Colorado provides compassionate release to prisoners with serious medical conditions through Special Needs Parole.¹

**SPECIAL NEEDS PAROLE**

**I. ELIGIBILITY**

**Medical Condition/Age** - A prisoner is considered a “special needs offender” if he or she:

- Is suffering from a “chronic, permanent, terminal, or irreversible physical illness, condition, disease, or a behavioral or mental health disorder that requires costly care or treatment” and incapacitated to the extent he or she is not likely to pose a risk to public safety;² or

- Does not have a “substantial probability of being restored to competency” during the remainder of any sentence and is not likely to pose a risk to public safety;³

- Is age 55 or older and suffering from a “chronic infirmity, illness, condition, disease, or behavioral or mental health disorder” and incapacitated to the extent he or she is not likely to pose a risk to public safety.⁴

**Exclusions** - The definition of a “special needs offender” specifically excludes prisoners who have been convicted of a (1) Class 1 felony (unless the offense was committed before July 1, 1990, and the prisoner has served at least 20 years for the offense);⁵ or (2) Class 2 felony crime of violence⁶ and having served fewer than 10 years of the sentence.⁷

**II. APPLICATION/REFERRAL**

**Referrals** - The Colorado Department of Corrections (Department) is responsible for identifying prisoners who meet the medical or age eligibility criteria for Special Needs Parole.⁸ This is usually done by Case Management staff, which refers prisoners to Clinical Services to complete the necessary clinical assessment to see if the medical criteria is met, or directly by Clinical Services based on identification that a prisoner meets the medical criteria.⁹

**Applications** - Prisoners can also start the process by filling out the Special Needs Parole Worksheet (AR Form 550-13A), signing a release of information for medical and mental health records, and preparing a letter to the Parole Board requesting consideration.¹⁰ The prisoner then gives the information and documents to his or her case manager, who forwards the packet to Clinical Services for review.¹¹
III. DOCUMENTATION AND ASSESSMENT

Clinical Services Review/Medical Staff - Once a prisoner is identified as meeting the medical and/or age criteria, medical staff complete the clinical section of the Special Needs Parole Worksheet (AR Form 550-13A) indicating that the conditions listed are accurate and prepare a packet of documentation supporting the claim of incapacitation and/or extreme medical costs. The medical provider also completes a memo using the format in the Supplemental Medical Data for Parole Board Consideration form (Form 550-13B) to describe the chronic condition and prognosis. The completed application and packet are then sent to the prisoner’s Case Manager.

Pre-Release Plan/Case Manager - Once the clinical memo is completed, the Case Manager completes the case management portion of the application, which includes (1) a draft pre-release plan; (2) an updated and current Colorado Transitional Accountability Plan assessment; (3) case plan; and (4) the Colorado Actuarial Risk Assessment Scale (CARAS). The Case Manager uses the Special Needs Parole Checklist (AR Form 550-13D) to finalize the packet for review by the Warden (also called the “administrative head”) before forwarding to the Director of Prisons.

Review and Referral/Director of Prisons - The Director reviews and forwards the packet to the Parole Board’s Special Needs Parole Committee (Parole Committee), ensuring that it contains all of the following information:

• A summary of the prisoner’s medical or physical condition;

• The risk of re-offense the prisoner poses to society - a decision made by taking into consideration the medical or physical condition, severity of any disability or incapacitation, risk assessment scores, nature and severity of the offense for which the prisoner is currently incarcerated, criminal history, institutional conduct, and any other relevant factors;

• Details of the special needs parole plan recommended by the Department;

• Recommendation to the parole board that the prisoner be released or not be released; and

• A victim impact statement and response from the district attorney who prosecuted the prisoner, if appropriate.

  o Note that prior to referring the packet to the Parole Committee, the Department must notify any victim of the prisoner’s possible consideration for Special Needs Parole. A victim then has 30 days after receiving the notice to submit a victim impact statement to the Department, which will be included in the materials sent to the Parole Board.
For referrals of prisoners convicted of specified crimes of violence or sex offenses, the Department must also notify the applicable district attorney’s office. The district attorney has 30 days after receiving notice to submit a response, which will be included in the materials sent to the Parole Board.

**IV. DECISION-MAKING PROCESS**

**Decision Maker:** Based on the Department’s referrals, the Colorado Board of Parole makes the final decisions whether or not to grant Special Needs Parole.

**Time Frame:** The Board must make a decision within 30 days after receiving the referral from the Department. However, decisions can be delayed if the Board asks Department to modify a prisoner's Special Needs Parole plan.

- **Competency:** Note that if, prior to or during a hearing, any member of the Board has a “substantial and good-faith reason” to believe the prisoner is incompetent to proceed, the Board is directed to suspend all proceedings and notify the trial court that imposed his or her sentence. The court must then determine the competency or incompetency of the prisoner.

  - If the court finds that the prisoner is incompetent to proceed, it may order the Department to provide or arrange for “appropriate restoration services in any setting authorized by law.”

  - If the court determines there is not a substantial probability of the prisoner being restored to competency, he or she may be referred for Special Needs Parole with an appropriate Special Needs Parole plan.

**Hearing:** The Board may schedule a hearing on the application for Special Needs Parole with the prisoner present or may review the application and issue a decision without a hearing.

- If a hearing is set, the Case Manager prepares all the hearing appropriate forms and initiates the application process for Social Security and Medicaid assistance.

- If the Board needs additional information regarding the prisoner’s medical condition, the information must be obtained directly from Clinical Services to ensure confidentiality.

- The Board considers the prisoner’s risk of re-offense, reviewing all the same factors the Department considered: the medical/physical condition, the severity of any disability or incapacitation, the prisoner’s risk assessment scores, the nature and severity of the offense for which the prisoner is currently incarcerated, criminal history, institutional conduct, and “other relevant factors.”

- Note that if the Department specifically recommends that the Board grant Special Needs Parole to a particular prisoner, it can only be denied by a majority vote of the
Board and only if the Board makes a finding that granting the parole would “create a threat to public safety and that the offender is likely to commit an offense.”

**Conditions and Pre-Release Planning**

- **Special Needs Parole Plan** - The Parole Board must approve a Special Needs Parole plan for each prisoner released, and confirm that the plan addresses appropriate supervision and continuity of medical care.

- **Length of Special Needs Parole** - As of April 23, 2018, the Board will set a limit on the length of a prisoner’s Special Needs Parole “for an appropriate time period” of six to 36 months.

**V. POST-DECISION**

**Effect of Medical Parole Request on Nonmedical Parole Eligibility** - A denial of Special Needs Parole by the Board does not affect a prisoner’s eligibility for any other form of parole or release.

**Denials and Appeal Rights** - If the Board denies an application for Special Needs Parole, the prisoner may re-submit the application one year from the prior application date.

- Despite this one-year waiting period, Clinical Services is directed to periodically review applications for Special Needs Parole that they recommended but were then denied by the Board. Clinical Services can resubmit an application if there is a “substantial change” in the prisoner’s condition or a change that would enable the prisoner to meet the medical criteria. If there are no changes noted, the prisoner cannot be reconsidered until his or her regularly scheduled parole hearing date.

**Revocation/Termination**

- **Revocation** - There are no specific laws or rules covering the revocation of Special Needs Parole and prisoners released under this law are treated like any other parolee, which means parole may be revoked using the “general” parole rules and processes.

- **Termination** - As noted above, as of April 23, 2018, the Board determines the length of a prisoner’s Special Needs Parole (from six to 36 months) and it can revise the duration at any time. However, prisoners will never be required “to serve a period of parole in excess of the period of parole to which he or she would otherwise be sentenced” under the general parole rules or 36 months, whichever is less.

**VI. REPORTING/STATISTICS**

2017 - According to the Colorado General Assembly’s Legislative Council Staff, in 2017 the Department received 33 applications for Special Needs Parole and, of those, referred only four to the Parole Board. The Board approved all four of those prisoners.
2016 - In 2016, 39 applications for Special Needs Parole were submitted to the Department, and five of those were referred to the Parole Board.\textsuperscript{43} Of the five applicants, two were granted Special Needs Parole, one prisoner “self-revoked” his application; and two prisoners died pending an approved parole plan.\textsuperscript{44}

2011 through 2016 - The Board’s Annual Report for Fiscal Year 2016 included the following information and statistics:\textsuperscript{45}

- From 2011 to 2016, the Board received 169 applications for Special Needs Parole. Of those, 25 prisoners were granted parole.
- Of those 25 offenders, 23 were actually released and two were “tabled,” waiting for acceptance into a suitable care facility.
- As of the end of FY 2016, 10 parolees were still under supervision, two had parole revoked for technical violations, four died while on parole, three received early discharges from parole supervision, and four successfully completed their parole.

NOTES

\textsuperscript{1} Colo. Rev. Stat. §§ 17-22.5-403.5, 17-1-102, and 17-2-201, as amended by HB 18-1109, An Act Concerning Discretionary Parole of Special Needs Offenders, 2018 Colo. Sess. Laws 912 (effective April 23, 2018). See also 8 Colo. Code Regs. § 1511-1-10.01 and Colorado Department of Corrections Regulation (DOC Regulation) 550-13 (2016). Note that as of June 1, 2018 these regulations had not been updated to reflect changes enacted by HB 18-1109.

\textsuperscript{2} Colo. Rev. Stat. § 17-2-201 (7.5) (a) (III) (2018); DOC Regulation 550-13 § III.G.2.

\textsuperscript{3} Colo. Rev. Stat. § 17-2-201 (7.5) (a) (IV) (2018), referencing Colo. Rev. Stat. 16-8.5-101 (4). Note that this eligibility category is new as of Apr. 23, 2018. See HB-18-1109, supra note 1. The initial determination of incompetency must be made by a licensed health care provider who is employed by or under contract with the Department. Id.

\textsuperscript{4} Colo. Rev. Stat. §§ 17-1-102 (7.5) (a) (I) (2018); DOC Regulation 550-13 § III.G.1 (2016). Note that the eligible age was changed from 60 to 55 years of age in HB 18-1109, supra note 1. As of June 1, 2018, the DOC regulation had not yet been updated to reflect the change.

\textsuperscript{5} Colo. Rev. Stat. § 17-2-201 (7.5) (b) (I); DOC Regulation 550-13, § III.G.3.

\textsuperscript{6} See Colo. Rev. Stat. § 18-1.3-406 for a definition of Class 2 felonies.

\textsuperscript{7} Colo. Rev. Stat. § 17-2-201 (7.5) (b) (II); DOC Regulation 550-13, § III. G.3.

\textsuperscript{8} Colo. Rev. Stat. § 17-22.5-403.5 (3) (a); 8 Colo. Code Regs. § 10.01.

\textsuperscript{9} DOC Regulation 550-13, §§ IV.C.1 and IV.D.1.

\textsuperscript{10} Id. at § IV.B.1.

\textsuperscript{11} Id.

\textsuperscript{12} Id. at § IV.D.1.a.

\textsuperscript{13} Id. at § IV.D.1.b.

\textsuperscript{14} Id. at § IV.D.1.c.

\textsuperscript{15} Id. at §§ IV.C.1.c and VI.D.1.d. For more information on CARAS, see https://www.colorado.gov/pacific/dcj-ors/ors-riskscales/CARAS.

\textsuperscript{16} Id. at §§ IV.B.1.d, IV.C.1.d, and IV.D.1.e. To finalize the packet, Case Management uses AR Form 550-13D, Special Needs Parole Checklist. Id.

\textsuperscript{17} Colo. Rev. Stat. § 17-22.5-403.5 (3) (a); 8 Colo. Code Regs. § 10.01; DOC Regulation 550-13, § IV.D.1.e.

\textsuperscript{18} Colo. Rev. Stat. §§ 17-22.5-403.5 (3) (b) (I) - (IV).

\textsuperscript{19} DOC Regulation 550-13, §§ IV.A.2.a and IV.C.1.b. See also Colo. Rev. Stat. § 24-4.1-302.5.

\textsuperscript{20} DOC Regulation 550-13, § IV.A.2.b. “When the case manager receives a referral for special needs parole from clinical services or an application for special needs parole from an offender, the case manager will draft
a letter to the district attorney using the format on AR Form 550-13C, District Attorney Notification Letter.”

The case manager will send the letter to the applicable district attorney’s office.

Id. at §§ IV.A.2.b (1) and (2).


22 Id. at (d); 8 Colo. Code Regs. § 10.01-C; DOC Regulation 550-13, § IV.E.2.


24 Colo. Rev. Stat. § 17-22.5-403.5 (4) (d), referencing Colo. Rev. Stat. § 16-8.5-101 (11), amended by HB 18-1109, supra note 1. Note that the court will appoint counsel to represent the prisoner regarding the determination of competency.

25 Id. at (4.5). Note that this language was added by HB 18-1109, supra note 1.

26 Id.

27 Colo. Rev. Stat. §§ 17-2-201(4) (f) (1) (A) and 17-22.5-403.5 (4) (c); 8 Colo. Code Regs. § 10.01-B; DOC Regulation 550-13, § IV.E.1.


29 DOC Regulation 550-13, § IV.E.3.

30 Colo. Rev. Stat. § 17-22.5-403.5 (4) (b); 8 Colo. Code Regs. § 10.01-A.


32 Id. at (1) (b).

33 Id. at (7), added by HB 18-1109 and effective on April 23, 2018, supra note 1.


36 Id. at § E.9.

37 Id.


40 Id.


42 Id.

43 Id.

44 Id.