

OREGON BOARD OF PAROLE & POST-PRISON SUPERVISION

HEARING NOTICE & NOTICE OF RIGHTS PACKET

INMATE: _____

HEARING DATE: _____ **HEARING LOCATION:** _____

You have been scheduled by the board for a Murder Review hearing.

If an attorney is going to represent you at your hearing, please tell the attorney that the date should be verified at least one day before the hearing date by calling the Board of Parole & Post-Prison Supervision at 503-945-0902. Please tell your attorney or any visitor(s) that they must contact the Board in advance to receive information about attending and/or participating in the hearing. Please read the attached notice of rights and procedures carefully.

HEARING ABBREVIATIONS:

EI.....	EXIT INTERVIEW	PC.....	PAROLE CONSIDERATION
PH.....	PAROLE HEARING	PT.....	PRISON TERM
FD.....	FUTURE DISPOSITION	PR.....	PERSONAL REVIEW
AR.....	ADMINISTRATIVE REVIEW	PP.....	POSTPONEMENT
MR.....	AGGRAVATED MURDER REVIEW	PI.....	PERSONAL INTERVIEW
PD	PREDATORY SEX OFFENDER DESIGNATION	SVPS	SEXUALLY VIOLENT DANGEROUS OFFENDER DESIGNATION

(PSY or PS.....indicates that a psychological evaluation will be considered.)

BE PREPARED

1. Read all information before the hearing.
2. Bring your hearing packet to the hearing.
3. If you need an interpreter or other help, contact the Board or your institutional counselor immediately.
4. Any written information you want the Board consider at your hearing should be received by the Board at least one week before the hearing. Please write on it: "FOR HEARING."

Copies of Board administrative rules are available in the inmate legal library.

**OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION
AGGRAVATED MURDER REVIEW HEARING
INMATE RIGHTS AND PROCEDURES**

(OAR 255-032-0022, OAR 255-030, 255-032, 255-040-0035, 255-050-0010, 255-060-0006, 255-080)

This is an informal summary of your rights at the hearing; please obtain and refer to the rules and statutes that govern the Board's conduct of Murder Review hearings.

Law that Applies

- 1) You are scheduled for a Murder Review hearing before the Oregon State Board of Parole and Post-Prison Supervision. The Board has the authority and jurisdiction to hold a hearing on the issue pursuant to ORS 163.105(2) or 163.115(5).
- 2) The sole issue to be considered shall be whether you are likely to be rehabilitated within a reasonable period of time. You have the burden of proving, by a preponderance of the evidence, the likelihood of rehabilitation within a reasonable period of time. If after hearing all the evidence, the full Board, upon a unanimous vote of all members, or by such other vote as is specified in statute, finds that you are capable of rehabilitation, and that the terms of your confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of confinement to life imprisonment with the possibility of parole or work release and may set a projected parole release date. Otherwise, the Board shall not change the terms of confinement.
- 3) The hearing will be conducted in the manner prescribed by ORS 163.105 or ORS 163.115, and in the manner provided in the administrative rules of the Oregon Board of Parole and Post-Prison Supervision, OAR chapter 255, Division 32. Ordinarily the Board will apply the substantive* rules in effect at the time you committed your crime(s) as well as the applicable procedural* rules and laws. These statutes and rules are available through the institution's inmate law library; please consult the law librarian or your inmate legal assistant.
- 4) OAR 255-032-0020 specifies that the criteria indicating whether an inmate is likely to be rehabilitated prior to release will include:
 - a. The inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released;
 - b. The inmate's institutional employment history;
 - c. The inmate's institutional disciplinary conduct;
 - d. The inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law;
 - e. The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor;
 - f. The inmate's prior criminal history, including the nature and circumstances of previous offenses;
 - g. The inmate's conduct during any previous period of probation or parole;
 - h. The inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community;
 - i. The adequacy of the inmate's parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live;

* "Substantive" rules or laws are those that create, define, or regulate the rights and duties of you and the Board. "Procedural" rules or laws are those that set out the methods for holding a hearing or taking an action. Procedural rules do not affect your rights.

- j. There is a reasonable probability that the inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

This is not an exclusive list, and the Board will consider such other information as may contribute to its ability to reach a decision.

Right to an Attorney

The Board may be represented by an attorney at the hearing. You may hire an attorney to represent you. In that case, it is your responsibility to notify the attorney of the date of your hearing. The Board will appoint and pay for an attorney if you do not have the funds to pay for an attorney and if you request an attorney. You may also represent yourself at the hearing. If you choose to represent yourself, but determine in the course of the hearing that an attorney is necessary, you may not request a recess.

Who May Attend the Hearing

The hearing is public, and persons who wish to observe or support you may attend in person, subject to Department of Corrections rules. Attendees may also participate by telephone as long as telephone access is available (the Board's phone lines are limited). Instruct your support persons and attorney to contact the Board at least two weeks in advance to arrange to attend the hearing.

Also attending the hearing, pursuant to statute and rule, may be victim(s) of your crime(s) and their supporters, and/or a representative of the District Attorney's office from the committing jurisdiction (the county where you were sentenced). The identified victim(s) and the DA representative have the right to make statements at the hearing under ORS 144.750 (*former* ORS 144.120(7)). You will have an opportunity to respond to any comments that are made.

Because Board hearings are public, representatives of the press may attend. The Board does not usually notify the parties that press representatives intend to be present at a hearing.

Information Considered at the Hearing/Witnesses

All material relevant and pertinent to issues before the Board will be made a part of the record. Exhibits not available prior to the hearing will be made available to you or your attorney at the hearing. Any material considered but not made part of the public record shall be separated and a statement to that effect shall be placed in the record. The Board shall follow the criteria for denial or disclosure of records set out in OAR 255-015-0010.

Requests that the Board research and obtain information you want considered cannot be honored. It is your responsibility to provide that information.

You must make your own arrangements for calling and presenting witnesses. However, upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas on your behalf. Make your request to the Board as soon as possible. If the Board allows the subpoena, the subpoena will be sent to you. **You are responsible for serving it on the witness.** Witnesses are not required to appear in person unless good cause can be shown why an in-person appearance is necessary. Witnesses may participate via teleconference. Instruct your attorney, witnesses, or any other visitor(s) that they must contact the Board in advance to receive information about attending and/or participating in the hearing. Testimony of each witness will ordinarily be limited to ten minutes.

In general, information that you want the Board to consider should be provided in writing at least one week prior to the hearing and you should write clearly on it: "FOR HEARING." The Board, at its discretion, may accept limited amounts of information during the hearing. Please be aware that information you submitted for previous hearings **will not automatically be considered by the Board for**

this hearing. You must resubmit any such information. You and your representative may make oral statements to the Board.

Notice and Waiver

You should receive your parole packet and a notice of your hearing at least 14 days before your hearing date. You should bring your copy of the parole packet to your hearing. If you do not receive these materials at least 14 days prior to your hearing, you may either waive the notice period or have your hearing rescheduled.

Presiding Officer

The full Board will hear your case. One of the members will serve as the presiding officer and will rule on all matters that arise at the hearing.

Hearing Procedure

The Board's task at any hearing is to gather information to make the best possible decision with the available information while assuring a fair and full hearing to all persons entitled to participate. A Board hearing is less formal than a court appearance. Generally it is fairly short, so be prepared to speak concisely.

You should bring your copy of the parole packet to your hearing. You may want to call the Board's attention to one or more documents, or the Board may refer to various documents and may want to discuss them with you. The Board will have reviewed the documents in your Board Review Packet, which will usually include the Presentence Report or a report of similar content, as well as any additional information provided by the police, counsel, the victim, or the district attorney, any Department of Corrections reports, and any recent psychological/psychiatric evaluations, as well as what you have submitted.

Please remember that under statute you have the responsibility (the "burden") of proving, by a preponderance of the evidence, the likelihood of rehabilitation within a reasonable period of time. **Be prepared to present your evidence!** However, the Board may also ask you questions about the crime(s) you committed, about your programming, prison adjustment or parole performance, efforts to deal with the factors that led to your criminal behavior, your parole planning, etc. If you have prepared a written statement, the Board prefers that you submit the statement for review and not plan to read aloud from it during the hearing. However, you can bring any notes that you want to remind yourself of what you want to tell the Board.

Relevant evidence of a type of commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Hearsay evidence is not automatically excluded, but the fact that it is hearsay will affect how much reliance the Board will place on it in reaching a decision.

If you object to the admissibility of evidence you must state your objection at the time the evidence is offered.

You should be aware that irrelevant, immaterial, or unduly repetitious evidence will be excluded, and you should plan your witness list and your own testimony with that in mind.

(If you successfully appeal your conviction or sentence in a court of law, any comments made to the Board during the hearing can be used upon retrial or resentencing.)

Continuances/Cancellation

There are normally no continuances granted at the end of a hearing. You should be prepared to finish what you want to say or submit it in writing at the time of the hearing. However, if you can show that the record should remain open for additional evidence, or upon the Board's own motion, the presiding Board member may, at his or her discretion, continue the hearing for a period of time not to exceed 60 days, to obtain additional information required to assist the Board in its decision.

If you ask for cancellation of a hearing, it must be for good cause, in writing, and with seven days' advance notice. If the Board finds the cancellation request does not fulfill these requirements, an inmate shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing.

The Board's Decision

At the end of the hearing the Board will close the testimony and adjourn the hearing. It will then deliberate and in most cases will issue its final order in writing. The Board may also issue its decision orally on the record at the hearing. If the Board does not find the likelihood of rehabilitation within a reasonable period of time, the order will include findings of fact and conclusion(s) of law. If the Board finds that you have proven by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time, then it is not necessary that the final order include findings of fact or conclusions of law.

Please be aware that the Board's careful consideration of your case may result in preparation of the final order taking several months. The Board regrets such delays, and works to issue your order as quickly as possible.

Effect of Denying Relief Request

If the Board does not find likelihood of rehabilitation within a reasonable period of time, the Board may specify the period until you are eligible to petition again for a change in the terms of confinement. The period shall be no less than two years and no longer than ten years after the denial.

Exceptions to Order

After the hearing, you will be sent a final order reflecting the Board's decisions in your case. This final order will be captioned "Board Action Form." If you disagree with the final order, you may seek reconsideration of the order by means of an administrative review. See Appeals and Administrative Reviews below and Division 80 of the Board's rules. If you disagree with the administrative review response, you may appeal to the Oregon Court of Appeals pursuant to ORS 144.335. There will not be an opportunity after the Board issues its final order for re-arguments or objections.

Record

An audio recording will be made of the entire hearing to preserve the testimony and other evidence for future reference. The hearing record will not be transcribed by the Board unless requested by the Department of Justice to prepare a response for judicial appeal. Inmates may purchase a copy of the audio recording of the hearing at a cost of \$8.00. The Board only retains hearing recordings for four years from the date of the hearing. After four years, the record is destroyed.

Administrative Reviews and Appeals

You must exhaust your administrative review remedies before you may appeal to the Court of Appeals (see ORS 144.335 and OAR 255-80-0001). You may request administrative review from the Board if you have evidence that:

1. The Board action is not supported by evidence in the record;
2. Pertinent information was available at the time of the hearing which through no fault of yours, was not considered;
3. Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions;
4. The Board acted inconsistently with its rules, policies, and procedures and the inconsistency is not explained;
5. The Board acted in violation of a constitutional or statutory provision; or
6. The Board acted outside the range of discretion delegated to the agency by law.

In order to request a review, the Board asks you to use the blue form called Administrative Review Request Form (Exhibit O). The form is available at the inmate law library and the Board's website. If you cannot get this form, please type or print your request in ink on white paper. There are rules about how long the administrative review request can be, and about the format you should use. Be sure to look up OAR 255-080-0008 and follow the rules there. The request for review must be received by the Board within 45 days after the date the Board Action Form is mailed (see OAR 255-080-0005). Do not use this form to make inquiries or to request corrections of obvious clerical errors. You can write to the Board for that.

Please note that the Board's limited staffing may result in the response to your review request taking several months. The Board regrets such delays, and works to complete your Administrative Review Response (ARR) as quickly as possible.

After you receive the Board response to your request, if you still believe that the Board erred, and you can show that the order "adversely affects or aggrieves" you (harms you), you may then request judicial review from the Oregon Court of Appeals (see ORS 144.335). You must file a Petition for Review with the Oregon Court of Appeals within 60 days after the final administrative review response is mailed (see OAR 255-080-0001 to 0015).

Pay attention to the time requirements for your administrative review request and your petition for review so that they will not be too late to be considered.

If you cannot afford a lawyer to help you with an appeal to the Court, you might qualify for appointed counsel. You should contact the Public Defender's Office about having an attorney appointed for you.