

Not Guilty by Reason of Insanity (NGRI): Process, Rights, and Terminology

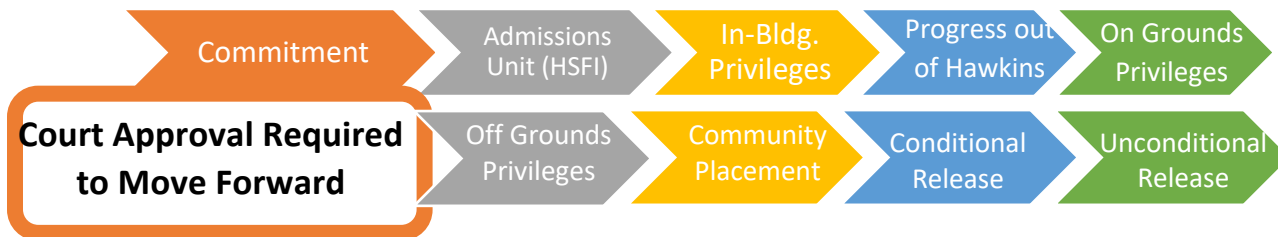
Disability Law Colorado, October 2024

BASIC FACTS:

- NGRI can result from trial or from plea agreement.¹
- In Colorado, NGRI adjudication NO LONGER requires mandatory commitment to the Division of Human Services, which means you can be placed at the Colorado Mental Health Hospital in Pueblo (CMHHIP), or you can remain in the community even after you are adjudicated (or “sentenced” by the court)
- There is also no set or minimum length of commitment. Your treatment and your length of stay should be dictated by your individual needs and risk, not by how long you have been at CMHHIP.² You can be held at CMHHIP until the court that heard your criminal case says that you met criteria for release (either conditional or unconditional).

TYPICAL PROGRESSION THROUGH CMHHIP:

- Most NGRI patients are first placed on an “Admissions Unit” upon arriving at CMHHIP. For men, this may be L1, or possible E1 or E2. For women, this may be C1.
- Historically, NGRI patients have moved through specific units before being released. However, you can be released from any unit, and the unit you are on should not limit the treatment available to you or your options for progression.³
- The below diagrams illustrate a GENERAL path for progression through CMHHIP to release



Rights of NGRI Patients come in part from: CMHHIP policies, State and Federal law (including caselaw, see table below), Centers for Medicare & Medicaid Services (CMS) Regulations, Joint Commission Accreditation (TJC) Standards

YOUR RIGHTS AT CMHHIP (See C.R.S. §§ 27-65-118, 119; CMHHIP Policies 16.50, 16.51, 1.28):

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| • To appropriate treatment, including “active treatment” | • Confidentiality | • Visits |
| • Provided in the least restrictive, most integrated setting | • To vote | • To wear your own clothing and have your own property |
| • Freedom from discrimination ⁴ | • Access to your medical records ⁵ | • To file grievances |
| | • To send and receive letters, access to writing materials | |

¹ C.R.S. §16-8-105.5, Procedure after plea for offenses committed after July 1, 1995.

² “[T]he court shall commit the defendant to the custody of the department of human services until such time as the defendant is found eligible for release.” C.R.S. §16-8-105.5.

³ See CMHHIP Policy 1.61, “Patient Progressive Movement”

⁴ Americans with Disabilities Act of 1990 (ADA)

⁵ Health Insurance Portability and Accountability Act of 1996 (HIPAA); see 45 C.F.R. §164.524.

RELEASE AND TEMPORARY PHYSICAL REMOVAL (TPR):

Annual Certification/Release Examination: Starting September 1, 2022, the CEO of the hospital must file a report to the criminal court each year, on the anniversary of your commitment date (ex. Every August 12), unless you have already had a release exam in the 12 months prior to the anniversary. This report must contain all of the information that is required in a release exam. This includes what treatment is available in the community, what treatment you will be given if you remain at CMHHIP, and whether and how ongoing risks could be mitigated in the community.

Temporary Physical Removal (TPR): Must be granted by the court in your criminal case; allows you to leave campus for limited periods of time. Includes both supervised (by staff) and unsupervised off-campus privileges. CMHHIP must request this from the court, and the court must grant it. You are not necessarily entitled to an attorney for this step.⁶ While CMHHIP often requests this step-by-step, it can be requested all at once. “Community placement” is not a term in state law, and neither is “disposition committee.”

Conditional Release (CR): Must be granted by the court. Can be requested by you or by CMHHIP after you have been at CMHHIP for 6 months minimum.⁷ Court will order a “release evaluation,” done by CMHHIP. If you do not like the report filed, you (through your attorney) can request a second-independent evaluation.⁸ The court will hold a hearing to decide whether to grant release and what conditions will apply to your release. The initial burden is on the DA to show that you are not eligible for release. If any evidence is introduced that you should not be released, the burden shifts, and you must prove that you are eligible for release under the applicable legal standard. *CR can be revoked if you violate the terms of your release.*⁹

TIP: If you want to file a request for release to the court, you should get an attorney appointed by contacting the defense attorney or office that represented you on the criminal case or by filing with the court a motion for appointment of counsel for the purposes of petitioning for release.¹⁰

Unconditional Release (UCR): Same process as CR (above), but if release is granted unconditionally, that means there are no conditions or restrictions on your release, and you are no longer under the jurisdiction or supervision of the court or CMHHIP.

TEST FOR RELEASE:¹¹ “That the defendant has no abnormal mental condition which would be likely to cause him to be dangerous either to himself or others or to the community in the reasonably foreseeable future, and is capable of distinguishing right from wrong and has substantial capacity to conform his conduct to requirements of law”.

IF YOU FEEL YOUR RIGHTS ARE BEING VIOLATED:

- File grievances¹² and exhaust all steps (including having them sent to the Office of Behavioral Health, CMHHIP CEO, DLC, etc.)
- Contact Disability Law Colorado at (303)722-0300 for an intake
- File complaint with the U.S. Department of Justice, Office of Civil Rights¹³

⁶ See C.R.S. §16-8-118, Temporary removal for treatment and rehabilitation.

⁷ See C.R.S. §16-8-116, Release by hospital authority.

⁸ See C.R.S. §16-8-106, Examinations and report and 108, Examination at instance of defendant.

⁹ See C.R.S. §16-8-115, Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition.

¹⁰ See C.R.S. §16-8-119, Counsel and physicians for indigent defendants.

¹¹ See C.R.S. §16-8-120, Applicable tests for release. Note: this test applies to persons charged with crimes committed on or after July 1, 1983 (but not between July 1, 1983, but before July 1, 1995).

¹² CMHHIP Policy 16.35, Patient Grievance Resolution Process.

¹³ <https://www.justice.gov/actioncenter/submit-complaint>