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**Your Responsibility When Using this Information:**

We did our best to give you useful and accurate information. We know incarcerated people often have trouble getting legal information, but we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use the information below or included here, it is your responsibility to make sure that the laws have not changed and still apply to your situation. Most of the materials you need should be available in the law library, including the law library materials on the CDCR electronic tablets.

**“Youth Offender” Parole Hearings**  
**(and other possible ways to get resentencing or early parole for**  
**offenses committed as a juvenile or young adult)**

(updated April 2024)

This information is for people serving lengthy prison terms in California for crimes committed when they were juveniles (under age 18) or young adults (under age 26). The California Department of Corrections and Rehabilitation (CDCR) calls this group “youth offenders.” Many “youth offenders” can be considered for early parole at a special Youth Offender Parole (YOP) hearing (YOPH). The purpose of this letter is to help you understand what a YOP hearing is and whether you qualify for a YOP hearing, and to point you to resources on preparing for a YOP hearing. The letter also summarizes other options for early release or resentencing that may benefit some people convicted for crimes committed when they were juveniles or young adults.

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## 1. What is a Youth Offender Parole hearing?

A **Youth Offender Parole (YOP)** hearing is a special type of parole hearing for “youth offenders” – people serving sentences for crimes committed when they were juveniles or young adults.<sup>1</sup> California created YOP after courts recognized that parts of the brain responsible for impulse control, understanding consequences, and other executive functions are not fully developed until a person is in their mid-to-late 20, and that people who commit crimes when they are young are likely to mature and become rehabilitated as they get older.<sup>2</sup>

At a YOP hearing, the Board of Parole Hearings (BPH) must give “great weight” to youth-related mitigating factors when deciding if you are suitable for parole. These factors include: your age at the time of the crime, immaturity, vulnerability to negative influences, and capacity to change, as well as evidence of your growth and maturity over time.<sup>3</sup> Thus, BPH rules say that the “hearing panel shall find a youth offender suitable for parole unless the panel determines, even after giving great weight to the youth offender factors, that the youth offender remains a current, unreasonable risk to public safety.” The panel must discuss which youth factors are present and how those factors are outweighed by relevant and reliable evidence of current public safety risk.<sup>4</sup> BPH must do more than give “lip service” to youth factors.<sup>5</sup>

## 2. Do I qualify for a Youth Offender Parole hearing?

To be *eligible* for a YOP hearing, you must be:

- serving a determinate term (set number of years) for a crime committed before you turned 26; **or**
- serving an indeterminate term (life with the possibility of parole) for a crime committed before you turned 26; **or**
- serving a life without parole (LWOP) term for a crime committed before you turned 18.<sup>6</sup>

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<sup>1</sup> The Youth Offender Parole law is in Penal Code § 3051, § 3051.1, § 4801. CDCR and BPH regulations for Youth Offender Parole are in the California Code of Regulations, title 15, § 2440-§ 2446, § 3498.1-§ 3498.2.

<sup>2</sup> Some of the relevant cases are *Graham v. Florida* (2010) 560 U. S. 48 (LWOP for juvenile’s non-homicide crime is cruel and unusual punishment); *Miller v. Alabama* (2012) 567 U.S. 460 (mandatory LWOP for juvenile’s homicide crime is cruel and unusual punishment); *People v. Caballero* (2012) 55 Cal.4th 262 (term of life with the possibility of parole that is longer than life expectancy is equivalent to LWOP and cannot be imposed for a juvenile’s non-homicide offense); *People v. Gutierrez* (2014) 58 Cal.4th 1354 (Penal Code § 190.5(b) previously was interpreted as favoring LWOP sentences for 16- and 17-year-olds convicted of special circumstances murder, which violated the Eight Amendment).

<sup>3</sup> Penal Code § 3051(d)-(e), § 4801(c); Cal. Code. Regs., tit. 15, § 2445.

<sup>4</sup> Cal. Code. Regs., tit. 15, § 2445(d). BPH also uses this standard when holding regular parole hearings for a person who committed their crime when they were under age 26, but who does not qualify for a YOP hearing. Cal. Code. Regs., tit. 15, § 2447.

<sup>5</sup> *In re Poole* (2018) 24 Cal.App.5th 965; *In re Perez* (2016) 7 Cal.App.5th 65.

<sup>6</sup> Penal Code § 3051(a)(1), (b), (h); Cal. Code. Regs., tit. 15, § 2440(a)-(c), § 3498.1. The lower eligibility age for people with LWOP terms has been upheld as lawful. *People v. Hardin* (2024) 15 Cal.5th 834.

Some people are **excluded** from YOP eligibility based on the type of sentence they received for their youth crime. Even if you meet the basic eligibility criteria, you are excluded from getting a YOP hearing if your controlling youth offense resulted in:

- a “three strikes” or “two strikes” sentence due to one or more prior serious or violent felonies (Penal Code § 1170.12, § 667(b)-(i)); **or**
- a “one strike” sex offense sentence (Penal Code § 667.61), although this part of the law is being challenged in court.<sup>7</sup>

Some people are **excluded** from YOP eligibility based on a new conviction they received for a crime after they committed after their youth offense. Even if you meet the basic eligibility criteria, you are excluded from getting a YOP hearing if you committed a new crime after you turned age 26 and:

- you were sentenced to “life in prison,” **or**
- “malice aforethought” was an element of the crime. Crimes that require proof or admission of malice aforethought include first- and second-degree murder (Penal Code § 187); attempted murder (Penal Code § 664/§ 187); conspiracy to commit murder (Penal Code § 182/§ 187); solicitation to commit murder (Penal Code § 653f(b)); and assault with a deadly weapon or assault likely to produce great bodily injury committed with malice aforethought while serving a life term (Penal Code § 4500).<sup>8</sup>

CDCR case records staff are responsible for deciding whether you qualify for a YOP hearing.<sup>9</sup> If you believe that CDCR wrongly decided that you are not eligible for a YOP hearing, you can use the CDCR Form 602-1/602-2 administrative grievance and appeal process to challenge that decision.<sup>10</sup> If you are not satisfied with the responses to your grievance and appeal, you can ask BPH to review the CDCR’s decision by sending a written request and any supporting documents to Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812. You should receive a response from BPH within 60 days.<sup>11</sup>

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<sup>7</sup> Penal Code § 3051(h); Cal. Code. Regs., tit. 15, § 2440(d)-(f), § 3498.1(d)(3). Ineligibility for people with Three Strikes Sentencees has been upheld as not violating equal protection. *People v. Wilkes* (2020) 46 Cal.App.5th 1159. One court decision (*People vs. Edwards* (2019) 34 Cal.App.5th 183) held that the exclusion of one-strike offenders from YOP violates equal protection; however, the California Supreme Court is currently considering that issue in *People v. Williams*, No. S262229.

<sup>8</sup> Penal Code § 3051(h); Cal. Code. Regs., tit. 15, § 2440(d).

<sup>9</sup> Cal. Code. Regs., tit. 15, § 3498.2(a).

<sup>10</sup> Cal. Code Regs., tit. 15, § 3498.2(d).

<sup>11</sup> Cal. Code Regs., tit. 15, § 2442.

### 3. When should I get my first Youth Offender Parole hearing?

If you are eligible for and not excluded from getting a YOP hearing, your Youth Parole Eligible Date (YPED) will depend on the type and length of your sentence.

Your YPED will be as follows:

- If you were sentenced to a *determinate term* (a set number of years), your YPED is the first day after you complete your *14th year* in custody;
- If you were sentenced to an *indeterminate term of less than 25 years to life*, your YPED is the first day after you complete your *19th year* in custody;
- If you were sentenced to an *indeterminate term of 25 (or more) years to life*, your YPED is the first day after you complete your *24th year* in custody; or
- If you were sentenced to an *LWOP term*, your YPED is the first day after you complete your *24th year* in custody.<sup>12</sup>

Your YPED is based on actual incarceration time served, which means that (with one exception) the date is not affected any credits you have earned for good conduct or programming in jail or prison. The exception is that an award of Educational Merit Credit entered on or after January 1, 2022 shall apply to advance your YPED, except if you have an LWOP sentence; also, any loss of Educational Merit Credit for rule violations will not affect your YPED calculation.<sup>13</sup>

CDCR case records staff are responsible for calculating your YPED.<sup>14</sup> If you believe that CDCR has wrongly calculated your YPED, you can use the CDCR Form 602-1/602-2 administrative grievance and appeal process to challenge that decision.<sup>15</sup> If you are not satisfied with the responses to your grievance and appeal, you ask BPH to review the CDCR's decision by sending a written request and any supporting documents to Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812. You should receive a response within 60 days.<sup>16</sup>

Your YOP hearing should be scheduled within six months after your YEPD.<sup>17</sup> However, if your regular “earliest possible release date” (EPRD), “minimum eligible parole date” (MEPD), or some other special parole date (like a Nonviolent Parole Eligible Date [NVPED]) is *earlier* than your

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<sup>12</sup> Penal Code § 3051(b); Cal. Code. Regs., tit. 15, § 2441, § 3498.2(b).

<sup>13</sup> Cal. Code Regs., tit. 15 § 3043(f); Cal. Code Regs., tit. 15 § 3043.5(b)-(c), (g)-(h). The Legislature has authorized CDCR to adopt regulations applying good conduct credits or other program credits to a YPED (Penal Code § 3051(j)), but CDCR has not chosen to use this authority except in regards to Educational Merit Credit.

<sup>14</sup> Cal. Code. Regs., tit. 15, § 3498.2(a).

<sup>15</sup> Cal. Code Regs., tit. 15, § 3498.2(d).

<sup>16</sup> Cal. Code Regs., tit. 15, § 2442.

<sup>17</sup> Penal Code § 3051(a)(2)(C); Cal. Code. Regs., tit. 15, § 2443. Many people had already passed their YEPDs prior to enactment or amendment of the law making them eligible for a YOP hearing. The laws set forth deadlines (all of which are now passed) by which BPH was required to complete YOP hearings for those people. Penal Code §§ 3051(i), 3051.1; Cal. Code. Regs., tit. 15, § 2443(b)(3)-(4)). However, BPH did not apply these deadlines to people who had already had regular parole hearings, so those people had to wait until their next regularly-scheduled hearing before their first hearing giving “great weight” to youth factors. *People v. Brownlee* (2020) 50 Cal.App.5th 720.

YPED, you will be released or considered for parole at that earlier date.<sup>18</sup> Also, you will not be scheduled for a YPED hearing if your EPRD is within one year after your YPED.<sup>19</sup>

If you are granted parole at a YOP hearing, you should be released if and when the parole grant becomes final.<sup>20</sup> You cannot be held in prison longer to serve any terms you have gotten for in-prison crimes, regardless of whether you committed those crimes before or after you turned age 26.<sup>21</sup> If parole is denied, your next parole hearing should be scheduled under the general rules that apply to subsequent hearings for people serving life with the possibility of parole.<sup>22</sup>

#### 4. What is a “Franklin” hearing, and how can I get one?

If the court that sentenced you did not receive evidence about youth factors that affected your crime, you may want to ask the court to conduct a “*Franklin* proceeding” so you can make an official record of youth factors to be considered at your YOP hearing.<sup>23</sup> If the judgment in your case is final (no longer appealable or no longer being appealed and not re-opened for resentencing), you can file a motion for a *Franklin* proceeding pursuant to Penal Code § 1203.1 (this is not a habeas corpus petition).<sup>24</sup> Courts of appeal also can remand cases that are still on appeal for *Franklin* proceedings; however, if you were sentenced after the *Franklin* case was decided in 2016, you will have to convince the appellate court that you did not already have an adequate opportunity to present evidence of youth factors at your original sentencing hearing.<sup>25</sup> You may be able to get more information or assistance with a *Franklin* proceeding by contacting the attorney who represented you on your trial/plea and sentencing, the attorney who handled your direct appeal, or the public defender’s office in the county where you were convicted.

#### 5. Can I get more information or help for my Youth Offender Parole hearing?

An organization called UnCommon Law publishes many free materials to help people prepare for parole suitability hearings. We are attaching UnCommon Law’s *Overview of California Parole Consideration Process & How to Prepare for it*. Other materials, including a longer comprehensive parole hearing manual are available by contacting UnCommon Law, 318 Harrison Street, Suite 103, Oakland, CA 94607 or on the Resources page of the UnCommon Law website at [www.uncommonlaw.org](http://www.uncommonlaw.org).

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<sup>18</sup> Cal. Code. Regs., tit. 15, § 2443.

<sup>19</sup> Cal. Code. Regs., tit. 15, § 2443(b)(1).

<sup>20</sup> Penal Code § 3046(c).

<sup>21</sup> *People v. Trejo* (2017) 10 Cal.App.5th 972; *In re Jensen* (2018) 24 Cal.App.5th 266; *In re Williams* (2018) 24 Cal.App.5th 794.

<sup>22</sup> Penal Code § 3041.5(b), § 3051(g); Cal. Code. Regs., tit. 15, § 2443(c)-(d).

<sup>23</sup> *People v. Franklin* (2016) 63 Cal.4th 261.

<sup>24</sup> *In re Cook* (2019) 7 Cal.5th 439; see also *People v. Lipptrapp* (2021) 59 Cal.App.5th 886 (motion sufficient where person clearly set forth the basis for the motion and established eligibility for a YOPH).

<sup>25</sup> *People v. Rodriguez* (2018) 4 Cal.5th 1123; *People v. Medrano* (2019) 40 Cal.App.5th 961.

## 6. Is there any other way I could get released early?

For many people who have lengthy sentences for crimes committed when they were juveniles or young adults, a YOP hearing will provide their earliest opportunity to be considered for release. However, there are other ways that some people may be considered for resentencing to a lower term or considered for early parole. Some of these apply only to people who were sentenced for crimes committed when they were juveniles. Others apply to people regardless of their age at the time of their crime. To ask for advice and assistance about which of these options might apply to you, you should try contacting the attorney who represented you on your trial/plea and sentencing, the attorney who handled your direct appeal, or the public defender's office in the county where you were convicted.

**If you committed your crime as a juvenile (under age 18), you may have the following options:**

- If you were sentenced to LWOP (or were sentenced to such a long term that it is the “functional equivalent” of LWOP), you may be able to file a petition in the sentencing court asking to be resentenced to a lower term under Penal Code § 1170(d)(1) (“Senate Bill 9”).<sup>26</sup> You will be excluded from filing a petition if it was proven that your crime involved torture or the victim was a public safety official or officer or firefighter. The earliest date on which you can file a petition is when you have served 15 actual years of incarceration.
- If you are excluded from getting a YOP hearing or Senate Bill 9 resentencing because of your crime or criminal record and your sentence is so long you don't have a realistic opportunity of ever being released, then you might be able to argue in a direct appeal or a habeas corpus petition that your sentence violates the U.S. Constitution's Eighth Amendment prohibition on cruel and unusual punishment. How strong your argument will be depends on facts including whether your crime was a homicide (murder or manslaughter) or a non-homicide, the length of your sentence, whether your sentencing was before or after relevant court decisions, and whether the sentencing court was aware of and considered your youth factors.<sup>27</sup>
- Proposition 57 enacted in November 2016, Senate Bill 1391 effective January 2019, and Assembly Bill 2361 effective January 2023 prohibit adult criminal charges against people who are under age 16 at the time of the offense and limit the circumstances in which 16- and 17-year-olds can be charged in adult criminal court. These laws don't apply retroactively to cases that were already final when the new laws took effect.<sup>28</sup> However,

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<sup>26</sup> Although Penal Code § 1170(d)(1) states that its resentencing procedure applies only to people with LWOP terms, courts have held that it also must be applied to juveniles whose sentences are “the functional equivalent of” LWOP. *People v. Heard* (2022) 83 Cal.App.5th 608.

<sup>27</sup> Some of the relevant cases are *Graham v. Florida* (2010) 560 U. S. 48 (LWOP for juvenile's non-homicide crime is cruel and unusual punishment); *Miller v. Alabama* (2012) 567 U.S. 460 (mandatory LWOP for juvenile's homicide crime is cruel and unusual punishment); *People v. Caballero* (2012) 55 Cal.4th 262 (term of life with the possibility of parole that is longer than life expectancy is equivalent to LWOP and cannot be imposed for a juvenile's non-homicide offense); *People v. Gutierrez* (2014) 58 Cal.4th 1354 (Penal Code section 190.5(b) had previously been interpreted as favoring LWOP sentences for 16- and 17-year-olds convicted of special circumstances murder, which violated the Eight Amendment).

<sup>28</sup> *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299.

at least some types of resentencing proceedings re-open a case for the purposes of considering whether a matter should or must be transferred to juvenile court.<sup>29</sup>

**There also are some sentencing reform and parole eligibility laws that apply to people who were convicted of crimes at any age.** These include:

- Senate Bills 1437 and 775, which took effect in 2019 and 2022, limit who can be convicted of murder (or manslaughter or attempted murder) when the person did not actually kill and did not intend for or expect anyone to be killed. Penal Code § 1172.6 allows people who were convicted before the law took effect – and who could not be convicted under the current law – to file a petition to have their conviction vacated and substituted with lesser offenses.) If you are interested in learning more, write back to ask for Prison Law Office’s information letter on *New Murder Laws*. The information also is available on the Resources page of [www. prisonlaw.com](http://www.prisonlaw.com).
- Proposition 57 and CDCR regulations allow many people who are serving terms for only nonviolent offenses (including second-strikers and third-strikers whose current offenses are not violent felonies) to be considered for early “nonviolent offender” parole. If you are interested in learning more, write back to ask for Prison Law Office’s information letter on *Proposition 57 “Nonviolent Offender” Parole*. The information also is available on the Resources page of [www. prisonlaw.com](http://www.prisonlaw.com).
- Penal Code § 1172.1 allows CDCR to recommend that a sentencing court resentence a person “in the interests of justice” at any time. The situations in which CDCR has been making such recommendations include when (1) a person has demonstrated exceptional conduct in prison, (2) court cases decided after a person’s conviction establish that the conviction or sentence is unlawful, and (3) new laws eliminate sentence enhancements or give courts new discretion to strike sentence enhancements, but the laws do not automatically apply retroactively to people whose cases were final before the law changed. In addition, District Attorneys or county jail officials can make these types of resentencing recommendations, and courts can act on their own motion to consider people for resentencing. If you are interested in learning more, write back to ask for Prison Law Office’s information letter on *Resentencing Under Penal Code § 1172.1*. The information also is available on the Resources page of [www. prisonlaw.com](http://www.prisonlaw.com)).

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There is information on your legal rights and how to protect your rights in *The California Prison and Parole Law Handbook*, published by the Prison Law Office. The *Handbook* is on CDCR electronic tablets and kiosks in the Law Library/California/Secondary Sources/The California Prison and Parole Law Handbook. In addition, people who have internet access can view and print the *Handbook* under the Resources tab at [www.prisonlaw.com](http://www.prisonlaw.com). As of early 2024, we are in the process of updating the *Handbook* to reflect changes in the law since 2019. Updated chapters will state the dates on which they were updated.

Attachment: UnCommon Law, *Overview of California Parole Consideration Process & How to Prepare for it*

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<sup>29</sup> *People v. Padilla* (2022) 13 Cal.5th 152; *People v. Ramirez* (2021) 71 Cal.App.5th 970.







*Please note: The information in UnCommon Law (UCL) resources is not intended as legal advice in any individual's case. There are many exceptions and variations in the parole consideration process. The provision of these resources does not create an attorney-client relationship or constitute an offer of additional services. If you have questions, please consult with an experienced parole attorney. Information about UCL's pro bono legal services can be found on the UCL Services and Limitations page. Please note that UCL is a small organization with very limited capacity. UCL accepts applications to our waitlist subject to certain intake requirements detailed on the UCL Services and Limitations page. Inclusion on our waitlist is not a guarantee of future representation.*

## **OVERVIEW OF CALIFORNIA PAROLE PROCESS & HOW TO PREPARE FOR IT**

### **I. What Is a Parole Hearing?**

A parole suitability hearing is a hearing conducted by the Board of Parole Hearings (the Board) to determine if a parole-eligible individual should be released from prison. There are several categories of people who are eligible for parole hearings, such as people who are sentenced indeterminately to life in prison, people who committed a crime prior to turning 26 years old and meet eligibility requirements for youth offender parole, and people who are 50 years or older and meet the requirements for elderly parole.

A parole hearing is usually a two-to-three-hour hearing where a Commissioner and Deputy Commissioner review the parole applicant's Central File, Compressive Risk Assessment, and any other relevant documents to determine whether, if released, the person poses an "unreasonable risk to public safety." Parole hearings can feel like a very invasive process and can be emotionally challenging for a variety of reasons. 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 Board; and plans for release upon parole

### **II. When Is Someone Eligible for a Parole Hearing?**

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 youth offender 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.

There are also new laws that allow indeterminately and determinately-sentenced individuals over the age of 50 to go before the Board, so long as they have served 20 years of continuous incarceration. For more information on elderly parole hearings, contact the Prison Law Office.

### **III. What Happens Before a Parole Hearing?**

#### **Consultation**

A consultation is the first step of the parole process. It may occur five to six years prior to the person's first ever parole suitability hearing, also known as an "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 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.

Although the parole applicant should plan to take the Board's recommendations, just because a person gets an RVR or does not take a particular recommended program prior to their initial hearing does not automatically mean that they will be denied parole. However, the parole applicant should come prepared to discuss why they were unable to follow the panel's recommendation, and any action steps for following the recommendations in the future.

#### **Comprehensive Risk Assessment (CRA or psych evaluation)**

A Comprehensive Risk Assessment (CRA) is a report written by the Board's psychologists that summarizes the parole applicant's life prior to prison, the details of the life crime, and the person's conduct in prison, and attempts to predict the person's risk of future violence. The psychologist will conclude that the person poses a "low," "medium," or "high" risk of future violence.

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. Generally, CRAs are only conducted once every three years, so it is possible that if the parole applicant has two hearings less than three years apart, the CRA used at the last hearing will still be valid.

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, as well as reflect on the parole preparation questions above.

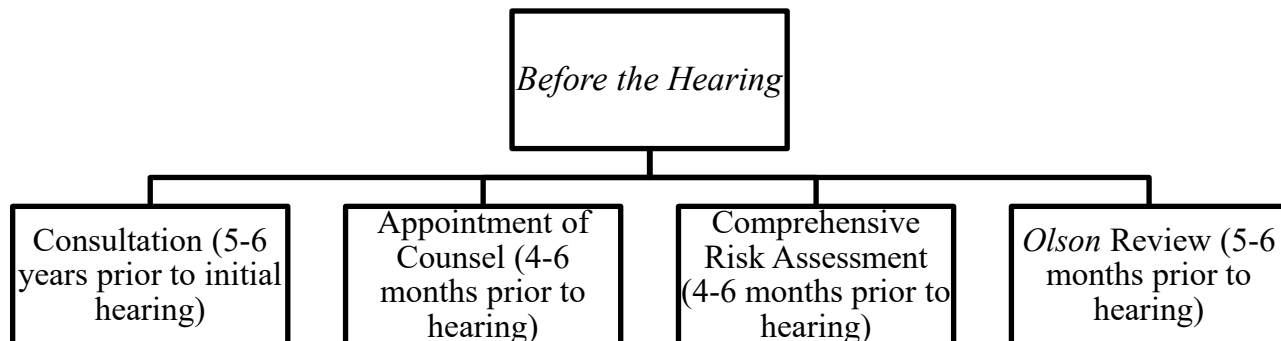
If the psychologist finds that the person does not understand the factors that contributed to their crime or that they have not resolved some of those factors, the CRA will conclude that the person lacks insight or needs more time and therapy to work on those areas. For more information about the CRA process and challenging errors in CRAs, write to UnCommon Law or visit our website.

### **Appointment of Counsel**

Parole candidates have the right to attorney representation at parole hearings. If a parole candidate cannot afford to hire an attorney, the Board will appoint one at no cost to the parole applicant. Attorneys are appointed approximately five months prior to the hearing. For more information about working with a state-appointed attorney and the minimum expectations of state-appointed attorneys, write to UnCommon Law or visit our website.

### **Olson Review**

Parole candidates have the right review their Central Files prior to parole hearings, during what is called an *Olson* review. While reviewing a Central File may feel overwhelming and challenging, it is an important opportunity for the parole candidate to review the all of the documentation the Board will have access to prior to the hearing.



### **Deciding Whether to Attend the Scheduled Hearing**

People may sometimes decide that they do not want to appear before the Board 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, 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 Board receives the signed Form 1003 at least 45 days before the scheduled hearing date, the waiver request will be granted. If the Board 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 Board 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 Board can refuse to accept. Sometimes, the Board 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 Board 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 Board 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.

**Waivers, Stipulations, and Postponements at a Glance**

Action	Timing for Request	Timing of Next Hearing Date	Recorded as Denial	Can Still Petition to Advance	The Board Can Also Do It
Waive	At least 45 days before hearing. <b>Exception:</b> (1) Good cause and (2) could not/did not know 45 days prior	1, 2, 3, 4, or 5 years	No	No	No
Stipulate	Anytime	3, 5, 7, 10 or 15 years	Yes	Yes	No
Postpone	Anytime	As soon as possible (usually, 4-6 months)	No	No (not enough time before next hearing date)	Yes

**IV. What Happens During a Parole Hearing?**

**Rights During the Parole Hearing Process**

People eligible for parole are entitled to attend their hearings in person, to have an attorney present, to have reasonable accommodations, 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 Board’s decision, and to receive a transcript of the hearing.

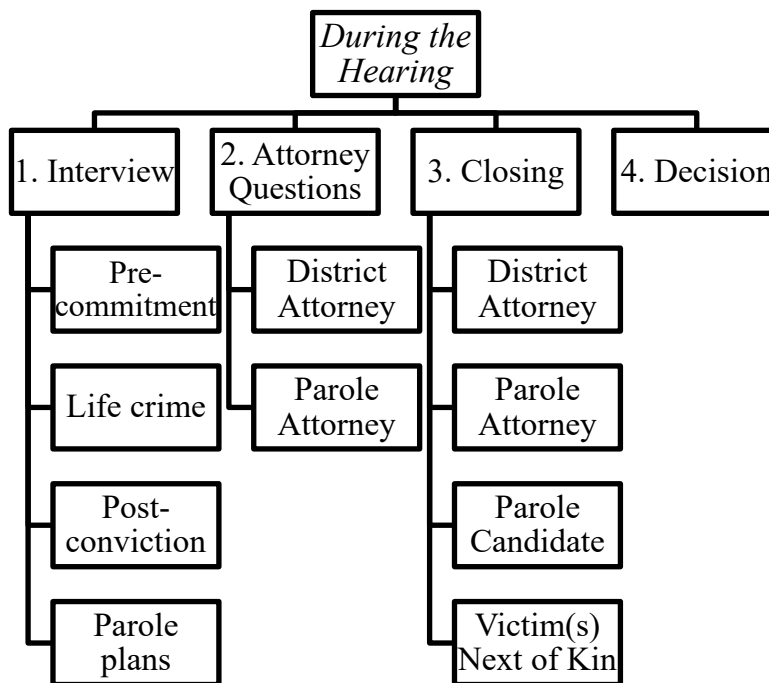
**Who Will Be Present at the Hearing?**

Parties attending parole hearings include the person eligible for parole, their attorney, a 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. Victims are defined broadly in this context, so there may be unexpected people in attendance classified as victims. Members of the public are also able to attend parole hearings as observers, but they must not have a connection to the parole applicant. 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 Be Discussed at the Hearing?**

Unlike other hearings where the attorney does most of the talking, parole hearings are unique because the parole applicant does most of the talking. The Commissioners will ask the parole applicant a series of questions to determine if the person is suitable for parole. 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. Some of these topics will feel very personal and invasive. It is important for the parole applicant to prepare emotionally and practice self-care strategies for remaining calm and grounded throughout the process.



### **What Does the Board Look for in Granting Parole?**

Overall, the parole applicant must explain their journey of transformation. They will need to explain who they were at the time of the life crime, and what they have done since then to change their thinking and behavior patterns to emerge as a person who will not resort to violence in the future.

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 parole applicant 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.

The person should also come to the hearing ready to **take accountability for the harm** that they have caused, and understand the **impact of the crime on the victims**. The Board is looking for people to take responsibility for all the actions they took prior to, and during the life crime and any other criminal acts (including prison discipline). Even if the parole applicant did not plan for people to be harmed (or harmed to the extent that occurred), the parole applicant should be prepared to explain how their actions could have and did result in harm.

### **How to Prepare for the Hearing**

Below are some specific questions that should be explored when preparing for 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. However, sometimes attorneys, especially state-appointed attorneys are unwilling to spend time with their client answering these questions. So, it may be helpful to find another trusted friend, family member, volunteer, or clergy member to discuss these questions with.

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 causative factors in your childhood/upbringing contributed to your crime? Specify how those factors contributed.
  - A **causative factor** is an “external event” or experience that contributes to who a person is at any given point in time. Potential causative factors include: substance abuse, gang membership, criminal thinking, anger leading to violence, domestic violence, unhealthy relationships, and codependency. These sometimes develop in response to traumatic events like: abandonment, rejection, abuse (physical, emotional, or sexual), or issues in relationships with parents or siblings.
2. What character defects or negative personality traits contributed to your crime and how did they contribute?
  - A **character defect or negative personality trait** is a way of being that can cause conflict, criminality, or violence. These traits often arise in response to an unmet need or a negative experience, but once developed, can result harm to the person who has the negative trait and others. A list of common character defects and negative character traits is enclosed at the end of this Guide.
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/upbringing factors and character traits since you have been in prison?
6. What tools or coping mechanisms do you have now that you didn't 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 coping mechanisms?
  - **Coping mechanisms** are the tools that someone uses to deal with difficult or stressful triggers in order to prevent a relapse into a target behavior such as substance use, criminal thinking, or anger leading to violence. Coping mechanisms are specific actions that a person will take when they experience an internal or external trigger. Healthy coping mechanisms can help individuals manage stressful events while allowing to maintain their emotional health and well-being. Examples of healthy coping mechanisms are exercising, journaling, meditating, engaging in breathing exercises, reaching out to someone for support, or staying connected to spiritual practices.
7. What challenges do you anticipate upon being paroled?



8. How will your parole plans and support system help you address those challenges?
  - **Parole plans** are detailed plans in which parole applicants outline what their lives will look after being released. The Board expects individuals to have realistic, detailed, well thought-out plans that include where the individual will live, how they will support themselves financially, and how they will guarantee that they will not relapse into the target behaviors that led them to prison. In an individual's parole plans, the Board puts particular focus on a person's living arrangements, employment opportunities, continued programming upon release, and support network.
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).
  - **External triggers** are circumstances outside of and around a person that might result in a relapse to a target (or harmful) behavior. Common external triggers include, but are not limited to: people, environments, situations, or things associated with a target behavior. For example, the smell of cannabis may remind someone with a substance use disorder of their former cannabis use, making them want to use again. External triggers can also be associated with trauma. For instance, something as subtle as the sound of an aluminum can opening might trigger memories of an adult that used to open a beer can before committing child abuse.
  - **Internal triggers** are thoughts and feelings that become so overwhelming that they cause a person to resort to their target (or harmful) behavior. Internal triggers are often the feelings that someone experienced in childhood that overloaded their ability to cope with a situation. Common internal triggers are feelings of: shame, insecurity, abandonment, rejection, grief, and lack of control.
10. Why were you denied parole at your prior hearing? What have you done to address those reasons since? (If applicable.)

### **What to Submit to the Board Prior to the Hearing**

Several weeks before the hearing, the parole applicant should plan on submitting documents to the Board that aid in showing their growth and transformation. Please visit our website or write to UnCommon Law for more information on what to submit to the Board in advance of the hearing. Here are a few examples of what the Board will expect to see, but parole applicants should not be limited by this list:

**Letters of support:** Friends, family members, employers, and housing providers can and should submit letters to the Board detailing the support they will provide the parole applicant. Through their letters to the Board, 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.

**Relapse prevention plans:** Relapse prevention plans are plans that help address one of the parole applicants thinking or behavior patterns that contributed to the life crime or other disciplinary problems. Some of these patterns can include substance abuse, gang membership, criminal thinking, anger leading to violence, domestic violence, and others. These plans should include the internal and external triggers (or warning signs) for the behavior, the coping mechanisms the person has developed to avoid relapse, and the support networks in place to aid in preventing relapse.

**Parole plans:** A parole plan is a detailed plan for life after release from prison. A parole plan is important to show that the parole applicant has a realistic, concrete plans to reenter the community in a safe and supported way. We recommend including the following sections: (1) a timeline of your needs and goals post-release; (2) job offers, support letters, or research explaining how you will support yourself financially; (3) housing plans and transitional housing acceptance letters; (4) viable transportation options; (5) plans for accessing services and programming; and (6) a list of the person's community support network.

**Letters of remorse:** Letters of remorse should demonstrate the parole applicant's understanding of the impact of their actions on their direct and indirect victims. They should focus on expressing remorse and empathy rather than listing the various self-help groups they have participated in, to explain their social history prior to the life crime, or to discuss who they are today. These letters should not be sent to the victims, only to the Board.

## V. What Happens after a Parole Hearing?

### **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.

### **When Parole is Granted**

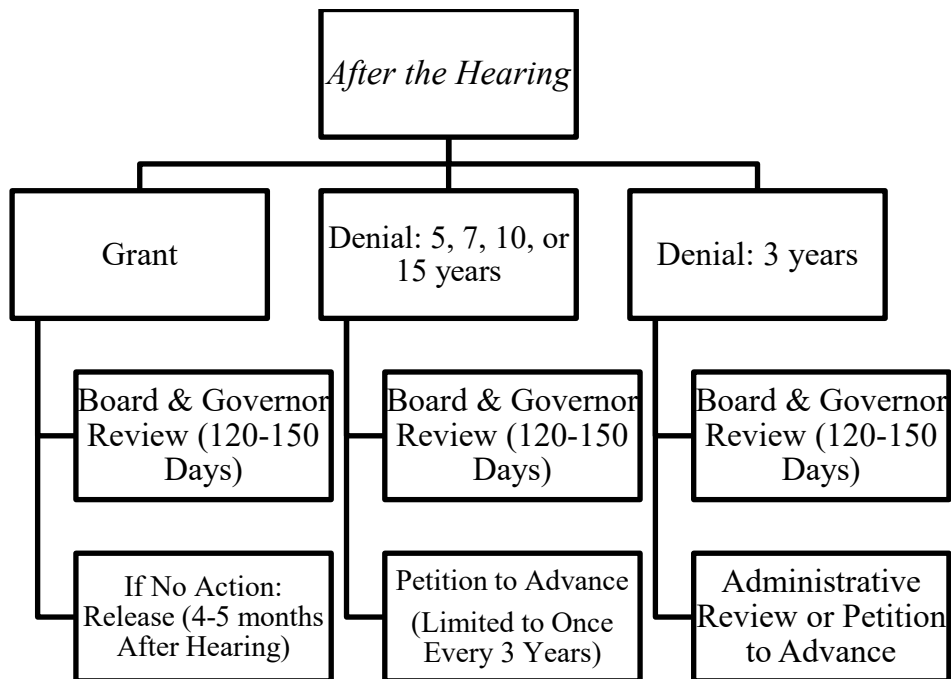
On average, the Board grants parole in approximately thirty to forty percent of the cases they hear. Even though the Board grants a person parole, however, it does not mean they will be released right away or that the decision is final. This is because after the parole hearing, the case will be reviewed by the Board'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.

### **When the Commissioners Do Not 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 and *en banc* review, write to UnCommon Law or visit our website.



### **Review Period**

As mentioned above, parole grants and denials are not final for 120 days, during which time the Board and the Governor review the decision. The Governor has an additional 30 days to review the decision in cases of murder. If a parole applicant believes they were denied parole and that there is a factual or legal error that led to the denial, during this review period is when they might submit a Decision Review Letter.

### **Administrative Review**

If a parole applicant was denied parole for three years and they received a “low” or “moderate” risk score on their Comprehensive Risk Assessment, the Board will automatically conduct an Administrative Review to see whether their next hearing date may be advanced to approximately 18 months instead of three years.

### **Petition to Advance**

If a parole applicant was denied parole, a Petition to Advance (PTA) may get them before the Board for a new hearing earlier if they can establish 1) a change of circumstance or 2) new information that establishes a “reasonable likelihood” that the additional time before the next hearing date is not necessary. (Cal. Code Regs., tit. 15, § 2150-57.) If the PTA is successful, it will advance the hearing to the next lowest denial length (denial lengths are 15, 10, 7, 5, and 3 years.) For example, if someone was denied for seven years, a successful PTA would get them in front of the Board in five years, because that would be the next lowest denial length. PTAs may only be filed once every three years. For that reason, if

a parole applicant was denied parole for three years and is entitled to an Administrative Review, it is best to wait and see if the case gets administratively advanced before filing a PTA.

## **VI. 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 Board. In cases against the Governor, courts might set aside the Governor's decision and allow the person to be released. In cases against the Board's denial of parole, courts might order the Board 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 Board 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.