

*Please Note: The information contained in this overview 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.*

## OVERVIEW OF CALIFORNIA'S PAROLE CONSIDERATION PROCESS & HOW TO PREPARE FOR IT

### I. Consultations

A *consultation* is the first step of the parole process. It may occur five to six years prior to the person's initial parole suitability hearing. Consultations are conducted for people serving life sentences and those serving long determinate sentences if they are eligible for parole consideration, such as people who qualify for youthful parole. During a consultation, a Board of Parole Hearings (BPH) Commissioner, Deputy Commissioner, or both will review the person's activities and conduct pertinent to both parole eligibility and to the granting or withholding of post-conviction credit (when applicable). The panel will provide the person information about the parole hearing process, discuss the legal factors relevant to their suitability or unsuitability for parole, and make individualized recommendations regarding their work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the panel will issue its positive and negative findings and recommendations to the person in writing.

Prior to January 1, 2014, consultations were called *documentation hearings*. Senate Bill 260 changed the timing of this hearing. Previously, the Board met with individuals eligible for parole during the third year of their incarceration.

### II. Parole Consideration Hearings

**When will the first hearing be scheduled?** A person's *minimum eligible parole date* (MEPD) is the earliest date they become eligible for release on parole. In general, people serving life sentences become eligible for parole once they have served the minimum term ordered by the court. However, that minimum term can be reduced by any goodtime and/or worktime credits they earn. The amount of credit (or time off the minimum term) earned is based on the type of crime and the date it was committed. The first parole consideration hearing will be scheduled to take place roughly thirteen months prior to the MEPD. However, the MEPD may change if credits are lost because of rule violations.

New laws also allow for those sentenced to long terms, including determinate (or non-life) terms for crimes committed before they turned 26 to have advanced parole hearings. Penal Code Section 3051 outlines when *youth offender parole hearings* are due. For determinate terms, hearings are due during the 15th year of incarceration; for life sentences of less than 25 years to life, hearings are due during the 20th year of incarceration; and for life sentences of 25 years to life, hearings are due during the 25th year of incarceration. For more information on youth offender parole, contact the Prison Law Office at General Delivery, San Quentin, CA 94964, to request a copy of their Youthful Offender Parole Guide.

**What if the person eligible for parole is not ready to go to their hearing?** People may sometimes decide that they do not want to appear before the BPH on their scheduled date. This might be due to recent disciplinary action, not enough participation in self-help or therapy programs, or some other issue that might lead to both a denial of their parole and a long period to wait for the next hearing.

If the person eligible for parole decides not to proceed with their hearing on the scheduled date, they have three options. They should discuss any decision to reschedule their parole hearing with their attorney. They must submit a Board of Parole Hearings Form 1003 in order to remove the hearing from the calendar. There are three main ways to put off a hearing:

**1. Waiver:** The person eligible for parole can choose to waive their hearing for 1, 2, 3, 4, or 5 years. This means that they give up the right to have a hearing and they choose how long (up to 5 years) until the next hearing. If the BPH receives the signed Form 1003 at least 45 days before the scheduled hearing date, the waiver request will be granted. If the BPH receives it less than 45 days before the scheduled hearing, they will likely deny the request to waive the hearing and proceed with the hearing unless the person eligible for parole can show “good cause” why they did not send it sooner. If the person waives their hearing, they cannot later petition to advance it.

**2. Stipulation:** The person eligible for parole can offer to stipulate that they are *not* suitable for parole and request that the BPH schedule their next parole hearing in 3, 5, 7, 10 or 15 years. A stipulation is an admission that the person is unsuitable for parole and they must tell the Board why they are unsuitable. The admission that they are unsuitable and their explanation of why they are unsuitable become part of the record for the next hearing. The person may stipulate to unsuitability any time – even on the day of the parole hearing. Keep in mind that this is an offer to stipulate, which the BPH can refuse to accept. Sometimes, the BPH believes the offer does not cover a long enough period of time, in which case they may encourage a longer stipulation or insist on going through with the hearing. Unlike waivers, if the person offers to stipulate and the BPH accepts the stipulation, the person can later petition to advance their next hearing.

**3. Postponement:** The person eligible for parole can request a postponement of their hearing to a later date. They can make this request at any time, but the sooner they make the request, the better. The shortest period for a postponement is to the “next available” date, which is usually 4 to 6 months. The BPH only grants postponements for extraordinary circumstances; if the person thinks they need one, they should request it but there is no guarantee it will be granted.

**What rights do people eligible for parole have at hearings?** People eligible for parole are entitled to attend their hearings in person, to have an attorney present, to ask questions, to receive all hearing documents at least ten days in advance of the hearing, to have their cases individually considered, to receive an explanation of the reasons for the BPH’s decision, and to receive a transcript of the hearing.

**Who will be at the hearing?** Parties attending parole hearings include the person eligible for parole, their attorney, a BPH Commissioner (sometimes two) and Deputy Commissioner, a representative from the District Attorney’s office, two correctional officers, and the victims and/or their next of kin or representatives. People up for parole are not permitted to call witnesses or to have their family members attend, unless those family members happen to also be victims of the life crime.

**What will the person eligible for parole be asked about at the hearing?** The main topics discussed at parole hearings are the following: the person’s life prior to the life crime; any prior juvenile or adult criminal history; the life crime and the circumstances surrounding it; conduct (both good and bad) in prison; recent Comprehensive Risk Assessments (CRAs or psych evaluations) prepared for the BPH; and plans for release upon parole.

When discussing these topics, it is very important that the person be able to demonstrate that they have gained a clear understanding of their background prior to the life crime (including family relationships and prior criminal or juvenile record), the circumstances leading to the crime, and how they have resolved and can prevent a relapse to the circumstances that led them to violence. These circumstances may include addiction, past experiences of trauma, and other factors that contributed to the lifestyle in which the crime took place. A person’s ability to understand and discuss these factors determines whether or not the Board finds that they lack “*insight*.” If the person eligible for parole does not understand these factors, they will be denied parole, no matter how much time they have served and no matter how spotless their disciplinary record is.

Being able to explain these circumstances and factors is important because the Board’s theory is that, unless the person truly understands how they ended up in the place where such a crime could be committed, then they cannot show that it will not happen again. Set forth below are some specific areas that should be explored when approaching a parole hearing. Family members and friends can help explore these areas. These topics touch on areas that are very sensitive and can reach down to the very core of what shaped someone’s

decisions about how to live. Although some of this material may seem “touchy-feely,” exploring these issues can have a very powerful impact on the person’s relationships and on their ability to show the Board just how much they have learned and changed while incarcerated. There is also a very good chance that this material will uncover issues that the person only feels comfortable discussing within a confidential relationship with the attorney who is going to represent them in their hearing. If a person’s attorney is unwilling to explore these issues, they should re-consider whether that attorney is really helping them get ready for their parole hearing.

**How can the person eligible for parole prepare for the hearing?** Below, are some questions that one should be ready and able to answer in the hearing. These topics are not intended to be tackled all in one sitting, however. One should take time to consider each topic and the various factors that have shaped their life.

1. What factors in your childhood and upbringing contributed to your crime? How did those factors contribute specifically?
2. What character traits contributed to your crime and how did they contribute?
3. Have any of those same character traits contributed to misconduct in prison (including things you were never caught for)? If so, how?
4. What do you understand about the impact your actions had on the victim(s) of your crime or the victims of other misconduct, and how have you attempted to make amends to them?
5. How have you addressed the childhood and upbringing factors and character traits since you have been in prison?
6. What tools do you have now that you did not have at the time of the crime (or at the time of prison misconduct), and are there specific programs that you credit for gaining those tools?
7. What challenges do you anticipate upon being paroled?
8. How will your parole plans and support system help you address those challenges?
9. What specific patterns of behavior do you need to prevent relapse to, and how will you prevent relapsing? Include specific warning signs or triggers, as well as your coping mechanisms in response to those warning signs or triggers. Identify which of those triggers or warning signs are about people, places and things (external) and which ones are about your own thoughts, feelings and character traits (internal).

**What can family and supporters do to help?** A person’s family and other supporters play a significant role in their parole plans. Through their letters to the BPH, supporters can demonstrate where their loved ones are invited to live once released, where they are offered employment, where they may participate in any necessary transitional program (e.g., drug or alcohol treatment), and any other financial, emotional, or spiritual support they may need. For more information about writing letters of support, write to UnCommon Law or visit our website.

### **III. Comprehensive Risk Assessments (CRAs or psych evaluations)**

Between four and six months prior to the parole consideration hearing, the Board will send one of its psychologists to interview the person eligible for parole, review their Central File, and write a report that attempts to predict their risk of future violence. This report is one of the most important documents the Board will use in determining whether or not the person will be granted parole. However, people too often make the mistake of not engaging an attorney or working on the areas discussed in this Guide until *after* the CRA is already written. In many cases, it is too late by then to have a significant impact on the parole hearing. This is because the psychologist is previewing the case for the Board. The person eligible for parole should review their Probation Officer's Report and any prior hearing transcripts or CRAs before meeting the psychologist.

If the psychologist finds that the person does not understand the factors that contributed to their crime or that they have not resolved some of those factors, the CRA will conclude that the person lacks insight or needs more time and therapy to work on those areas. This conclusion will almost guarantee a parole denial of at least three or five years. The denial will be longer if the person also has recent rule violations. For more information about the CRA process and challenging errors in CRAs, write to UnCommon Law or visit our website.

### **IV. Potential Hearing Outcomes**

**What happens when parole is denied?** Due to the passage of Proposition 9 (Marsy's Law) in 2008, people denied parole at either an initial or subsequent hearing will have another hearing scheduled either three, five, seven, ten or fifteen years later. It is possible, however, to advance the date of a subsequent hearing through the Board's Administrative Review and Petition to Advance processes. For more information about what happens after parole is denied, write to UnCommon Law or visit our website.

**What happens when parole is granted?** On average, the Board grants parole in approximately twenty to thirty percent of the cases they hear. Even though the Board grants a person parole, however, it does not mean they will be released right away. This is because after the parole hearing, the case will be reviewed by the BPH's Decision Review Unit for 120 days. If they affirm the date, then the case proceeds to the Governor's Office for an additional 30 days of review. By the end of the 30 days, the Governor may either reverse the parole grant or let the decision stand, after which the person will be released. (This extra 30 days for the Governor's review does not apply in non-murder cases.)

In cases other than murder, the Governor cannot directly reverse a parole grant. Instead, the most the Governor can do is request that the full Board conduct an *en banc* review at one of the Board's monthly Executive Meetings and schedule a rescission hearing, at which the person's grant may be taken away (rescinded). In these cases, the Governor's

review must take place within 120 days following the parole hearing; no additional 30-day period applies.

If a parole grant is reversed by the Governor or rescinded by the Board, the person is placed back into the regular rotation of parole consideration hearings unless and until they are granted parole again. The next hearing will generally take place 18 months following the hearing at which parole was last granted. Some people are granted parole several times before they are finally released from prison. For more information about what happens after parole is granted, write to UnCommon Law or visit our website.

**What happens when commissions cannot agree?** If a hearing results in a split decision between the Commissioner and Deputy Commissioner, the case goes to the full Board at a monthly Executive Meeting. This is called an *en banc* review, and a majority vote is required for a person to be granted parole. Members of the public may attend this hearing and speak to the Board. For more information about split decisions, write to UnCommon Law or visit our website.

## **V. Challenging BPH Decisions in Court**

At any stage of the parole consideration process, a person eligible for parole may ask a court to intervene and correct some unlawful conduct by the BPH. In cases against the Governor, courts might set aside the Governor's decision and allow the person to be released. In cases against the BPH's denial of parole, courts might order the BPH to conduct a new hearing. Over the years, many cases litigated by people in prison have helped establish the legal limits on conduct by the BPH and the Governor. Important cases include: *In re Rosenkrantz* (2002) 29 Cal.4th 616; *In re Dannenberg* (2005) 34 Cal.4th 1061; *In re Lawrence* (2008) 44 Cal.4th 1181; and *In re Shaputis* (2008) 44 Cal.4th 1241. For summaries of these and other relevant cases, write to UnCommon Law or visit our website.

## **VI. Life on Parole**

Most life-sentenced people who are released on parole nowadays must serve a minimum of five or seven years on parole before they may be discharged. However, these parolees face a maximum of a lifetime on parole if parole authorities find that there is good cause to believe they continue to require intense parole supervision. While on parole, they must abide by specific conditions supervised by a parole agent. A former life-sentenced person who is on parole faces the possibility of a new life sentence if they are returned to prison for even a minor violation of parole.