



COLORADO

State Board of Parole

Brandon Shaffer
Parole Board Chair

Presumptive Parole: FY 2013 Report

**A REPORT SUBMITTED TO THE HOUSE AND SENATE JUDICIARY COMMITTEES
DUE JANUARY 30, 2014, PURSUANT TO C.R.S. 17-22.5-404.5(4)(a)**

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Background

The Colorado Board of Parole consists of seven members appointed by the Governor and confirmed by the Senate. Pursuant to Section 17-2-201, C.R.S. (2013), the Board of Parole has the authority to parole any person who is sentenced or committed to a correctional facility when such person has served his or her minimum sentence and there is a strong and reasonable probability the person will not commit another crime. Various statutes create a "presumption of parole" in certain situations, as described in more detail in this report. Below, we analyze statistics during FY2013 of presumptive parole offenders who were "deferred" (not granted parole), "granted" (released on discretionary parole), "ordered" (released on mandatory parole), and/or "rescinded" (had their grant of parole suspended by the Board).

Subject to the final discretion of the Parole Board, there is a statutory presumption in favor of granting parole to particular offenders, including certain drug offenders, Immigration and Customs Enforcement (ICE) detainees, and offenders eligible for special needs parole. The Parole Board still must ensure that all appropriate guidelines for granting parole are followed as required by Colorado Revised Statute (C.R.S.) 17-22.5-404.

This report is required pursuant C.R.S. 17-22.5-404.5 (4) (a):

THE CHAIRPERSON OF THE PAROLE BOARD SHALL PROVIDE A REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, BY JANUARY 30, 2012, AND BY EACH JANUARY 30 THEREAFTER REGARDING THE IMPACT OF THIS SECTION ON THE DEPARTMENT OF CORRECTIONS' POPULATION AND PUBLIC SAFETY.

This publication will also report on presumptive parole for ICE detainees and special needs parolees, although not required by statute.

Drug Offenders

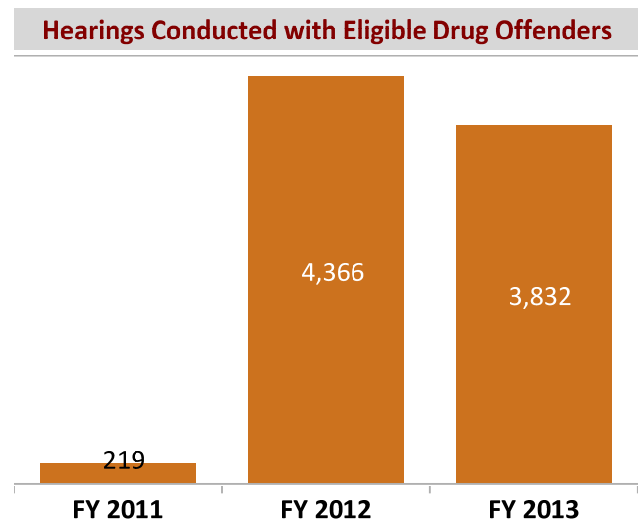
House Bill 10-1352 lowered penalties for unlawful possession and use of controlled substances, making it very unlikely those offenders would serve a prison term for unlawful use or low-quantity possession. However, it was soon realized that offenders with the same crimes, already incarcerated at the time that the law changed, would likely serve longer sentences than those sentenced after them. House Bill 11-1064 created a presumption of parole for those offenders incarcerated for unlawful use or possession offenses committed prior to when HB 10-1352 was enacted on August 11, 2010. To be eligible for presumption, offenders must not have incurred a class I Code of Penal Discipline (COPD) violation within the last 12 months or a class II COPD within the last 3 months, must be program compliant, and must not have an active felony or immigration detainer.

Data Source

A computerized report generates a list of inmates who were eligible for parole at the time of their release hearing, and then the Office of Planning and Analysis augments the list with Parole Board hearing and release data also captured in Department of Corrections' Information System. HB 11-1064 was effective beginning on May 27, 2011.

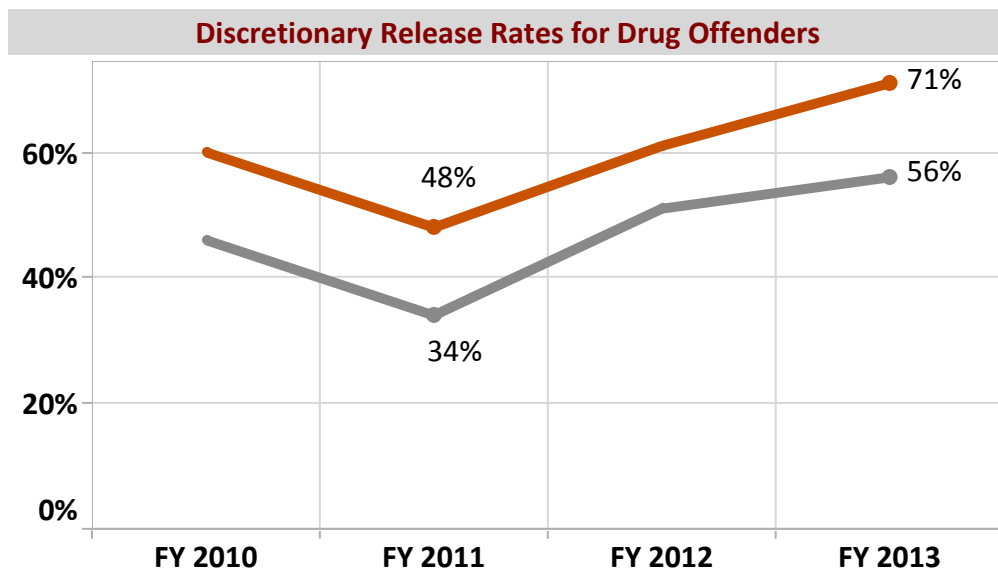
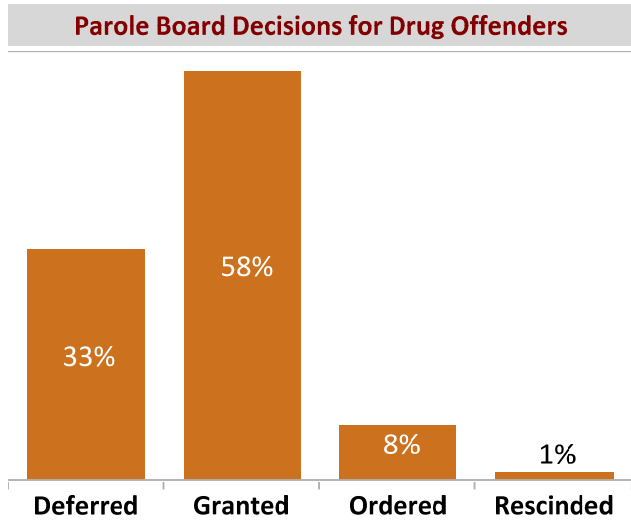
Parole Hearings and Releases

Since the time that this Bill was enacted through the end of fiscal year (FY) 2013, over 8,400 application reviews have been conducted by the Parole Board with eligible drug offenders. Offenders can have multiple hearings within a span of weeks or months; the following data shows all unique hearings (not releases or offenders).



The following graph shows the grant rate at 58% for eligible drug offenders, based on Parole Board decisions. By comparison, 29% of all release hearings conducted by the Board from January 2012 through June 2013 resulted in a parole grant. The hearings data clearly shows that the Parole Board is giving presumptive favor to eligible drug offenders.

Examination of actual releases to parole provides further evidence that the Parole Board is favoring eligible offenders for release. Although related, release data differs from Board decisions because an offender might receive multiple hearings prior to a single release. The bottom graph shows the percent of parole releases that were discretionary. Across time, both before and after the law was passed, drug offenders with unlawful use or possession were more likely to be granted parole. Because the overall rate of discretionary releases increased 65% from FY 2011 to FY 2013, it is not possible to attribute the increase to the passage of HB 11-1064.

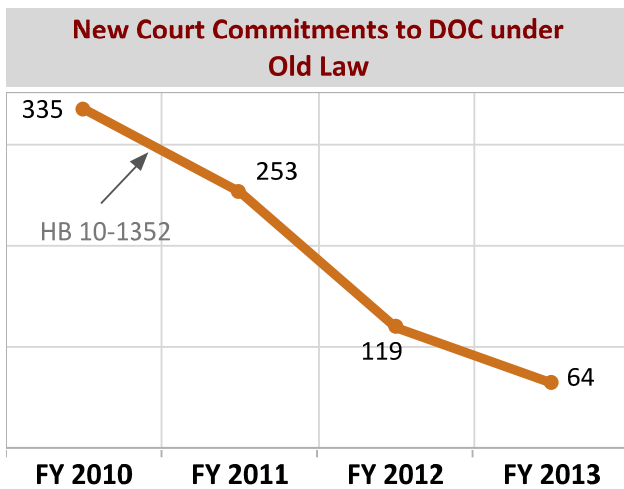


■ Drug Offenders
■ All Offenders

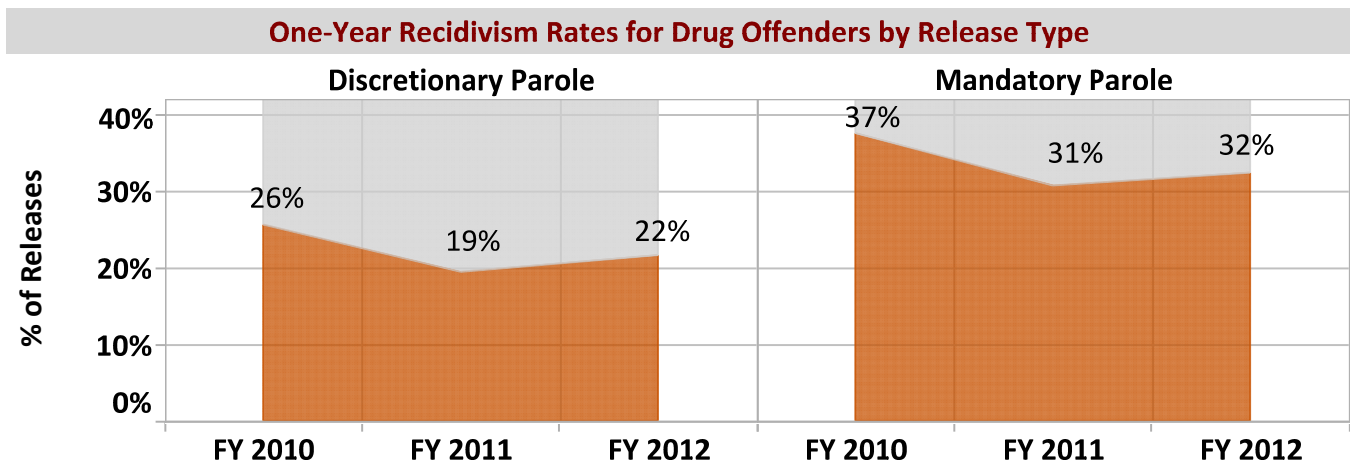
Figure note. Discretionary rate is calculated as percent of all discretionary and mandatory releases to parole. Reparoles and sentence discharges are excluded because governed by other laws.

Impact on Prison Population and Public Safety

Since HB 11-1064 was enacted, the population of eligible drug offenders declined from 1,051 (4.6% of adult inmate population) on June 30, 2011, to 409 (2.0% of adult inmate population) on June 30, 2013. Of the 409 remaining in the inmate population, 54% have released to parole and been revoked due to either a technical violation or a new crime. This is in part due to the granting of discretionary parole, but also due to the diminishing number of offenders sentenced under statutes in effect prior to HB 10-1352. The following graph displays new court admissions to the Department of Corrections (DOC) for unlawful use or possession under the old law.



Recidivism rates were explored for eligible drug offenders for one year following their release to parole. The graph below shows releases both before and after HB 11-1064 went into effect by type of parole release. In general, releases in FYs 2010 and 2011 were prior to the Bill's effective date (a small number in 2011 were after). The results indicate that there was not a meaningful increase in recidivism rates for offenders receiving presumption of parole and that the recidivism rates of discretionary releases continue to be much lower than similar drug offenders who released on their mandatory parole date.



ICE Detainees

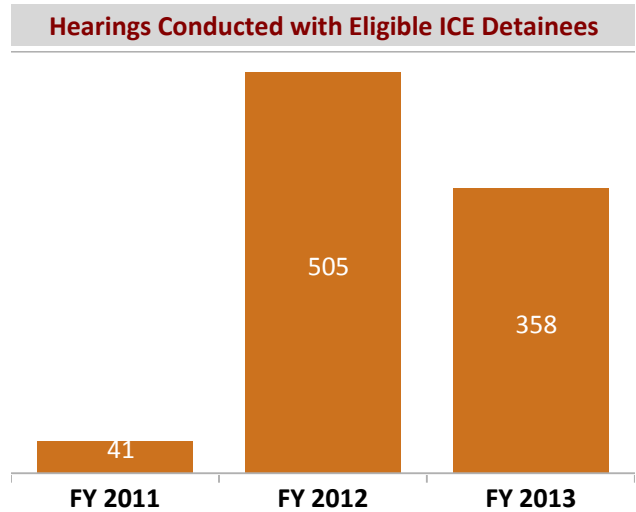
Presumption of parole for a nonviolent inmate with an ICE detainer is based upon an inmate having reached his/her parole eligibility date and having received a score of medium or below for risk to re-offend per the Colorado Actuarial Risk Assessment Scale. Senate Bill 11-241 added a new section, C.R.S. 17-22.5-404.7, creating this presumption of parole release.

Data Source

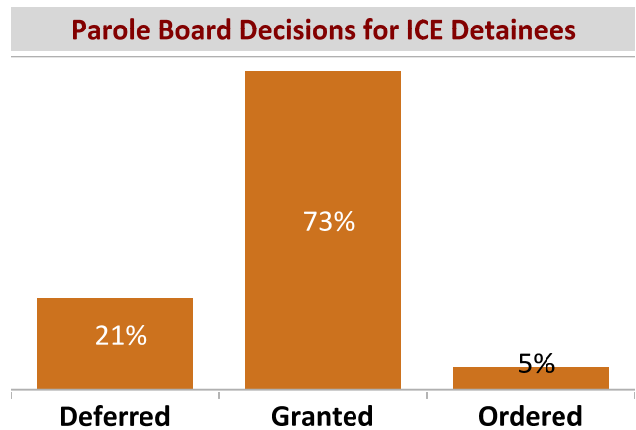
A computerized report generates a list of inmates who were eligible for ICE detainee presumption of parole at the time of their Parole Board hearing, and then the Office of Planning and Analysis augments the list with Parole Board hearings data also captured in Department of Corrections' Information System. SB 11-241 was effective beginning on May 23, 2011.

Parole Hearings and Releases

During FYs 2011 through 2013, a total of 904 hearings were held with ICE detainees who met the eligibility requirements of this statute. These figures represent the number of hearings held, not the number of offenders or releases, as an offender may have multiple hearings across or within years. However, it should be noted that ICE detainees were much less likely to have multiple hearings than the drug offenders.

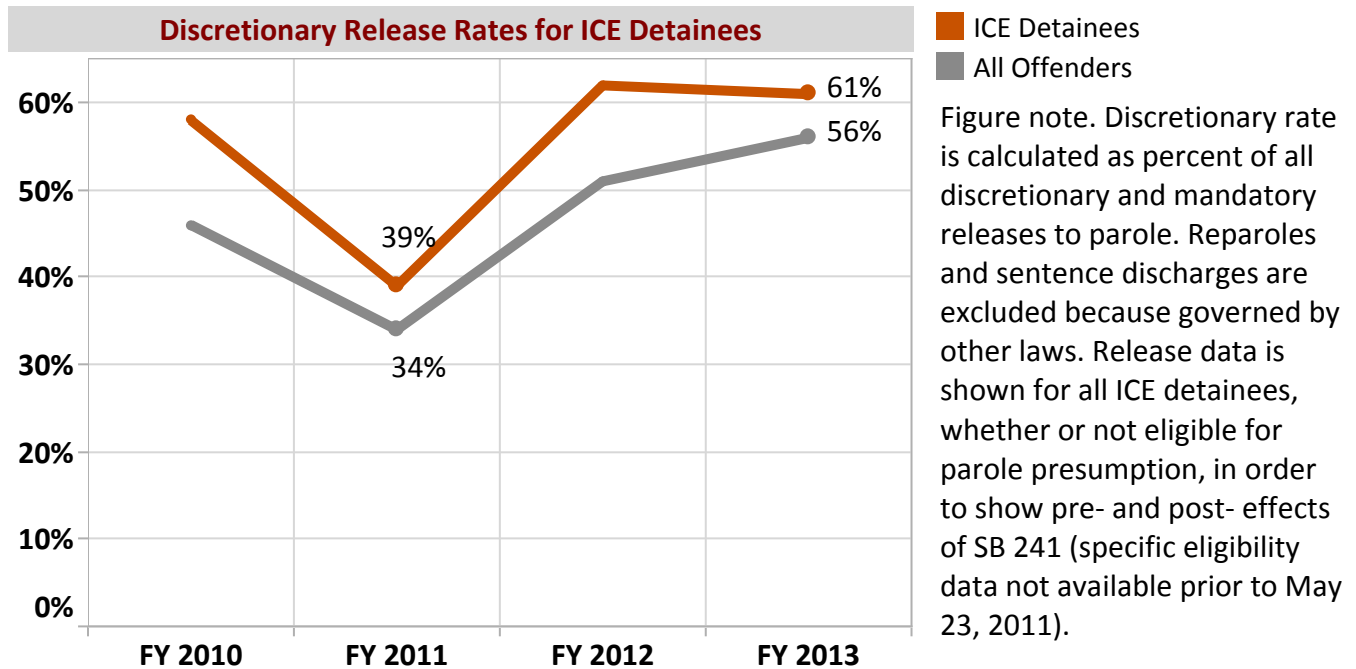


The following graph shows the grant rates by the Parole Board. Across years, parole was granted for 73% of hearings, which is again compared to the typical grant rate of approximately 29%.



The graph below examines actual parole releases of ICE detainees in comparison to all inmate releases to parole. Again, actual releases differ from Parole Board hearing decisions because offenders can have one or more hearings prior to a single release. The data indicates that ICE detainees release

through discretionary parole at a greater frequency than most offenders, both before and after SB 11-241 took effect. Because the overall rate of discretionary parole releases also increased after FY 2011, it is not possible to attribute the increased release of ICE detainees to the passage of SB 11-241.

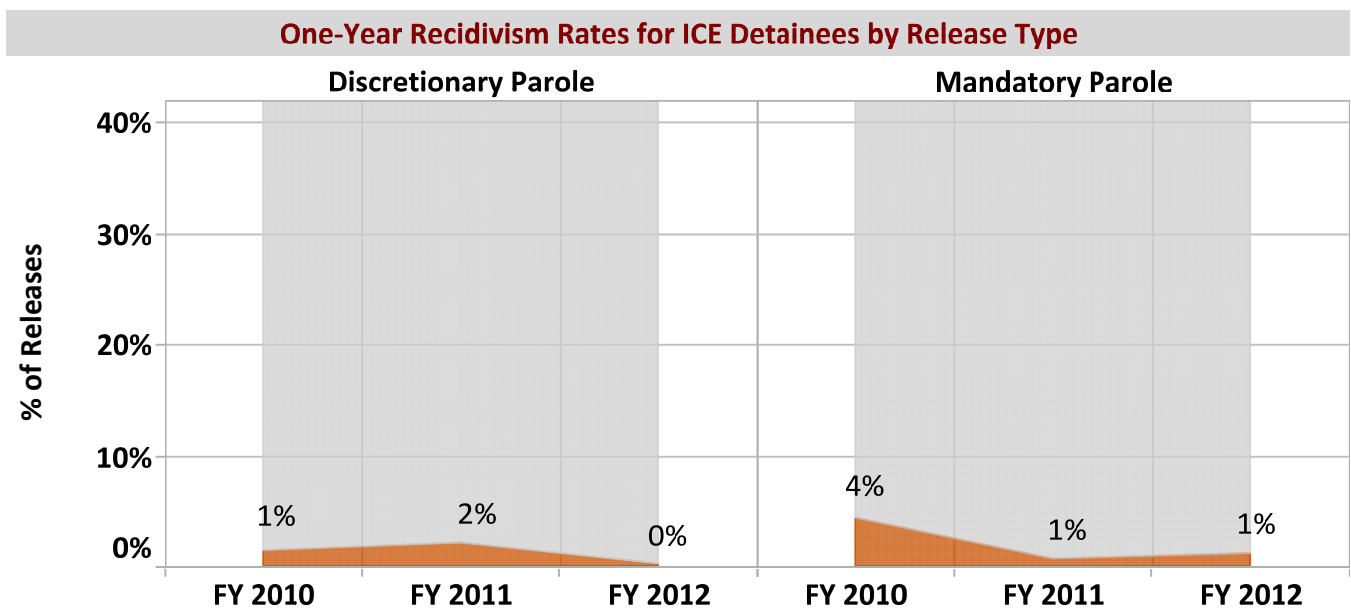
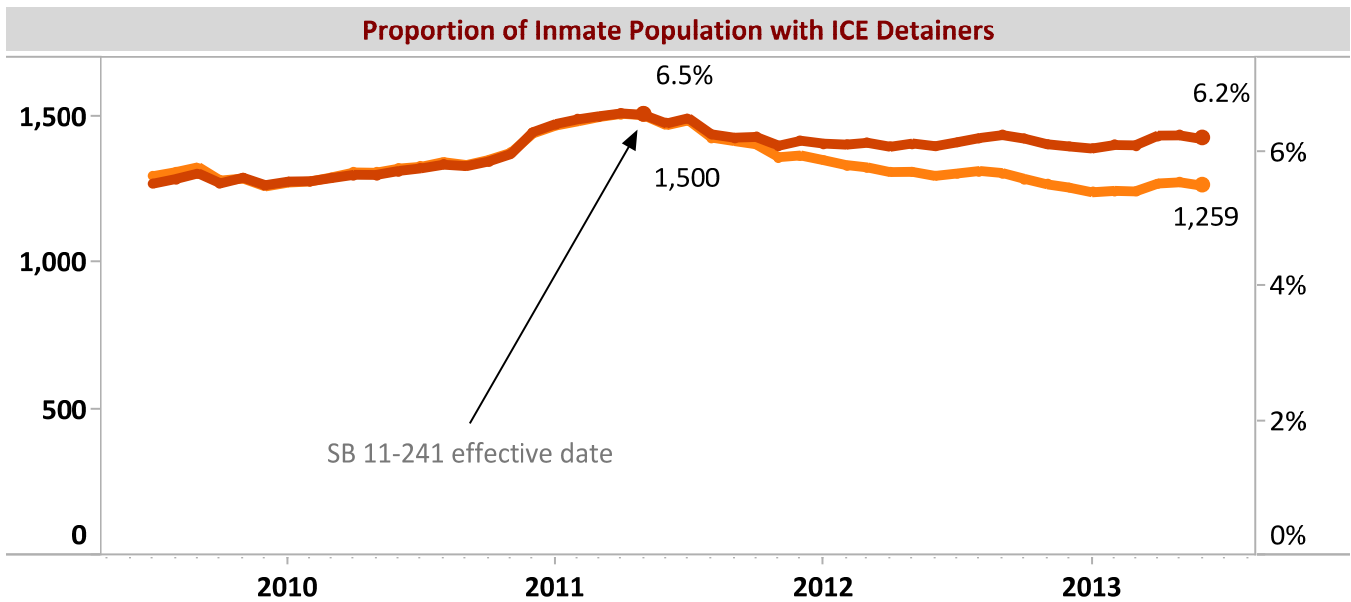


Impact on Prison Population and Public Safety

There was an increase in the number of ICE detainees among the inmate population leading up to this legislation. Since SB 11-241 was enacted, the ICE population has decreased nearly 250 inmates. However, because the overall inmate population has also decreased,

the decline is only slightly greater than for all of the inmate population.

Recidivism rates, as shown in the bottom graph are near zero for all ICE detainees, regardless of whether they received parole presumption or whether they were released under discretionary or mandatory parole.



Special Needs Parole

Special needs parole refers to the release of a special needs inmate from prison to parole. A special needs offender means an inmate who:

- is at least 60 years old; is diagnosed to have a chronic infirmity, illness, condition, disease or mental illness; AND is determined to be incapacitated to the extent that he or she does not pose a risk to public safety,
OR
- suffers from a chronic, permanent, terminal, or irreversible physical or mental illness, condition, disease or mental illness that requires costly care or treatment AND who is determined to be incapacitated to the extent that he or she does not pose a risk to public safety.

Releases are based on a special needs inmate's conditions and medical evaluations. Senate Bill 11-241 modified C.R.S. 17-22.5-403.5 to expand the eligibility requirements and assign the DOC the responsibility of identifying inmates who meet the eligibility criteria and referring them to the State Board of Parole.

DOC clinical staff, case managers, and/or the inmate may initiate the referral process. This process requires a clinical assessment, case management prerelease plan, and notification to victims and the district attorney. All documentation is forwarded to a committee delegated by the Director of Prisons. The committee determines who meets the eligibility requirements and then makes a referral to the Parole Board.

Data Source

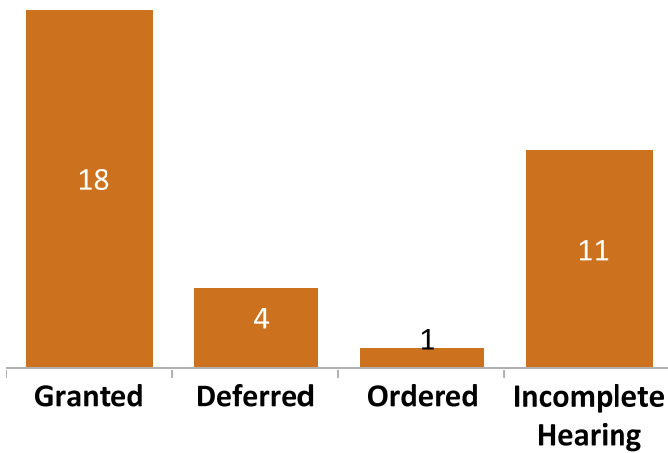
DOC's Prison Operations records dates and decision results, which are then combined by the Office of Planning and Analysis with data in DCIS regarding Parole Board release decisions and subsequent releases to parole. SB 11-241 was effective beginning May 23, 2011.

Release Hearings

From the time that SB 11-241 went into effect through the end of FY 2013, 34 inmates were determined by DOC to meet special needs offender criteria and were referred to the Parole Board (some who were in process prior to the Bill's effective date but had not yet received a release decision are included in this count). The number of referrals by year was: 7 in FY 2011, 14 in FY 2012, and 13 in FY 2013.

The Parole Board then determined the inmate's risk to public safety. The graph on the following page depicts the outcomes of the Parole Board's review. The majority were granted discretionary parole, although a large number did not receive a final determination. The reasons for incomplete hearings included that the offender passed away before a decision was made ($n = 8$), the offender had not reached parole eligibility ($n = 1$), the offender was released by the courts to probation ($n = 1$), and the offender was tabled due to lack of suitable care facility ($n = 1$). It should be noted that finding suitable care facilities for convicted felons under active supervision is quite difficult, and likely the reason for the high mortality rate prior to a decision being reached.

Parole Board Decisions for Special Needs Offenders



Impact on Prison Population and Public Safety

Of the 18 offenders who were granted parole, 17 actually released to parole and 1 died prior to release. Due to the small number of offenders released and short time period at risk post-release, it is difficult to quantify the effect on public safety or the prison population. However, only two of the 17 offenders who released had their parole revoked for violations of the conditions of their parole, and both were subsequently reparaoled approximately four months later. None were returned to prison for new crimes. The majority of special needs offenders are still under parole supervision ($n = 11$), but three died while on parole and three successfully completed their parole sentence.

Conclusions

Two legislative bills, HB 11-1064 and SB 11-241, were passed during the 2011 legislative session to mandate that the Parole Board show presumptive favor in granting parole to particular offenders, including certain drug offenders, nonviolent Immigration and Customs Enforcement (ICE) detainees, and special needs inmates. Although the bills added or changed offender eligibility criteria, no changes were made with regards to the release criteria. Therefore, the same release guidelines applied to these offenders as were used by the Board of Parole in granting parole to any offender.

The data indicate the Parole Board is strongly granting presumptive favor to both drug offenders and ICE detainees. However, because the legislation targets offenders who are lower risk, these offenders were already favored for early release (i.e., discretionary parole) before the legislation was created. The conclusions to be drawn are that the Parole Board is complying with the spirit and the intent of the legislation, but there is no compelling evidence that these specific legislative mandates were the cause of a change in practices.

The central purpose of HB 11-1064 was to provide advantages to offenders convicted of unlawful use or possession who were sentenced to longer prison terms under the old law than those sentenced pursuant to HB 10-1352. The data presented herein show that the number of offenders admitted under the old law is declining and they are receiving presumptive favor of parole. As of June 30, 2013, the population of targeted drug inmates ($n = 409$) was 39% of its size on June 30, 2011.

Additionally, 221 of the 409 drug offenders had already paroled at some point during their incarceration and were reincarcerated due to a parole revocation.

The Parole Board must achieve an adequate balance between release rates and public safety. That is to say that, optimally, the Board would release the maximum number of offenders without increasing the public safety risk. The recidivism data shows that drug offenders released onto discretionary parole were likely to fail at approximately the same rate before and after parole presumption was in effect, which was at a substantially lower rate than similar offenders who released on their mandatory parole date. For ICE detainees, recidivism rates approach zero, which is very minimal public safety risk at most. Thus, it can be concluded that the increased rate of releases has not so far shown an increased threat to public safety.

Special needs parole is harder to assess because of the smaller number of offenders and lack of cost data. Reliable data regarding special needs offenders does not exist prior to the effective date of SB 11-241, so it is difficult to gauge whether the statute changes increased the number of special needs parolees. As well, it is difficult to know the extent to which special needs parole may be needed but impractical due to the challenges of finding appropriate end-of-life care for felons. The small number who have released makes it difficult to adequately quantify recidivism rates, but none released have been convicted of new crimes thus far.