

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 255

BOARD OF PAROLE AND POST-PRISON SUPERVISION

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& LEGISLATIVE COUNSEL

FILING CAPTION: Amend Exhibit NOR-1 "HEARING NOTICE & NOTICE OF RIGHTS PACKET" for clarity and readability.

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CONTACT: Perry Waddell
503-871-5362
Perry.R.Waddell@state.or.us

1321 Tandem Ave NE
Salem, OR 97310

Filed By:
Perry Waddell
Rules Coordinator

AMEND: 255-030-0013

NOTICE FILED DATE: 05/29/2020

RULE SUMMARY: This change is an update to the attachment Exhibit NOR-1 and not to the rule itself. Exhibit NOR-1 is amended to update language to modern terms, fix grammar and for clarity and readability.

CHANGES TO RULE:

255-030-0013

Notification of Hearing ¶¶

- (1) The Board shall send written notice of the hearing and its purpose to the inmate. The inmate shall receive a copy of the Board Review Packet, including the notice of rights (Exhibit NOR-1), at least 14 days prior to the hearing.¶¶
- (2) If the inmate did not receive 14 days notice, the Board may reschedule the hearing or the inmate may waive the notice and the Board shall conduct the hearing.¶¶
- (3) The Board shall attempt to notify the victim, if the victim requests notification and furnishes the Board a current address, and the District Attorney of the committing county at least ninety (90) days before all hearings by sending written notice to the current addresses of both parties.

Statutory/Other Authority: ORS 144.120(7), 144.130

Statutes/Other Implemented: ORS 144.120(7), 144.130

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.



OREGON BOARD OF PAROLE & POST-PRISON SUPERVISION

HEARING NOTICE & NOTICE OF RIGHTS PACKET

AIC: _____

Hearing Date: _____ Hearing Location: _____

You have been scheduled by the Board for a: _____ 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 visitors that they must contact the Board at least two weeks **in advance** to find out about attending or participating in the hearing. Please read the attached notice of rights and procedures carefully.

HEARING ABBREVIATIONS:

AR.....	ADMINISTRATIVE REVIEW	PI.....	PERSONAL INTERVIEW
EI.....	EXIT INTERVIEW	PP.....	POSTPONEMENT
FD.....	FUTURE DISPOSITION	PR.....	PERSONAL REVIEW
MR.....	MURDER REVIEW	PSY or PS...	Indicates that a psychological evaluation will be considered.
PC.....	PAROLE CONSIDERATION	PT.....	PRISON TERM
PD.....	PREDATORY SEX OFFENDER DESIGNATION	SVDO.....	SEXUALLY VIOLENT DANGEROUS OFFENDER DESIGNATION
PH.....	PAROLE HEARING		

HOW TO BE PREPARED FOR YOUR HEARING:

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 to consider at your hearing should be received by the Board at least two weeks before the hearing. Please write: "FOR HEARING" on the packet.
5. For a Prison Term Hearing, review your history risk score, aggravation, and mitigation carefully.
6. For the Board to officially acknowledge an error in the PSI that you argue exists, you will need to provide a signed order showing that the court has approved your requested changes.

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

TYPES OF HEARINGS

- **ADMINISTRATIVE REVIEW:**
Hearing conducted on a specific issue where it has been found that: prior Board action is not supported by the written findings; the written findings are inaccurate; pertinent information was not considered at a prior hearing; the action is inconsistent with Board rules or policies; or there is a change in the rules or statutes or a prison sentence.
- **EXIT INTERVIEW:**
Interview with the AIC to determine whether to affirm or defer the AIC's projected parole release date. A projected parole release date may be affirmed or postponed for no fewer than 2 years or no more than 10 years from the current projected parole release date.
- **FUTURE DISPOSITION:**
Hearing conducted after parole revocation to determine whether the AIC should be re-released on parole.
- **MURDER REVIEW:**
Hearing to determine whether or not the AIC is likely to be rehabilitated within a reasonable period of time so that the terms of their sentence may be converted to life with the possibility of parole.
- **PAROLE CONSIDERATION:**
Hearing to determine whether a dangerous offender's condition is absent, in remission, or whether the AIC remains dangerous but can be adequately controlled in the community with supervision and mental health treatment. If the dangerous condition is absent or in remission, a parole release date may be set. If the condition is present, another parole consideration hearing date may be scheduled to be held no sooner than 2 years and no longer than 10 years from the current parole consideration date.
- **PAROLE HEARING:**
Interview of the AIC who is under the Discretionary System (crime committed before approximately 1977), to determine whether to grant release on parole. This may result in no action or the setting of a parole date.
- **PAROLE POSTPONEMENT:**
Hearing to determine whether the parole release date should be postponed for misconduct. The extension of the prison term can be from 5% to 100% of the prison term, but no more than 5 years. Inoperative (escape) time will be added.
- **PERSONAL INTERVIEW:**
A discretionary hearing scheduled by the Board to review the progress of an AIC.
- **PERSONAL REVIEW:**
Hearing to determine whether to grant a reduction in the AIC's prison term, based on a positive recommendation from the Department of Corrections, which would result in advancing the projected parole release date.
- **PRISON TERM:**
Hearing held to establish a prison term, deny parole, or set a parole consideration hearing date.
- **SEXUALLY VIOLENT DANGEROUS OFFENDER DESIGNATION:**
Hearing to determine if an offender should be deemed a sexually violent dangerous offender under ORS 144.635 and OAR 255-060-0018.

BOARD OF PAROLE & POST-PRISON SUPERVISION

AIC RIGHTS AND HEARINGS PROCEDURES

(OAR 255-030-0035(2)(a), OAR 255-030, 255-032, 255-040, 255-050, 255-060, 255-075)

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

Law that Applies

You are scheduled for a hearing before the Oregon State Board of Parole & Post-Prison Supervision. Based on the hearing results, the Board will issue an order which may affect your release date from the institution. Refer to the previous page for more specific information on the type of hearing.

You may be released on parole or post-prison supervision (PPS). It is also possible that your parole release date or parole consideration date may be postponed or that parole/PPS release may be denied.

The hearing will be conducted as provided in Chapter 144 of the Oregon Revised Statutes and as further provided in the administrative rules of the Oregon Board of Parole & Post-Prison Supervision, OAR Chapter 255. Ordinarily the Board will apply the *substantive* rules* in effect at the time you committed your crime as well as the applicable *procedural** rules and laws. These statutes and rules are available through the institution's AIC law library; please consult the law librarian or AIC legal assistant.

Right to an Attorney

The Board will not be represented by an attorney at the hearing. Unless your hearing is a Murder Review hearing, the Board will not appoint or pay an attorney for you. You may represent yourself at the hearing. You may also choose to bring your attorney at your expense. Legal aid organizations may be able to assist an AIC who has limited financial resources. Most Department of Corrections institutions have AIC legal assistants available through the legal library who can assist you in preparing for the hearing, and who may accompany you to the hearing. If you choose to consult an attorney or legal assistant, make sure you begin your contacts well before the hearing; the process can be time-consuming. If you hire an attorney, it is your responsibility to notify your attorney of the date of your hearing.

Who May Attend the Hearing

You may be accompanied by one or more persons of your choice to the hearing, who may make statements on your behalf. The hearing is public, and other persons who wish to observe or support you may attend in person, subject to Department of Corrections and Board of Parole rules. Attendees may also participate by telephone if telephone access is available. Tell your supporters and attorney to contact the Board at least two weeks in advance to arrange to attend the hearing.

Victims of your crimes and their supporters, and a representative of the District Attorney's office from the county where you were sentenced may also attend the hearing. The identified victims and the DA representative have the right to make statements at the hearing under ORS 144.750. You will be able 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.

* *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.

Information Considered at the Hearing* –

The Board will consider the documents in the packet prepared for your hearing and provided to you. It is your responsibility to provide any other information you want considered. 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. The Board will not research and obtain information for you. You may not call witnesses or cross-examine anyone who has provided information to the Board.

In general, information that you want the Board to consider should be provided in writing at least fourteen days before the hearing and you should write clearly on it: *FOR HEARING*. Please send a written list of your certificates, instead of photocopies of the certificates themselves. The Board, at its discretion, may also accept limited amounts of written information during the hearing. You and your support persons or representatives may make statements to the Board. The statements provided by your support persons are limited to a total of 15 minutes, unless the Board member presiding over your hearing finds good cause to allow for additional time.

Presiding Officer

Either the full Board or a panel of the Board (one or more members) will hear your case. One of the members will serve as the presiding officer (or “lead”) and will rule on all matters that arise at the hearing. The Board will usually announce its decision at the end of the hearing. If not, you will receive the decision in writing in a Board Action Form (BAF).

Notice and Waiver

The parole packet and a notice of your hearing are sent to you at least 14 days before the hearing date. 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. If you are near to a hearing date and have not received a packet or other information, let the Board know right away.

Refusal

You may refuse to attend your hearing. If so, please write to the Board and specifically state that you plan to refuse to attend your hearing. If it is a last-minute decision, please inform your counselor, who in turn can notify the Board. When you are called out for the hearing, you should honor the call-out, and then inform institution staff of your decision not to attend the hearing. The Board may then hold the hearing without you and make its decision. You should be aware that in your absence, the Board may deny parole, or defer parole to a date close to your good time date.

Hearing Procedure

The Board’s task 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. You should be prepared to speak briefly and to the point. You should bring your copy of the parole packet to your hearing. The Board may refer to some of the documents and may want to discuss them with you.

First, the Board will review the documents in your Board Packet, which will usually include the Presentence Report or a similar report, as well as information provided by police, the victim, or the district attorney, any Department of Corrections reports, and any recent psychological or similar evaluations. You have the right to examine these documents before the hearing, subject to the exceptions listed in OAR 255-015-0010.

* Please refer to the statutes and administrative rules for the type of hearing you are having.

In the specific case of a Prison Term Hearing, the Board will tell you the proposed findings regarding your history, risk score and crime category. Go over the forms in your packet ahead of time. You have the right to present additional relevant information, including mitigating factors (refer to Exhibit E2 and E3) and you have the right to give the Board evidence or arguments on information that you believe is not accurate. If you wish to ask the Board to find mitigation, please send to the Board or bring with you written documentation to verify your statements. (Be aware that if you successfully appeal your conviction or sentence, any comments made to the Board during the hearing can be used in court upon retrial or resentencing.)

Depending on the purpose of your hearing, the Board will ask you questions about the crimes 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 to the Board 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.

As noted above, your representatives, the victims, and the DA representative may make statements to the Board. You will have an opportunity to speak to the Board and respond to the statements made by the victims and DA.

Continuances

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, the presiding Board member may, at their sole discretion, continue the hearing for a short period of time to allow you or others to submit extra information.

Decision

Following the fact-finding portion of the hearing, the Board will make its decision in private, and then will (usually) give its decision to you. There will not be an opportunity after the Board deliberates for re-arguments or objections. After the hearing, you will also be sent an order that states the Board's decision in your case. This order will be captioned Board Action Form (referred to as a "BAF").

Record

An audio recording will be made of the entire hearing to preserve the testimony for future reference and in the event of appeal from the Board's order. The hearing audio record will not be transcribed by the Board unless requested by the Department of Justice to prepare a record for a judicial appeal. AICs may purchase a copy of the recording from the Board. The Board only keeps hearing recordings for 4 years from the date of the hearing; after 4 years they are destroyed.

Administrative Reviews and Appeals

If you believe the Board made a mistake in making its decision, you may seek administrative review.

You must ask the Board to examine your claims ("exhaust your administrative remedies") before you may ask for judicial review from the Court of Appeals (see ORS 144.335 and OAR 255-080-0001). You may request review 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 your own, 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 given to the agency by law.

Please use the blue form called Administrative Review Request Form (Exhibit O) to request a review. The form is available at the AIC law library and from the Board's website. If you cannot get this form, please type or print your request in ink on blue or 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, or within 45 days of the date you receive a supervision order. Read OAR 255-080-0005. Do not use the Exhibit O form to ask questions or to request corrections of obvious clerical errors. You can write to the Board for 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**, 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 OAR255-080-0001 to 0015).

Pay attention to the time and format requirements for your administrative review request and your petition for review so that they will not be too late to be considered or may be rejected for other reasons.

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.

* Harms you.