

Please Note: The information contained in this Guide is not intended as legal advice in any individual's case. There are many exceptions and variations in the parole consideration process. If you have questions, please consult with an experienced parole attorney.

HOW TO CHALLENGE A COMPREHENSIVE RISK ASSESSMENT

This Guide is intended to help you understand the Comprehensive Risk Assessment (CRA or “psychological evaluation”) process and challenge any factual errors, mischaracterizations, or omissions you find in those reports.

How often are CRAs prepared? A person eligible for parole is entitled to have a CRA prepared, if on the date of the hearing, at least three years will have passed since the most recent CRA became final, or if it is the person's very first parole hearing. (CCR § 2240(d)(1).) CRAs are final on the date on which they are approved by the Chief Psychologist or Senior Psychologist, *not* the date on which the person was interviewed. (CCR § 2240(c)(2).) This means that a person eligible for parole might have the same CRA used in multiple parole consideration hearings.

It is possible, however, that a new CRA will be prepared earlier, even if the most recent CRA is not yet three years old. This most frequently occurs when the person eligible for parole becomes eligible for a new type of special parole consideration, such as youthful or elderly parole. For that reason, when preparing for a parole hearing, it is very important that both the person eligible for parole and/or their attorney be aware of the date of the last CRA. They also need to determine whether the person eligible for parole has recently become eligible for a new type of special parole consideration and whether that special parole consideration was evaluated in the most recent CRA. If, for example, a person recently became eligible for a youth offender parole hearing but their most recent CRA does not discuss the hallmark features of youth, even if their most recent CRA is not yet three years old, a new CRA must be prepared.

If a new CRA is required, how soon before the hearing will it be prepared? If the person eligible for parole is entitled to a new CRA, it must be provided to them no later than 60 calendar days prior to the date of the hearing. (CCR § 2240(d)(2).) One of the many reasons attorneys should meet with their clients in the weeks prior to a hearing is to allow time to identify any errors in the report that need to be addressed.

If there are errors in a CRA, what is the process for objecting to them? If the person eligible for parole and/or their attorney believes that there are factual errors, mischaracterizations, or omissions in the CRA, it is best to object to them in advance of the hearing. Objections are made in the form of a letter to the Chief Counsel of the Board and

must be addressed: “Attention: Chief Counsel / Risk Assessment Objection.” (CCR § 2240(e)(3).) Objections must be received 30 calendar days before the date of the hearing. (CCR § 2240(e)(1).)

In general, attorneys and clients should have at least one of their meetings between 45 and 60 days before the scheduled hearing date. This way, the contents of the CRA can help to determine whether to make written objections by the 30-day deadline and whether to “waive” the hearing for a year or more. (Waivers are discussed in our Guide entitled, *Overview of California’s Parole Consideration Process & How to Prepare For It.*) Requests to waive a hearing should be made at least 45 days before the scheduled hearing date.

The Board has narrowly defined the types of errors that can be objected to as “factual errors,” which the Board defines as “an untrue circumstance or event. A disagreement with clinical observations, opinions, or diagnoses is not a factual error.” (CCR § 2240(e)(2).) Despite this narrow interpretation by the Board and its regulations, we encourage you to continue raising all types of errors so that the Board has a better understanding of the problems with the CRA process. The following are some general guidelines to consider when drafting a letter objecting to errors in a CRA:

- If the letter is objecting to an ***error of fact*** in the CRA, such as the Board’s psychologist incorrectly reporting a name or date, it can be helpful to include documentation that supports your correction. Corroborating documentation can be attached as an exhibit at the end of the letter. Corroboration that is the most helpful is that which can be found in the Central File or in court documents.
- If the letter is objecting to an ***omission of fact*** or ***mischaracterization of a statement made***, it can be helpful to include documentation that shows the omitted fact elsewhere or that properly explains the statement. Again, corroboration that is the most helpful is that which can be found in the Central File or in court documents.
- If the letter is attempting to object to a ***clinical observation, opinion, or diagnosis***, it is likely that the Board will decline to address the objection because these do not fall within the definition of “factual error.” To avoid this, you should object to the underlying erroneous facts that resulted in the problematic observation, opinion, or diagnosis. If the opinion or diagnosis is based on factual errors, it may not be valid.
- If the letter is objecting to ***multiple errors***, it can be helpful to number the errors and categorize them by type. For example, the letter might state: “Errors 1-4 relate to substance abuse, while Errors 5-7 related to in-prison conduct.” Then, outline each error individually. If there are multiple errors, it can also be helpful to point

out their *cumulative effect* on the CRA. In other words, even if any individual error is less important, consider whether the weight of all of the errors together weakens the CRA.

- No matter what type of error is being objected to, it is very important that the letter outline *how the alleged error elevated the psychologist's risk rating*. If the alleged error cannot easily be tied to the person's risk, it is not likely the Board will act to address it.
- Consider what will be *most persuasive to the Board*. Outright attacks on the CRA or the psychologist who wrote it, even if justified, are less helpful than arguing that an error-filled CRA hinders the Board's ability to accurately understand the relevant facts in a particular case. Take the Board's perspective into account and try to make arguments that will be sympathetic to them.
- *Not all errors are worth raising in advance of a hearing*. When errors have elevated a risk rating to moderate or high, can clearly be disputed, and are so fundamental that they have led to a biased evaluation, writing an objection letter will likely be a good avenue to pursue. However, if the risk rating is a low and the errors are not substantial, e.g. a name is recorded incorrectly, writing an objection letter may not be necessary because minor errors can be directly raised and corrected in the hearing. Weigh the costs and benefits before drafting an objection letter.

What happens once a letter alleging errors in a CRA has been timely submitted?

Once the Board receives the objection letter, the Board's Chief Counsel will review the CRA and evaluate whether it contains the errors alleged. (CCR § 2240(f)(1).) The Board's Chief Counsel can either find that no error exists and overrule the objection or find that an error does exist and refer the case to the Chief Psychologist. (CCR § 2240(f)(2)(A)-(B).) If the case is referred to the Chief Psychologist, the Chief Psychologist will determine whether the alleged error "materially impacted" the evaluating psychologist's conclusions regarding risk of violence. (CCR § 2240(g)(1).) If the errors *did not* "materially impact" the evaluating psychologist's conclusions regarding risk of violence, the Chief Psychologist will direct that the errors in the CRA be corrected in an addendum. (CCR § 2240(g)(1)(A).) If the errors *did* "materially impact" the evaluating psychologist's conclusions regarding risk of violence, the Chief Psychologist will direct that a new CRA be prepared. (CCR § 2240(g)(1)(B).) CRAs that must be revised or redone will be removed from the Central File. (CCR § 2240(g)(3).)

When must the Board notify the person eligible for parole and/or their attorney about the outcome of the objections? Whatever decision the Board's Chief Counsel and Chief Psychologist make with respect to the objections raised, their decision will be noted in an addendum to the CRA, and a copy is provided to the person eligible for parole and/or their attorney. The Board must notify the person eligible for parole and/or their attorney about

their decision no less than 10 calendar days prior to the hearing. (*See* CCR § 2240(f)(2)(A); CCR § 2240(g)(2).)

What happens if the Board does not address the objections in time? If the Board does not address the objections in a timely manner, the person eligible for parole and/or their attorney can raise the errors in the hearing (see below).

What happens if the objection letter is not received 30 days prior to the hearing? If the objection letter is not received 30 days prior to the hearing, the Chief Counsel will determine whether or not there is sufficient time for the appropriate review to occur. If the Chief Counsel determines that sufficient time *does exist*, the review process will be completed. If the Chief Counsel determines that sufficient time *does not exist*, the objections will be referred to the hearing panel. (CCR § 2240(h).) The Chief Counsel's decision not to respond to an untimely objection is not alone good cause for either a postponement or a waiver.

How are objections addressed in the hearing? If objections are raised for the first time in the hearing or if objections have been referred to the hearing panel, the hearing panel will first decide whether the person eligible for parole and/or their attorney have demonstrated good cause for failing to submit written objections 30 days before the hearing. (CCR § 2240(i)(1).) If the hearing panel finds that the person eligible for parole and/or their attorney *have not* demonstrated good cause, the presiding commissioner may overrule the objections on that basis alone.

If good cause *has been* established, the hearing panel will consider the objections. The hearing panel can either determine that the CRA does or does not contain factual errors. If the hearing panel determines the CRA *may* contain factual errors, the presiding commissioner will identify each alleged factual error and refer the CRA to the Chief Counsel for review. If there is enough evidence before the hearing panel to evaluate suitability for parole, however, the hearing panel will disregard the alleged factual error, as well as any conclusions affected by the alleged factual error, and complete the hearing. If there is not enough evidence before the hearing panel to evaluate suitability for parole, the presiding commissioner will postpone the hearing pending the review process.

If the hearing panel determines the CRA *does not* contain a factual error, the presiding commissioner will overrule the objection and the hearing will be completed.