

Colorado provides compassionate release to eligible incarcerated individuals who have serious medical conditions and those who are older through **Special Needs Parole**.¹

SPECIAL NEEDS PAROLE

I. ELIGIBILITY

Medical Condition/Age – An incarcerated individual is defined as having “special needs” if the person meets one or more of the following criteria:

- The individual is incapacitated and suffers from a chronic, permanent, terminal, or irreversible physical illness, condition, disease, or behavioral or mental health disorder that requires costly care or treatment.²
- The individual is incompetent to proceed (for example, an individual with dementia) and does not have a “substantial probability” of being restored to competency during the remainder of the person’s sentence.³
- The individual is age 55 or older and suffers from a chronic infirmity, illness, condition, disease, or behavioral or mental health disorder that causes “serious impairment” that limits the person’s ability to function.⁴ A serious impairment is defined as a physical or mental condition that is chronic and long term in nature and severely limits a person’s ability to independently perform essential day-to-day activities without daily intervention, attention, or support from an aide or professional caregiver.⁵
- The individual is age 64 or older and has served at least 20 years of a sentence for a crime other than a violent and/or sexual offense.⁶

Exclusions – An individual will not be considered for Special Needs Parole if the person has been convicted of a (1) Class 1 felony, sentenced to life with the possibility of parole, and has served fewer than 20 calendar years for the offense;⁷ (2) Class 1 felony and sentenced to life without parole;⁸ or (3) Class 2 felony crime of violence⁹ and has served less than 10 calendar years of the sentence.¹⁰

- **Exceptions** – Those exclusions do not apply to an incarcerated individual who has been diagnosed as having a terminal illness with an anticipated life expectancy of 12 months or less.¹¹

II. APPLICATION/REFERRAL

Referrals – The Colorado Department of Corrections (Department) is responsible for identifying individuals who meet the medical or age eligibility criteria for Special

Needs Parole¹² and referring them to the Colorado Board of Parole (Board).¹³ Department clinical services staff may make a Special Needs Parole referral, under the supervision and review of the Chief Medical Officer or designee.¹⁴

- Note that the procedures outlined below apply to requests made by an incarcerated individual or their “inmate liaison.” We could not locate regulations governing clinical staff referrals. We expect the procedures to be similar.

Requests – An incarcerated individual or an “inmate liaison” – defined as an individual’s family member or attorney, a government agency, or a representative from an organization with experience in helping incarcerated people apply for Special Needs Parole¹⁵ – may request that the Department determine whether the person is eligible.¹⁶ The Department must make that determination within 30 days after receiving the request, unless a competency evaluation has been requested.¹⁷

- Incarcerated individuals can seek a referral by “inquiring with the case manager” once a year or upon a significant change in their medical or mental health condition.¹⁸
 - Note that the Office of the State Public Defender must provide public defender liaisons to assist incarcerated individuals or their family members with a range of matters, including Special Needs Parole applications.¹⁹
- Inmate liaisons may seek a referral by inquiring with the Special Needs Parole Case Manager, once a year or upon a suspected significant change in the person’s medical or mental health condition.²⁰

Referral Process

- Upon inquiry from the incarcerated person or their liaison, Case Managers request they execute a *Release of Information* (ROI) or related form. If the individual declines to sign the form, Case Management ends the referral process, sends an email to the clinical group, updates the Special Needs Tracker, and notifies the Public Defender Liaison of the refusal.²¹
- If the individual executes the form, Case Managers email the Special Needs Parole Case Manager (SNP CM) and uploads the ROI to the system.²²

III. DOCUMENTATION AND ASSESSMENT

On entry of the ROI, the Department conducts an assessment using the following steps.

- The Chief Medical Officer, or a designee, fills out *Worksheet A*, and forwards it to the SNP CM. The SNP CM reviews *Worksheet A* to determine eligibility.²³ The SNP CM uploads *Worksheet A* to the system and notes whether the individual is medically eligible.²⁴
 - *Worksheet A* includes a set of screening questions that paraphrase statutory medical and age eligibility criteria.²⁵
- If the individual meets medical criteria, the SNP CM completes *Worksheet B*.²⁶
 - *Worksheet B* includes a set of screening questions that address statutory exclusions based on the nature of the offense and time-served criteria.²⁷
- If the individual fails to meet statutory criteria, the SNP CM notes and codes the reason(s) and uploads *Worksheet B* into the system.²⁸
- If the individual meets the statutory criteria, the SNP CM completes a series of steps prior to making a referral to the Board.
 - Notifies Victims Services²⁹ and, if necessary, the District Attorney (DA);³⁰
 - Gathers medical information to share with the DA;³¹
 - Requests the parole plan from the facility Case Manager, who in turn informs the individual they have 30 days to provide additional medical information; the individual can waive the 30-day period;³² and
 - Notifies the Division of Adult Parole Benefit Acquisition Team to confirm and initiate insurance.³³

At the conclusion of these tasks, the SNP CM refers the individual³⁴ to the Board of Parole and must include the following:³⁵

- A diagnosis and summary of the person’s medical, physical, or mental condition;
- Criminal history;
- Risk and needs assessment scores and any other relevant information regarding risk and risk-reduction factors;
- Institutional disciplinary history;
- Participation in any employment, treatment, vocational training, and educational opportunities;

- Details of the Department’s recommended Special Needs Parole Plan;
- A statement from the incarcerated individual (or the individual’s liaison if the person is unable to submit a statement); and
- A victim impact statement and a response from the district attorney who prosecuted the individual, if appropriate.
 - If the Department determines that the incarcerated individual meets the Special Needs Parole eligibility criteria, it must notify any victim.³⁶ A victim has 30 days after receiving notification to submit a victim impact statement to the Department, which will be included in the materials sent to the Board.³⁷ The Department must also notify the district attorney that prosecuted the individual if the person is serving any one of a long list of crimes specified in the statute. The district attorney has 30 days after receiving the notice to submit a response to the Department. Any district attorney response will also be included in the referral to the Board.³⁸

IV. DECISION-MAKING PROCESS

Decision-Maker – The Colorado Board of Parole makes the final decision whether to grant Special Needs Parole.³⁹

Decision-Making Process

- **Hearing** – The Board may schedule a hearing on the application for Special Needs Parole with the incarcerated individual present. It may also choose to review the application and issue a decision without a hearing.⁴⁰
- **Risk** – The Board will not release an individual on Special Needs Parole unless it determines that the person is not likely to pose a risk to public safety.⁴¹ In making that determination, it considers the individual’s risk of re-offense, risk and needs assessment scores, the nature and severity of the person’s offense and criminal history, institutional conduct, and program and treatment participation.⁴² The Board also looks at the nature and severity of the individual’s condition and age and the Department’s ability to provide necessary medical or behavioral health treatment.⁴³
- **Competency** – Note that if the individual is determined to be incompetent to proceed, the sentencing court may order the Department to provide or arrange for appropriate “restoration services” in an authorized setting.⁴⁴ If the court determines there is **not** a substantial probability of the individual being restored to competency, the Department may refer the person for Special Needs Parole, develop an appropriate Special Needs Parole Plan, and notify the

public defender liaison.⁴⁵

Decision – The Board must make a decision whether to grant Special Needs Parole within 30 calendar days after receiving the Department’s referral.⁴⁶ However, the Board may delay its decision and ask that the Department modify the individual’s Special Needs Parole Plan.⁴⁷

- The Board cannot deny Special Needs Parole based solely on the lack of a recommended Special Needs Parole Plan. If the Board considers an individual to be appropriate for release except for the lack of a plan, it will delay the decision (or render a conditional release decision) and ask the Department to submit a Special Needs Parole Plan within 30 calendar days.⁴⁸
- If the Board denies Special Needs Parole, it may inform the Department that it should not refer the individual for a subsequent application unless the person’s medical or mental health status deteriorates.⁴⁹
- Note that the Board can only deny an individual referred for Special Needs Parole by a majority vote and only if it finds that granting the parole would create a threat to public safety and that the person is likely to commit another offense.⁵⁰

Prerelease Planning – The Board must approve a Special Needs Parole Plan for each individual released and confirm that the plan addresses appropriate supervision and continuity of medical care.⁵¹ Once the Board approves the individual, the Special Needs Parole Case Manager works with the Parole Supervisor, Chief Probation Officer, Community Re-Entry Specialist, and Treatment Coordination Case Managers to enact the plan.⁵²

- Note that the Department generally does not have any responsibility for an incarcerated individual’s medical care upon release. However, individuals age 65 or older who have been approved for Special Needs Parole must be enrolled in the “most appropriate” medical insurance benefit plan (including Medicare, veteran’s benefits, or other health insurance) prior to or upon release. For those individuals, the Department pays any insurance premiums for up to six months from the start of coverage.⁵³

V. POST-DECISION

Denials and Appeal Rights – The denial of Special Needs Parole does not affect an individual’s eligibility for any other form of parole or release.⁵⁴

Revocation and Termination

- **Revocation** – There are no specific laws or rules covering the revocation of

Special Needs Parole, and individuals released under this law are treated like any other parolee, which means parole may be revoked using the “general” parole rules and processes.⁵⁵

- Termination – The Board sets the length of the individual’s Special Needs Parole for at least six months but not more than 36 months, and it can revise the duration at any time.⁵⁶ However, individuals are not required to serve a period of parole that exceeds that to which they would otherwise be subject to (or covered by) the general parole rules or 36 months, whichever is less.⁵⁷

VI. REPORTING/STATISTICS

The Department must provide a monthly report, by facility, detailing the (1) number of Special Needs Parole applications submitted to the Board of Parole, (2) number of decisions, (3) number of applications pending, (4) average length of time the decision has been pending, and (5) the general reason for delaying the decision.⁵⁸

- The Board did not respond to FAMM’s request on how many individuals were granted Special Needs Parole in 2019 and 2020, and that information is not publicly available on its website.

COLORADO COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

SPECIAL NEEDS PAROLE

Statutes

Colorado Revised Statutes § 17-1-102 (2021), available through the Colorado General Assembly at <https://leg.colorado.gov/laws> [after entering the URL, select Colorado Revised Statutes, click on Title 17, and go to the relevant subsection].

Colorado Revised Statutes § 17-22.5-403.5 (2021), available through the Colorado General Assembly at <https://leg.colorado.gov/laws> [after entering the URL, select Colorado Revised Statute, click on Title 17, and go to the relevant subsection].

Colorado Revised Statutes § 17-2-201, available through the Colorado General Assembly at <https://leg.colorado.gov/laws> [after entering the URL, select Colorado Revised Statute, click on Title 17, and go to the relevant subsection].

Colorado Revised Statutes § 21-1-104 (6), available through the Colorado General Assembly at <https://leg.colorado.gov/laws> [after entering the URL, select Colorado Revised Statute, click on Title 21, and go to the relevant subsection].

Regulations

Code of Colorado Regulations, 8 CCR 1511-10.1 (2013), Rules Governing the State Board of Parole and Parole Proceedings, available through the Colorado Secretary of State, <https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=6249&fileName=8%20CCR%201511-1>. Note that this regulation is included for reference purposes only; as of March 2022, it has not been updated to reflect the 2021 amendments to the Special Needs Parole statute.

Agency Policy/Publications

Colorado Department of Corrections, Administrative Regulation 550-13 (December 1, 2021), <https://drive.google.com/file/d/1WtnmbP9CilLb38emX-vEzC3gJyFmuXv/view> .

NOTES

* *Id.* means see prior note.

¹ Colo. Rev. Stat. §§ 17-22.5-403.5, 17-1-102, and 17-2-201. The Colorado State Board of Parole Rules at 8 CCR 1511-1 include a section on Special Needs Parole (§ 10.01, Special Needs Offender). However,

as of March 2022, these rules have not been updated since 2013 and do not reflect the July 2021 changes to the parole and Special Needs Parole statutes.

² Colo. Rev. Stat. § 17-1-102 (7.5) (a) (II); Colorado Department of Corrections, Administrative Regulation 550-13 (December 1, 2021) (DOC Reg.), § III (I) (2) (a). A licensed health care provider who is employed by or under contract with the Department, or a private licensed health care provider caring for the incarcerated individual, must make the diagnosis. *Id.*

³ Colo. Rev. Stat. § 17-1-102 (7.5) (a) (IV); DOC Reg. 550-13 §§ III (I) (2) (c) and (d). A licensed health care provider who is employed by or under contract with the Department or a competency evaluator as defined in Colo. Rev. Stat. § 16-8.5-101 (3) must make the initial determination of incompetency. *Id.*

⁴ Colo. Rev. Stat. § 17-1-102 (7.5) (a) (I); DOC Reg. 550-13 § III (I) (1). A licensed health care provider who is employed by or under contract with the Department, or a private licensed health care provider caring for the incarcerated individual, must make the diagnosis. *Id.*

⁵ Colo. Rev. Stat. § 17-1-102 (7.4); DOC Reg. 550-13 § III (H).

⁶ Colo. Rev. Stat. § 17-1-102 (7.5) (a) (III); DOC Reg. 550-13 § III (I) (2) (b). Individuals meeting the age and time-served criteria are excluded from consideration if convicted of a Class 1 or Class 2 felony for crimes such as murder and manslaughter [see Colo. Rev. Stat. § 24-4.1-302 (1)], unlawful sexual behavior [see Colo. Rev. Stat. § 16-22-102 (9)], domestic violence [see Colo. Rev. Stat. § 18-6-800.3 (1)], or stalking [see Colo. Rev. Stat. § 18-3-602].

⁷ Colo. Rev. Stat. § 17-1-102 (7.5) (b) (I) (A); DOC Reg. 550-13 § III (I) (3) (a).

⁸ Colo. Rev. Stat. § 17-1-102 (7.5) (b) (I) (B); DOC Reg. 550-13 § III (I) (3) (b).

⁹ See Colo. Rev. Stat. § 18-1.3-406 for a definition of Class 2 felonies.

¹⁰ Colo. Rev. Stat. § 17-1-102 (7.5) (b) (I) (C); DOC Reg. 550-13 § III (I) (3) (c).

¹¹ Colo. Rev. Stat. § 17-1-102 (7.5) (b) (II). A licensed health care provider who is employed by or under contract with the Department, or a private licensed health care provider caring for the incarcerated individual, must make the diagnosis. *Id.*

¹² Colo. Rev. Stat. §§ 17-22.5-403.5 (1) (a) and (3) (a).

¹³ *Id.* at (3) (a).

¹⁴ DOC Reg. 550-13 § IV (A) (2) (c).

¹⁵ Colo. Rev. Stat. § 17-1-102 (6.7); DOC Reg. 550-13 §§ IV (A) (2) (a) and (b).

¹⁶ Colo. Rev. Stat. § 17-22.5-403.5 (3) (a).

¹⁷ *Id.*

¹⁸ DOC Reg. 550-13, § IV (A) (2) (a).

¹⁹ Colo. Rev. Stat. § 21-1-104 (6).

²⁰ *Id.* at (2) (b).

²¹ DOC Reg. 550-13, §§ IV (B) (1) (a) and (b).

²² DOC Reg. 550-13, § IV (B) (1) (c).

²³ DOC Reg. 550-13, §§ IV (B) (4) through (6). Note that DOC Reg. 550-13 § IV (B) has two subsections (6). This cites to the *first* subsection (6).

²⁴ DOC Reg. 550-13 §§ IV (B) (5) and (6). Note that DOC Reg. 550-13 § IV (B) has two subsections (6). This cites to the *first* subsection (6).

²⁵ DOC Reg. 550-13, Special Needs Parole - Worksheet A.

²⁶ DOC Reg. 550-13, § IV (B) (7). Note that DOC Reg. 550-13 § IV (B) has two subsections (7). This cites to the *first* subsection (7). Note that the regulations provides that the SNP CM will note whether the individual meets medical criteria but does not otherwise explain what happens if the individual does not, other than a “chron” note.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Colo. Rev. Stat. § 17-22.5-403.5 (3) (c) (1), referencing Colo. Rev. Stat. § 24-4.1-302.5, governing victim notification requirements.

³⁰ DOC Reg. 550-13 § IV (B) (6). Note that DOC Reg. 550-13 § IV (B) has two subsections (6). This cites to the *second* subsection (6). See also Colo. Rev. Stat. § 17-22.5-403.5 (3) (c) (1), referencing Colo. Rev. Stat. §§ 18-1.3-406, 16-22-102 (9) (j) through (9) (l) and (9) (n) through (9) (2) governing when district attorneys must be notified.

³¹ DOC Reg. 550-13 § IV (B) (7). Note that DOC Reg. 550-13 § IV (B) has two subsections (7). This cites to the *second* subsection (7).

³² *Id.*

³³ DOC Reg. 550-13 § IV (B) (8).

³⁴ DOC Reg. 550-13 § IV (B) (9).

³⁵ Colo. Rev. Stat. §§ 17-22.5-403.5 (3) (b) (I) through (b) (IV).

³⁶ *Id.* at (3) (c) (1), referencing Colo. Rev. Stat. § 24-4.1-302.5.

³⁷ *Id.*

³⁸ *Id.* at (3) (c) (II), referencing Colo. Rev. Stat. §§ 18-1.3-406, 16-22-102 (9) (j) through (9) (l), and (9) (n) through (9) (s).

³⁹ *Id.* at (4) (a).

⁴⁰ Colo. Rev. Stat. §§ 17-2-201 (4) (f) (1) (A) and 17-22.5-403.5 (4) (c).

⁴¹ Colo. Rev. Stat. § 17-22.5-403.5 (1) (b).

⁴² *Id.* at (4) (b), referencing Colo. Rev. Stat. § 17-22.5-404 (4) (a).

⁴³ Id.

⁴⁴ Id. at (4.5).

⁴⁵ Id. at (4) (f) and (4.5), referencing Colo. Rev. Stat. §§ 16-8.5-101 (12) and 17-21-104 (6).

⁴⁶ Id. at (4) (d).

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id. at (5).

⁵¹ Id. at (1) (b).

⁵² DOC Reg. 550-13 § IV (B) (10).

⁵³ Id. at (6). See also §§ 17-1-113.5 and 26-11-105 (g). Note that the Department may provide financial assistance for longer than six months if the individual is still under the Department's jurisdiction and would otherwise be uninsured or underinsured. Id.

⁵⁴ Id. at (4) (g).

⁵⁵ See Colo. Rev. Stat. § 17-2-103.

⁵⁶ Colo. Rev. Stat. § 17-22.5-403.5 (7).

⁵⁷ Id., referencing Colo. Rev. Stat. § 18-1.3-401 (1) (a) (V) (A).

⁵⁸ Id. at (4) (e). Note that the Department must also update the Colorado House of Representatives and Senate Judiciary Committees on (1) the status of the implementation of the Special Needs Parole amendments signed into law on July 6, 2021, and (2) its analysis of the need for and current availability of specialized "care placement" for individuals, such as skilled nursing or other long-term care services, for individuals released from prison who are unable to manage activities of daily living without assistance. Id. at (8).