

A GENERAL OVERVIEW OF PAROLE

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Like most of the other topics we have discussed, the parole system is also full of variables. This is a summary of general principles, and does not address either all possible scenarios or sex offenders. For a more detailed analysis, see Chapter 5 in the Legislative Council Report.

§ 17-2-100.2. Legislative intent regarding parole. ... “[T]he primary consideration for any decision to grant parole shall be the public safety.”

§ 17-22.5-102.5. Purpose of parole

(1) The purposes of this [statute] 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.

The parole system is administered by the Division of Adult Parole in the Department of Corrections.

Types of Parole

“Parole” is defined as the release of an inmate from incarceration upon certain conditions that must be observed.

In the Colorado system, there are two types of “parole”:

- Prior to 1993, all parole was discretionary, i.e. an inmate who met the appropriate criteria could be released from incarceration before the sentence was completely served. If the parolee violated the terms of the release, parole could be revoked and the parolee returned to prison to serve the remainder of the sentence. Ex: Inmate X is eligible for release after serving 6 years of his 10-year sentences. He is placed on parole for the remainder of the sentence. If he violates any of the conditions of parole, he can be reincarcerated for the remainder of the sentence. Whether he gets credit for any time spent on parole depends on when he committed his original offense and the nature of that offense.
- In 1993, the legislature added an additional type of parole. Inmates could still be released before completing their entire sentences, but would be subject to an additional 1, 3, or 5-year term of mandatory parole after release, depending on the type of felony the offender had committed. **Under the current system, every inmate is required to serve a term of mandatory parole.** If the parolee violates the terms of the release, parole can be revoked and the parolee returned to prison to serve the remainder of the term of mandatory parole. Whether he gets credit for the time he spent on parole depends on the basis for the revocation.

Since the vast majority of current inmates are incarcerated for offenses committed after July 1, 1993, that is what I’ll focus on today.

Parole Eligibility

Inmates sentenced to life sentences for Class 1 felonies committed after July 1, 1990 are not eligible for parole. Prior to that date, they were eligible for parole after having served 10, 20, or 40 years of the sentence, depending on when the offense was committed. Inmates sentenced to life sentences under a habitual criminal statute are eligible for parole after 40 years.

If they have no disciplinary infractions, most inmates serving sentences for class 2 through 6 felonies become eligible for parole after serving 50% of their sentence. Offenders convicted of more violent offenses must serve 75% of the imposed sentence. These thresholds may be increased if the inmate is subject to disciplinary action. (This is called “good time”).

Inmates get credit for any time they served in confinement prior to sentencing.

Hypothetical Inmate X is serving a 10-year sentence for a non-violent offense. There is a presumption that X will serve his time without any disciplinary issues. If he goes 5 years without any such issues, he is eligible for parole at that 5-year mark (any presentence confinement credit he may have gotten counts toward that 5 years). If he has infractions within that 5-year period, his parole eligibility is postponed in proportion to the amount of misbehavior.

In addition, the parole eligibility thresholds can be reduced even further by “earned time” adjustments. “Earned time” – which can be up to 10 days per month – is a credit earned for participating in various prison training, education, and rehab programs. So if Inmate X behaves and participates in these programs to the fullest extent possible, he could be eligible for parole after serving about 35% of the sentence, or about 3 ½ years.

DOC tallies up good time and earned time about every 6 months (as the inmate’s parole eligibility date gets closer, review may be done every month). As noted, good time can be cancelled out by disciplinary infractions, and the inmate may have to serve more than 50 or 75% of his sentence before he becomes parole eligible. For an inmate, earned time vests and cannot be taken away. Earned time also applies as a credit toward the inmate’s discharge date, up to 25% of the original sentence. An inmate who has been paroled can still accumulate earned time so long as he does

not engage in criminal activity while on parole. If he does engage in such activity, he can lose any earned time he would otherwise have accumulated on parole.

The parole process

DOC calculates an inmate's parole eligibility date and starts the parole review process about 90 days before the parole eligibility date.

Before Inmate X can be released, he must have a parole plan that details where he will live and work, and who will be responsible for him upon release. His case manager will help him prepare that plan, and a parole officer will do an investigation to determine whether the plan is feasible.

At the release hearing, a parole board member will review the inmate's parole plan and a long list of factors that must be considered in deciding whether to grant release (§ 17-22.5-404):

The testimony of the victim of the crime or a relative of the victim, if the victim has died, pursuant to section 17-2-214;

The offender's conduct which would indicate whether he has substantially observed all of the rules and regulations of the institution or facility in which he has been confined and has faithfully performed the duties assigned to him;

The offender's demonstration of good faith efforts to make restitution to the victim of his conduct for the actual damages that were sustained;

The offender's demonstration of good faith efforts to pay reasonable costs of parole supervision;

The offender's demonstration of good faith efforts to devote time to a specific employment or occupation;

The offender's good faith efforts to enroll in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment;

Whether the offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income, whether the offender has an employment disability, or whether the offender's age prevents him or her from obtaining employment;

The offender's demonstration of good faith efforts to remain within prescribed geographical boundaries and notify the court or the parole officer of any change in the offender's address or employment;

The offender's demonstration of good faith efforts to report as directed to the parole officer;

The offender's demonstration of good faith efforts to participate in some type of community service work;

The offender has not harassed the victim either verbally or in writing;

The offender's demonstration of good faith efforts to provide support, including any court-ordered child support, for any minor children;

The offender's participation in the literacy corrections programs;

Any other relevant factors

In addition to the preceding factors, the parole board is required to consider a variety of extraordinary aggravating and mitigating factors.

Extraordinary Aggravating factors:

The crime involved serious bodily injury, threat of serious bodily injury, or other acts disclosing a high degree of cruelty, viciousness, or callousness.

The offender was armed with or used a deadly weapon at the time of the commission of the offense.

The offense involved multiple victims.

The victim was particularly vulnerable due to advanced age, disability, ill health, or extreme youth.

The offender's conduct was directed at an active officer of the court or at an active or former judicial officer, prosecuting attorney, defense attorney, peace officer, correctional employee, or firefighter during or because of the exercise of his or her official duties.

The offender induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants in its commission.

The offender took advantage of a position of trust or confidence to commit the offense.

The offender committed the offense pursuant to an agreement that he either pay or be paid for its commission.

The circumstances surrounding the offense indicate that the crime was carried out following substantial planning and deliberation.

The object of the crime was to acquire or to obtain control of a controlled substance or other item or material, the possession of which is illegal.

The offender has engaged in a pattern of violent conduct which indicates a serious danger to society.

The offender was on parole or on probation for another felony when he committed the offense.

The offender was charged with or was on bond for a previous felony when he committed the offense, and for which previous felony he was subsequently convicted.

The offender was under confinement in prison or in any correctional institution within this state as a convicted felon, or was an escapee

from any correctional institution within this state or another state when he committed the offense.

The offender has numerous or increasingly serious convictions as an adult or adjudications of delinquency as a juvenile.

Any other relevant aggravating factor.

Extraordinary mitigating circumstances

The offender was a passive participant or played a minor role in the commission of the offense.

The victim was an initiator, willing participant, aggressor, or provoker of the incident.

Substantial grounds exist tending to excuse or justify the offender's conduct, though failing to establish a defense.

The offender committed the crime under duress, coercion, threat, or compulsion, insufficient to constitute a complete defense but which significantly affected his conduct.

The offender has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time prior to the commission of the offense.

The offender voluntarily acknowledges wrongdoing or evidences remorse or penitence for his criminal conduct.

The offender is responsible for the maintenance or financial support of others and, to avoid undue hardship to his dependents, a shorter period of incarceration is warranted.

Rehabilitation of the offender would be enhanced by imposing a shorter period of incarceration.

Before the parole hearing, the offender compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

Any other relevant mitigating factors.

If the Parole Board denies parole, it shall reconsider the application for parole on a periodic basis thereafter. How often that occurs depends on the nature of the inmate's crime and sentence.

If parole is granted, the Parole Board can impose whatever conditions it deems appropriate.

Parole Supervision

Parolees are supervised by the Division of Adult Parole, which is charged with providing supervision and assistance in securing housing, employment, and such other services as may affect the successful integration of the parolee into the community. § 17-22.5-403. The level of supervision required of the inmate depends on a risk assessment conducted within the first 30 days after release and periodically thereafter. All parolees must submit to random drug and alcohol testing.

The State Board of Parole can discharge a parolee at any time during the period of parole upon a determination that the offender has been sufficiently rehabilitated and can no longer benefit from parole supervision. § 17-22.5-403(8)(a).

Intensive Supervision Program 17-27.5-106

The intensive supervision program is a transitional release program available to inmates who are within 180 days of their parole eligibility date. In essence, the program places the inmate into the community on parole status, but supervised by local officials (generally community corrections programs),

Parole revocation

A parolee's failure to comply with the terms and conditions of parole may subject him to revocation. Some violations -- such as committing a new offense, possession or use of a firearm or deadly weapon, refusal to submit to a drug or alcohol testing or to a search of his person or premises, or absconding from supervision -- require that the parole officer file a complaint to revoke. Other violations, such as failing to report a change of address or failing a drug or alcohol test, do not require mandatory action.

When a complaint for revocation is filed, the parolee is entitled to a hearing that affords basic due process. The hearing officer can continue the parolee on parole, modify the conditions of parole, or revoke. Parolees who are returned to DOC are eligible to be re-considered for parole after serving 180 days.