

PROPOSED REGULATORY TEXT

Proposed additions are indicated by underline and deletions are indicated by ~~strikethrough~~.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. BOARD OF PAROLE HEARINGS
CHAPTER III. PAROLE RELEASE
ARTICLE 2. INFORMATION CONSIDERED

§ 2240. Psychological Comprehensive Risk Assessments for Life Inmates.

(a) ~~Prior to a life inmate's initial parole consideration hearing, a Comprehensive Risk Assessment will be performed by a licensed psychologist employed by the Board of Parole Hearings, except as provided in subsection (g).~~ Licensed psychologists employed by the Board of Parole Hearings shall prepare comprehensive risk assessments for use by hearing panels. The psychologists shall consider the current relevance of any risk factors impacting an inmate's risk of violence. The psychologists shall incorporate standardized approaches, generally accepted in the psychological community, to identify, measure, and categorize the inmate's risk of violence.

~~(1) In the case of a life inmate who has already had an initial parole consideration hearing but for whom a Comprehensive Risk Assessment has not been prepared, a Comprehensive Risk Assessment shall be performed prior to the inmate's next scheduled subsequent hearing, unless a psychological report was prepared prior to January 1, 2009.~~

~~(2) Psychological reports prepared prior to January 1, 2009 are valid for use for three years, or until used at a hearing that was conducted and completed after January 1, 2009, whichever is earlier. For purposes of this section, a completed hearing is one in which a decision on parole suitability has been rendered.~~

~~(b) A Comprehensive Risk Assessment will be completed every five years. It will consist of both static and dynamic factors which may assist a hearing panel or the board in determining whether the inmate is suitable for parole. It may include, but is not limited to, an evaluation of the commitment offense, institutional programming, the inmate's past and present mental state, and risk factors from the prisoner's history. The Comprehensive Risk Assessment will provide the clinician's opinion, based on the available data, of the inmate's potential for future violence. Board of Parole Hearings psychologists may incorporate actuarially derived and structured professional judgment approaches to evaluate an inmate's potential for future violence. When preparing a risk assessment under this section for a youth offender, the psychologist shall also take into consideration the youth factors described in Penal Code section 3051, subdivision (f)(1) and their mitigating effects.~~

~~(c) In the five-year period after a Comprehensive Risk Assessment has been completed, life inmates who are due for a regularly scheduled parole consideration hearing will have a Subsequent Risk Assessment completed by a licensed psychologist employed by the Board of Parole Hearings for use at the hearing. This will not apply to documentation hearings, cases coming before the board en banc, progress hearings, three year reviews of a five-year denial, rescission hearings, postponed hearings, waived hearings or hearings scheduled pursuant to court~~

order, unless the board's chief psychologist or designee, in his or her discretion, determines a new assessment is appropriate under the individual circumstances of the inmate's case. The Subsequent Risk Assessment will address changes in the circumstances of the inmate's case, such as new programming, new disciplinary issues, changes in mental status, or changes in parole plans since the completion of the Comprehensive Risk Assessment. The Subsequent Risk Assessment will not include an opinion regarding the inmate's potential for future violence because it supplements, but does not replace, the Comprehensive Risk Assessment. A risk assessment shall not be finalized until the Chief Psychologist or a Senior Psychologist has reviewed the risk assessment to ensure that the psychologist's opinions are based upon adequate scientific foundation, and reliable and valid principles and methods have been appropriately applied to the facts of the case. A risk assessment shall become final on the date on which it is first approved by the Chief Psychologist or a Senior Psychologist.

~~(d) The CDCR inmate appeal process does not apply to the psychological evaluations prepared by the board's psychologists. In every case where the hearing panel considers a psychological report, the inmate and his/her attorney, at the hearing, will have an opportunity to rebut or challenge the psychological report and its findings on the record. The hearing panel will determine, at its discretion, what evidentiary weight to give psychological reports.~~ (1) Risk assessments shall be prepared for all initial and subsequent parole consideration hearings and all subsequent parole reconsideration hearings for inmates housed within the State of California if, on the date of the hearing, more than three years will have passed since the most recent risk assessment became final.

(2) The board may prepare a risk assessment for inmates housed outside of California.

~~(e) If a hearing panel identifies a substantial error in a psychological report, as defined by an error which could affect the basis for the ultimate assessment of an inmate's potential for future violence, the board's chief psychologist or designee will review the report to determine if, at his or her discretion, a new report should be completed. If a new report is not completed, an explanation of the validity of the existing report shall be prepared.~~ (1) If an inmate or the inmate's attorney of record believes that a risk assessment contains a factual error that materially impacts the risk assessment's conclusions regarding the inmate's risk of violence, the inmate or attorney of record may send a written objection regarding the alleged factual error to the Chief Counsel of the board, postmarked or electronically received no less than 30 calendar days before the date of the hearing.

(2) For the purposes of this section, "factual error" is defined as an explicit finding about a circumstance or event for which there is no reliable documentation or which is clearly refuted by other documentation. Factual errors do not include disagreements with clinical observations, opinions, or diagnoses or clarifications regarding statements the risk assessment attributed to the inmate.

(3) The inmate or attorney of record shall address the written objection to "Attention: Chief Counsel / Risk Assessment Objection." Electronic messages sent after board business hours or on a non-business day will be deemed received on the next business day.

~~(f) If a hearing panel identifies at least three factual errors the board's chief psychologist or designee will review the report and determine, at his or her discretion, whether the errors invalidate the professional conclusions reached in the report, requiring a new report to be~~

~~prepared, or whether the errors may be corrected without conducting a new evaluation.~~ (1) Upon receipt of a written objection to an alleged factual error in the risk assessment, or on the board's own referral, the Chief Counsel shall review the risk assessment and determine whether the risk assessment contains a factual error as alleged.

(2) Following the review, the Chief Counsel shall take one of the following actions:

(A) If the Chief Counsel determines that the risk assessment does not contain a factual error as alleged, the Chief Counsel shall overrule the objection, issue a miscellaneous decision explaining the result of the review, and promptly provide a copy of the miscellaneous decision to the inmate or attorney of record when a decision is made, but in no case less than 10 days prior to the hearing.

(B) If the Chief Counsel determines that the risk assessment contains a factual error as alleged, the Chief Counsel shall refer the matter to the Chief Psychologist.

~~(g) Life inmates who reside in a state other than California, including those under the Interstate Compact Agreement, may not receive a Comprehensive Risk Assessment, Subsequent Risk Assessment or other psychological evaluation for the purpose of evaluating parole suitability due to restraints imposed by other state's licensing requirements, rules of professional responsibility for psychologists and variations in confidentiality laws among the states. If a psychological report is available, it may be considered by the panel for purpose of evaluating parole suitability at the panel's discretion only if it may be provided to the inmate without violating the laws and regulations of the state in which the inmate is housed.~~ (1) Upon referral from the Chief Counsel, the Chief Psychologist shall review the risk assessment and opine whether the identified factual error materially impacted the risk assessment's conclusions regarding the inmate's risk of violence. The Chief Psychologist shall prepare an addendum to the risk assessment documenting his or her opinion and notify the Chief Counsel of the addendum.

(2) Upon receipt of the Chief Psychologist's addendum, the Chief Counsel shall promptly, but in no case less than 10 days prior to the hearing, take one of the following actions:

(A) If the Chief Psychologist opined that the factual error did not materially impact the risk assessment's conclusions regarding the inmate's risk of violence, the Chief Counsel shall overrule the objection, issue a miscellaneous decision explaining the result of the review, and provide a copy of the miscellaneous decision and Chief Psychologist's addendum to the inmate or attorney of record prior to the hearing.

(B) If the Chief Psychologist opined that the factual error did materially impact the risk assessment's conclusions regarding the inmate's risk of violence, the Chief Counsel shall issue a miscellaneous decision explaining the result of the review, order a new or revised risk assessment, postpone the hearing if appropriate under section 2253, subdivision (d) of these regulations, and provide a copy of the miscellaneous decision and Chief Psychologist's addendum to the inmate or attorney of record. Impacted risk assessments shall be permanently removed from the inmate's central file.

~~(h) The provisions of this section shall not apply to medical parole hearings pursuant to Penal Code section 3550 or applications for sentence recall or resentencing pursuant to Penal Code section 1170.~~ If the Chief Counsel receives a written objection to an alleged factual error in the risk assessment that is postmarked or electronically received less than 30 calendar days before the hearing, the Chief Counsel shall determine whether sufficient time exists to complete the review process described in subdivisions (f) and (g) of this section no later than 10 days prior to

the hearing. If the Chief Counsel determines that sufficient time exists, the Chief Counsel and Chief Psychologist may complete the review process in the time remaining before the hearing. If the Chief Counsel determines that insufficient time exists, the Chief Counsel may refer the objection to the hearing panel for consideration. The Chief Counsel's decision not to respond to an untimely objection is not alone good cause for either a postponement or a waiver under section 2253 of these regulations.

(i)(1) If an inmate or the inmate's attorney of record raises an objection to an alleged factual error in a risk assessment for the first time at the hearing, the hearing panel shall first determine whether the inmate has demonstrated good cause for failing to submit a written objection 30 or more calendar days before the hearing. If the inmate has not demonstrated good cause, the presiding hearing officer may overrule the objection on that basis alone. If good cause is established, the hearing panel shall consider the objection and proceed with either paragraph (3) or (4) of this subdivision.

(2) For the purpose of this subdivision, good cause is defined as an inmate's excused failure to timely object to the risk assessment earlier than he or she did.

(3) If the hearing panel determines the risk assessment may contain a factual error that materially impacts the risk assessment's conclusions regarding the inmate's risk of violence, the presiding hearing officer shall identify each alleged factual error in question and refer the risk assessment to the Chief Counsel for review under subdivision (f) of this section.

(A) If other evidence before the hearing panel is sufficient to evaluate the inmate's suitability for parole, the hearing panel shall disregard the alleged factual error, as well as any conclusions affected by the alleged factual error, and complete the hearing.

(B) If other evidence before the hearing panel is insufficient to evaluate the inmate's suitability for parole, the presiding hearing officer shall postpone the hearing under section 2253, subdivision (d) of these regulations pending the review process described in subdivisions (f) and (g) of this section.

(4) If the hearing panel determines the risk assessment does not contain a factual error that materially impacts the risk assessment's conclusions regarding the inmate's risk of violence, the presiding hearing officer shall overrule the objection and the hearing panel shall complete the hearing.

(j) Notwithstanding subdivision (i), an inmate shall have the opportunity at a hearing to object to or clarify any statements a risk assessment attributed to the inmate, or respond to any clinical observations, opinions, or diagnoses in a risk assessment.

NOTE: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3051, 11190, and 11193, Penal Code; In re Lugo, (2008) 164 CalApp.4th 1522; In re Rutherford, Cal. Super. Ct., Marin County, No. SC135399A.