



*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 NAVIGATE YOUR INNOCENCE CLAIM IN A PAROLE CONSIDERATION HEARING**

This Guide is intended to help you understand how to navigate an innocence claim in a parole consideration hearing. For those who maintain they are innocent of their commitment offense, it can be difficult to understand how to meet the Board's standards for suitability, given the central focus of the Board is remorse, accountability, and insight related to the commitment offense. This Guide is intended to help those with an innocence claim approach the parole process while maintaining their innocence. ***Please note that the purpose of this Guide is for information only; you must consult with the attorney who will be representing you at your parole hearing to determine what approach to take in your case.***

**What the law says about how the Board must handle innocence claims.** The Board cannot require you to admit guilt to any crime for which you are committed. You can decline to discuss the facts of the crime during your hearing, in which instance a decision must be made based on other information available to the panel and your decision not to admit guilt cannot be held against you. The Board must also consider written material submitted by you relating to your culpability. (Cal. Pen. Code, section 5011; Cal. Code Regs., Tit. 15, section 2236; Cal. Code Regs., Tit. 15 section 2249.) However, an "implausible" denial of guilt may support a finding of current dangerousness if the denial of guilt is factually unsupported or otherwise lacking in credibility. (*In re Shaputis* (2011) 53 Cal.4th 192, 216.)

**What the law means.** This means that parole candidates who plan to maintain their innocence should attempt to establish the credibility, or "plausibility," of their innocence claim. If you are able to establish that your innocence is plausible, the Board must make their decision based on other information available to them, for example, your record of programming, your disciplinary history, the strength of your parole plan, etc. However, if the Board does not find your innocence claim credible and/or plausible, it *can* support a finding of current dangerousness to support a parole denial. Importantly, if you have not participated in self-help, have rules violations (especially recent rules violations), or lack parole plans, etc., the Board can support a denial on bases outside of your guilt or innocence.

**How to establish plausible innocence.** Unfortunately, there is no clear guidance on how to establish plausible innocence. However, in practice, we have observed various ways in which parole candidates have attempted to make that showing. Below, we explain a few ways parole candidates might attempt to handle their innocence during the parole preparation and hearing process.

## I. Take Accountability for Misconduct Outside of the Life Crime.

One approach to mitigate the impact of an innocence claim is to make the question of your guilt or innocence less relevant to the Board by accepting responsibility for other criminal acts in your past. Under this approach, you would still submit whatever written material you have prepared to show the Board you are innocent of the life crime (discussed below), *and* you would **articulate some alternative arc of transformation** that makes sense to the Board. The key to this approach is to *show the Board that you understand who you were at the time of the life crime*—including *why you were someone that would have been suspected of the crime or implicated in it*. This could include accepting responsibility for misconduct at the time of the crime that you were not caught for.

If you can acknowledge that you had negative character traits and behavior patterns before you came to prison, identify those traits/patterns, and explain how you have addressed them over the course of your incarceration through self-help, the Board might set aside the issue of your guilt or innocence of the life crime because you have been able to accept responsibility in other areas.

This approach requires you to reflect on your personal growth and transformation outside of the crime you maintain innocence of. You can ask yourself these questions to determine whether this is an approach you might work for you:

- *What have you been working on since coming to prison? Are there certain character traits/behaviors that you have attempted to address through some form of self-help programming? If so, identify those character traits/behaviors and what you have done to address them.*
- *Aside from the life crime, are there crimes you have committed in your life that you do take accountability for, even if you were not caught? If so, what are they? How do those crimes connect to the character traits/behavior patterns you identified?*
- *Taking accountability is not limited to illegal acts, and you can take accountability for any act you did and knew (or now know) to be wrong/harmful. Are there wrong/harmful acts you engaged in that you can take accountability for? If so, what are they? How do those acts connect to the character traits/behavior patterns you identified?*

If you can provide quality answers to these questions, there is a chance that you will be able to demonstrate enough insight into who you were at the time of the crime such that your actual guilt or innocence will matter less to the Board. If you cannot answer these questions, this approach may not work for you. However, almost everyone has struggled with behaviors/character traits and caused harm as a result. It may feel counterintuitive to bring up

past crimes and/or harm that the Board has not brought up first. However, doing so can help establish your credibility with the Board. If you struggle to answer these questions at first, we encourage you to continue to reflect on and revisit them.

## **II. Trial Transcripts and Other Records.**

Another approach to mitigate the impact of an innocence claim is submitting written material in support of your innocence claim to the Board in advance of your hearing, including trial transcripts and other records from the time of your trial. These records can provide useful information to cast doubt on the official narrative of events that the Board will review in your prison record.

The Board will not be familiar with your trial transcript. You and your attorney can prepare a concise and compelling statement citing evidence that came out at trial, or in other records, and attach the relevant and cited pages to your statement. You can include your statement with the materials you submit to the Board *before* your hearing. This should give the Board an opportunity to thoroughly review and consider your statement. However, if you do not submit your statement before your hearing, you should still bring it to the hearing and submit it then.

Keep in mind that self-serving statements alone are unlikely to be compelling to the Board in making a case for your innocence. Your statement should include more than just your version of events if at all possible.

## **III. Innocence Project Review.**

One last approach to mitigate the impact of an innocence claim is to reach out to an Innocence Project and submit findings the Innocence Project made regarding your case as written material in support of your plausible innocence to the Board.

**UnCommon Law urges you to consider this approach with caution, however, as if you reach out to an Innocence Project and later decide to take responsibility for the harm you caused, there may be negative consequences in your future Board proceedings. If you reach out to an Innocence Project and later realize you are accountable for harming your victim, you will have to explain how your decision to reach out to an Innocence Project caused additional harm to your victim(s). We strongly encourage you to consult with the attorney representing you in your parole proceedings before making any contact with an Innocence Project.**

If you are certain that you are factually innocent, have no victims, and will continue to maintain your innocence, you should consider reaching out to an Innocence Project. There are several Innocence Projects in California and each has different restrictions on what cases they take. When you reach out to an Innocence Project, you should ask for a **case screening**

**application.** Complete and return this application to determine whether your case meets the minimum requirements to be considered by a particular Innocence Project. Restrictions might include you being convicted in a certain county and the degree to which you deny involvement in your commitment offense.

Innocence Projects provide legal assistance outside of the parole context. However, if you simultaneously pursue release via an innocence claim and through the parole process, any written materials the Innocence Project has prepared on your behalf that cast doubt on your conviction and lend credibility to your innocence claim, can be submitted as written material to the Board to help establish your plausible innocence.

**To reiterate, you must discuss any strategic choices regarding how to handle your innocence claim in the parole process with the attorney who will represent you at your hearing.** However, we hope this information is helpful, and encourage you to share this information with your attorney once you either select or are appointed one.

We wish you the best of luck in your journey home.