



*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.*

## **WHAT HAPPENS ON THE DAY OF & DURING A HEARING?**

This Guide is intended to take some of the mystery out of what happens on the day of a parole hearing. After reading this Guide, you should have a clear idea of what to expect before, during, and after your hearing. As you prepare for the hearing, keep in mind that the main purpose of a parole hearing is for the Board to determine whether the parole candidate has identified the factors that contributed to their past crimes and whether they have taken appropriate steps while incarcerated to make sure those factors will not contribute to another crime in the future. When the time comes, the parole candidate will need to explain how they have gained valuable tools while incarcerated, through self-help programs and self-study, to make sure these issues do not lead to future violence. ***If the Commissioners cannot write down a couple of sincere words or phrases they hear from the parole candidate explaining what experiences, thoughts, feelings, or fears from their background and what character traits contributed to the crime, they will not grant parole.***

### **I. Virtual Hearings**

Virtual hearings are a new feature of the California parole process, made necessary by the spread of COVID-19 and in accordance with Governor Newsom's Executive Order N-36-20. The Board implemented emergency regulations to hold parole suitability hearings through video conference as the primary way to conduct parole hearings. The Board is now in the process of making these regulations permanent, meaning that most parole hearings will be held virtually, unless an exception applies. If your hearing is conducted via video conference, the commissioners, district attorney, and victims/next of kin will appear virtually; however, your attorney may be physically present in the hearing room to satisfy your right to confer confidentially during the hearing. What to expect on the day of a virtual hearing is very similar to what to expect at an in-person hearing.

### **II. Before the Hearing Begins**

Typically, the Board schedules three hearings a day that are set to take place at 8:30 a.m., 10:30 a.m., and 1:30 p.m. While the first hearing usually starts close to the designated time, hearings scheduled later in the day are regularly delayed. For a hearing scheduled at 8:30 a.m., the parole candidate will likely be brought to the Board area between 7:30 a.m. and 8 a.m. They and their attorney can meet around 8 a.m. or 8:15 a.m. to go over any last-minute issues before the hearing. If your attorney is appearing virtually, you will be able to speak briefly on a confidential phone line. Unfortunately, some prisons do not provide confidential meeting space before the hearing, so do not plan to discuss any major issues at that time. The hearing will likely start around 8:40 a.m. or 8:45 a.m. and last approximately three hours, though some hearings last much longer.

In many cases, a representative from the District Attorney’s Office will be present for the hearing, and sometimes the person injured in the crime and/or their family members will participate, either in person or by videoconference. All of these people, along with the Commissioner and Deputy Commissioner, will already be seated or in the video conference when the parole candidate and their attorney enter the physical or virtual hearing room.

### **III. Starting the Hearing**

Once everyone is in the virtual or physical hearing room, the Presiding Commissioner will address **preliminary and logistical matters**. This includes explaining the hearing process, identifying all people present for the record, and determining whether the parole candidate has any disabilities that require accommodation during the hearing.

Additionally, the Commissioner will **confirm that the parole candidate’s rights have been met**. This includes the right to meet with a correctional counselor, who notified them of their rights in the hearing and gave them an opportunity to review the Central File (*Olson Review*), as well as the right to an attorney, who advised them of hearing procedures and rights.

Next, the Commissioner will confirm that all parties have received the **65-Day Master Packet** and the **10-Day Packet**. They will also ask if the attorney has any **preliminary objections** and whether there are any **additional documents to be submitted**.

**Pro Tip:** This is the appropriate time to bring up any objections to the Comprehensive Risk Assessment (CRA) and to submit any last-minute letters of support, writings, or additional documents.

Sometimes, the Commissioner will ask whether the parole candidate will be speaking to them during the hearing, about the crime and all other issues. After confirmation from the attorney, the Commissioner will **swear the parole candidate in**. Often, Commissioners just swear the person in without asking whether they will be answering the questions on the record.

Before beginning to ask questions, the Commissioner will **adopt a version of the facts of the case**. They might use the Probation Officer’s Report, the Court of Appeal Opinion affirming the conviction, or the version of events set forth in the CRA. The Commissioner will either read these facts and statements into the record or state they are incorporating those documents “by reference.”

#### IV. The Board's Questions

Most of the questions during the hearing will be directed to the parole candidate, rather than to the attorney. Usually, the Commissioner begins by asking about **pre-conviction factors**. This includes questions about family, upbringing, school, violence, gangs, substance or alcohol abuse, and divorce or separation between parents. To guide the conversation, the Commissioner relies on what is written in the most recent CRA about these topics, and the parole candidate and/or their attorney should be prepared to correct any errors. The Commissioner will also ask about prior criminal history including juvenile and/or adult arrests or convictions. They may also ask if the parole candidate has ever committed crimes for which they were never arrested. It generally does not hurt to admit to these things at this point, as long as they were not crimes that could potentially carry a lengthy sentence if convicted.

Next, the Board will review **case factors specific to the life crime**. The Commissioner might ask if there is anything to add to the version of the crime they have adopted, or they might ask specific questions about information in the file. Many Commissioners, however, will ask the person eligible for parole to describe the circumstances surrounding the crime. Whichever way they bring it up, the parole candidate should be prepared to tell the story of what happened. Commissioners may also attempt to nail down the specific factors that contributed to or caused the crime. They will either ask the parole candidate to identify those factors, or they will ask the parole candidate to explain *why* the crime happened. Some Commissioners will just ask for “insight.” **Again: *If the Commissioners cannot write down a couple of sentences they hear from the parole candidate explaining what experiences, thoughts, feelings, fears or character traits from their background led to the crime, they will not grant parole.***

Following the discussion of pre-conviction factors and the life crime, the Board will ask about **post-conviction factors**. This includes work, educational and vocational assignments, disciplinary record, self-help and therapy programs while in prison. The attorney must be familiar with their client's prison record so that they can ensure the Board does not overlook any achievements. This portion of the hearing also includes discussion of any misconduct in prison, such as RVRs (115s), counseling chronos (128As), and information contained in the confidential file. The Board will expect to hear from the parole candidate a similar level of insight and accountability for these incidents as the life crime.

During this portion of the hearing, the Board will also review **parole plans**. This includes housing arrangements, employment opportunities, continued self-help programming, and letters of support. If the person eligible for parole does not have a firm job offer, they should be prepared to discuss how they will use vocational skills they have obtained. While the Board generally prefers for people to be released into a transitional program, this is not a requirement. Even if they do have a transitional program offering

residence, they should explain where they plan on living after the six months to a year they would be staying in the residential program.

Throughout the Board’s questioning, remember that **this is the parole candidate’s hearing and their opportunity to tell their story**. That is to say, while the Board is asking the questions, this is *about the parole candidate and their life*. They should avoid simple “yes” or “no” answers and take the time to explain – at the right time – how they have changed during their incarceration. Explaining things *at the right time* simply means that the parole candidate should not skip past a painful or embarrassing discussion of things from the past in favor of focusing on how much they have changed. Instead, the Board is most concerned about their ability to talk honestly and openly about experiences from the past.

□ **Pro Tip:** At the conclusion of the Board’s questions, typically after discussing parole plans or the CRA, the attorney should consider **requesting a recess** (unless there has recently been one) to review issues likely to be raised in the clarifying questions from the District Attorney or the parole candidate’s attorney.

□ **Pro Tip:** Throughout the hearing, the parole candidate and their attorney will have a chance to talk during any recesses that are called (either for a restroom break, for deliberations or for any other reason).

## V. Questioning by Attorneys

Once the Board has completed its questioning, **the District Attorney’s representative has an opportunity to ask questions** and clarify matters for the record. The DA will direct their question to the panel, and the Commissioners decide whether to pose the question to the parole candidate. Clients should remember to pause after the DA asks each question, because the panel may either want to re-phrase the DA’s question, decide not to ask the question, or answer the question themselves based on the parole candidate’s testimony from earlier in the hearing. The attorney might also object to the question, answer it, or advise the client not to answer the question.

Once the DA is finished asking questions, **the parole candidate’s attorney will have an opportunity to ask questions**. The attorney should use this time to come back to any questions that may have given the parole candidate trouble earlier in the hearing. The attorney should also have a short list of issues they know the parole candidate needs to discuss in order to demonstrate remorse, acceptance of responsibility, and insight into the crime. If any of those issues has not yet been fully addressed, they should use this opportunity to ask a question that lets the parole candidate share that information. There should not be any surprise questions for the parole candidate.

## VI. Closing Statements

After clarifying questions, **the DA will make a closing statement.** They will likely focus on the life crime and any prior attempts to avoid responsibility. In addition, the DA will highlight any concerning statements in the CRA or hearing testimony in an effort to connect the historical factors surrounding the crime to some current evidence of dangerousness. Attorneys should advise their clients not to react visibly or verbally to what the DA says.

After the DA's closing statement, **the parole candidate's attorney will get a chance to make a closing statement**, which should take no more than ten minutes (some Commissioners strictly enforce a time limit). The attorney should highlight the most notable reasons for finding the parole candidate suitable for parole. This often involves reminding the Board of compelling testimony they just heard parole candidate and addressing any concerns raised by prior hearing panels or in the CRA. Although the attorney should have already outlined their argument before the day of the hearing, they will also need to be prepared to respond to issues that have come up during the hearing. For example, they might need to clarify statements made by the client, or provide documentary support to resolve a disputed issue that came up in the hearing. In addition, they may need to refute allegations made by the DA in their closing.

Next, **the parole candidate has an opportunity to make a closing statement.** The closing statement should be limited to expressing remorse for the harm they caused the victim and victim's family. It is normal for people to read a statement they previously prepared because it helps them stay focused and speak clearly. The closing statement should not respond to anything the DA has said during his or her questions or closing; that is the attorney's job and responsibility.

If **the person harmed by the crime or their representative** is present, they will be given an opportunity to talk to the Board about the impact of the crime and whether they think the parole candidate should remain in prison. The parole candidate and their attorney cannot make any further statements or objections after the victims/representatives have finished speaking. While attorneys are not permitted to object to (or interrupt) the victim's statements, they may need to find a way to raise objections with the DA and the Commissioners during a break in the proceedings.

## VII. Deliberation and Decision

After closing statements, the Commissioners will meet privately while they deliberate on whether to grant or deny parole. Deliberation generally takes between 20 minutes and an hour. Once they finish deliberating, they will call everyone back in to the physical or virtual hearing room to read their decision. They will either grant parole or deny parole, directing the next hearing to be held either 3, 5, 7, 10 or 15 years later.

### **VIII. Post-Decision**

The parole candidate and their attorney will have a few minutes after the decision to discuss next steps, whether the decision is to grant or deny parole. If parole is denied, options to challenge the decision include pursuing informal relief through the Board's Decision Review process (a type of informal appeal); pursuing formal relief from court (using a petition for writ of habeas corpus); or focusing on addressing the Board's stated concerns in preparation for the next parole hearing.

After approximately 30 days, a full transcript from the hearing will be sent to the person eligible for parole. At that time, the transcript will also be made available to the public upon request through the Board's website.