



SEVENTEENTH JUDICIAL DISTRICT

ADAMS COUNTY AND THE CITY AND COUNTY OF BROOMFIELD,
COLORADO

ORDER OF THE CHIEF JUDGE

10-04

Amending CJO 09-09

**IN THE MATTER OF THE USE OF MEDICAL MARIJUANA BY PERSONS
GRANTED PROBATION OR SUPERVISED RELEASE ON BOND**

WHEREAS the Colorado General Assembly has approved as lawful the use of marijuana in Colorado, commonly referred to as “medical marijuana,” when lawfully prescribed by an authorized physician in accordance with C.R.S. 25-1.5-106, C.R.S. 18-18406.3 and Section 14 of Article XVIII of the Colorado Constitution; and

WHEREAS the Court has the power to grant probation (C.R.S. 18-1.3-202; 19-2-913) and to grant supervised pre-trial release and to impose conditions of probation and supervised release which the court in its discretion deems reasonably necessary to ensure that the offender will lead a law-abiding life and to assist the defendant in doing so (C.R.S. 18-1.3-204, 19-2-925); and

WHEREAS adult probation and supervised release are privileges rather than rights. They suspend conditionally what might be a harsher judgment. *Holdren v. People*, 452 P.2d 28 (Colo. 1969); *Gehl v People*, 423 P.2d 332 (Colo. 1967). Probation or supervised release is accorded only to a defendant who seeks it or is willing to accept it as a sentence or pre-trial release condition. *People v Rollins*, 771 P.2d 32 (Colo. App. 1989); and

WHEREAS juvenile probation is a privilege rather than a right, suspending conditionally what might be a harsher judgment as a contract with the convicted person, made by a court and sanctioned by statute that he may remain free so long as his conduct is good and he genuinely attempts to rehabilitate himself. *People in the Interest of B.L.M. v. B.L.M.*, 31 Colo. App. 106, 500 P.2d 95 (1972); and

WHEREAS the standard terms and conditions of adult probation and supervised release state: “You shall not violate any local, state or federal law.” C.R.S. 18-1.3-204.

The Colorado Children's Code states: "The court shall, as minimum conditions of probation, order that the juvenile: a) Not violate any federal or state statutes, municipal ordinances, or orders of the court;" and

WHEREAS the use of marijuana is illegal under federal law (Controlled Substances Act, 21 U.S.C. § 811). Federal law does not recognize any state medical marijuana exemption, and a probationer using medical marijuana remains subject to federal prosecution. The Supreme Court held in *Gonzales v. Raich*, 545 U.S. 1 (2005) that the federal government can prosecute medical marijuana patients, even in states with compassionate use laws; and

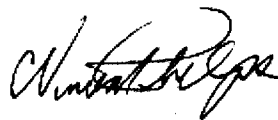
WHEREAS Driving Under the Influence of Drugs, including driving under the influence of medical marijuana remains a crime in the State of Colorado (C.R.S. 42-4-1301) and even upon lawful prescription, there does not exist a medically approved standard to define therapeutic levels of marijuana or a statute defining a legal limit for use of marijuana while driving; and

WHEREAS the Colorado Department of Public Health and Environment Rules and Regulations for Medical Use of Marijuana do not include State Probation Officers under Regulation 5 which allows for communication with law enforcement officials about patients in the registry for the purpose of verifying that an individual who has presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card. (5 CCR 1006-2; Regulation 5; effective August 30, 2009); and

WHEREAS, supervision of persons on probation who wish to consume medical marijuana creates difficulties for the Probation Department and Supervised Release Program.

NOW THEREFORE IT IS ORDERED THAT the possession or use of medical marijuana by any adult or juvenile, who is granted and accepts supervised probation or supervised pre-trial release in the Seventeenth Judicial District, shall be prohibited during the period of probation or pre-trial release supervision.

Done at Brighton, Colorado this 3rd day of August, 2010.



C. Vincent Phelps, Chief Judge
Seventeenth Judicial District