

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

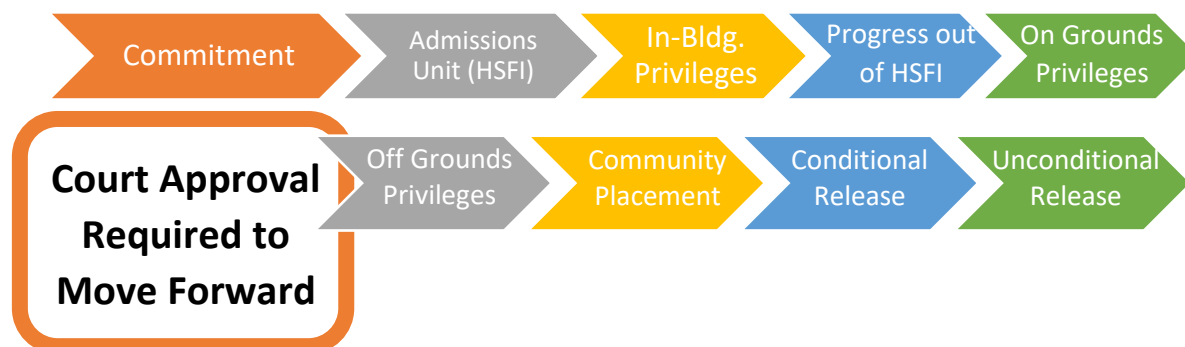
Disability Law Colorado, June 2021

BASIC FACTS:

- NGRI can result from trial or from plea agreement.¹
- In Colorado, NGRI adjudication requires mandatory commitment to the Division of Human Services, which usually means you will be placed at the Colorado Mental Health Institute at Pueblo (CMHIP).
- There is no set length for your commitment. It is sometimes referred to as “one day to life.” You can be held at CMHIP until the court that heard your criminal case says that you met criteria for release (either conditional or unconditional).
- There is also no 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 CMHIP.²

TYPICAL PROGRESSION THROUGH CMHIP:

- Most NGRI patients are first placed on an “Admissions Unit” upon arriving at CMHIP. 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. Now, 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 CMHIP to release



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

<i>Olmstead v. L.C.</i> , 527 U.S. 581 (1999)	Right to be treated in least restrictive environment
<i>Jones v. U.S.</i> , 103 S. Ct. 3043 (1983)	Can be confined longer than would have been in prison but cannot be “punished.”
<i>Foucha v. Louisiana</i> , 504 U.S. 71 (1992)	Must be released if not both mentally ill and dangerous
<i>People v. Parrish</i> , 879 P.2d 453 (Colo. App. 1994)	Can be held based on ASPD “abnormal mental condition, if it is considered treatable.
<i>Neiberger v. Hawkins</i> , 70 F. Supp. 2d 1177 (1999)	Confirms that C.R.S §27-65 protections DO apply to NGRI patients

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 CMHIP Policy 1.61, “Patient Progressive Movement”

YOUR RIGHTS AT CMHIP (See C.R.S. §27-65-116, 117; CMHIP Policies 16.50, 16.51, 1.28):

- To appropriate treatment, including “active treatment”
- Provided in the least restrictive, most integrated setting
- Freedom from discrimination⁴
- Confidentiality
- To vote
- Access to your medical records⁵
- To make and receive phone calls, including confidential calls with attorneys
- To send and receive letters, access to writing materials
- Visits
- To wear your own clothing and have your own property
- To file grievances

RELEASE AND TEMPORARY PHYSICAL REMOVAL (TPR):

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. CMHIP must request this from the court, and the court must grant it. You are not necessarily entitled to an attorney for this step.⁶

Conditional Release (CR): Must be granted by the court. Can be requested by you or by CMHIP after you have been at CMHIP for 6 months minimum.⁷ Court will order a “release evaluation,” done by CMHIP. 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 CMHIP.

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, CMHIP 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

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.

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 CMHIP Policy 16.35, Patient Grievance Resolution Process

¹³

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