisement

Exclusionary Rule

(C.R.S. 19-2-803)

- When a party seeks to exclude evidence in a delinquency proceeding because of how the peace officer (peace officer is defined in C.R.S. 16-2.5.101) obtained it, such evidence should not be excluded if the evidence would otherwise be admissible when the proponent of the evidence can show the conduct of the peace officer was taken in reasonable, good faith belief that it was proper. (C.R.S. 19-2-803 (1))
 - “Good faith mistake” means a reasonable error of judgment concerning the existence of facts or law that, if true, would be sufficient to constitute probable cause pursuant to C.R.S. 19-1-103(53).
- Evidence should not be excluded in a delinquency proceeding because of the conduct of the peace officer leading to its discovery if the court finds that the evidence was seized by the peace officer as a result of a good faith mistake or a technical violation and the evidence is otherwise admissible. (C.R.S. 19-2-803 (3))
 - “Technical Violation” means a reasonable, good faith reliance upon a statute that is later ruled unconstitutional, a warrant that is later invalidated due to a good faith mistake, or a court precedent that is later overruled pursuant to C.R.S. 19-1-103 (105)
- Evidence that is obtained as a result of a confession voluntarily made in a noncustodial setting shall not be suppressed by the court in a delinquency proceeding if it is otherwise admissible. (C.R.S. 19-2-803 (4))
- Prima facie evidence exists that the conduct of the peace officer was in reasonable good faith belief and that it was proper if the evidence was obtained pursuant to and within the scope of a warrant. (C.R.S. 19-2-803 (5))
 - The exception to this is if the warrant was obtained through intentional and material misrepresentation.

Statements Made by the Juvenile

(C.R.S. 19-2-511)

- No statements or admissions made by a juvenile as a result of interrogation by law enforcement concerning alleged delinquent acts shall be admissible in evidence against such juvenile unless: (C.R.S. 19-2-511 (1))
 1. A parent, guardian, physical custodian, or legal custodian was present at such interrogation and;
 2. The juvenile and his or her guardian were advised of the: (C.R.S. 19-2-511 (1))
 - i. Right to remain silent;
 - ii. That any statements made may be used against him or her in a court of law;
 - iii. His or her right to the presence of an attorney during such interrogation; and
 - iv. His or her right to have counsel appointed if he or she so requests at the time of the interrogation.
 3. A parent, guardian, physical custodian, or legal custodian not necessary:
 - i. If a public defender or counsel representing the juvenile is present at such interrogation, the need for the parent, guardian, or legal custodian is not needed. (C.R.S. 19-2-511 (1))
 - ii. If the juvenile was accompanied by a responsible adult who was a custodian of the juvenile or assuming the role of a parent at the time of the interrogation the need for the parent, guardian, or legal custodian is not needed. (C.R.S. 19-2-511 (3))
 - iii. The juvenile and his or her parent or guardian may expressly waive in writing the requirement for the parent or guardian to be present at the interrogation. (C.R.S. 19-2-511 (5))
 - The waiver may only be obtained after the juvenile and his or her parent or guardian receives a full advisement of the juvenile's right.
 - A county social services department and DHS, as legal or physical custodian, may not waive the parent or guardian requirement.
 - iv. If the juvenile makes any deliberate misrepresentations affecting the applicability of the above requirements and a law enforcement official, acting in good faith and in reasonable reliance on such deliberate misrepresentations, conducts a custodial interrogation that does not comply with the requirements of C.R.S. 19-2-511(1).
- Statement or admissions made by a juvenile are admissible if the court finds that, under the totality of the circumstances, the juvenile made a knowing, intelligent, and voluntary waiver of rights and: (C.R.S. 19-2-511 (2)(a))
 - The juvenile is eighteen (18) years of age or older at the time of the interrogation;
 - The juvenile misrepresents his or her age as being eighteen (18) years of age or older and the law enforcement official acts in good faith reliance on such misrepresentation in conducting the interrogation;
 - The juvenile is emancipated from the parent, guardian, or legal or physical custodian

- pursuant to C.R.S. 19-1-103 (45); or
- The juvenile is a runaway from a state other than Colorado and is of sufficient age and understanding.

Steps to Take at a First Appearance of a Juvenile Whom has Allegedly Committed a Delinquent Act

(C.R.S. 19-2-708 and Rule 3 of the Colorado Rules of Juvenile Procedure)

1. At first appearance the court should begin before calling any specific cases by giving all the juveniles, parents, guardians, legal custodians, and physical custodians an advisement of all the juvenile's rights. (Use the initial delinquency advisement)
2. Call the first case
3. Move on to the following advisements and question: (C.R.J.P. 3)
 - Ask the juvenile if he or she has understood the general advisement;
 - Explain to the juvenile the nature of the allegations in the petition;
 - Explain to the juvenile the sentencing alternative if the juvenile is found guilty;
 - Explain to the juvenile that if he or she pleads guilty it must be voluntary and not the result of undue influence or coercion on the party of anyone;
 - Explain the juveniles right to bail pursuant to C.R.S. 19-2-508 and C.R.S. 19-2-509; and
 - Explain That the juvenile may be subject to transfer to the criminal division of the district court to be tried as an adult pursuant to C.R.S. 19-2-518
4. Proceed with asking whether the parents will hire a lawyer or refer to the public defender.
5. Set a future court date to appear with counsel or, if counsel is not hired or appointed, meet with the district attorney.