

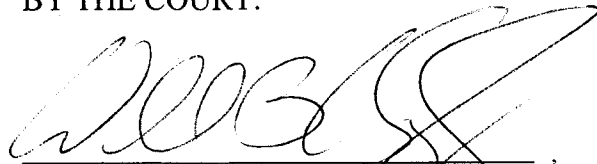
DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
Plaintiff: People of the State of Colorado v. Defendant: Holmes, James Eagan	Case No. 12CR1522 Division: 22
<p style="text-align: center;">ORDER REGARDING ADVISEMENT ON PLEA OF NOT GUILTY BY REASON OF INSANITY (C-22)</p>	

This Matter comes before the Court on the People's Motion P-37 Response to the Court's Proposed Advisement Regarding NGRI, filed March 8, 2013; Defendant's Objections to Court's Proposed "Advisement Regarding Plea of Not Guilty by Reason of Insanity" [D-033], filed March 8, 2013; and the Court's Attachment to the Order Re: Defense Motions D-28, D-29, D-30, D-31, and D-32, issued March 7, 2013.

This Court has considered the suggestions from Defendant and the People regarding the Advisement on Plea of Not Guilty by Reason of Insanity. The Court has incorporated some of those suggestions, and the attached advisement will be the advisement given to defendant should he decide to enter a plea of not guilty by reason of insanity. In making this determination, the Court believes it is important to track the statutory language as closely as possible, while protecting Defendant's statutory and constitutional rights, and to ensure that it is not necessary to bring Defendant back at a later date for an additional advisement, should facts and circumstances warrant.

DATED this 11th day of March, 2013.

BY THE COURT:


 WILLIAM BLAIR SYLVESTER
 CHIEF JUDGE
 EIGHTEENTH JUDICIAL DISTRICT

DISTRICT COURT, CITY AND COUNTY OF ARAPAHOE, COLORADO

Case No. 2012CR1522

ADVISEMENT ON PLEA OF NOT GUILTY BY REASON OF INSANITY¹

THE PEOPLE OF THE STATE OF COLORADO, Plaintiffs,

v.

JAMES EAGAN HOLMES, Defendant

Before accepting your tendered plea of Not Guilty By Reason of Insanity, the Court must advise you of the following possible effects and consequences of such a plea:

1. Do you read, write, and understand English?
2. Is anyone forcing you to enter this plea?
3. You have requested to plead Not Guilty By Reason of Insanity. The applicable test for insanity shall be:
 - (a) A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable. In determining whether this definition applies, care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions, for, when the act is induced by any of these causes, the person is accountable to the law; OR
 - (b) A person who suffered from a condition of mind caused by mental disease or defect that prevented the person from forming a culpable mental state that is an essential element of a crime charged. In determining whether this definition applies, care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred or other motives and kindred evil conditions because, when the act is induced by any of these causes, the person is accountable to the law.

“Diseased or defective in mind” does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

“Mental disease or defect” includes only those severely abnormal mental conditions that grossly and demonstrably impair a person’s perception or understanding of reality and

¹ This advisement applies to all offenses committed after July 1, 1999.

that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance but does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Authority: C.R.S. § 16-8-101.5 (1)-(3).

4. By pleading not guilty by reason of insanity and placing your mental condition at issue, by disclosing witnesses who may provide evidence concerning your mental condition during a sentencing hearing held pursuant to C.R.S. § 18-1.3-1201 or by seeking to introduce evidence concerning your mental condition, you waive any claim of confidentiality or privilege as to communications you made to a physician or psychologist in the course of an examination or treatment for such mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to C.R.S. § 18-1.3-1201. The Court will order both you and the prosecutor to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated you for such mental condition.

Authority: C.R.S. § 16-8-103.6 (2)(a)-(b).

5. When, at the time of arraignment, the defense of insanity is raised, the Court shall order an examination of you with regard to the insanity defense. When you give notice pursuant to C.R.S. § 16-8-107(3) that you intend to introduce evidence in the nature of expert opinion concerning your mental condition, the Court will order an examination of you pursuant to C.R.S. § 16-8-106. **Authority: C.R.S. § 16-8-103.7(2)-(3).**

6. You have a right to trial by a jury. You may also waive your right to a jury trial and request a trial to the court; however, the prosecution has a statutory right to refuse to consent to a waiver of a trial or sentencing determination by a jury in all cases where the accused has the right to request a trial or sentencing determination by a jury. The court may override the prosecution's objection to a trial to the court only if the defendant establishes that a jury trial would violate his right to due process. If you seek to waive your right to a trial by jury and the prosecution objects, you must raise your due process concerns with the trial court. The issues raised by the plea of not guilty by reason of insanity shall be treated as an affirmative defense and shall be tried in the same proceeding and before the same trier of fact as the charges to which not guilty by reason of insanity is offered as a defense. **Authority: C.R.S. § 16-8-104.5; C.R.S. § 16-10-101; see also** Amendment VI, U.S. Constitution (right to jury trial in criminal cases); Colo. Const. art. 2, § 23 (right to trial by jury in criminal cases); *People v. McKeel*, 246 P.3d 638 (Colo. 2010).

7. When a plea of not guilty by reason of insanity is accepted, the Court shall immediately commit you for a sanity examination, specifying the place and period of commitment. Upon receiving the report of the sanity examination, the Court shall immediately set the case for trial. Every person is presumed to be sane; but, once any evidence of insanity is introduced, the People have the burden of proving sanity beyond a reasonable doubt. **Authority: C.R.S. § 16-8-105.5(1)-(2).**

8. If the trier of fact finds you not guilty by reason of insanity, the Court shall commit you to the custody of the Department of Human Services until such time as you are found eligible for release. The executive director of the Department of Human Services shall designate the state facility at which you shall be held for care and psychiatric treatment and may transfer you from one facility to another if, in the opinion of the director, it is desirable to do so in the interest of the proper care, custody, and treatment of you or the protection of the public or personnel of the facilities in question. **Authority: C.R.S. § 16-8-105.5(4).**

9. All examinations ordered by the Court in criminal cases shall be accomplished by the entry of an order of the court specifying the place where such examination is to be conducted and the period of time allocated for such examination. You may be committed for such examination to the Colorado psychiatric hospital in Denver, the Colorado mental health institute at Pueblo, the place where you are in custody (in this case, Arapahoe County Jail), or such other public institution as designated by this Court. In determining the place where such exam is to be conducted, the Court shall give priority to the place where you are in custody, (in this case, the Arapahoe County Jail), unless the nature and circumstances of the examination require designation of a different facility. **Authority: C.R.S. § 16-8-106(1).**

10. You shall be observed and examined by one or more psychiatrists during such period as the Court directs. For good cause shown, upon your motion or motion by the prosecution, or upon the Court's own motion, the Court may order such further or other examination, including services of psychologists, as is advisable under the circumstances. Nothing in this section shall abridge your right to obtain a psychiatric examination as provided in section 16-8-108. **Authority: C.R.S. § 16-8-106(1).**

11. You shall cooperate with psychiatrists and other personnel conducting any examination ordered by the court. Statements you make in the course of such examination shall be protected as provided in section 16-8-107 (See ¶ 17). If you do not cooperate with psychiatrists and other personnel conducting the examination, the court shall not allow you to call any psychiatrist or other expert witness to provide evidence at your trial concerning your mental condition, including, but not limited to, providing evidence on the issue of insanity or at any sentencing hearing held pursuant to C.R.S. § 18-1.3-1201. Additionally, the fact that you did not cooperate with psychiatrists and other personnel conducting the examination may be admissible in your trial to rebut any evidence you introduce with regard to your mental condition including, but not limited to, the issue of insanity and in any sentencing hearing held pursuant to C.R.S. § 18-1.3-1201. **Authority: C.R.S. § 16-8-106(2)(c).**

12. To aid in forming an opinion as to your mental condition, it is permissible in the course of an examination under this section to use your confessions and admissions and any other evidence of the circumstances surrounding the commission of the offense(s), as well as your medical and social history, in questioning you. If you are not cooperative with psychiatrists and other personnel conducting the examination, an opinion of your mental condition may be

rendered by such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense(s), as well as your known medical and social history, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to C.R.S. § 18-1.3-1201. **Authority: C.R.S. § 16-8-106(3)(b).**

13. It shall also be permissible to conduct a narcoanalytic interview of you with such drugs as are medically appropriate, and to subject you to polygraph examination. In any trial or hearing on the issue of your sanity or eligibility for release and in any sentencing hearing held pursuant to C.R.S. § 18-1.3-1201, the physicians and other personnel conducting the examination may testify to the results of any such procedures and your statements and reactions insofar as these entered into the formation of their opinions as to your mental condition both at the time of the commission of the alleged offense(s) and at the present time. **Authority: C.R.S. § 16-8-106(3)(b).**

14. When you undergo examination as set forth previously because you have given notice pursuant to section 16-8-107(3) that you intend to introduce expert opinion evidence concerning your mental condition, the physicians and other personnel conducting the examination may testify to the results of any such procedures and your statements and reactions insofar as these entered into the formation of their opinions as to your mental condition. **Authority: C.R.S. § 16-8-106(3)(c).**

15. With respect to your alleged offense(s), the report of the examination shall include, but not be limited to, the following items: (a) the name of each physician or other expert who examined you; (b) a description of the nature, content, extent, and results of the examination and any tests conducted; (c) a diagnosis and prognosis of your physical and mental condition; (d) an opinion as to whether you suffered from a mental disease or defect or from a condition of mind caused by mental disease or defect that prevented you from forming the culpable mental state that is an essential element of any crime charged; and, if so, (e) separate opinions as to your mental condition including, but not limited to, whether you were insane or are ineligible for release, as those terms are defined in C.R.S. § 16-8-101.5, et seq., and in any Class 1 Felony case, an opinion as to how the mental disease or defect or condition of mind caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by this Court. **Authority: C.R.S. § 16-8-106(6)(a)-(b); § 16-8-106(5)(a)-(c).**

16. When you have undergone examination because you gave notice pursuant to section 16-8-107(3) that you intend to introduce expert opinion evidence concerning your mental condition, the report of the examination shall include, but not be limited to, the following items: (a) the name of each physician or other expert who examined you; (b) a description of the nature, content, extent, and results of the examination and any tests conducted; (c) a diagnosis and prognosis of your physical and mental condition; (d) an opinion as to whether you suffered from a mental disease or defect or from a condition of mind caused by mental disease or defect

that affected your mental condition and, if so, (e) separate opinions as to your mental condition including, but not limited to, whether you were insane or are ineligible for release, as those terms are defined in C.R.S. § 16-8-101.5, et seq., and in any Class 1 Felony case, an opinion as to how the mental disease or defect or condition of the mind caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by this Court. **Authority: C.R.S. § 16-8-106(7)(a)-(b); § 16-8-106(5)(a)-(c).**

17. Except as otherwise provided in this advisement, no evidence acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a court-ordered examination under section 16-8-106 or acquired pursuant to a waiver of your privilege as set forth in section 16-8-103.6 is admissible against you on the issues raised by a plea of not guilty, if you are put to trial on those issues, except to rebut evidence you introduce of your mental condition to show incapacity to form a culpable mental state; and, in such case, that evidence may be considered by the trier of fact only as bearing upon the question of capacity to form a culpable mental state, and the jury, at the request of either party, shall be so instructed. If you testify on your own behalf upon the trial of the issues raised by the plea of not guilty or at a sentencing hearing held pursuant to C.R.S. § 18-1.3-1201, the provisions of this section shall not bar any evidence used to impeach or rebut your testimony. **Authority: C.R.S. § 16-8-107(1)(a), (c).**

18. Except as otherwise provided in this advisement, evidence acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a court-ordered examination pursuant to section 16-8-106 or acquired pursuant to a waiver of your privilege as set forth in section 16-8-103.6 is admissible only as to the issues raised by your plea of not guilty by reason of insanity, and the jury, at the request of either party, shall be so instructed; except that such evidence shall also be admissible as to your mental condition if you undergo the examination because you have given notice pursuant to subsection (3) of C.R.S. 16-8-107 that you intend to introduce expert opinion evidence concerning your mental condition. If you testify on your own behalf, these provisions shall not bar any evidence used to impeach or rebut your testimony. **Authority: C.R.S. § 16-8-107(1.5)(a), (c).**

19. Evidence acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a court-ordered examination under section 16-8-106 or acquired pursuant to a waiver of your privilege as set forth in section 16-8-103.6 is admissible at any sentencing hearing held pursuant to C.R.S. § 18-1.3-1201, only to prove the existence or absence of any mitigating factor. **Authority: C.R.S. § 16-8-107(1)(b); (1.5)(b).**

20. In any trial or hearing concerning your mental condition, physicians and other experts may testify as to their conclusions reached from their examination of hospital records, laboratory reports, x-rays, electroencephalograms, and psychological test results if the material which they examined in reaching their conclusions is produced at the time of trial or hearing. **Authority: C.R.S. § 16-8-107(2).**

21. In no event shall the Court permit you to introduce evidence relevant to the issue of insanity, as described in section 16-8-101.5, unless you enter a plea of not guilty by reason of insanity pursuant to section 16-8-103. **Authority: C.R.S. § 16-8-107(3)(a).**

22. Regardless of whether you enter a plea of not guilty by reason of insanity pursuant to section 16-8-103, you shall not be permitted to introduce evidence in the nature of expert opinion concerning your mental condition without having first given notice to the court and the prosecution of your intent to introduce such evidence and without having undergone a court-ordered examination pursuant to section 16-8-106. If you place your mental condition at issue by giving such notice you waive any claim of confidentiality or privilege as provided in section 16-8-103.6. Such notice shall be given at the time of arraignment; except that the court, for good cause shown, shall permit you to inform the court and prosecution of the intent to introduce such evidence at any time prior to trial. Any period of delay caused by the examination and report provided for in section 16-8-106 shall be excluded, as provided in section 18-1-405(6)(a), C.R.S. from the time within which you must be brought to trial. **Authority: C.R.S. § 16-8-107(3)(b).**

23. If you wish to be examined by a psychiatrist, psychologist, or other expert of your own choice in connection with any proceeding under this article, the court, upon timely motion, shall order that the examiner you choose be given reasonable opportunity to conduct the examination. A copy of any report of an examination of you made at the instance of the defense shall be furnished to the prosecution a reasonable time in advance of trial. **Authority: C.R.S. 16-8-108 (1)-(2).**

24. Upon your motion and proof that you are indigent and without funds to employ physicians, psychologists, or attorneys to which you are entitled, the Court shall appoint such physicians, psychologists or attorneys for you at state expense. **Authority: C.R.S. § 16-8-119.**

25. Have you thoroughly discussed this matter with your attorney?
26. Knowing the consequences of entering a plea of not guilty by reason of insanity, do you still want to enter such a plea?

DATED this _____ day of _____, 2013.

BY THE COURT:

WILLIAM BLAIR SYLVESTER
CHIEF JUDGE
EIGHTEENTH JUDICIAL DISTRICT

ACKNOWLEDGMENT

I acknowledge that I have received a copy of this advisement and have reviewed the advisement with my attorney. I fully understand the effect and consequences of my plea of Not Guilty By Reason Of Insanity.

Dated this _____ day of _____, 2013.

Defendant

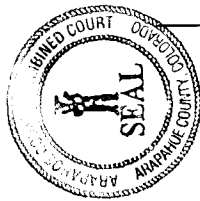
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2013, a true and correct copy of **Order Regarding Advisement on Plea of not Guilty by Reason of Insanity (C-22)** was served upon the following parties of record.

Karen Pearson
Amy Jorgenson
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(via email)

Sherilyn Koslosky
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