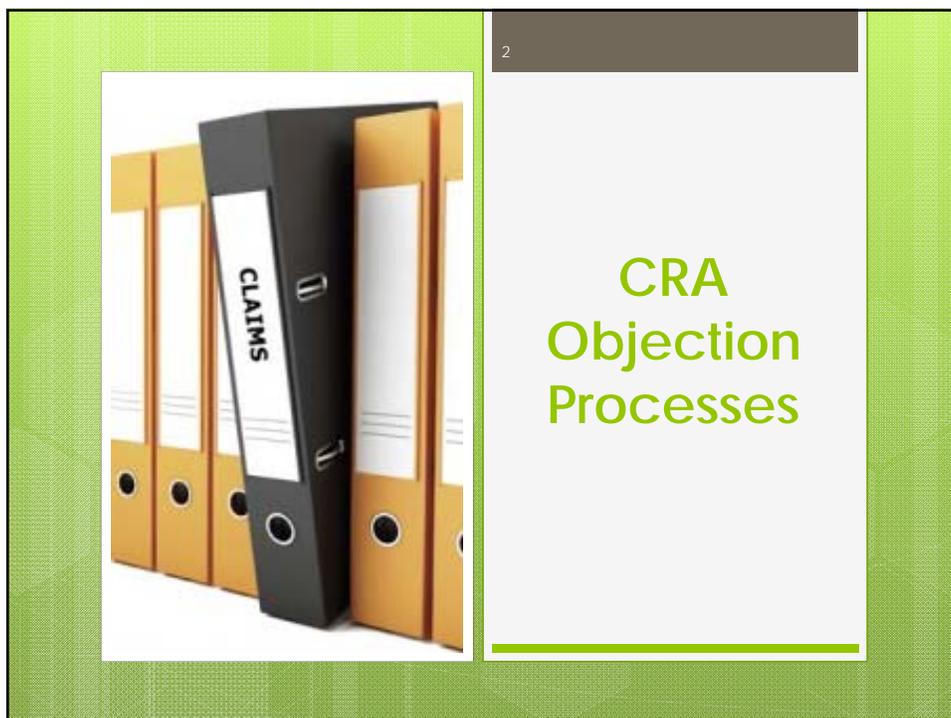


Comprehensive  
Risk Assessment  
Objections

by  
Heather McCray  
Assistant Chief Counsel

This slide features a green textured background with a repeating geometric pattern. A dark grey rectangular box is positioned at the top right. The title and author information are centered in a white rectangular area on the right side of the slide.



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CRA  
Objection  
Processes

This slide features a green textured background with a repeating geometric pattern. On the left side, there is a photograph of several binders, with the central one being black and labeled 'CLAIMS'. A dark grey rectangular box is positioned at the top right, containing the number '2'. The title is centered in a white rectangular area on the right side of the slide.

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## CRA OBJECTION PROCESSES

CRA Objection Processes are now codified in the board's regulations

**(15 CCR § 2240(e)-(j).)**

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## TYPES OF ALLEGATIONS

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## Factual Errors

A **FACTUAL ERROR** is defined as: “[A]n untrue circumstance or event.” (15 CCR 2240(e)(2).)

- *May range from very minor to highly significant errors*

### Examples:

- **Minor:** Inmate states the number of siblings reported is incorrect.
- **Moderate:** Inmate asserts that she was actually working during a period the CRA reported her to be unemployed and living off of generosity of others.
- **Significant:** Inmate asserts that he was convicted of one count of rape instead of eight, as reported in the CRA and factored into the Static-99 score.

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## Factual Errors

Factual Errors include statements the risk assessment attributes to the inmate (“**He Said/She Said**” allegations) where an inmate is challenging:

- **Having ever said** a statement that the risk assessment attributed to the inmate;
- The **manner or tone** in which an inmate’s statement was captured;
- **Additional omitted information** that would have placed the inmate’s statement in a different light.

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## Clinical Opinions

“Clinical opinions” includes clinical **observations, opinions, or diagnoses.**

- **Observations:** Clinician’s findings about observable conditions, such as the inmate’s appearance, hygiene, speech, affect, non-verbal communication, etc.
- **Opinions:** Clinician’s expert conclusions about the inmate’s insight, remorse, level of understanding, level of commitment, etc.
- **Diagnoses:** Clinician’s diagnoses of any mental health conditions including, but not limited to, mental illnesses, personality disorders, substance disorders, etc.

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## Legal Errors

A **LEGAL ERROR** is an allegation that a CRA failed to meet an appropriate legal standard.

### Examples:

- The CRA did not include consideration of the youth/elderly factors for a qualified youth/elderly offender.
- The CRA elevated risk based solely on an inmate’s claim of innocence.

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Pre-Hearing  
Objection  
Process for  
**FACTUAL  
ERRORS**

15 CCR 2240 § (e)-(i)

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### Pre-Hearing Objection Process

- Only for inmates challenging **factual errors**. (15 CCR 2240(e).)
- Inmates must send the objection at least **30 days prior** to the hearing. (15 CCR 2240(e)(1).)
- Board must respond **promptly** but **no later than 10 days prior** to the hearing. (15 CCR 2240(f)-(g).)

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## Pre-Hearing Objection Process

**Step 1:** Chief Counsel (CC) reviews allegations to determine whether any raise factual errors under the regulatory definition.

- **YES:** Refer to Chief Psychologist (CP).
- **NO:** Determine if allegations (1) were proven incorrect or (2) are challenging opinions.
  - **Proven Incorrect:** Overrule the inmate's objections and issue miscellaneous decision.
  - **Opinions:** refer to panel for review.

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## Pre-Hearing Objection Process

**Step 2:** CP reviews factual errors to clinically determine whether the error(s) "materially impacted the risk assessment's conclusions regarding the inmate's risk of violence."

- **YES:** CP issues addendum in BITS determining whether board should amend CRA or conduct new CRA. CRA is corrected or re-done. Prior assessment is removed from file.
- **NO:** CP issues addendum in BITS stating no material impact, but corrects errors in CRA. Prior assessment is removed from file.

In **BOTH** cases, CP refers back to CC.

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## Pre-Hearing Objection Process

**Step 3:** CC issues miscellaneous decision containing results of board's review. (May issue additional response to inmate if warranted.)

**Step 4:** Response to Objection issued to inmate and attorney (either separate or included in 10-day packet) with copies of:

- Miscellaneous decision
- Any additional response to inmate/attorney
- CP addendum letter if issued
- New/amended CRA (if applicable)

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Untimely  
Objections  
and Good  
Cause for  
**FACTUAL  
ERRORS**

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## Pre-Hearing Untimely Objections

**Objection submitted pre-hearing but after 30-days prior to hearing:** CC determines whether review may be completed prior to 10 days before the hearing.

- **YES:** CC and CP complete pre-hearing process described above.
- **NO:** Refer to panel for review. *(Good cause standard will apply.)*

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## At-Hearing Untimely Objections

**Objection raised first time at hearing or untimely pre-hearing objection was referred to panel:** Panel determines whether inmate has demonstrated “good cause” for failing to timely raise objections.

**Good Cause** NOT defined; determined at discretion of the panel.

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## NO Good Cause

**Panel finds NO good cause:** Panel may, but is **NOT required** to, consider the objection and determine whether the inmate has raised a possible factual error that may materially impact the risk assessment's conclusions regarding the inmate's risk of violence.

- *Panel MAY overrule the objection based on lack of good cause alone.*
- *If panel uses its discretion to hear the objection, panel follows directions below **as though the inmate did have good cause.***

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## Good Cause

**Panel finds good cause:** Panel is **required** to consider the objection and determine whether the inmate has raised a possible factual error that may materially impact the risk assessment's conclusions regarding the inmate's risk of violence.

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## Good Cause

**Panel finds NO Errors Exist:** Panel overrules the objection and completes the hearing.

**Panel finds Errors May Exist:** Panel must do BOTH of the following:

- **First:** Identify all alleged factual errors at issue and refer all errors to CC and CP for review.
- **Second:** Determine whether the panel can reach a decision regarding the inmate's suitability without reliance on the risk assessment:
  - **YES:** Panel must disregard all portions of the CRA with any possible errors and any potentially affected opinions (such as the final risk rating) and complete hearing
  - **NO:** Panel must postpone hearing

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## At-Hearing Objection Process for Objections to **CLINICAL OPINIONS**

**15 CCR § 2240(j)**

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## At-Hearing Objection Process

Only for inmates challenging **clinical observations, opinions, or diagnoses**.

- Inmates may raise these objections for the **first time at the hearing** because they are not included in the pre-hearing process.
- **No Good Cause** is required.

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## At-Hearing Objection Process

Challenges to **clinical observations, opinions, or diagnoses**:

- Panel hears inmate's reasons for disagreement and panel reaches own determination.
- Panel has discretion whether to disregard any or all portions of a CRA and how much weight to give a CRA.

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## Objection Process for **LEGAL ERRORS**

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### Legal Errors

- Not included in regulations because the Board is already obligated under other laws to remedy all legal errors in a CRA.
- Legal Errors may be raised either prior to a hearing or during the objection portion of a hearing.
- **We request attorneys raise these issues as soon as possible to avoid hearing delays.**

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## Attorney Role in CRA Objection Processes

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### Attorney Role

- CRAs are now required to be served on the inmate and attorney at least 60 days prior to the hearing (*majority are served more than 90 days in advance*).
- Attorneys are responsible for discussing the CRA with their clients prior to the hearing.
- Attorneys are also responsible for identifying any possible **legal errors** that may exist, since the client may not be aware of or understand the laws.

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## Attorney Role

During discussion, encourage the clients to identify any portions of the CRA they believe are in error.

For errors identified by the inmate, attorneys should provide guidance about whether the alleged error is:

- A **factual error** that must be raised pre-hearing.
- A disagreement with a **clinical opinion** that must be raised at the hearing.
- A **legal error** that should be raised pre-hearing.

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## Attorney Role

For **FACTUAL ERRORS**: Attorneys should provide guidance about:

- Whether objecting to the identified errors could **potentially harm the inmate's case**
- How to **appropriately draft** a pre-hearing objection to factual errors
  - Be brief
  - Clearly identify the error and any existing documentation supporting the objection if available
  - Manage tone of letter

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## Attorney Role

### For **DISAGREEMENTS WITH CLINICAL OPINIONS**:

- Attorneys should provide guidance about: Whether objecting to the identified errors could **potentially harm the inmate's case**
- If Attorney determines objection is appropriate, Attorney also needs to make the objection at hearing and be prepared to identify any information supporting the reasons for the disagreement.

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## Attorney Role

### Successful **DISAGREEMENTS WITH CLINICAL OPINIONS**:

- Conflicting information in the CRA discredits a clinical opinion.
- Information in the CRA demonstrates that a critical element for a specific diagnosis is not met.

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## Attorney Role

For **LEGAL ERRORS**: Attorneys should provide guidance about:

- Whether a legal error exists
- How to **appropriately draft** a pre-hearing objection to a legal error
  - Be brief
  - Clearly identify the error and the specific law (constitutional, statutory, or regulatory section, or case law) violated.
- Manage tone of letter

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## Attorney Role

For **LEGAL ERRORS**: Attorneys may also need to be prepared to:

- Make the objection at hearing on behalf of the inmate, if appropriate.
- Determine whether to request a new CRA or request that the panel consider the impact the legal error may have had in determining suitability.

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## Attorney Role – ADA Clients

If your client has a **disability** that impacts his or her ability to identify or draft objections, attorneys should be prepared to:

- **Review the central file** and identify any potential **factual errors**
- **Review the CRA** and identify any potential **legal errors** or disagreements with **clinical opinions**
- **Draft and send** timely objections on behalf of the client.

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## Attorney Role – Client Pre-empt

If your client has already submitted CRA objections before you are able to meet, attorneys should be prepared to:

- **Review the objections** their client submitted, if available, or request a copy from the board.
- Determine whether any client objections are **potentially damaging** to the case and **mitigate** the damaging impact at the hearing.
- Raise client's objections to **clinical opinions** at the hearing if attorney deems appropriate.
- Identify any **unreported legal errors** and advise the client on properly objecting to the legal errors.

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## SUBMITTING OBJECTIONS

**ALL Pre-Hearing Objections must be sent to:**

**Board of Parole Hearings  
Attention: Chief Counsel / Risk Assessment Objection  
P.O. Box 4036  
Sacramento, CA 95812-4036**

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## Any Questions?

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