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# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

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**COLORADO**



**ROBINA INSTITUTE**  
OF CRIMINAL LAW AND CRIMINAL JUSTICE

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

### Colorado

By

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### 1. Background; Sentencing System

#### a. Sentencing Framework

Colorado has an indeterminate sentencing system for the majority of offenders sentenced to prison. The state does not make use of judicial sentencing guidelines. Discretionary parole release was abolished in Colorado in 1979 but reinstated in 1985 in legislation that doubled the maximum authorized sentences for most felonies (See Figure 1.).<sup>1</sup> In 2007, the state created the Commission on Criminal and Juvenile Justice (CCJJ), which has some of the duties performed by sentencing commissions in other states, although the CCJJ has no responsibility to promulgate sentencing guidelines.<sup>2</sup>

#### b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?

The Colorado State Board of Parole has authority to release or defer release of prisoners who are eligible for discretionary parole.<sup>3</sup>

Website: [www.colorado.gov/pacific/paroleboard](http://www.colorado.gov/pacific/paroleboard)

#### c. Which Agencies Are Responsible for the Supervision of Released Prisoners?

The Division of Adult Parole, housed in the Colorado Department of Corrections, supervises parolees through Community Parole Officers.<sup>4</sup>

Website: [www.doc.state.co.us/adult-parole-information](http://www.doc.state.co.us/adult-parole-information)

#### d. Which Agency Has Authority Over Parole Revocation?

The Colorado State Board of Parole has exclusive jurisdiction over parole revocation decisions.<sup>5</sup>

#### e. Colorado Statistical Profile

**Summary:** Prison and parole population rates are similar in Colorado compared to the states as a whole. However, parolees are more likely to be reincarcerated compared to the states as a whole. Just over one-quarter of parole hearings lead to a discretionary release, while the remaining hearings lead to a deferral of some type. Colorado currently practices discretionary release for the majority of offenders, including violent offenders, sex offenders, property offenders, drug offenders, and public order offenders.

**Figure 1. Felonies and Misdemeanors in Colorado**

Offense Category	Maximum Punishment
Class 1 Felony	Life imprisonment; death
Class 2 Felony	8 - 24 years; \$5,000 - \$1,000,000 fine
Class 3 Felony	4 - 12 years; \$3,000 - \$750,000 fine
Class 4 Felony	2 - 6 years; \$2,000 - \$500,000 fine
Class 5 Felony	1 - 3 years; \$1,000 - \$100,000 fine
Class 6 Felony	1 year - 18 months; \$1,000 - \$100,000 fine
Class 1 Misdemeanor/Drug Misdemeanor	6 months - 18 months; \$500 - \$5,000 fine
Class 2 Misdemeanor	3 months - 12 months; \$250 - \$1,000 fine
Class 2 Drug Misdemeanor	Up to 12 months; \$50 - \$750 fine
Class 3 Misdemeanor	Up to 6 months; \$50 - \$750 fine

Sources: Colo. Rev. Stat. Ann. §§ 18-1.3-401; 18-1.3-501 (2014). Note: Sentences for first-time offenders.

**Chart 1. Prison and Parole Population per 100,000 Adult Residents, 2003-2014**

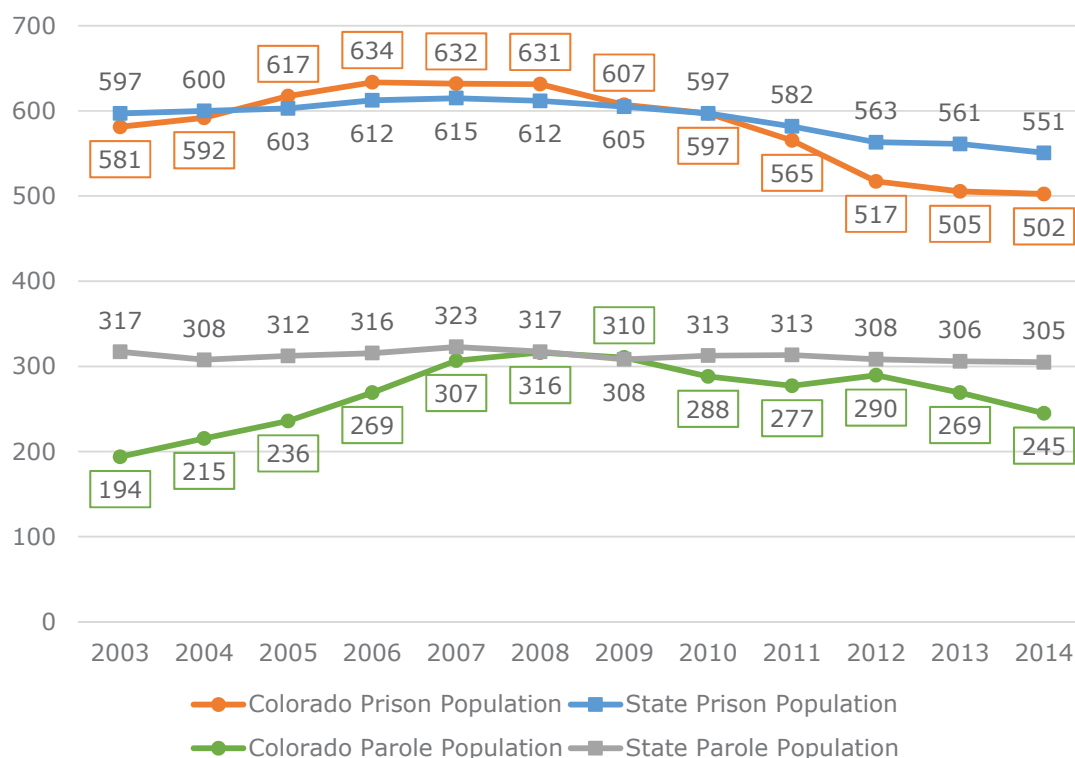


Chart 1 shows the population in prison and on parole per 100,000 adult residents at yearend for each year from 2003 to 2014. The data for this chart come from the *Probation and Parole in the United States* series and the *Prisoners* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown.

The prison population rate in Colorado is similar to the aggregate state rate. The peak rate was in 2006-2008; thereafter, the rate declined. In recent years, the Colorado rate has decreased faster than the aggregate rate. In 2014, the prison population rate was 502 in Colorado versus 551 for all 50 states. Colorado had the 28th highest prison population rate of the states in 2014. In 2014, 84% of releases from prison were conditional releases.

From 2003 to 2008, the parole population rate in Colorado increased steadily becoming equivalent to the aggregate rate by 2008. Since 2008, the rate has decreased (to 245 in 2014) and is lower than the aggregate rate of 305. Colorado had the 20th highest parole population rate of the states in 2014. In 2014, 33% of admissions to parole were due to a discretionary decision such as the decision of a parole board.

In 2014, Colorado had the 28th highest prison population rate in the United States.

In 2014, Colorado had the 20th highest parole population rate in the United States.

## Chart 2. Conditional Release Violators as a Percentage of Prison Admissions, 2003-2014

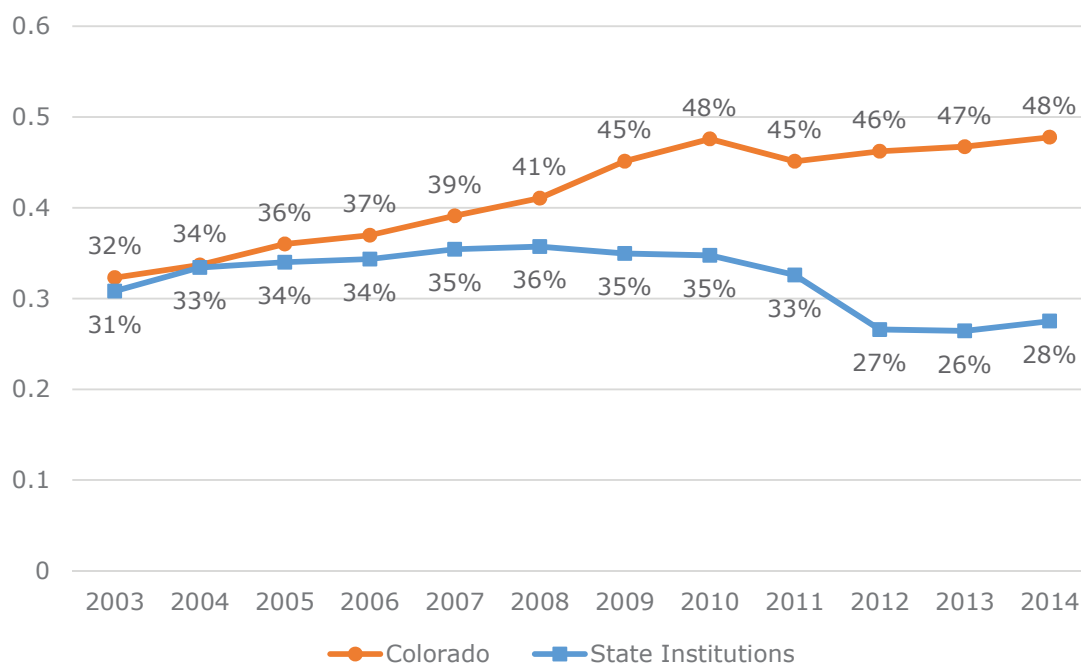


Chart 2 shows the percentage of prison admissions each year from 2003 to 2014 that were due to violations of parole or other conditional release. The data for this chart come from the *Prisoners* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown.

In the early years of this series, the percentage of prison admissions that were conditional release violators in Colorado was similar to that of the aggregate states. However, while the states aggregately remained steady for several years before decreasing beginning in 2011, the percentage in Colorado has been increasing. In 2014, nearly half of prison admissions in Colorado were due to violations of conditional release compared to just over a quarter of the admissions for states in aggregate. Colorado had the 5th highest percentage of prison admissions that were due to violations of conditional releases of the states in 2014.

In 2014, Colorado had the 5th highest percentage of prison admissions that were due to violations of conditional releases in the United States.

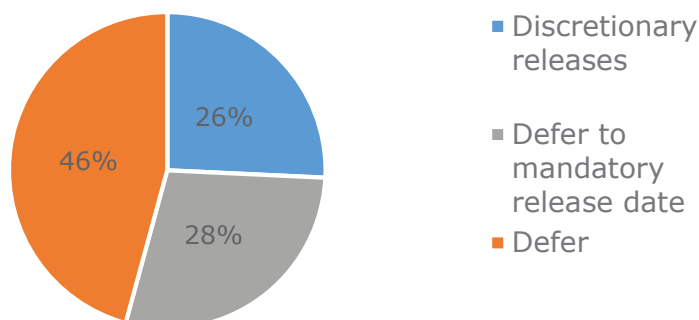
**Chart 3. Colorado Grant Rate, 2014**

Chart 3 shows the percentage of parole hearings in fiscal year 2014 that resulted in a discretionary release, a deferral to the mandatory release date, and a deferral. Nearly half of the hearings resulted in a deferral, while just over one-quarter resulted in a deferral to the mandatory release date. Slightly more than one-quarter led to a discretionary release.

Source: *Annual Report to the Joint Judiciary Committee 2014*, <https://goo.gl/8tHtrp>, p.9.

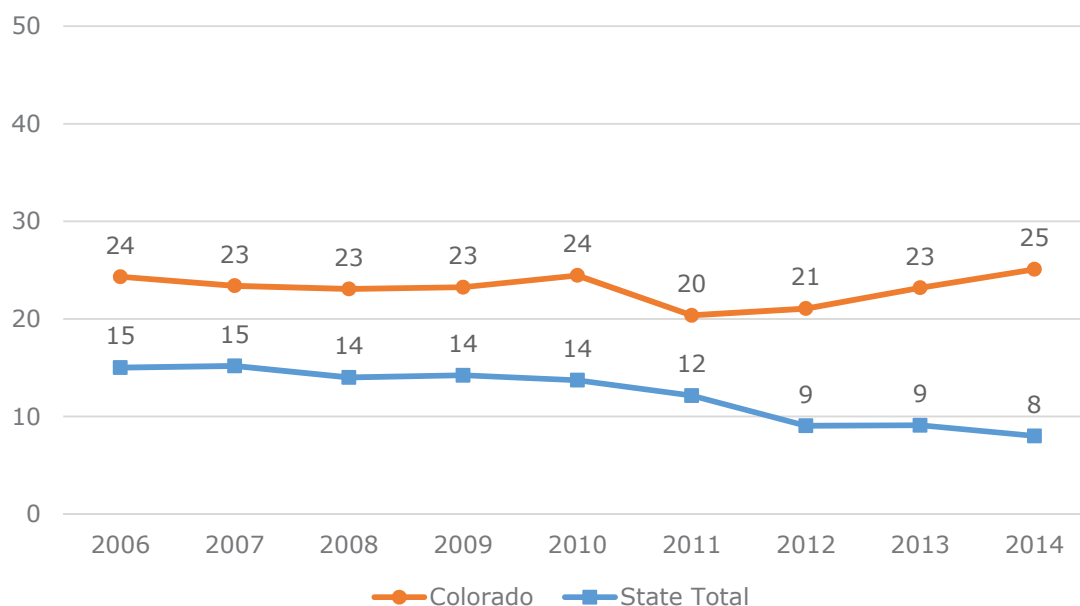
**Chart 4. Rate of Incarceration Per 100 Parolees at Risk, 2006-2014**

Chart 4 shows the rate of incarceration per 100 parolees who are at risk of reincarceration each year from 2006 to 2014. The data for this chart come from the *Probation and Parole in the United States* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown. The incarcerated population includes the reported number of parolees who exited parole to incarceration for any reason. The at-risk population is calculated as the number reported on parole at the beginning of the year, plus the reported number of entries to parole during the year.

The rate of incarceration for parolees is higher in Colorado compared to the states in aggregate and has been so throughout the series. In 2014, the rate stood at 25 per 100 parolees in Colorado compared to 8 per 100 for the states in aggregate.

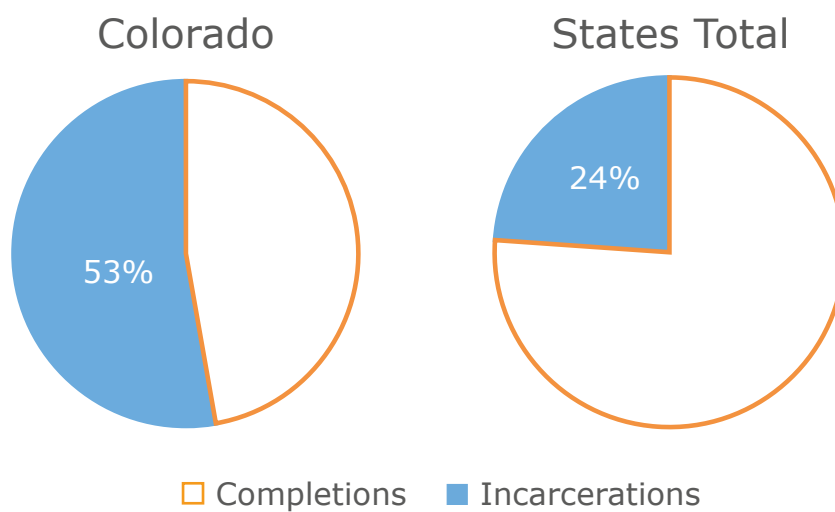
**Chart 5. Parole Exits, 2014**

Chart 5 show the percentage of people who exit parole to incarceration. All other exits are included in "completions". The data for this chart come from the *Probation and Parole in the United States* series published by the Bureau of Justice Statistics (BJS).

In Colorado, just over half of the exits from parole are due to incarceration. This is much higher than the aggregate state proportion of 24%.

## 2. Parole Release and Other Prison-Release Mechanisms

### a. Parole Release Eligibility Formulas: Degree of Indeterminacy in System

Most prisoners in Colorado are given a “mandatory release date” (MRD) with the possibility of earlier release at the discretion of the Board. The first “parole eligibility date” (PED) for an individual prisoner is established by statutory law and the judicial sentence.<sup>6</sup> In 2013-14, roughly one-third of all Colorado prison releasees were released on discretionary parole; the other two-thirds were released because they had reached their MRDs.<sup>7</sup>

*General rules of release eligibility.* For most felonies, prisoners become eligible for discretionary parole release after they have served 50 percent of the sentence imposed by the court. This eligibility formula assumes that a prisoner has earned all available good time credits (see below) of 15 days per month; release eligibility can be postponed due to misconduct during incarceration.<sup>8</sup> The period to parole eligibility can be shortened below 50 percent by the award of earned time credits (see below) of up to 10 days per month.<sup>9</sup>

Release eligibility for offenders serving consecutive prison terms is calculated as though the consecutive terms were one continuous sentence.<sup>10</sup>

*Violent offenders.* Many violent offenders (depending on the seriousness of the current offense and, in some cases, a prior conviction of any “crime of violence”) must serve 75 percent of their sentence before release consideration, although this period may be reduced by earned-time credits.<sup>11</sup>

*Sex offenders.* Sex offenders are subject to special statutory rules concerning maximum prison stays and parole eligibility. In many cases, the maximum term is “the sex offender’s natural life.” First parole eligibility varies depending on current offense and criminal history, and can occur as early as one year for the least serious sex offenders. Much longer minimum sentences are mandated by statute in many instances, under a variety of formulas.<sup>12</sup>

*Life sentences.* Colorado’s release-eligibility rules for life sentences (for non-sex-offenders) are relatively straightforward. Since 1985, those sentenced to life terms *with the possibility of parole* must wait a minimum of forty years

to be eligible for release.<sup>13</sup> There is no parole release eligibility at any time for offenders sentenced to life *without the possibility of parole*—a penalty available only for class 1 felonies.<sup>14</sup>

*Recurring eligibility after denial of release.* When parole is denied at first eligibility, the parole board must review most inmates’ files every year thereafter, except for offenders convicted of designated violent or sex offenses, when the statutory interval may be three or five years.

### b. Good Time, Earned Time, and Other Discounts

Good time accrues at a rate of fifteen days per month. It does not vest—i.e., it can be withheld or deducted by the Department of Corrections at any time.<sup>16</sup> The Department has authority to withhold good time credits, not yet earned, for past misconduct.<sup>17</sup>

Earned time credits for program participation accrue at a rate of thirty days for every six-month period.<sup>18</sup> If an inmate also makes progress in a “correctional education program,” they may earn up to ten days of credit per thirty day period.<sup>19</sup>

### c. Principles and Criteria for Parole Release Decisions

*General statutory standard for release decisions.* By statute, “[t]he risk of reoffense shall be the central consideration by the state board of parole in making decisions related to the timing and conditions of release on parole or revocation of parole.”<sup>20</sup> The general standard for release decisions is articulated as follows:

The state board of parole may parole any person who is sentenced or committed to a correctional facility when the board determines. . . there is a reasonable probability that the person will not violate the law while on parole and that the person’s release from institutional custody is compatible with public safety and the welfare of society. The state board of parole shall first consider the risk of reoffense in every release decision it makes.<sup>21</sup>

*Statutory factors the Board must consider.* When making release decisions, the Board is directed to consider the “totality of the circumstances,” including a non-exclusive list of 11 statutory factors.<sup>22</sup> There is no case law or other authority that limits the non-enumerated factors the parole board may consider in release decisions.

*Special standard for sex offenders.* There are separate release criteria for sex offenders under Colorado statutes and regulations—and a special “sex offender release guideline instrument” must be used for most sex offenders.<sup>23</sup> The general statutory standard for release of sex offenders is as follows:

[T]he parole board shall determine whether the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if released under appropriate treatment and monitoring requirements and whether there is a strong and reasonable probability that the person will not thereafter violate the law.<sup>24</sup>

#### d. Parole Release Guidelines

*Parole release guidelines used for most offenders (other than sex offenders).* Colorado law requires the development and use of parole release guidelines.<sup>25</sup> The current version of guidelines for most offenders, developed by Colorado’s Division of Criminal Justice and Board of Parole, is known as the Parole Board Release Guideline Instrument (PBRGI).<sup>26</sup> The PBRGI is not used for most sex offenders, who are subject to separate parole guidelines and release criteria.<sup>27</sup>

The PBRGI has been in use since late 2012. The guidelines’ recommendations of “release” or “deferral” are expressed through the use of a 15-cell matrix with 5 rows for “Risk Category” (very low, low, medium, high, and very high), and 3 columns for “Readiness Category” (low, medium, and high). In each of the 15 cells, the guidelines recommend either “release” or “defer.” In the extreme corners of the matrix, the single-word recommendations are supplemented by the words “best candidate for release” and “best candidate for defer” (see Figure 2). Explanatory commentary suggests that the guidelines should be understood to have a “boundary region”—roughly a diagonal zone of cells zig-zagging through the middle of the matrix—where decisions are expected to be close calls.<sup>28</sup> The guidelines are advisory, and there is no legal standard that must be met in order for the Board to depart from PBRGI recommendations, although the Board must state reasons for departures.

There are 8 items used to calculate the “Risk Category” of each offender, while the “Readiness Category” is based on 5 additional items:

#### Risk Items

1. The Colorado Actuarial Risk Assessment Scale (CARAS).<sup>29</sup>
2. Code of Penal Discipline / Victim Threat.
3. Code of Penal Discipline/ Class I Offense.
4. Code of Penal Discipline/ Class II Offense.
5. Escape/Abscond or Attempt.
6. 60 Years of Age or Older (Risk moderator).
7. Medical Condition Reduces Risk of Re-Offense (Risk moderator).
8. Manageable in the Community (Risk moderator).

#### Readiness Items

9. Level of Service Inventory-Revised (LSI-R)
10. Level of Service Inventory-Rater Box Average.
11. Program Participation / Progress.
12. Treatment Participation / Progress.
13. Parole Plan.

Items 1 through 7, 9, and 10 are completed before the parole application hearing and are incorporated electronically into the Parole Board Hearing Application Portal (see Part 3(a) below). Items 8, 11, 12, and 13 are not completed ahead of time, but are judgments to be made and scored by the board member who conducts the hearing.<sup>30</sup>

**Figure 2. PBGRl Advisory Release Decision Recommendation Matrix**

ADVISORY RELEASE DECISION RECOMMENDATION MATRIX			
Risk Category	Readiness Category		
	3 High	2 Medium	1 Low
1 Very Low	RELEASE (Best candidates for release)	RELEASE	RELEASE
2 Low	RELEASE	RELEASE	DEFER
3 Medium	RELEASE	RELEASE	DEFER
4 High	RELEASE	DEFER	DEFER
5 Very High	DEFER	DEFER	DEFER (Best candidates for defer)

Since implementation in 2012, Colorado has maintained data on rates of “agreement” with PBRGI recommendations in the Board’s actual decisions, including statistics broken out for cases within each of the 15 matrix cells and reasons given for departures. Decisions not in agreement with the guidelines are called “departures.” In 2013-14, the Board’s combined release and deferral decisions were in agreement with the PBRGI in 68 percent of all cases. In cases where the PBRGI recommended deferral, the Board’s “agreement percentage” was 92.3 percent; where the guidelines recommended release, the agreement percentage was 42.9 percent.<sup>31</sup>

*Parole release guidelines for sex offenders.* The Board has developed a separate set of parole guidelines for the discretionary release of sex offenders serving determinate sentences. The release of inmates in sex offender treatment depends on whether or not they meet the criteria for successful treatment progress while in prison and also meet the parole release guidelines for most indeterminate offenders described above.

If an inmate is on the wait list for sex offender treatment, the Board will consider release if the inmate:

- is not designated a Sexually Violent Predator;
- has a history of one or fewer sex crime convictions or juvenile adjudications;
- has no history of parole or community corrections revocation during the current sentence; and
- does not have a “P” designation signifying treatment placement refusal or failure.

If the inmate does not meet the above criteria or is not on a wait list for treatment, the guidelines recommend against discretionary parole.<sup>32</sup>

## e. Risk and Needs Assessment Tools

*Statutory mandate.* The Colorado law of parole requires the creation and use of “actuarial risk assessment tools” to “promote public safety,” based on a legislative finding that such tools “can predict the likelihood or risk of reoffense with significantly greater accuracy than professional judgment alone.” The law requires “good” statistical predictive accuracy and periodic validation of the risk instrument:

The risk assessment scale shall include criteria that statistically have been shown to be good predictors of the risk of reoffense. The division of criminal justice shall validate the Colorado risk assessment scale at

least every five years or more often if the predictive accuracy, as determined by data collection and analysis, falls below an acceptable level of predictive accuracy as determined by the Division of Criminal Justice, the State Board of Parole, and the Division of Adult Parole in the Department of Corrections.

The statute provides that actuarial risk assessment should not be the exclusive ground for parole-board decisions, stating that, “[t]he best outcomes are derived from a combination of empirically based actuarial tools and clinical judgment.”<sup>33</sup>

*Transparency.* Most of the risk tools used by the Colorado State Board of Parole are available for public inspection—a degree of transparency not found in many other parole boards.<sup>34</sup> Current instruments, relevant handbooks, and validation studies may be downloaded on the Colorado Division of Criminal Justice website.<sup>35</sup> An exception is the Level of Service Inventory-Revised instrument, which is not available to the public.

*Main risk instrument.* The risk tool currently used in parole release decisions is the Colorado Actuarial Risk Assessment Scale (CARAS) Version 6, which tallies points for nine variables to determine a “point range.”<sup>36</sup> CARAS then sorts individuals into five categories: very low, low, medium, high, and very high risk.<sup>37</sup> For example, a very-high-risk individual is someone who scores in the total point range of 160-186. The nine factors included in CARAS are:

1. Number of Current Conviction Charges (14 to 37 points).
2. Number of All Prior Parole Revocations (6 to 11 points).
3. LSI Total Score (8 to 20 points).
4. Current Custody Level (19 to 31 points).
5. Number of All Prior Escapes or Absconds (8 to 12 points).
6. Most Recent SSI-SA Total Score (19 to 28 points).
7. Arrested Under Age 16 (14 to 17 points).
8. Age at Projected Release (15 to 28 points).
9. Number of Incarcerations (22 to 26 points).<sup>38</sup>

The previous version of CARAS (Version 5) was validated by independent researchers.<sup>39</sup>

*Sex offenders.* The Colorado Sex Offender Management Board (SOMB) developed four criteria to be used for this purpose. However, the Colorado State Board of Parole is not required by statute to use these criteria.<sup>40</sup>

## f. Medical or Compassionate Release

“Special needs parole” is available to Colorado prisoners who are designated “special needs offenders” based on considerations of age, infirmity, cost of medical care, and public safety risk.<sup>41</sup>

Special needs parole is administered by sequential decisions of the DOC and the parole board, with actions by both agencies required before release may be granted.<sup>42</sup> As in other states, this mechanism of release is not used often. In 2013-14, the Board reviewed 48 special needs parole applications. Over the four-year period from Fiscal Years 2011 through 2014, a total of only 22 prisoners were granted special needs parole.<sup>43</sup>

The Colorado statutes do not address revocation or withdrawal of special needs parole.<sup>44</sup> As a result, special needs parolees are treated like any other parolee once they are on parole and can be revoked under the same criteria and using the same process as any other parolee.<sup>45</sup>

## g. Executive Clemency Power

Although outside the scope of this study, Colorado has a statutory process for executive clemency that may result in the release of prisoners wholly outside the parole process.<sup>46</sup>

## h. Emergency Release for Prison Crowding

There is no Colorado law providing for the emergency release of prisoners to respond to circumstances of prison overcrowding.<sup>47</sup>

# 3. Parole Release Hearing Process

## a. Format of Release Hearings

Colorado’s parole release process includes “parole application interviews and hearings”—although a “release review” or “file review” is permitted without an interview of the inmate in narrow circumstances.<sup>48</sup> Interviews may be conducted by video conferencing, telephone, or face-to-face.<sup>49</sup> In 2014-15, the Board conducted 16,697 application interviews and 1,875 full board reviews. The Board also conducted 1,811 file reviews.<sup>50</sup>

At least one board member is required to be present at a parole application interview. Final action on an application requires the concurrence of a second board member, unless the case is of a kind requiring review by

the full board. When the second board member does not concur with the action recommended by the first member, a third member must cast the deciding vote. If necessary, the third member may elect to conduct an additional interview with the inmate.<sup>51</sup>

Inmates serving life sentences must be interviewed by two board members.<sup>52</sup>

The Board is required to conduct a “full board” review for crimes involving violence and sex offenses, and may conduct a full board review on a case-by-case basis when recommended by the board member who conducted the parole application interview.<sup>53</sup>

Since 2011, the board has used a paperless electronic hearing system called the “Parole Board Hearing Application Portal (or “Portal”).” The Portal automates release hearings by providing an electronic interface with offender case file information and other hearing-related data and documents. The parole release guideline instrument (PBGRl) is housed on the Portal. At the conclusion of each hearing, the Portal calculates and displays the PBGRl recommendation to release the prisoner or defer release. The Portal also records hearing decisions on electronic forms, including reasons given for any departures from PBGRl recommendations. For prisoners released on parole, the Portal also records the conditions of supervision that have been ordered by the Board.<sup>54</sup>

## b. Information Before the Board; Factors the Board May Consider

The Board may review the following information during release proceedings: “applicable records, case histories, personal data, criminal records, Parole plan, risk assessment guidelines, objective parole criteria and other information as may be brought before the Board.”<sup>55</sup>

The Board may consider allegations of criminal conduct for which the prisoner has not been convicted, including alleged conduct for which the prisoner has been acquitted.<sup>56</sup>

## c. Prisoners’ Procedural Rights

The federal Due Process Clause imposes no procedural requirements on parole release decision making unless state law has created a “liberty interest” in the proceedings. Colorado law has not been held to create a liberty interest in the paroling process.<sup>57</sup>

Prisoners have the statutory right to participate in their release hearings in most instances.<sup>58</sup> The Board may conduct a file review of any prisoner within 6 months of their Mandatory Release Date (MRD) or Statutory Discharge Date (SDD).<sup>59</sup>

Like most other states, Colorado law does not provide for appointment of counsel to indigent prisoners who cannot afford to retain lawyers for release proceedings. Prisoners may hire counsel at their own expense. Attorneys “may be present [at a release hearing] with proper clearance, [but] they have no specific legal authority.”<sup>60</sup>

An inmate may have up to five supporters present at the hearing.<sup>61</sup> Inmates’ supporters may speak only with the Board’s permission. Anyone may submit written material in support of the inmate’s application.<sup>62</sup>

Inmates are given no right to call or cross examine witnesses.

There is no provision in Colorado law to allow prisoners to review their case files or other documents or data that will be considered by the parole board. The law does not require that prisoners be given the opportunity to review or challenge the parole guidelines as applied to them or the risk or criminogenic needs scoring performed in their cases.<sup>63</sup> There is no legal requirement before or during application hearings that prisoners be informed how board members have assessed their “readiness for release,” and no legal requirement that prisoners be allowed to respond to those assessments—although the typical interview will address this subject matter.<sup>64</sup>

#### **d. Victims and Other Participants**

All victims have a statutory right to be notified of pending parole proceedings, and to submit a written or oral statement and attend any parole proceeding regarding the crime of which they were the victim. Victims have the right to appear personally or with counsel.<sup>65</sup>

The scope and permissible content of crime victims’ statements are defined in statute. A victim may “reasonably express his or her views concerning the crime, the offender, and whether or not the offender should be released on parole, and if so, released under what conditions.”<sup>66</sup> The parole board must in turn give “appropriate consideration” to the “information or testimony supplied by the victim.”<sup>67</sup> Any written or oral testimony from the victim or a representative is confidential. The prisoner has

no enumerated legal right to be informed of the content of the victim’s testimony, and has no right to respond.<sup>68</sup>

Any parole proceeding in which two or more parole board members are present is open to the public, subject only to certain security requirements.<sup>69</sup> The Board of Parole publishes an online list of all inmates up for parole thirty days prior to their release.<sup>70</sup> Any member of the public must be notified of a parole decision if they register with the Department of Corrections to receive updates.<sup>71</sup>

#### **e. Burden of Proof or Standards of Persuasion**

Parole decisions are made by a “totality of the circumstances” subject to the following “reasonable probability” standard:

The state board of parole may parole any person who is sentenced or committed to a correctional facility when the board determines, by using, where available, evidence-based practices and the guidelines established by this section, that there is a reasonable probability that the person will not violate the law while on parole and that the person’s release from institutional custody is compatible with public safety and the welfare of society. The state board of parole shall first consider the risk of reoffense in every release decision it makes.<sup>72</sup>

#### **f. Possible Outcomes at Parole Release Hearings; Form of Decisions**

Depending on the case, the following are the possible outcomes of parole application hearings: (1) grant parole; (2) defer release to the mandatory release date (MRD) if the MRD is within 14 months; (3) defer for up to 12 months; (4) defer certain sex, violent, or habitual offenders for up to 36 months; (5) defer certain violent offenders for up to 60 months; (6) table the case, pending a parole plan investigation or receipt of additional information; or (7) present the matter to a full board review.<sup>73</sup>

Notice of the Board’s decision, including “its basis,” must be sent “within a reasonable time” to the inmate.<sup>74</sup>

#### **g. Administrative or Judicial Review of Parole Denial**

There is no administrative appeal process, and judicial review is limited to a habeas action.<sup>75</sup>

## h. Rescission of Parole Release Dates

For inmates who have been given a discretionary release date by the parole board, but have not yet been released, their release dates may be “rescinded” for violations of the Department of Corrections’ disciplinary code or when other unfavorable information is received by the Board prior to the assigned release date.<sup>76</sup>

## 4. Supervision Practices

*Parole supervision rate.* The statistics of parole supervision in Colorado are close to the averages across all states—with supervision rates somewhat below the national mean. In 2013-14, the average parole population on any given day in Colorado was 10,521.<sup>77</sup> The state’s parole supervision rate in 2014 was 245 per 100,000 adult residents, which ranked 20th highest of the 50 states. The parole supervision rate in 2013 for all states combined was 305 per 100,000 adult residents.<sup>78</sup>

The size of a state’s prison population is one factor that contributes to the parole supervision rate. Here again, Colorado is roughly representative of the nation as a whole, with a slightly less than average prison rate. Colorado prisons held 20,646 inmates at yearend 2014. The state’s imprisonment rate in 2014 was 207 per 100,000 adults, which was 28th highest of all states. The imprisonment rate across all states combined in 2014 was 551 per 100,000 adults.<sup>79</sup>

The ratio of parolees on supervision to prisoners in 2014 was 49 percent in Colorado. For all states combined in 2014, the equivalent ratio was 56 percent.<sup>80</sup>

### a. Purposes of Supervision

For persons on parole supervision, the Division of Adult Parole has the statutory duty to “provide parole supervision and assistance in securing employment, housing, and such other services as may affect the successful reintegration of such offender into the community while recognizing the need for public safety.”<sup>81</sup> In 2015, the Division’s website included the following statement about the goals and methods of supervision:

Adult Parole enhances public safety through the effective supervision of offenders. The goal of reducing the probability of further criminal behavior of offenders under supervision is accomplished through providing assistance to the offender in the areas of employment counseling, mental health and substance

abuse treatment referrals, emergency residential planning, and daily life skills. Offenders are routinely monitored for alcohol and substance abuse with mandatory testing procedures carried out by Community Parole Officers or authorized contract staff.<sup>82</sup>

### b. Are All or Only Some Releasees Placed on Supervision?

All released prisoners who were sentenced for a felony on or after July 1, 1993 in Colorado must serve a mandatory period of parole supervision, which is a free-standing component of their criminal sentence.<sup>83</sup> Unlike most other states, the length of the parole supervision term in Colorado is not determined by the unserved balance of the prison sentence.<sup>84</sup>

### c. Length of Supervision Term

*Maximum supervision terms.* Maximum postrelease supervision terms follow a statutory schedule based on the inmate’s underlying conviction (see Figure 3 below). For most offenders, the longest possible parole supervision term is 5 years.<sup>85</sup> The generally-applicable maximum of 5 years for serious felonies is shorter than found in most other states, but is not the shortest in the country.<sup>86</sup> There are special rules for sex offenders, however, many of whom receive lifetime parole supervision.<sup>87</sup> Juveniles convicted as adults for class 1 felonies also face lifetime parole.<sup>88</sup>

**Figure 3. Mandatory Parole Periods by Felony Class in Colorado**

Felony Class	Mandatory Period of Parole
1	None
2	5 years
3	5 years
4	3 years
5	2 years
6	1 year

*Early termination.* By statute, the Board may discharge an offender from supervision “upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision.”<sup>89</sup> A parolee will not be considered eligible for consideration of an early discharge from parole unless considered compliant with parole supervision.

Parolees must also be under supervision for not less than six months or 50 percent of the current parole term before consideration.<sup>90</sup> Under the Board's regulations, early termination requires a majority vote of the full board.<sup>91</sup>

An exception allowing for early termination will also be considered for an offender with special circumstances and/or a serious diagnosed medical condition or mental illness that interferes with the offender's ability to comply with their conditions of parole.<sup>92</sup>

*Extension of supervision term.* The Board has authority to lengthen the period of parole supervision at any time after the term has been fixed, although—for non-sex-offenders—the extended term may not exceed “the maximum sentence imposed upon the inmate by the court or five years, whichever is less.”<sup>93</sup>

*Incentives; “goal parole.”* There is no formal program in Colorado for promising parolees early discharge from supervision if they meet designated goals or benchmarks. However, offenders have the opportunity to earn good time while on parole which can reduce the amount of time served.<sup>94</sup>

#### d. Conditions of Supervision

The Board has exclusive authority to set and alter an inmate's conditions of parole, subject to a number of statutory requirements.<sup>95</sup> Sentencing courts play no role in setting or changing postrelease supervision requirements.

Colorado statutes lay out a non-exclusive list of nine standard conditions that must be included in every parole agreement (see Figure 4). There is a tenth catch-all provision that authorizes imposition of “any other condition the Board may determine to be necessary.”<sup>96</sup>

*Sex offenders.* Prior to release, sex offenders must submit to DNA testing. Test results are maintained by the Colorado Bureau of Investigation and are available to any law enforcement agency upon request.<sup>97</sup>

**Figure 4. Statutory Standard Conditions of Parole**

#### Colo. Rev. Stat. § 17-2-201(f)(I)

As a condition of every parole, the parolee shall sign a written agreement that contains such parole conditions as deemed appropriate by the Board, which conditions shall include but need not be limited to the following:

- (A) That the parolee shall go directly to a place designated by the board upon his release from the institution to which he has been confined;
- (B) That the parolee shall establish a residence of record and shall not change it without the knowledge and consent of his or her community parole officer and that the parolee shall not leave the area or the state without the permission of his or her community parole officer;
- (C) That the parolee shall obey all state and federal laws and municipal ordinances, conduct himself or herself as a law-abiding citizen, and obey and cooperate with his or her community parole officer;
- (D) That the parolee shall make reports as directed by his or her community parole officer, permit residential visits by the community parole officer, submit to urinalysis or other drug tests, and allow the community parole officer to make searches of his or her person, residence, or vehicle;
- (E) That the parolee shall not own, possess, or have under his control or in his custody any firearm or other deadly weapon;
- (F) That the parolee shall not associate with any other person on parole, on probation, or with a criminal record or with any inmate of a correctional facility without the permission of his or her community parole officer;
- (G) That the parolee shall seek and obtain employment or shall participate in a full-time educational or vocational program while on parole, unless such requirement is waived by his or her community parole officer;
- (H) That the parolee shall not abuse alcoholic beverages or use illegal drugs while on parole;
- (I) That the parolee shall abide by any other condition the board may determine to be necessary;
- (J) That the parolee shall contact any child support enforcement unit with whom the parolee may have a child support case to arrange and fulfill a payment plan to pay current child support, child support arrearages, or child support debt due under a court or administrative order.

*Modification of conditions.* A parole officer may submit a request for modification of an inmate's conditions of release regardless of whether a violation has occurred, but only the Board has authority to make a change.<sup>98</sup>

*Incentives; lighter conditions.* There is no formal program in Colorado for promising parolees a lightening of their conditions of parole if they meet designated goals or benchmarks.

## e. Fees and Other Financial Sanctions

*Parole supervision fees.* Parole conditions "may include" the requirement that offenders pay reasonable costs of parole supervision or home detention.<sup>99</sup>

*Payments for drug and alcohol testing and treatment.* Every parolee must submit to random drug and alcohol testing as a condition of parole—and must pay a fee for every test performed. If a parolee tests positive, he may be required to participate at his own expense in a drug, alcohol, or other treatment program.<sup>100</sup>

*Restitution.* Whenever applicable, Colorado law mandates that the Board order victim restitution as a condition of parole.<sup>101</sup>

*Child support.* In Colorado, a standard condition of parole requires offenders to "arrange and fulfill a payment plan" with an appropriate enforcement unit to meet any child support obligations, including current payments and arrearages.<sup>102</sup>

*Other financial obligations.* Other potential economic sanctions imposed on parolees may include fines, asset forfeitures, court costs, public defender fees, jail fees, and others. It is beyond the scope of this report to compile a full accounting of financial sanctions and obligations that may be assessed against criminal offenders on parole supervision in Colorado.<sup>103</sup>

*Incentives; reduction of economic sanctions.* There is no formal program in Colorado for promising parolees a reduction of their economic sanctions if they meet designated goals or benchmarks.

## 5. Parole Revocation

*Parole revocation proceedings.* In 2013-14, the Board conducted 8,551 revocation hearings and revoked parole in 4,826 cases (an average of 402 per month). Among all revocations, 88 percent were for technical violations and 12 percent were for new crimes.<sup>104</sup> In 2014, nearly 48 percent of all prison admissions in Colorado were attributable to parole revocations, compared to nearly 28 percent of prison admissions for all states.<sup>105</sup>

*Absconders.* In 2013-14, the Board reported 6,480 absconders (an average of 540 per month), of whom one-third were apprehended. The number of absconders decreased 24 percent from 2010 to 2014 and the rate of apprehension of absconders increased by 43 percent over the same period.<sup>106</sup>

### a. Principles and Criteria of "When to Revoke"

*Policy considerations.* Colorado statute mandates that "[t]he risk of reoffense shall be the central consideration by the state board of parole in making decisions related to . . . revocation of parole."<sup>107</sup> The law also requires the Board to consider "evidence-based practices" during revocation proceedings "where available."<sup>108</sup>

*Legal predicates.* Parole may be revoked for a violation of a condition of release ("technical violation"<sup>109</sup>) or the commission of a new crime.<sup>110</sup> In contrast with many other states, however, the mere showing of a technical violation is not enough to support revocation in Colorado. By statute, the Board "shall not" revoke parole for a technical violation "unless the board or administrative hearing officer determines on the record that appropriate intermediate sanctions have been utilized and have been ineffective or that the modification of conditions of parole or the imposition of intermediate sanctions is not appropriate or consistent with public safety and the welfare of society."<sup>111</sup>

*Statutorily enumerated factors.* When conducting parole revocation hearings, the Board is required to consider the following non-exclusive list of factors: "(I) A determination by the state board of parole that a parolee committed a new crime while on parole, if applicable; (II) The parolee's actuarial risk of reoffense; (III) The seriousness of the technical violation, if applicable; (IV) The parolee's frequency of technical violations, if applicable; (V) The parolee's efforts to comply with a previous corrective action plan or other remediation plan required by the state board of parole or parole officer; (VI) The imposition

state board of parole or parole officer; (VI) The imposition of intermediate sanctions by the parole officer in response to the technical violations that may form the basis of the complaint for revocation; and (VII) Whether modification of parole conditions is appropriate and consistent with public safety in lieu of revocation.”<sup>112</sup>

## **b. Revocation Guidelines**

The development and use of “administrative [parole] revocation guidelines” is mandated by statute.<sup>113</sup> Colorado’s Parole Board Revocation Guidelines (PBRVG) are currently under development (as of March 2016).<sup>114</sup>

## **c. Risk and Needs Assessment Tools**

In conducting a parole revocation hearing, the Board must consider, among other things, the parolee’s actuarial risk of re-offense. The Level of Service Inventory (LSI) is currently used for this purpose.<sup>115</sup>

## **d. Preliminary and Final Revocation Procedures**

*Arrest or summons.* If a community parole officer has reasonable grounds to believe that a condition of supervision has been violated, that officer can issue a summons to appear before the Board.<sup>116</sup> A community parole officer also has the authority to arrest a parolee under certain circumstances.<sup>117</sup> Within ten days of the arrest, a community parole officer must complete an investigation of the parolee and either file a complaint, order the parolee’s release, or release the parolee with a summons to appear.<sup>118</sup>

*Preliminary hearings.* An initial hearing before the Board must occur within thirty days of an arrest or within thirty working days from the date a summons was issued.<sup>119</sup> A parolee may waive their right to a timely hearing.<sup>120</sup> The record of a new criminal conviction is conclusive proof of a violation of parole, and so the Board will conduct a hearing as to the disposition only.<sup>121</sup>

Hearings are generally held before a single board member or administrative hearing officer.<sup>122</sup> The parolee must be served with a detailed revocation complaint at least two days before the first parole revocation hearing.<sup>123</sup>

*Final hearings.* If a parolee pleads not guilty to an alleged parole violation, the division of adult parole must show that the violation occurred in a final hearing.<sup>124</sup> Generally, one member of the Board will hear a case to its conclusion.<sup>125</sup>

The county attorney of the county in which the alleged violation occurred may present the case against the parolee.<sup>126</sup> “Any evidence having probative value” is admissible regardless of exclusionary evidence rules as long as a parolee has a fair opportunity to rebut hearsay evidence.<sup>127</sup>

If an individual is found guilty of a new crime or parole violation but parole is not revoked, that decision will be reviewed within fifteen days by two other members of the Board who may overturn that decision.<sup>128</sup>

## **e. Offenders’ Procedural Rights**

At least two days prior to an appearance before the Board, the parolee must be advised in writing of the nature of the charges that are alleged to justify revocation of parole and the substance of the evidence sustaining the charges.<sup>129</sup> The parolee must be given a copy of the complaint.<sup>130</sup> The parolee must also be informed of their rights during the hearing and consequences of parole revocation.

The parolee may retain counsel at their own expense, but will be provided with appointed counsel only in certain circumstances.<sup>131</sup> The parolee may also have up to five supporters in attendance.<sup>132</sup> These individuals may also submit letters of support on the parolee’s behalf.<sup>133</sup> The parolee may present witnesses, evidence, and exhibits at the hearing. The parolee has a right to cross examine witnesses unless the Board finds good cause to disallow confrontation.<sup>134</sup>

## **f. Victims and Other Participants**

Victims may attend and give confidential statements,<sup>135</sup> and they must be notified in the same manner as before a parole release hearing. The parolee has no enumerated legal right to be informed of the content of the victim’s testimony, and has no right to respond.<sup>136</sup>

The prosecuting attorney must be notified and may present the case against the parolee.<sup>137</sup> All revocation proceedings are open to the public and media, but there are no provisions for public notification.<sup>138</sup>

## **g. Burden of Proof or Standards of Persuasion**

Determinations of parole revocation must be made upon a preponderance of the evidence, and the Division of Parole bears the burden of proof.<sup>139</sup> If the alleged violation is the commission of a criminal act, the burden of proof is beyond a reasonable doubt, but a conviction of that

crime is a conclusive determination of guilt for revocation purposes. The Board may consider any evidence that has “probative value,” regardless of its admissibility according to the rules of evidence.<sup>140</sup>

## **h. Revocation and Other Sanctions**

Upon finding a violation, the Board may revoke parole, modify the conditions of release or leave the original conditions in effect. The statute lays out a large menu of options ranging from revocation and confinement, to increasing the duration of the period of parole and modifying conditions.<sup>141</sup>

A specialized menu of sanctions is set forth for parolees who fail to pay restitution.<sup>142</sup>

If a community parole officer determines that a technical or other minor violation has occurred and does not believe revocation is necessary, they may submit a request to alter the conditions of release with the Board, which must determine whether the proposed change is appropriate.<sup>143</sup>

## **i. Issuing Parole Revocation Decisions**

One member of the Board must hear the case to conclusion and make a finding of guilt or innocence. If the finding is guilty, within 15 days of the original hearing, two other members of the Board must review the record and can overturn the original decision if they both agree reversal is warranted. The parolee must be notified of the board’s finding within five business days of the Board’s final determination.<sup>144</sup>

## **j. Administrative or Judicial Review of Parole Revocation Decisions**

The parolee may appeal a revocation determination to two members of the Board, but must do so within 30 days of the determination.<sup>145</sup> The appeal must be based on one of seven errors. These include: “(1) Irregularity in the proceedings by which any Inmate was prevented from having a fair Revocation Hearing; (2) An abuse of discretion or misconduct by the person who conducted the Revocation Hearing; (3) An arbitrary and capricious decision by the person who conducted the Revocation Hearing; (4) Accident or surprise, which ordinary prudence could not have guarded against; (5) Newly-discovered evidence; (6) Error or change in law; or (7) Discharge of sentence.”<sup>146</sup>

The parolee may also pursue judicial review under a post conviction relief statute if “the sentence has been fully served or there has been unlawful revocation” of parole.<sup>147</sup>

The District Attorney or the Attorney General may appeal the decision of a member of the Board to two members of the Board, excluding the member who conducted the parole revocation proceeding.<sup>148</sup>

## **k. Re-Release Following Revocation**

An offender who is reincarcerated due to a parole revocation is eligible for re-parole at any time during reincarceration.<sup>149</sup> Colorado statute provides that, “[t] he board shall consider the parole of a person whose parole is revoked either for a technical violation or based on a self-revocation at least once within one hundred eighty days after the revocation if the person’s release date is more than nine months from the date of the person’s revocation; except that a person whose parole is revoked based on a technical violation that involved the use of a weapon shall not be considered for parole for one year.”<sup>150</sup>

# **6. Parole Board; Institutional Attributes**

## **a. Source of Authority and Jurisdiction**

The Colorado State Board of Parole was created by statute. The Board oversees all applications for parole and all parole revocation hearings, and has a variety of other statutory powers related to the parole system. The Board has rulemaking authority for parole release and revocation criteria, and procedures for hearings.<sup>151</sup>

## **b. Location in Government**

The parole board is an executive branch agency within the Colorado Department of Corrections.<sup>152</sup>

## **c. Purpose (Vision/Principles/Rationale)**

The Board’s governing statute specifies that: “the purposes of this article with respect to parole are: (a) To punish a convicted offender by assuring that his length of incarceration and period of parole supervision are in relation to the seriousness of his offense; (b) To assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in length of incarceration, and establishing fair procedures for the imposition of a period of parole supervision; and (c) To promote rehabilitation by encouraging the successful reintegration of convicted offenders into the community while recognizing the need for public safety.”<sup>153</sup>

The Board's website states that "[t]he mission of the Parole Board is to increase public safety by critical evaluation, through the utilization of evidence-based practices of inmate potential for successful reintegration to society. The Board determines parole suitability through the process of setting appropriate conditions of parole and assists the parolee by helping to create an atmosphere for successful reintegration and return to the community."<sup>154</sup>

#### **d. Appointment and Qualifications of Board Members**

The Board is composed of seven members, all of whom are appointed by the Governor and subject to confirmation by the Colorado Senate.<sup>155</sup> Both the Chairperson and Vice-Chairperson of the Board are appointed by the Governor.<sup>156</sup>

*Qualifications.* The statutory language governing qualifications of individuals to be appointed to the Board of Parole is as follows:

"The board shall be composed of representatives from multidisciplinary areas of expertise. Two members shall have experience in law enforcement and one member shall have experience in offender supervision, including parole, probation, or community corrections. Four members shall have experience in other relevant fields. Each member of the board shall have a minimum of five years of experience in a relevant field, and knowledge of parole laws and guidelines, rehabilitation, correctional administration, the functioning of the criminal justice system, issues associated with victims of crime, the duties of parole board members, and actuarial risk assessment instruments and other offender assessment instruments used by the board and the department of corrections. A person who has been convicted of a felony or of a misdemeanor involving moral turpitude or who has any financial interests which conflict with the duties of a member of the parole board shall not be eligible for appointment."<sup>157</sup>

#### **e. Tenure of Board Members, Ease of Removal**

Members are full-time employees appointed to three-year terms, that are, in practice, staggered. Board members may serve consecutive three-year terms. They are removable by the Governor for "incompetency, neglect of duty, malfeasance in office, continued failure to use the risk assessment guidelines. . . or failure to regularly attend meetings as determined by the governor."<sup>158</sup>

#### **f. Training and Continuing Education**

Colorado statute provides that "[e]ach board member shall complete a minimum of twenty hours of continuing education or training every year in order to maintain proficiency and to remain current on changes in parole laws and developments in the field. . . .The sole remedy for failure to comply with training and data collection requirements shall be removal of the board member by the governor, and the failure to comply with training and data collection requirements shall not create any right for any offender."<sup>159</sup>

#### **g. Workload**

In fiscal year 2014-15, the Board conducted a total of 27,395 hearings and reviews of varying types.<sup>160</sup>

#### **h. Reporting and Accountability of Parole Board**

All votes of the Board at any hearing or appeal are deemed a public record open to inspection.<sup>161</sup>

Colorado's Board is required to produce an Annual Report to the Joint Judiciary Committee; it also reports to the Joint Budget Committee.

Hearings must be open to the public, except for people who are currently under criminal supervision or who present safety concerns. Offenders and the public may request certain Board records, including electronic correspondence of public employees, as detailed in the Colorado Open Records Act (CORA) and the Colorado Criminal Justice Records Act (CCJRA).

Sources: Colo. Rev. Stat. § 17-2-102(11), (13); Colo. Dep't of Corr. Admin. Reg. 550-09; and Colo. Dep't of Corr. Admin. Reg. 1350-04. See also Colo. Rev. Stat. § 24-72-201 *et seq.* (Colorado Open Records Act); Colo. Rev. Stat. § 24-72-301 *et seq.* (Colorado Criminal Justice Records Act).

## END NOTES

- <sup>1</sup> Marianne Wesson, Sentencing Reform in Colorado—Many Changes, Little Progress, *Sentencing Reform in Overcrowded Times: A Comparative Perspective* 94-100 (Michael Tonry & Kathleen Hatlestad, eds., 1997).
- <sup>2</sup> H.B. 07-1358, 66th Gen. Assemb., 1st Reg. Sess. (Colo. 2007). Among the Commission's duties is to "[t]o conduct an empirical analysis of and collect evidence-based data on sentencing policies and practices, including but not limited to the effectiveness of the sentences imposed in meeting the purposes of sentencing and the need to prevent recidivism and revictimization," Colo. Rev. Stat. § 16-11.3-103(2)(a).
- <sup>3</sup> Colo. Rev. Stat. § 17-2-201.
- <sup>4</sup> Colo. Rev. Stat. §§ 17-2-101, 17-2-102.
- <sup>5</sup> Colo. Rev. Stat. § 17-2-201.
- <sup>6</sup> Colo. Rev. Stat. § 17-22.5-403.
- <sup>7</sup> Colo. State Bd. of Parole, *Annual Report to the Joint Judiciary Committee* at 7 (2015). From November 2013 to December 2014, 65 percent of all prisoners released in Colorado were released to mandatory parole, and 35 percent were released to discretionary parole [hereinafter *Annual Judiciary Report 2015*].
- <sup>8</sup> There are statutory per se rules barring otherwise eligible inmates for release due to behavior in the institution. See Colo. Rev. Stat. § 17-2-201(3.7)(a) ("Notwithstanding any other provision in this section, an inmate is not eligible for parole if the inmate: (I) Has been convicted of a class 1 code of penal discipline violation within the twelve months preceding his or her next ordinarily scheduled parole hearing; or (II) Has, within the twelve months preceding his or her next ordinarily scheduled parole hearing, declined in writing to participate in programs that have been recommended and made available to the inmate.").
- <sup>9</sup> Colo. Rev. Stat. §§ 17-22.5-301, 17-22.5-403, 17-22.5-405.
- <sup>10</sup> See *Nowak v. Suthers*, 320 P.3d 340, 348 (Colo. 2013).
- <sup>11</sup> Colo. Rev. Stat. § 17-22.5-403(2)(a), (2.5)(a). The Governor has authority to grant earlier release to some repeat violent offenders under "extraordinary mitigating circumstances" and where "compatible with the safety and welfare of society." *Id.* at (4).
- <sup>12</sup> Colo. Rev. Stat. § 18-1.3-1004.
- <sup>13</sup> Colo. Rev. Stat. § 17-22.5-104(2)(c). For crimes committed prior to 1985, first parole eligibility under life sentences occurs after 20 years, for life sentences for crimes before 1977, first release eligibility occurs after 10 years. *Id.* at (2)(a)-(b).
- <sup>14</sup> Colo. Rev. Stat. §§ 17-22.5-104(2)(d)(I), 18-1.3-401(4)(a). However, offenders with LWOP sentences may eventually be eligible for "special needs parole," see section below on "Medical or Compassionate Release."
- <sup>15</sup> Colo. Rev. Stat. §§ 17-2-201(4)(a), 17-22.5-403(5)(a), (b).
- <sup>16</sup> Colo. Rev. Stat. § 17-22.5-301. See also Colo. Rev. Stat. § 17-22.5-401 ("The general assembly hereby declares that if any inmate does not demonstrate positive behavior during incarceration, such inmate should be required to serve out the full sentence imposed upon such inmate. If any inmate does demonstrate positive behavior during incarceration, such inmate should be considered for release from incarceration prior to the end of the full sentence imposed upon him. Therefore, the general assembly, in enacting this part 4, intends to provide standards whereby any inmate can earn a reduction of incarceration time and to provide incentives for inmates to demonstrate positive behavior during incarceration.").
- <sup>17</sup> *Id.* (Note that before 1985, credit could not be revoked after it had vested.).
- <sup>18</sup> Colo. Rev. Stat. § 17-22.5-302.
- <sup>19</sup> *Id.*, Colo. Rev. Stat. § 17-22.5-405 (Lists a variety of mechanisms for accruing earned time, including "exceptional conduct," such as saving the life of another person or preventing an escape.).
- <sup>20</sup> Colo. Rev. Stat. § 17-22.5-404(1)(a), (2)(a). See also Colo. Rev. Stat. § 17-2-100.2 ("The general assembly hereby finds and declares that the primary consideration for any decision to grant parole shall be the public safety.").
- <sup>21</sup> Colo. Rev. Stat. § 17-22.5-404(3). [Elsewhere in the statutes this general standard is stated slightly differently, requiring a "strong" finding in addition to a "reasonable" finding of probable law-abiding behavior: "[Parole release may be granted when] there is a strong and reasonable probability that the person will not thereafter violate the law and that release of such person from institutional custody is compatible with the welfare of society." Colo. Rev. Stat. § 17-2-201(4)(a).].
- <sup>22</sup> Colo. Rev. Stat. § 17-22.5-404 ("In considering offenders for parole, the state board of parole shall consider the totality of the circumstances, which include, but need not be limited to, the following factors: (I) The testimony or written statement from the victim of the crime, or a relative of the victim, or a designee, pursuant to section 17-2-214; (II) The actuarial risk of reoffense; (III) The offender's assessed criminogenic need level; (IV) The offender's program or treatment participation and progress; (V) The offender's institutional conduct; (VI) The adequacy of the offender's parole plan; (VII) Whether the offender while under sentence has threatened or harassed the victim or the victim's family or has caused the victim or the victim's family to be threatened or harassed, either verbally or in writing; (VIII) Aggravating or mitigating factors from the criminal case; (IX) The testimony or written statement from a prospective parole sponsor, employer, or other person who would be available to assist the offender if released on parole; (X) Whether the offender had previously absconded or escaped or attempted to abscond or escape while on community supervision; and (XI) Whether the offender successfully completed or worked toward completing a high school diploma, a high school equivalency examination, as defined in section 22-33-102(8.5), C.R.S., or a college degree during his or her period of incarceration.").
- <sup>23</sup> Colo. Rev. Stat. § 17-22.5-404(4)(c)(II).
- <sup>24</sup> Colo. Rev. Stat. § 18-1.3-1006(1)(a); 8 Colo. Code Regs. 1511-1:16.00.
- <sup>25</sup> Colo. Rev. Stat. § 17-22.5-404(1)(c), (d).
- <sup>26</sup> 8 Colo. Admin. Code § 1511-1:6.00; see also Kevin L. Ford, Colo. Div. of Criminal Justice and State Bd. of Parole, *Overview: Colorado State Board of Parole Administrative Release Guideline Instrument* (2012).
- <sup>27</sup> Colorado Sex Offender Management Board, *Standards and Guidelines for the Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders* (Colo. Dept. of Public Safety Div. of Criminal Justice 2011).
- <sup>28</sup> Kevin L. Ford, Colo. Div. of Criminal Justice and State Bd. of Parole, *Analysis of Colorado State Board of Parole Decisions: FY 2014 Report* at 38 (2015).
- <sup>29</sup> See Part 2(e) of this report below.
- <sup>30</sup> Kevin L. Ford, *Analysis of Colorado State Board of Parole Decisions: FY 2014 Report* (Colorado Division of Criminal Justice and Colorado State Board of Parole 2015), at 34-35.
- <sup>31</sup> *Id.* at 14. Nearly half of all departures from release recommendations were "defer-to-MRD" decisions, which are permitted for inmates whose MRD is within 14 months of the release hearing, see 8 Colo. Code Regs. § 1511-1:504(2)(a). There were 1,047 departures of this kind in the 2013-14 fiscal year. *Id.* at 20. If the average time to MRD among this group was 4 months, then these departures added 349 person-years to the state prison population for 2013-14, or 1.7 percent of the state's 2013 prison population. If the annual cost of incarceration of one prisoner is \$22,000 (as estimated by the Colo. Dep't of Corrections), then the financial impact of "defer-to-MRD" departures was more than \$7 million. The financial cost of a deferral in most instances is the annual cost of imprisonment

## END NOTES

- for a single prisoner, or \$22,000, because parole eligibility occurs at one-year intervals for the majority of offenders. For many sex and violent offenders, however, the delay before renewed eligibility is 3 or 5 years, which translates into dollar costs of \$66,000 to \$110,000 per individual deferral decision.
- <sup>32</sup> Colo. State Bd. of Parole, *Parole Guidelines for Discretionary Release of Determinate-Sentenced Sex Offenders* (2011) citing Colo. Rev. Stat. § 17-22.5-404(4)(c)(11); Correspondence from Rebecca Oakes, Vice-Chairperson, Colo. State Bd. of Parole (Sept. 28 and Oct. 6, 2015). The statutory definition of “sexually violent predators” is found in Colo. Rev. Stat. § 18-3-414.5(1).
- <sup>33</sup> Colo. Rev. Stat. § 17-22.5-404(1)(b), (4)(b).
- <sup>34</sup> See Edward E. Rhine et al., *The Future of Parole Release: A Ten-Point Reform Plan, Crime and Justice: A Review of Research* (Michael Tonry ed., forthcoming 2016).
- <sup>35</sup> Colo. Div. of Criminal Justice Dep’t of Pub. Safety, *Risk Scales and Handbooks*, <https://www.colorado.gov/dcj-ors/ors-riskscales> (last visited Mar. 21, 2016).
- <sup>36</sup> *Id.* The CARAS report is supplemented by three of four qualitative assessments: the “Level of Supervision Inventory” (assesses level of needed supervision), the “Prison Intake Tool” (assesses risk/needs at time of prison entry), “Re-Entry Tool” (assesses inmates incarcerated for more than four years), and the “Supplemental Reentry Tool” (assesses inmates incarcerated for less than four years). Each of these tools assigns a standardized score, which, when taken with the CARAS score, generates a recommendation regarding release and subsequent level of needed supervision. See Colo. Admin. Code § 1511-1:6.00.
- <sup>37</sup> For correlations with reoffending, see Kevin L. Ford, Colo. Div. of Criminal Justice and State Bd. of Parole, *Analysis of Colorado State Board of Parole Decisions: FY 2014 Report* at 33 n. 32 (2015). (“The CARAS recidivism (three-year, new court filing or prison return) rates by risk category are: Very Low, 17.8%; Low, 23.9%, Medium, 32.9%, High, 45.3%, and Very High, 76.6%.”).
- <sup>38</sup> Colorado Department of Public Safety, Division of Criminal Justice, Office of Research and Statistics, 2014 Colorado Actuarial Risk Assessment Score (CARAS) Version 6 (2014). After tallying all points based on the nine factors, a “constant” of -24 is subtracted from an individual’s score.
- <sup>39</sup> See Gerald G. Gaes, *Review of CARAS, Colorado Actuarial Risk Assessment Scale* (2009); Christopher Baird, Nat’l Council on Crime and Delinquency, *Review of CARAS-5* (2009), both available at: [https://cdpsdocs.state.co.us/ors/docs/Risks/CARAS\\_Reviews\\_V5.pdf](https://cdpsdocs.state.co.us/ors/docs/Risks/CARAS_Reviews_V5.pdf).
- <sup>40</sup> Colo. Div. of Criminal Justice Dep’t of Pub. Safety, *Risk Scales and Handbooks*, <https://www.colorado.gov/dcj-ors/ors-riskscales> (last visited Mar. 21, 2016).
- <sup>41</sup> By statute, “special needs offenders” include two types: (1) Prisoners sixty or older who are diagnosed as “suffering from a chronic infirmity, illness, condition, disease, or mental illness” and are determined to be “incapacitated to the extent that he or she is not likely to pose a risk to public safety,” and (2) Prisoners who suffer from “a chronic, permanent, terminal, or irreversible physical or mental illness, condition, disease, or mental illness that requires costly care or treatment” and are determined to be “incapacitated to the extent that he or she is not likely to pose a risk to public safety.” Colo. Rev. Stat. § 17-1-102(7.5)(a).
- <sup>42</sup> Colo. Rev. Stat. § 17-22.5-403.5. A referral from the DOC to the parole board is needed to activate the board’s special needs paroling authority. The DOC’s referral to the parole board must be accompanied by a recommendation concerning whether the prisoner should be released.
- <sup>43</sup> Colo. State Bd. of Parole, *Presumptive Parole: FY 2014 Report* at 8 (2015). Over the four years covered in the report, only 3 of the 22 special needs releasees were returned to prison for parole violations, none of them for new crimes.
- <sup>44</sup> Some states have laws requiring the withdrawal of medical or compassionate parole in the event the released prisoner recovers from his medical or mental-health infirmity, or circumstances otherwise change so that the ex-prisoner becomes a danger to public safety.
- <sup>45</sup> Correspondence from Brandon Shaffer, Former Chair, Colo. State Bd. of Parole (Sept. 4, 2015).
- <sup>46</sup> See Colo. Rev. Stat. §§ 16-17-101 – 16-17-103.
- <sup>47</sup> *Cf.* Colo. Rev. Stat. § 17-1-104.9 (granting the governor power to declare a correctional emergency, which allows the DOC to remove prisoners above the medium custody classification to private prisons outside of Colorado—but expressly excluding prison overcrowding from its definition of “emergency,” which focuses on riots, disturbances, or outbreaks of violence in prison facilities).
- <sup>48</sup> Colo. Rev. Stat. § 17-2-201(4)(f)(I). In 2013-14, the Colorado State Board of Parole held a total of 28,704 hearings, of which only 1,104 were file reviews in lieu of hearings. Colorado Board of Parole Annual Report to the Joint Budget Committee, January 6, 2015, at 3.
- <sup>49</sup> 8 Colo. Code Regs. 1511-1:5.00.
- <sup>50</sup> Colo. State Bd. of Parole, *Annual Report to the Joint Judiciary Committee* at 6 (2015).
- <sup>51</sup> Colo. Rev. Stat. § 17-2-201(9)(a)(I); 8 Colo. Code Regs. 1511-1:5.00.
- <sup>52</sup> 8 Colo. Code Regs. 1511-1:5.00.
- <sup>53</sup> 8 Colo. Code Regs. 1511-1:8.00.
- <sup>54</sup> Kevin L. Ford, Colo. Div. of Criminal Justice and State Bd. of Parole, *Analysis of Colorado State Board of Parole Decisions: FY 2014 Report* at 7-9 (2015).
- <sup>55</sup> 8 Colo. Code Regs. 1511-1:5.04(B).
- <sup>56</sup> Sentencing judges in Colorado are likewise permitted to consider nonconviction criminal conduct, including acquitted conduct. *People v. Lowery*, 642 P.2d 515, 518 (Colo. 1982) (en banc) (finding it within sentencing court’s discretion to consider nonconviction charges dismissed as a result of a pretrial plea); *People v. La Plant*, 670 P.2d 802, 805 (Colo. Ct. App. 1983) (acquittal conduct).
- <sup>57</sup> See *Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1 (1979) (no liberty interest in parole release hearing unless created by state law; in *Greenholtz* a liberty interest was created by Nebraska statute that required release of prisoner unless board believed one of four designated reasons for deferral was appropriate at 12; this created an expectancy of release; the *Greenholtz* Court did not speak to what procedures are required once a liberty interest has been established but stressed flexibility, the need for state experimentation, the need for “such protections as the particular situation demand;” and said the “guiding principle” was the goal to “minimize the risk of erroneous decisions” at 13); *Swarthout v. Cooke*, 562 U.S. 216 (2011) (holding that California did not create a liberty interest in its parole process, so challenge on merits was not cognizable on federal habeas review).
- <sup>58</sup> Colo. Rev. Stat. § 17-2-201(4)(f)(I).
- <sup>59</sup> Correspondence from Brandon Shaffer, Former Chair, Colo. State Bd. of Parole (Sept. 4, 2015).
- <sup>60</sup> 8 Colo. Code Regs. § 1511-1:3.00(3.05)(A)(4).
- <sup>61</sup> Colo. Rev. Stat. § 17-2-201.
- <sup>62</sup> 8 Colo. Code Regs. § 1511-1:3.00.
- <sup>63</sup> 2015 Colorado survey conducted by the Robina Institute revealed that in practice risk assessment score is not shown to prisoners.
- <sup>64</sup> This information was gained through the Robina Institute’s observational studies of Colorado parole hearings conducted in March 2015.
- <sup>65</sup> Colo. Rev. Stat. § 17-2-214(1).
- <sup>66</sup> Colo. Rev. Stat. § 17-2-214(1).
- <sup>67</sup> 8 Colo. Code Regs. 1511-1:3.00.

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- <sup>68</sup> 8 Colo. Code Regs. 1511-1:3.00.
- <sup>69</sup> Colo. Rev. Stat. § 24-6-402(1)(d).
- <sup>70</sup> See Colo. Dep't of Corr., *Offender Search*, <http://www.doc.state.co.us/oss/index.php?ref=pblast> (last visited Mar. 21, 2016).
- <sup>71</sup> See Colo. Rev. Stat. § 24-4.1-302.5.
- <sup>72</sup> Colo. Rev. Stat. § 17-22.5-404(4)(a).
- <sup>73</sup> 8 Colo. Code Regs. §§ 1511-1:5.00, 1511-1:5.04. The Board may also defer an inmate's hearing until past the statutory maximum discharge date, allowing the offender to release on that date; this may occur if the discharge date is within 14 months of the parole application (assuming 60 days of good time credit, which brings the discharge date to within 12 months).
- <sup>74</sup> 8 Colo. Code Regs. § 1511-1:9.
- <sup>75</sup> *Id.*
- <sup>76</sup> 8 Colo. Code Regs. § 1511-1:12; Correspondence from Brandon Shaffer, Former Chair, Colo. State Bd. of Parole (Sept. 4, 2015).
- <sup>77</sup> Colo. State Bd. of Parole, *Annual Report to the Joint Budget Committee* at 4 (2015).
- <sup>78</sup> Mariel E. Alper, *By the Numbers: Parole Release and Revocation Across 50 States* at 203 (2016).
- <sup>79</sup> *Id.*
- <sup>80</sup> *Id.*
- <sup>81</sup> Colo. Rev. Stat. § 17-22.5-403(8)(a).
- <sup>82</sup> Colo. Dep't of Corr., *Adult Parole Information*, <http://www.doc.state.co.us/adult-parole-information> (last visited June 26, 2015).
- <sup>83</sup> Colo. Rev. Stat. § 18-1.3-401.
- <sup>84</sup> See American Law Institute, Model Penal Code: Sentencing, Tentative Draft No. 3 (approved May 19, 2014), § 6.09.
- <sup>85</sup> Colo. Rev. Stat. § 18-1.3-401.
- <sup>86</sup> See American Law Institute, Model Penal Code: Sentencing, Tentative Draft No. 3 (approved May 17, 2011), § 6.09 (recommending maximum 5-year terms for postrelease supervision).
- <sup>87</sup> Colo. Rev. Stat. § 18-1.3-1006(1)(b).
- <sup>88</sup> Colo. Rev. Stat. § 17-22.5-403.7(3).
- <sup>89</sup> Colo. Rev. Stat. §§ 17-2-201(6), 17-22.5-403(8)(a).
- <sup>90</sup> Colo. Dep't of Corr. Admin. Reg. 250-29 Parolees who have previously absconded, are pending a revocation hearing, or are in custody paroled to a detainer or to charges are not eligible for early discharge. Parolees must be in substantial compliance with all parole conditions including meeting treatment requirements, making restitution payments, and being substance abuse free. Parolees may not be considered if they have had a level III or higher parole violation in the previous six months of supervision.
- <sup>91</sup> 8 Colo. Admin. Code § 1511-1:15.00.
- <sup>92</sup> Colo. Dep't of Corr. Admin. Reg. 250-29.
- <sup>93</sup> Colo. Rev. Stat. § 17-2-201(6).
- <sup>94</sup> Correspondence with Anne Carter, Data Analyst, Colo. State Bd. of Parole (Sept. 18, 2015).
- <sup>95</sup> Colo. Rev. Stat. §§ 17-2-201, 17-22.5-403(8)(a).
- <sup>96</sup> Colo. Rev. Stat. § 17-2-201(f)(I)(A)-(J).
- <sup>97</sup> Colo. Rev. Stat. § 17-2-201(5)(g)(I).
- <sup>98</sup> Colo. Dep't of Corr. Admin. Reg. 250-37.
- <sup>99</sup> Colo. Rev. Stat. § 17-2-201(5)(b).
- <sup>100</sup> Colo. Rev. Stat. § 17-2-201(5.5)(a), (5)(d)(I).
- <sup>101</sup> Colo. Rev. Stat. § 17-2-201(c)(I).
- <sup>102</sup> Colo. Rev. Stat. § 17-2-201(f)(I)(J).
- <sup>103</sup> In any one state, it is a large job to compile a full survey of applicable financial costs, fees, and assessments that may be levied against criminal offenders, which often vary at the local level. See R. Barry Ruback and Valerie Clark, *Economic Sanctions in Pennsylvania: Complex and Inconsistent*, 49 Duquesne L. Rev. 751 (2011); Katherine A. Beckett, et al. Wash. State Minority and Justice Comm., *The Assessment and Consequences of Legal Financial Obligations in Washington State* (2008).
- <sup>104</sup> Colo. State Bd. of Parole, Annual Report to the Joint Budget Committee at 3-4 (2015).
- <sup>105</sup> E. Ann Carson, U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2014* at p. 10 table 7 (2015).
- <sup>106</sup> Colo. State Bd. of Parole, *Annual Rep't to the Joint Budget Comm.* at 3-4 (2015).
- <sup>107</sup> Colo. Rev. Stat. § 17-22.5-404(1)(a).
- <sup>108</sup> Colo. Rev. Stat. § 17-22.5-404(5)(b).
- <sup>109</sup> Colo. Rev. Stat. § 17-22.5-404(9) ("For purposes of this section, 'technical violation' means a violation of a condition of parole that is not a conviction for a new criminal offense or not determined by the state board of parole to be a commission of a new criminal offense.").
- <sup>110</sup> Colo. Rev. Stat. § 17-2-100.2 ("The general assembly further finds and declares that, since parole is a privilege granted by the general assembly and not a right guaranteed under the state or federal constitutions, if the parolee violates the conditions of his parole, that privilege may be revoked."); 8 Colo. Code Regs. § 1511-1:13.00.
- <sup>111</sup> Colo. Rev. Stat. § 17-22.5-404(5)(c).
- <sup>112</sup> Colo. Rev. Stat. § 17-22.5-404(5)(a)(I)-(VII).
- <sup>113</sup> Colo. Rev. Stat. §§ 17-22.5-107(2)(a); 17-22.5-404(2)(d), (5)(b).
- <sup>114</sup> There is also an ongoing project in Colorado to develop an electronic portal for parole revocation proceedings comparable to that used for release hearings. Kevin L. Ford, Colo. Div. of Criminal Justice and Colo. State Bd. of Parole, *Analysis of Colorado State Board of Parole Decisions: FY 2014 Report* at 9 (2015).
- <sup>115</sup> Colo. Rev. Stat. § 17-22.5-404. Correspondence with Anne Carter, Data Analyst, Colo. State Bd. of Parole (Sept. 18, 2015).
- <sup>116</sup> Colo. Rev. Stat. § 17-2-103.
- <sup>117</sup> *Id.* There are certain parole violations for which the community parole officer is mandated to arrest a parolee. Examples include being found in possession of a deadly weapon, being arrested and charged with a new felony or a crime of violence, or tampering with an ankle monitor. Colo. Rev. Stat. § 17-2-103.5.
- <sup>118</sup> Colo. Rev. Stat. § 17-2-103.
- <sup>119</sup> *Id.*
- <sup>120</sup> 8 Colo. Admin. Code § 1511-1:13.09.
- <sup>121</sup> Colo. Rev. Stat. § 17-2-103.
- <sup>122</sup> 8 Colo. Admin. Code § 1511-1:13.02.
- <sup>123</sup> 8 Colo. Admin. Code § 1511-1:13.03. ("[u]nless good cause is shown as determined by the Board Member or administrative hearing officer conducting the Parole Revocation hearing.")
- <sup>124</sup> Colo. Rev. Stat. § 17-2-103.
- <sup>125</sup> 8 Colo. Admin. Code § 1511-1:13.02.
- <sup>126</sup> 8 Colo. Admin. Code § 1511-1:13.05.
- <sup>127</sup> Colo. Rev. Stat. § 17-2-103.
- <sup>128</sup> 8 Colo. Admin. Code § 1511-1:13.05; Colo. Rev. Stat. § 17-2-103.5.
- <sup>129</sup> Colo. Rev. Stat. § 17-2-103(9)(a).
- <sup>130</sup> 8 Colo. Admin. Code § 1511-1:13.03.
- <sup>131</sup> Counsel will be appointed to a parolee only if: "The parolee denies that he violated the condition or conditions of his parole, as set forth in the complaint; (II) The parolee is incapable of speaking effectively for himself; (III) The parolee establishes to the satisfaction of the board that he is indigent; and (IV) The board, after reviewing the complaint, makes specific findings in writing that the issues to be resolved are complex and that the parolee requires the assistance of counsel." Colo. Rev. Stat. § 17-2-201.
- <sup>132</sup> 8 Colo. Admin. Code § 1511-1:3.06.
- <sup>133</sup> 8 Colo. Admin. Code § 1511-1:3.04.
- <sup>134</sup> 8 Colo. Admin. Code § 1511-1:13.11.
- <sup>135</sup> 8 Colo. Code Regs. § 1511-1:13.
- <sup>136</sup> 8 Colo. Code Regs. 1511-1:3.00.
- <sup>137</sup> 8 Colo. Code Regs. § 1511-1:13.05.

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<sup>138</sup> Colo. Rev. Stat. § 17-2-201.

<sup>139</sup> 8 Colo. Code Regs. § 1511-1:13.12.

<sup>140</sup> Colo. Rev. Stat. § 17-2-103.

<sup>141</sup> *Id.*

<sup>142</sup> Colo. Rev. Stat. § 17-2-201(5)(c)(III).

<sup>143</sup> Colo. Dep't. of Corr. Admin. Reg. 250-37.

<sup>144</sup> Colo. Rev. Stat. § 17-22.5-303.

<sup>145</sup> 8 Colo. Code Regs. § 1511-1:14.

<sup>146</sup> *Id.*

<sup>147</sup> Colo. Rev. Stat. § 18-1-410; See, e.g., *Duran v. Price*, 868 P. 2d 375 (Colo. 1994) (en banc) (holding that it is appropriate to grant an appeal where a person whose parole has been revoked alleges that his parole has already expired).

<sup>148</sup> Colo. Rev. Stat. § 17-2-201(9)(d).

<sup>149</sup> Colo. Rev. Stat. § 17-22.5-403(8)(a).

<sup>150</sup> Colo. Rev. Stat. § 17-2-201(14).

<sup>151</sup> Colo. Rev. Stat. § 17-2-201.

<sup>152</sup> *Id.*

<sup>153</sup> Colo. Rev. Stat. § 17-22.5-102.5.

<sup>154</sup> Colo. State Bd. of Parole, *Parole Board Rules and Regulations*, <https://www.colorado.gov/pacific/paroleboard/node/8071> (last visited Mar. 21, 2016).

<sup>155</sup> Colo. Rev. Stat. § 17-2-201(1)(a).

<sup>156</sup> *Id.* at (2).

<sup>157</sup> *Id.* at (1)(a). The board may contract with administrative hearing officers (licensed attorneys) to conduct revocation hearings, may appoint administrative law judges to conduct revocation hearings, or may contract with “qualified individuals” (who need not be lawyers) to serve as release hearing officers. *Id.* at (3)(h). Their qualifications, training, and continuing education requirements are set forth in Colo. Rev. Stat. § 17-2-202.5.

<sup>158</sup> *Id.*

<sup>159</sup> Colo. Rev. Stat. § 17-2-201(1)(e).

<sup>160</sup> Joe Morales, Colo. Report to the Joint Judiciary Committee (2015), at 6.

<sup>161</sup> Colo. Rev. Stat. § 17-2-201(12).