



KILLMER LANE, LLP

CIVIL RIGHTS LITIGATION

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December 12, 2025

VIA EMAIL & FIRST CLASS MAIL

Weld County Sheriff's Office
Sheriff Steve Reams
Will Grumet, County Attorney
Ann Velasquez, Records Unit Manager
Melissa Chesmore, Public Relations Officer
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Greeley, CO 80631
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wgrumet@weld.gov
Records@weld.gov
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(970) 400-2770

RE: *9News and Colorado Public Radio / Weld County Sheriff's Office*

Dear Ms. Velasquez, Mr. Grumet, and Ms. Chesmore:

9News and Colorado Public Radio (hereinafter "Clients") have retained KILLMER LANE, LLP to represent them in connection to the Weld County Sheriff's Office ("WCSO") notarization requirement to obtain records under the Colorado Criminal Justice Records Act ("CCJRA"). Based on the facts as I currently understand them, I have advised my Clients that they likely have meritorious claims against WCSO for this erroneous policy which contravenes the statutory intent and purpose of the CCJRA.

Factual Background

Clients are members of the media who have faced unnecessary hurdles that are not authorized by the statute in requesting records under the CCJRA due to WCSO's notarization requirement. WCSO requires members of the media (and all requestors, for that matter) to complete an Application for Release of Records ("Application") to request records under the CCJRA. The Application requires the record requestor to sign and notarize the following statement:

David A. Lane | Darold W. Killmer | Michael Fairhurst | Reid Allison | Liana G. Orshan
Madison Lips Schaefer | Thomas B. Kelley

USE OF THIS INFORMATION IS REGULATED BY LAW – DO NOT DISSEMINATE

Note: According to the Colorado Revised Statute 24-72-305.5, records of official action, criminal justice records, or the names, addresses, telephone numbers, and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. A violation of this section subjects you to an unclassified misdemeanor and shall be punished by a fine of up to one thousand dollars.

I affirm that I will not use the records, or any portion of the records requested for the purpose of directly soliciting business for pecuniary gain.

On July 1, 2025, Mr. Aaron Adelson, a 9News Investigative Producer and Journalist, asked the WCSO Records Unit about the notarization requirement. Weld County Public Relations Manager Melissa Chesmore responded to Mr. Adelson via email after she spoke to County Attorney Will Grumet. Ms. Chesmore indicated that WCSO requires annual notarization from each individual member of the media seeking records under the CCJRA. Upon Mr. Grumet's advisement, Ms. Chesmore stated the following:

Mr. Grumet advised if we choose not to require the notary, the effect would essentially be that we grant the requester a free pass to break the law by divesting ourselves of the ability to hold them accountable when they do. It isn't that we have any reason to think that a given person would use the requested record to break the law. Mr. Grumet further advised, the law on this subject is in place to constrain potential bad actors. This law, unfortunately, isn't intended to be convenient for the good actors that are out there in the journalism community trying to do their job. He went on to explain, under Colo. Rev. Stat. § 24-72-305.5, he feels we must still get the affirmation. The reason is that if the person or entity violates the affirmation, we have the option to prosecute that person criminally. If we end up on that road, we will have to prove beyond a reasonable doubt that it was that specific person who held the pen; or we don't meet the identification element at trial, and we will not be able to get the conviction. Through our policy choice not to require the notary, we would be removing the enforcement mechanism (the teeth if you will) from the law, which was designed specifically to prevent people in the media from holding a booking photo ransom on public display until some arbitrary fee is paid by the person in the picture.

To the best of Clients' knowledge and belief, WCSO is the only agency or office in Colorado that requires notarization to obtain public records under the CCJRA. Further, per WCSO, Weld County has not sought to prosecute a single person for a violation of C.R.S. § 24-72-305.5.

Legal Claims

Based upon my evaluation of the facts and circumstances of WCSO's notarization requirement, I have advised my clients that they have viable and compelling claims for violations of their statutory rights under the CCJRA.

The CCJRA governs public access to criminal records through uniform statewide standards. C.R.S. § 24-72-301. Under the CCJRA, records fall into two categories, each "governed by its own 'regimen[] of public access:'" (1) records of official action; and (2) all other criminal justice records. C.R.S. § 24-72-302(4), (7); *The Gazette v. Bourgerie*, 560 P.3d 964, 971 (Colo. 2024) (quoting *Freedom Colo. Info., Inc. v. El Paso Cnty. Sheriff's Dep't*, 196 P.3d 892, 898 (Colo. 2008)). The CCJRA mandates that records of official action "shall be open for inspection by any person at reasonable times, except as provided in [the CCJRA] or as otherwise provided by law." C.R.S. § 24-72-303(1). Examples of records of official action include:

an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence.

C.R.S. § 24-72-302(7). In contrast, "inspection of criminal justice records is subject to the custodian's exercise of sound discretion." *Gazette*, 560 P.3d at 971. Criminal justice records include:

all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule...

C.R.S. § 24-72-302(4). In creating a separate category for criminal justice records, "the General Assembly intended the custodian to engage in balancing the public and private interests in the inspection request." *Freedom Colo. Info., Inc.*, 196 P.3d at 898–99. To determine whether record disclosure is in the public interest, "the custodian must consider pertinent factors, which include: the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request." *Gazette*, 560 P.3d at 971.

The CCJRA "generally favor[s] the broad disclosure of records," but "allows a custodian of records discretion to deny the disclosure of documents that meet the definition of criminal justice records if the custodian determines that a privacy interest or dangers of adverse consequences outweigh the public interest." *Id.* Transparency of information is particularly important when it contributes to the "public understanding of the operations or activities of the government" and "sheds light on an agency's performance of its statutory duties." *Trentadue v.*

Integrity Comm., 501 F.3d 1215, 1233 (10th Cir. 2007). An abuse of discretion occurs when a custodian's decision is manifestly arbitrary, unreasonable, or unfair; based upon a misapplication or erroneous construction of the applicable law; or "not reasonably" supported by competent evidence in the record. *Freedom Colo.*, 196 P.3d at 899-900.

As raised in Ms. Chesmore's email, the CCJRA states the following:

Records of official actions and criminal justice records and the names, addresses, telephone numbers, and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The official custodian shall deny any person access to records of official actions and criminal justice records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

C.R.S. § 24-72-305.5(1). Notably, the statute explicitly contemplates only a requirement that a statement be signed, and makes no mention of requiring notarization of that statement.

It is standard practice for a public agency or office to require records requestors to sign an affirmation in compliance with C.R.S. § 24-72-305.5 prior to the disclosure of records. However, WCSO's notarization requirement creates an arbitrary and unreasonable hurdle intended to deter open records requestors. WCSO's additional notarization requirement is not contemplated in the CCJRA and contravenes its purpose and statutory intent, which favors the broad disclosure of records.

Moreover, WCSO's notarization policy does not serve any legitimate government interest; a signature affirming the requestor's compliance with C.R.S. § 24-72-303.5 is a sufficient enforcement mechanism for the County to prosecute statutory noncompliance. If a prosecution under the statute ever *were* to be necessary, the prosecutor could authenticate the signature just like any other evidence under Colorado Rule of Evidence 901 – by presenting evidence sufficient to support a finding that the signature is what it purports to be. "CRE 901 contemplates a flexible, factual inquiry to determine under the facts of each case whether a reasonable jury could determine that the proffered evidence 'is what its proponent claims.'" *People v. Gonzales*, 2019 COA 30, P21 (citing *People v. Glover*, 2015 COA 16, ¶ 12). Given the vanishingly small likelihood of a prosecution under this statute, the ample availability of other methods of authenticating a signature, and the large burden on requestors of public records to retain the services of a notary before submitting a request for open records, there is no legitimate government interest that warrants adding this burdensome requirement. Therefore, WCSO abuses its discretion under the CCJRA by imposing a notarization requirement that is contrary to statute and serves no legitimate governmental interest.

Conclusion

If a Court finds that WCSO abused its discretion or defied mandatory disclosure requirements as a records custodian, the Court shall order the custodian to permit inspection of the criminal justice records at issue. C.R.S. § 24-72-305(7). Upon a finding that the custodian's denial of access was arbitrary or capricious, the Court may further order the custodian to pay the court

costs and attorneys' fees of the requesting party, and may also order a penalty of up to \$25 per day that access was improperly denied. *Id.*

Before pursuing a court order enjoining WCSO from continuing its notarization practice, which is contrary to the CCJRA, my clients would like to give WCSO an opportunity to voluntarily cease its unlawful requirement for notarization as described above. If WCSO intends to do so, or otherwise wishes to discuss this issue further, please contact me on or before January 9, 2026.

Please preserve all possible evidence relevant to the facts of WCSO's CCJRA notarization policy and practice as discussed above.

I look forward to hearing from you.

Sincerely,

Madison L. Schaefer

MLS/kn

cc: Aaron Adelson, 9News
Sean Nethery, Colorado Public Radio