

OGDEN CITY JUSTICE COURT, SECOND JUDICIAL DISTRICT, OGDEN, UTAH

RIGHTS, INSTRUCTIONS, AND WAIVER FORM 8/12/2019

Defendant: \_\_\_\_\_ Case No.: \_\_\_\_\_

**IMPORTANT RIGHTS:**

- (1) You have the right to be represented by an attorney at all court proceedings. You have the right to a reasonable continuance in order to obtain the advice of an attorney.
- (2) You have the right to petition the court for the services of a public defender. The court will appoint a public defender at no cost to you if: (a) you cannot afford an attorney according to state guidelines; and (b) there is the possibility of a jail sentence for the offense. At the conclusion of the case, however, you may be required to pay a reasonable fee for public defender services according to your ability to pay if you are found guilty, or if you plead guilty or no contest. (Current fees for public defender services range from \$50 to \$250.) If you want to use the public defender, please ask for and fill out the Affidavit and Application for a Court-Appointed Lawyer before you see the judge today.
- (3) You have the right to represent yourself. If you do so, the court cannot advise you on how to handle your case, and you will be required to comply with technical legal rules. There may be disadvantages to proceeding without an attorney (see back page).
- (4) You have the right to a speedy public trial before an impartial (unbiased) jury, or you may ask the judge to decide the case. If you want a jury trial, you must make a written demand at least 10 days prior to trial. You are not entitled to a jury trial if you are charged only with an infraction or if there is no possibility of a jail sentence.
- (5) You have the right to confront and cross-examine the prosecution witnesses in open court.
- (6) You have the right to call witnesses and compel by subpoena their attendance and testimony. If you cannot afford to pay for the attendance of witnesses, the prosecution will pay those costs.
- (7) You have the right to testify on your behalf. You are NOT required to testify, make any statement, or give evidence against yourself. Your refusal to testify cannot be held against you.
- (8) You are presumed innocent until: (a) you plead guilty or no contest; or (b) the prosecution proves you guilty. The prosecution has the burden of proving each of the elements of the crime beyond a reasonable doubt. A jury verdict must be unanimous.
- (9) You have the right to bail. If you post bail, you will be released on the condition you appear in court for future proceedings and any other conditions the court imposes. Bail may be modified on proper motion, notice, and findings.
- (10) You have the right to an information (formal charging document) filed by the prosecution.

**If you plead guilty or no contest, the above listed rights are waived, and a plea of guilty constitutes an admission of all the elements of the crime.**

**ENTRY OF PLEA:** If you do not wish to seek the advice of an attorney and you are prepared to enter your plea today, then you have three plea options:

- (1) You can enter a plea of “not guilty.” A plea of not guilty means you question the charge made against you and that you would like a trial on the matter. You may also enter a not guilty plea if you are not sure you want to proceed to trial, but would like to discuss the charge with the prosecutor at a pretrial conference.
- (2) You can plead “guilty.” A plea of guilty is an admission that you committed each element of the offense charged. You are saying to the court that you have violated the law as stated in the charge. If you enter a plea of guilty, you may give an explanation to the court before sentencing.
- (3) You can plead “no contest” with the consent of the court. A plea of no contest means that you do not challenge the charge before the court. You should understand that a plea of no contest has the same effect as a guilty plea. A sentence may be rendered in the same manner as if a plea of guilty had been entered.

**WITHDRAWAL OF PLEA:** A motion to withdraw a guilty or no-contest plea must be made before you are sentenced or within 30 days of a plea held in abeyance. To withdraw your plea, you must show it was not knowingly and voluntarily made. Because a “guilty” or “no contest” plea becomes permanent after sentencing and the passing of the 28 day appeal period, do NOT enter such a plea unless you are actually guilty of the charges or would be found guilty upon the evidence presented to the jury or judge.

**APPEAL:** The right to appeal is limited. If you choose to appeal, you must file a written Notice of Appeal within 28 days of the sentence or order from which you are appealing.

**MINIMUM/MAXIMUM PENALTIES:** Class B Misdemeanor (0 days up to 6 months in jail, \$0 up to \$1,950 in fines and surcharges, plus interest); Class C Misdemeanor (0 to 90 days jail, \$0 to \$1062.50 in fines and surcharges, plus interest); Infraction (no jail, \$0 to \$1062.50 in fines and surcharges, plus interest. The court may also order restitution to any victim, if appropriate, or impose costs or additional terms of probation. You may request to pay a fine by doing community service and receiving a \$10 credit for each hour of community service, but it is up to the judge to determine whether to grant such a request.

**SENTENCING:** Sentencing recommendations are not binding on the court. The court may order the jail sentence to run consecutively (one after the other) with the charges in this case and with any other case. You have the right to come back to court at a later day anywhere from 2 to 45 days after your plea for your sentencing, but you may elect to be sentenced on the same day you enter a “guilty” or “no contest” just want to be sentenced at the time of their plea to avoid another day in Court. **If you want a later sentencing date, please ask the Court for a later sentencing date,** as the Court will always accommodate your request for a later sentencing date.

**IMMIGRATION CONSEQUENCES:** If you are not a U.S. citizen, pleading guilty or no contest to some offenses may have potential consequences to the defendant’s immigration status.

**GUN (2<sup>ND</sup> AMENDMENT) RIGHTS:** In domestic violence cases in which the use or attempted use of physical force or the threatened use of a deadly weapon is an element of the offense, you will be prohibited pursuant to federal law from possessing or purchasing any firearms if a conviction (including a guilty or no contest plea) is entered in such a case. You may wish to discuss your intended plea with legal counsel if you have any concerns about how your plea may impact your 2<sup>nd</sup> Amendment rights.

### RIGHT TO COUNSEL--WAIVER OF COUNSEL

I understand that I have the right to consult with an attorney before entering a plea to my criminal charges and during each phase of my criminal case and that, where there is a possibility that I could be jailed, the Court may appoint an attorney for me at no cost if I cannot afford an attorney. Further if I change my mind and desire the assistance of an attorney, I need only request the Court, at least 10 days prior to trial, to appoint one for me or to give me the opportunity to hire one on my own. I understand that a trained attorney is likely to defend me much better than I could for the following reasons:

- Court proceedings are governed by complex and technical rules of evidence and criminal procedure, and the Court cannot violate these rules merely because I may not be aware of these rules or how they work.
- The Utah Rules of Evidence govern what evidence may or may not be introduced at trial, and even though I may not be familiar with these rules, any evidence that does not comply with these rules will not be admitted.
- Similarly, the Utah Rules of Criminal Procedure govern the way in which a criminal action is tried in court.
- Because I may not understand the Rules of Evidence or the Rules of Criminal Procedure, my failure to comply with these rules likely will impair my ability to present a defense in my case, jeopardizing my liberty.
- An attorney is trained to appeal to the equity of the court in its administration and enforcement of penal laws.
- An attorney is trained to advise me of potential defenses, legal strategies, including my rights against self-incrimination, to speedy trial and to trial by jury, and other potentially mitigating factors applicable to my case.
- The Court (the judge) is not my attorney and cannot and will not give me legal advice.
- Likewise, the prosecutor is not my attorney, but rather is the attorney for the government that is charging me with having committed a crime.
- A defendant who elects to represent himself cannot complain that the quality of his own defense amounted to a denial of effective assistance of counsel.
- A criminal conviction may have collateral consequences separate and apart from the sentence imposed by this court, such as, but not limited to, loss of driving privileges, impact to employment or effects upon immigration status. An attorney can advise me as to these possible consequences.

*I have read (or have had read to me) and I understand the foregoing rights and instructions. I understand the charge(s) and penalties. Any plea I enter is voluntary and of my own free will and choice. No force, threats or unlawful influence have been made to get me to plead in any way. I am not presently under the influence of any drug, medication, or intoxicant which impairs my judgment. If I tell the judge I do not want an attorney to represent me, I am voluntarily, knowingly, and intelligently waiving my right to an attorney and proceeding by representing myself without legal counsel.*

\_\_\_\_\_ (Date) \_\_\_\_\_ (Defendant's signature)