



Written by Mark Wilson Edited by Julia Yoshimoto

Oregon Justice Resource Center

The Oregon Justice Resource Center (OJRC) is a Portland, Oregon, 501(c)(3) nonprofit founded in 2011. We work to promote civil rights and improve legal representation for communities that have often been underserved in the past: people living in poverty and people of color among them. Our clients are currently and formerly incarcerated Oregonians. We work in partnership with other, like-minded organizations to maximize our reach to serve underrepresented populations, train public interest lawyers, and educate our community on civil rights and civil liberties concerns. We are a public interest law firm that uses integrative advocacy to achieve our goals. This strategy includes focused direct legal services, public awareness campaigns, strategic partnerships, and coordinating our legal and advocacy areas to positively impact outcomes in favor of criminal justice reforms.

How to contact the Board of Parole and Post-Prison Supervision

Oregon Board of Parole and Post-Prison Supervision 1321 Tandem Ave., NE Salem, Oregon 97301 Ph. 503-945-0900 Fax 503-373-7558 www.oregon.gov/BOPPPS

"A Guide to Preparing for your Murder Review Hearing" was written by Mark Wilson and edited by Julia Yoshimoto. Design and layout were by Alice Lundell.

Legal disclaimer

The information in this guide is for general information purposes only. This information is not a substitute for specific legal advice regarding a person's specific situation, problem, or case. Remember that the law is always changing and that the information in this guide may not be the most up-to-date information available.

A note from the author

This guide offers an overview of the "murder review" or "rehabilitation" hearing process conducted by the Board of Parole and Post-Prison Supervision (Board) for people convicted of murder or aggravated murder. We hope this information will help you begin to think about and prepare for your rehabilitation hearing.

This guide provides general information. It is not legal advice. For advice specific to your situation, facts, and case, speak to any attorney or legal assistant.

The information provided here is based on the most current law available at the time this guide was written. However, it is important to remember that laws frequently change. Rather than relying only on this guide, you should read all the relevant statutes, rules and cases and do your own research to make sure that the law has not changed significantly since this guide was written.

Mark Wilson Special Advisor to the Oregon Justice Resource Center Youth Justice Project Incarcerated in Oregon

A GUIDE TO PREPARING FOR YOUR

Murder Review Hearing

| What is a Murder Review Hearing and how does it affect me? | 01 | 1 |
|---|---|----|
| What law governs Rehabilitation Hearings? | 02 | 2 |
| When am I eligible for a Rehabilitation Hearing? | 03 | 4 |
| What is the purpose of a Rehabilitation Hearing? | 04 | 5 |
| What do I have to prove at a Rehabilitation Hearing? | 05 | 6 |
| How do I show that it is more likely than not that I am capable of rehabilitation? | 06 | 12 |
| A. Board's rehabilitation criteria | | 12 |
| 1. 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; | 010203040506 | 14 |
| 2. The inmate's institutional employment history; | | 17 |
| 3. The inmate's institutional disciplinary conduct; | | 17 |
| 4. The inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or | | 18 |

hinder conformity to law;

| 5. The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor; | 19 |
|---|-------|
| 6. The inmate's prior criminal history, including the nature and circumstances of previous offenses; | 20 |
| 7. The inmate's conduct during any previous period of probation or parole; | 21 |
| 5. The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor; 6. The inmate's prior criminal history, including the nature and circumstances of previous offenses; 7. The inmate's conduct during any previous period of probation or parole; 8. 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; 9. 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; 10. There is a reasonable probability that the inmate will remain in the community without violating the law, and there is a substantial likelihood that the inmate will conform to the conditions of parole. Summary of preparing for the Board's rehabilitation criteria B. Evidence generally, documents and witnesses i. Evidentiary standards ii. Documents iii. Witnesses How do I talk to the Board about my crime? O7 How and when do I request a hearing? | 22 |
| 9. 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; | 25 |
| 10. There is a reasonable probability that the inmate will remain in the community without violating the law, and there is a substantial likelihood that the inmate will conform to the conditions of parole. | 28 |
| Summary of preparing for the Board's rehabilitation criteria | 30 |
| B. Evidence generally, documents and witnesses | 33 |
| i. Evidentiary standards ii. Documents iii. Witnesses | 33-35 |
| How do I talk to the Board about my crime? 07 | 36 |
| How and when do I request a hearing? 08 | 38 |

| 39 | 09 | Appointment of counsel at a rehabilitation hearing |
|--|-----------|--|
| 39 41 43 45 46 49 54 54 56 58 | 10 | Victim and prosecutor hearing participation |
| 43 | 11 | Board Review Packet and Notice of Rights |
| 45 | 12 | Expert witnesses |
| 46 | 13 | Subpoenas, calling witnesses and cross- examination |
| 49 | 14 | Conduct of the hearing |
| 54 | 15 | The decision |
| 54 | 13 | A. Negative decision and subsequent rehabilitation hearing eligibility |
| 56 | | B. Positive decision and additional Board hearings |
| 58 | 16 | Audio recording of the hearing |
| 59 62 | 17 | Administrative and judicial review of Board orders |
| 62 | | Conclusion |
| | | Endnotes |
| × | | Appendix One |

1. What is a murder review hearing and how does it affect me?

What is a Murder Review Hearing and how does it affect me?

A "murder review hearing" – commonly called a "rehabilitation hearing" – applies to anyone convicted of:

- Aggravated murder² and sentenced to life imprisonment with a 20- to 30year minimum³, or
- Murder⁴, committed on or after June 30, 1995⁵, and sentenced to life imprisonment with a 25-year minimum.

A rehabilitation hearing is required before the Board can set a release date. **It is not a release hearing.** It is a hearing that the Board holds to consider converting a life sentence from life without the possibility of release, to life with the possibility of release.⁶

The rehabilitation hearing is a hurdle that you must get over to be released. As discussed in Section 15A, if you fail to make it over that hurdle, you will be eligible for a subsequent rehabilitation hearing at intervals of every two-to-ten years thereafter. As discussed in Section 15B, once you make it over the rehabilitation hearing hurdle, the Board will hold a Prison Term hearing to set a release date. Approximately six months before that scheduled release date, the Board will order you to have a psychological evaluation, which will be considered at an Exit Interview hearing. If the Board finds during the Exit Interview hearing that you engaged in serious misconduct in the prison, have a severe mental or emotional condition that may make you a danger to the community, or your release plan is inadequate, it will postpone the previously scheduled release date. Otherwise, it will order your release.

What law governs rehabilitation hearings?

The Board is an administrative agency that was created by the legislature. It has only the authority that the legislature grants by statute. The Board has authority and a duty to adopt administrative rules to carry out the power granted by the legislature but it cannot adopt a rule that gives the Board greater authority than the legislature granted. Yet, the Board can adopt rules that limit the authority that the legislature granted. Once the Board has adopted a rule, it *must* follow it.

The rehabilitation hearing process was created by statute when the crime of aggravated murder was first adopted on October 3, 1977. That process changed very little until 2007 and 2009. If you were convicted of aggravated murder, the rehabilitation hearing process is found in ORS 163.105.

In 1999, the Legislature inserted the aggravated murder rehabilitation hearing process into the murder statute ORS 163.115. The Board currently applies the 1999 version of ORS 163.115 to murders that were committed on or after June 30, 1995.

The Board also adopted **OAR 255-032-0005** to **OAR 255-032-0040**, which guide rehabilitation hearings. The statutes and rules are available for review in your prison law library on the Folio legal research system.

The Board explains that:

Ordinarily the Board will apply the substantive* rules in effect at the time you committed your crime(s) as well as applicable procedural* rules and laws.

Read OAR 255-032-0005 to OAR 255-032-0040 and the other laws discussed in this quide - before your rehabilitation hearing. "Knowledge is power." Educating yourself about the rehabilitation hearing process will improve your chances of success and help you use your legal options during the hearing and any necessary appeals. If you need help understanding your rights and options, consult a legal assistant or attorney.

2. What law governs rehabilitation hearings:

*"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.¹⁴

Statutes and rules may change throughout the years. Those changes may be minor, but sometimes they are significant. Law changes may be beneficial or detrimental to you. **Therefore, review the version of the statutes and rules that were in effect at the time you committed your crime, and the version in effect at the time of your hearing.** If the current laws are more detrimental to you – if they negatively impact your legal rights – you may have a legal claim that the Board must apply the statutes and rules that were in effect at the time of your crime rather than the hearing. Discuss the effect of these differences and your options with a legal assistant or attorney.

2. What law governs rehabilitation hearings?

3. When am I eligible for a rehabilitation hearing?

When am I eligible for a rehabilitation hearing?

While 20-30 years is a very long time, it is important to begin preparing for your rehabilitation hearing as soon as you enter prison. If you did not do so, start TODAY! The earlier that you start to prepare, the more you increase your likelihood of success.

The statute that was in effect at the time that you committed your crime controls the date that you are eligible for a rehabilitation hearing. The amount of time that a person must serve before becoming eligible for a rehabilitation hearing has changed several times throughout the years, as follows:

AGGRAVATED MURDER (ORS 163.105)

You are eligible for your first rehabilitation hearing at any time after:

- 20 years, if you committed aggravated murder between October 3, 1977 and June 29,
 1995¹⁵
- 25 years, if you committed aggravated murder between June 30, 1995 and October 22, 1999;¹⁶ and
- 30 years, if you committed aggravated murder from October 23, 1999 to the present¹⁷

MURDER (ORS 163.115)

You are eligible for your first rehabilitation hearing at any time after:

25 years, if you committed murder from June 30, 1995 to the present.¹⁸

These dates are also set out in OAR 255-032-0010 and OAR 255-032-0015 of the Board's rules.

4. What is the purpose of a rehabilitation hearing?

What is the purpose of a Rehabilitation Hearing?



"The sole issue [to be decided during a rehabilitation hearing] shall be whether or not the prisoner is **likely to be rehabilitated within a reasonable period of time.**" 19

The Oregon Supreme Court stated, "That determination pertains only to personal characteristics of the prisoner; it does not focus... on the offenses that the prisoner committed...." The Court also stated that "[a] past act, such as a past crime," is not a "characteristic" and the Court of Appeals has stated that:

[t]he predictive value of behavior evidence [like a crime] – and thus the reasonableness of giving weight to that evidence – diminishes over time if it is not reinforced by evidence of more recent conduct or a pattern of behavior suggesting some likelihood of similar conduct in the future.²²

Nevertheless, the Board *does* focus heavily on the crimes you committed. Be prepared to talk about the crime. If the Board rules against you and you believe the Board improperly focused predominantly on the crime you committed rather than your rehabilitation during the 20+ years since that crime, you may consider challenging the Board's decision to do so on administrative and judicial review. Section 17 further describes administrative and judicial review.

What must I prove at a Rehabilitation Hearing?

YOU bear the burden of proving by a preponderance of the evidence that you are likely to be rehabilitated within a reasonable period of time.

Specifically, the law currently reads that the "prisoner" or "inmate" has:

The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time[.]²³

But what exactly does that mean? First, it means that it is your burden, duty, or responsibility to present evidence of "the likelihood of [your] rehabilitation within a reasonable period of time." It is *not* the responsibility of the Board, prosecutors, or victims to prove that you are *not* likely to be rehabilitated. If you do not present *any* evidence, you must lose because you did not satisfy your burden of proof. Even when you present evidence, the Board may rule against you, finding that you did not satisfy your burden of proof because you did not offer *enough* evidence.

To understand how much evidence is "enough," it is important to first understand what "rehabilitation," a "likelihood of rehabilitation," and a "preponderance of the evidence" mean.

What is "rehabilitation"?

5. What must I prove at a rehabilitation hearing?

Rehabilitation – also known as "reformation" – generally means the process of changing a person's character and behavior for the better.²⁴ Rehabilitation is difficult, but not impossible, to prove and to judge.²⁵ It means different things to different people and what you need to do to become rehabilitated may look very different from what someone else needs to do to become rehabilitated.

Importantly, rehabilitation is a *process*, or journey, rather than an event or destination. That journey is rarely easy or fun. It is hard and often painful work. One way to think about the rehabilitative process is to think of peeling away layers of an onion. As we go deeper and deeper, it gets harder and harder, often bringing tears to our eyes. But the more layers we peel away, the closer we get to the core of who we truly are.

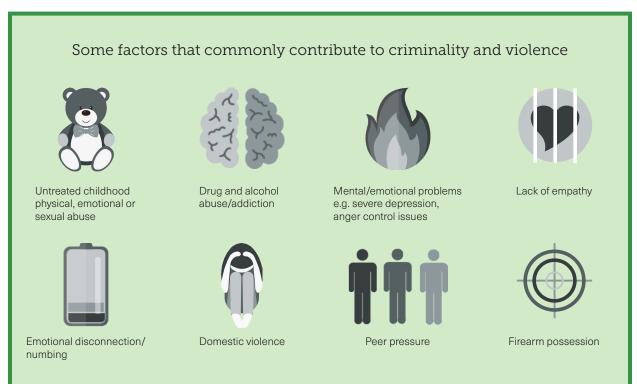
Rehabilitation does not merely happen to us. We do not wake up one morning suddenly "rehabilitated." It is something we must work to attain. The more time and effort we devote, the more rehabilitated we become. Someone who dedicates 20 years of their life to becoming rehabilitated is likely to become *much* more rehabilitated than someone who dedicates just six months or even a few years. If you hope to convince the Board that you are truly rehabilitated, you *must* do the work to make positive changes in your life. Do not waste years in prison before beginning your rehabilitative journey. Start today!

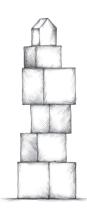


Convincing the Board that your rehabilitation is real, significant and lasting is only possible if you take a close and honest look at your life.

We did not end up in prison because our lives were going well. Most of us were headed down an increasingly destructive path long before we made the choice to commit a homicide. Rehabilitation requires us to honestly examine our lives and our crimes. We must explore the choices we made, the reasons we made them, and the factors that existed in our lives that significantly contributed to those choices. We must identify the issues that made our crimes possible and work to remove them from our lives. For most of us, there was far more than a single factor that contributed to our criminality and violence.

5. What must I prove at a rehabilitation hearing?





5. What must I prove at a rehabilitation hearing?

Most of us spent *many* years stacking one risk factor on top of another, like a tower of blocks. Once that tower grew too high, it came tumbling down, hurting a lot of people in the process. When that happens, some people point only to the last block on top as the reason the tower collapsed and why criminality and violence became possible. This is rarely true. While the final block certainly influenced what happened, so did all the blocks that came before it in the stack. Becoming rehabilitated requires us to identify as many of those blocks as we can (hopefully *all* of them) and work to remove their presence and influence from our lives.

If, for example, alcohol and drug abuse/addiction played a significant role in your life, criminality, and violence – as studies show that it does in the lives

of at least 70% of incarcerated people²⁶ – how can you ever truly say you are rehabilitated unless you work to understand and overcome your addiction and the issues underlying and fueling that addiction? It is not enough to simply say that you haven't used drugs or alcohol in prison and promise to never use them again after you are released. You *must* work to understand and overcome your addiction and to create a realistic relapse prevention plan. If you do not do that work, you will not be able to talk about your addiction, recovery, and relapse prevention plans in a way that will make the Board believe that it can trust that you will not return to substance abuse when you are released.

Substance abuse is rarely ever the only issue that contributes to criminality and violence. If you think it is the only issue that contributed to *your* criminality and violence you probably are not looking deeply enough. Rehabilitation requires us to look below the obvious surface-level issues.

In addition to understanding and talking about why we committed our crimes, rehabilitation requires us to develop insight into whom we hurt and how we have hurt them. It requires us to show remorse for what we have done and empathy and compassion for the people we harmed.



During a rehabilitation hearing, the Board will ask about the things you have done in prison (good and bad) to change your life (or not). However, the Board will also focus a lot of time and attention on the crimes you committed, asking you to describe what you did and why you did this. This can feel like you are being prosecuted all over again. These are rarely easy questions. Be prepared to answer some very difficult and emotionally charged questions.

Many people have tried and failed to outsmart the Board by telling them what they think the Board wants to hear. The Board wants to hear the truth; *your* truth, not what someone else has written for you or tells you to say. Board members are not stupid people and you will only hurt yourself, badly, during current and future hearings if you try to lie and con your way through the hearing. Success comes from doing the work and coming up with your own answers. You need to demonstrate that

you understand the factors that led to your criminality and violence, and how you have changed and why. Do not ask someone else to write out what you should tell the Board and do not think you can simply go into a rehabilitation hearing and repeat something that worked for someone else.



There are no "right" or "magic" answers anyone can give you. The only "right" answers are honest answers that you come up with yourself after doing the work.

The easiest thing you can do is give up, put this guide down, and turn the television on or go back to the yard or dayroom. But none of that is going to get you out of prison. Working to become rehabilitated is not easy. Neither is honestly examining and taking responsibility for your life, hurtful choices, and failures. If you are serious about changing your life, this guide will help you begin to think about the issues that contributed to your crimes and what it is going to take to overcome them. We hope this guide will help you understand and talk about your rehabilitation.

What is "likelihood of rehabilitation"?

5. What must I prove at a rehabilitation hearing?

Fortunately, you do not have to prove that you are fully or permanently rehabilitated to prevail at a rehabilitation hearing. You must prove only that you are "*likely* to be rehabilitated within a reasonable period of time."²⁷ As the courts have expressed, this means that you must prove only that you are "*capable* of rehabilitation."²⁸ The Board previously declared, "[c]apable of rehabilitation does not mean [a prisoner] is rehabilitated, nor does it guarantee that he ever will be rehabilitated."²⁹ We must look to the common definition of "capable of" to understand exactly what the statutory term means.³⁰ The plain, natural, ordinary definition of "capable of" is having the capacity or ability for something.³¹ So, "likelihood of rehabilitation" means the capacity or ability for rehabilitation.

Preponderance of the Evidence

Finally, it is important to understand what it means to prove something "by a preponderance of the evidence." There are three commonly recognized legal burdens of proof: 1) beyond a reasonable doubt; 2) by clear and convincing evidence; and 3) by a preponderance of the evidence. Beyond a reasonable doubt is applied in criminal trials and is the highest burden, which is typically understood as almost certainly true (somewhere very near 100%). Clear and convincing evidence is applied in some kinds of civil proceedings like those that result in termination of parental rights or revocation of professional licenses. It means the truth of a fact is "highly probable," which is commonly understood as an 80-85% certainty. Finally, a preponderance of the evidence is the standard that is applied in rehabilitation hearing cases and is generally thought of as "more likely than not" or a "slight tipping of the evidentiary scales." (i.e., 51% vs. 49%).

Proving something by a preponderance of the evidence (or any other burden of proof) is not simply a matter of counting the number of witnesses each side presents and ruling in favor of the person who offers the most witnesses. Rather, satisfying your burden of proof depends on the content

and quality of the evidence, not the number of witnesses or documents you offer. Remember, you have the burden of proof. So, if you do not present any evidence you *must* automatically lose because you failed to satisfy your burden of proof. If you do not understand this idea, consult with a legal assistant or an attorney. We will discuss the types of evidence that may be submitted during a rehabilitation hearing in Section 6.

Putting all these terms together

5. What must I prove at a rehabilitation hearing?



You are responsible for providing enough evidence to prove more likely than not that you are capable of rehabilitation within a reasonable period of time.

You bear the burden of proving during a rehabilitation hearing that it is more likely than not (preponderance of the evidence) that you are capable of (have the capacity for) rehabilitation. If the Board finds that you did not give enough evidence that you are "likely to be" or "capable of" rehabilitation (as it often does), but you feel that you proved that it is "more likely than not that you are capable of rehabilitation," you may consider challenging the Board's findings on administrative and judicial review.



How do I show that it is more likely than not that I am capable of rehabilitation?

There is no single way to prove that you are capable of rehabilitation. There have likely been many significant moments in your life that have helped you change and grow. Only you know what those moments are. Don't overlook any of them as you prepare for your hearing.

While there are some things that definitely apply equally to all of us, there are also some things that may be unique and personal to you that had a significant impact on your rehabilitation. Maybe it was a promise you made to a dying relative. Perhaps it was service work such as hospice, dog training, working with at-risk kids, meeting with victims of violent crime, or some similar efforts. Maybe *you* suffered a loss like the one you caused. The list is endless.

A. Board's Rehabilitation Criteria

The Board adopted a list of ten "[c]riteria indicating whether the inmate is likely to be rehabilitated prior to release[.]" OAR 255-032-0020. However, it is important to note that this is not an exclusive list,³⁴ meaning the Board can consider factors that are not on this list. The Board is also "not required to rely on *all* of the criteria set out in OAR 255-032-0020, listed below, to support its ultimate conclusion."³⁵



Be prepared to offer evidence of rehabilitation in support of *each* of the Board's ten criteria.



OAR 255-032-0020 - Purpose of Review Hearing

The sole issue of the hearing described in OAR 255-032-0015 shall be to determine whether or not the inmate is likely to be rehabilitated within a reasonable period of time. Criteria indicating whether the inmate is likely to be rehabilitated prior to release include:



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:



The inmate's institutional employment history;



The inmate's institutional disciplinary conduct;



The inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law;



The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor;



The inmate's prior criminal history, including the nature and



circumstances of previous offenses;



The inmate's conduct during any previous period of probation or parole;



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;



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;

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.

To prepare for your hearing, write things down. Write regularly and write well in advance of your hearing. It doesn't matter if you are a good writer or not, if you can't spell, or if you can't write in complete sentences. There is no "right" way to write. The most important thing is to keep track of what you are doing, reflect on how what you are doing has changed you for the better, and track your changes and growth.

Before your hearing, you will have the opportunity to submit a written description of your rehabilitation addressing the ten factors to the Board. Having a record of all that you have done and the ways that you have changed over many years will be a big help in putting this written description together quickly and in preparing what you will say in the hearing.

In the sections below is a brief discussion of each of the Board's ten factors with suggestions of what to write down and supporting evidence you might consider offering.



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;

Divide your response to this criterion into two categories:

- 1. Correctional treatment; and
- 2. Educational, vocational & other training.

In the "correctional treatment" section, make a chronological or reverse chronological list of all the individual and/or group counseling programs that you have participated in, including informal volunteer-run programs (e.g., restorative justice, victim awareness, empathy development, insight development, parenting, anger management, cognitive development, mindfulness, domestic violence, etc.), with the most recent programs at the top of the list and the oldest at the bottom.

In your list, include:

- Program name or, if you don't recall the specific name, the type of program (i.e., "Anger Management," "Parenting" or "Drug & Alcohol");
- Program facilitator's name and title if you know and remember them; and
- Dates you participated.

If you aren't sure of the dates, list approximate dates (e.g., May 1993 to Dec. 1995 or 1993-1995). Your counselor may be able to give you a printout of all the programs you have participated in during your incarceration. That printout will list approximate dates that may help you. Approximately 30 days before your hearing, the Board will send this list to you in your Board Review Packet, which is discussed in more detail in Section 10.

After making a list of all the programs you have participated in, think about the most significant thing(s) you learned or gained from one or more of those programs. Write a little about your participation in the program. For example, write how a program helped you:

Change and grow;

6. How to show capability of rehabilitation?

- Open your mind and/or heart;
- Understand and develop insight into the factors that contributed to your crime;
- Overcome a significant factor that contributed to your crime;
- Develop insight into how you harmed others and the extent of that harm; and/or;
- Develop empathy for people you harmed.

If you can, be specific and include examples as shown below.

An example of how to format your record of rehabilitation

| | 1 |
|------------------------|---|
| Program: | Significant things I learned or gained: |
| Anger Management | This program helped me changeAs |
| Susan Smith | an example, I no longer |
| April 2004 - June 2004 | |
| | |
| Parenting | In this program, I learned |
| Lisa Brown | |
| Sept. 2003 - Nov. 2003 | |
| | |

An alternative example of how to format your record of rehabilitation

Anger Management, Susan Smith, April 2004 – June 2004

This program helped me change... As an example, I no longer...

Parenting, Lisa Brown, Sept. 2003 -Nov. 2003

In this program, I learned...



Follow some variation of this documentation format for every program you discuss under each criterion.

In the **"educational, vocational & other training"** section, make a list of any significant educational achievements *during your incarceration*. Including:

- Formal schooling and degrees, e.g. GED, Associate of Arts (AA) degree, bachelor's degree (BA, BS), and master's degree (MA, MS) or any other postgraduate degree;
- Credits toward a degree or college credits (Include your GPA if you'd like to. You can say something like: "I have completed ____ credits toward an Associate of Arts degree with a 3.75 GPA.");
- Non-credit college-level classes;

6. How to show capability of rehabilitation?

- Licensing, apprenticeship, or vocational training programs, identify the program (e.g. HVAC, hair design, electrician, etc.) and any license or certification you earned; and
- Specialized training, which may not have resulted in a diploma, degree, or license (e.g. hospice volunteer training, dog handler training, meditation training, certified yoga instructor training, etc.);
- Independent study/correspondence courses. If you have completed a paralegal or other correspondence course, list the name of the school and program, your final grade and the date you completed it. If the program is accredited, be sure to indicate that it is.

Include the dates of your participation or program completion; the name of the institution/school; approximate hours of training; and instructor's name; and program contact information.

If the education programs contributed to your rehabilitation, write a paragraph about how they helped and changed you. For example, write about how the education programs helped you:

- Improve your sense of self-worth;
- Understand and overcome one or more of the significant factors that contributed to your crimes;
- Understand the ways you have harmed others and the extent of that harm; and/or
- Develop empathy for people you have harmed.

There is a large body of research establishing that prison education dramatically reduces criminal recidivism rates.³⁶ You could talk about these (and other) studies and how your prison educational pursuits will dramatically reduce your risk of returning to prison and increase your chances of getting and keeping a job after you are released.



The inmate's institutional employment history;

Make a chronological list of all the significant jobs you have had in prison. List the name of the job or department and approximate dates you were in the position.

Write about how each prison work assignment helped you change and grow. For example, write about:

- Any job skills the prison work assignment helped you develop;
- If you remained in a job for a long time, how that is evidence of your stability, responsibility, ability to get along well with staff and others, and ability to follow directions;
- Any promotions you received and why you were promoted;
- The impact on your self-worth;
- How the job allowed you to be of service to others and what that taught you;
- How the job helped you understand and overcome one or more of the significant factors that contributed to your crimes;
- How the job helped you understand the ways you have harmed others and the extent of that harm; and
- How the job helped you develop empathy for the people you have harmed.

If you have changed jobs often, write a paragraph about why or what you learned from those experiences and if you have left a job for a better position. If you left one or more jobs for disciplinary or other negative reasons, be prepared to talk about what you learned from the situation and how that difficulty may have helped you change and grow.

If one or more of your current or former work supervisors is willing to write a performance report, recommendation or other statement about their observations and opinions about your employment performance, character, behavior, rehabilitation and/or other issues, you should consider getting a letter or memo from them that you can submit during your Board hearing.

(3)

6. How to show capability of rehabilitation?

The inmate's institutional disciplinary conduct;

Make a chronological list of all your major disciplinary rule violations, beginning with the most recent at the top of the list and the oldest at the bottom. List the disciplinary charge, sanction, and date of the order.

If you have not incurred any disciplinary violations you can simply say, "None" or "I have not incurred any prison disciplinary violations during my ___ years in prison." If it has been many years since you have been found guilty of a rule violation you can say something like, "It has been ___ years since my last disciplinary violation." or "I have ___ years of clear conduct."

Be prepared to talk about why you incurred your disciplinary violations. To prepare, write a paragraph next to each listed disciplinary violation about:

 Why you got the disciplinary violation/sanction (Take responsibility for what you did and do not blame staff or others);

- What you learned, if anything, from the violation/sanction; and
- How the violation/sanction helped you grow and change your heart and attitude for example: Was there a point when you felt like you couldn't keep breaking your mother's or child's heart by spending all your time in segregation? Was there a point when you simply got tired of spending all your time in segregation?

If you have many disciplinary violations or several during a short period of time, write about what was going on in your life. What were you thinking and feeling? Why were you so angry? Why couldn't you stop using drugs? Whatever it is, try to explain how and why things are different now.

If you have quite a bit of clean time since your last disciplinary violation or the severity or frequency of your disciplinary violations has decreased, write about what changed for you (i.e., why you stopped getting misconduct reports or why your violations are less severe or frequent).



6. How to show capability of rehabilitation?

The inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law;

This is a very broad category that allows you to raise many aspects of your rehabilitative journey that may not fit well within any of the other specific criteria.

Some people have used this category to address things like:

- Evidence of remorse;
- Regret and responsibility/accountability for their crimes;
- Service work efforts, like working with at-risk youth, hospice work, mentoring, etc;
- Fundraising efforts for people in the community;
- Creating and facilitating programs that help other prisoners in some way; and
- Other positive, prosocial activities.



It is important to remember that this is usually the factor that the Board uses to find that you are *not* capable of rehabilitation, finding that you lack maturity, responsibility, accountability, insight, empathy, remorse, etc. for various reasons.³⁷ It is impossible for us to cover everything the Board might use under this criterion to find against you. Use this criterion to offer all the evidence you can think of that shows that you have maturity, responsibility, accountability, insight, empathy, remorse, etc. *Read the cases listed in endnote 37 for examples of how the Board has previously used this criterion in its decision-making.*

As with all the other criteria, it is important to do more than say, "I did this, this and this." You want to say something more like, "I did this, because of this and it taught me this about myself and it changed me and helped me grow in these ways." To keep track of these changes in yourself, make a list and next to each item, write about how it helped you grow, change, and develop insights about yourself and/or your crime. You can use the questions from other criteria to give you ideas of what to write.

(5)

The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor;

Studies show that 70-80% of incarcerated people committed substance-abuse-related crimes.³⁸ If this does not include you, simply say something like: "None;" "I have never used drugs or alcohol;" or "Drugs and/or alcohol abuse did not play a role in my criminality and violence" and move on to the next factor.

If, however, you are in the majority of incarcerated people on this issue, be prepared to talk about such issues as those listed below. Write down your thoughts about:

- The role that drugs and alcohol played in your crimes;
- Why you abused drugs and alcohol (i.e., what issues were underlying and fueling your addiction);
- What you have done in prison to understand and overcome your addictions;
- What you have learned about your addiction and how you have overcome it;
- How you manage your addiction today;
- Your support network and relapse prevention plan for how you will manage your addiction after you are released; and;
- Any other related issues.



Even if you have not used for many years, it is not enough to simply say that you have not used drugs or alcohol in prison and that you have no intention of using them again after you are released. You need to show what has changed and why. You need to convince the Board that you have good understanding and control of your addictions and that you have developed a sound relapse prevention plan and support network that is going to help ensure that you remain clean and sober after you are released.

However, it is also important to tell the Board if it has been many years since you have used drugs and/or alcohol. The Court of Appeals has stated in another context:

[t]he predictive value of behavior evidence – and thus the reasonableness of giving weight

to that evidence – diminishes over time if it is not reinforced by evidence of more recent conduct or a pattern of behavior suggesting some likelihood of similar conduct in the future.³⁹

This possibly means that if it has been many, i.e. 20+, years since you have used drugs and/ or alcohol and you have had no dirty UAs or other drug or alcohol related problems in prison, the Board should not be allowed to rely on your pre-crime substance abuse history to find that you are not capable of rehabilitation unless that 20+ year old behavior "is . . . reinforced by evidence of more recent conduct or a pattern of behavior suggesting some likelihood of similar conduct in the future."

Still, do not take your drug and/or alcohol addictions lightly. Substance abuse counseling has been virtually non-existent within the prison system for many years. But there are often volunteer-run groups available that may help you understand, control, and overcome your addictions. Get involved in any drug counseling or relapse prevention groups or other programs that may be available. There are also numerous addiction recovery books that you can read. Ask your family or others in your life to order one for you. Study it. Do the work to truly understand your addiction and the issues that led to them. Why did you use drugs and alcohol? Have you found better ways of coping with life's stresses and dramas than drugs and alcohol (e.g. meditation, yoga, journaling, etc.)? To keep track, write down:

- The tools you use;
- How and when you use them and how they help you;
- Specific examples of times that were particularly difficult for you (e.g., the death of a loved one, etc.) when you previously would have turned to drugs and/or alcohol; and explain what you did instead of returning to your addictions and how your choice led to a different or better result than previous results with drugs and alcohol;
- Insight about how you have previously hurt others (and yourself) by abusing drugs and alcohol; and
- Remorse and regret for the harm you caused while abusing drugs and alcohol.

The inmate's prior criminal history, including the nature and circumstances of previous offenses;

For most people, this factor focuses on other crimes committed before, or during the same period of time, as the homicide. Unfortunately for some people, however, this also includes crimes that may have been committed in prison after the homicide.

If you do not have any criminal history, you can simply write, "None" or "I have no previous criminal history" and move on to the next criterion. If you do have one or more prior criminal convictions, honestly list all of your prior criminal convictions in chronological order, including the dates of the offenses, the charges, convictions, and sentences. You should also include all juvenile court adjudications.

Next to each offense or set of offenses, write a brief explanation of:

What was going on with you;

- How that offense relates to or contributed to the homicide you committed; and
- What is different now (i.e., why the Board should believe that your criminality remains only history and that you will not return to criminal behavior after release). For example, if your criminality was fueled largely by drug addiction or anger control issues, etc., you should identify the specific issues and how you have overcome those issues during your incarceration.

Again, the court has stated:

[t]he predictive value of behavior evidence – and thus the reasonableness of giving weight to that evidence – diminishes over time if it is not reinforced by evidence of more recent conduct or a pattern of behavior suggesting some likelihood of similar conduct in the future.⁴⁰

Behavior evidence includes your prior crimes. This means that if it has been 20+ years since you have engaged in any criminality, the Board should not rely on your prior criminal history to find that you are not capable of rehabilitation unless that 20+ year old behavior "is . . . reinforced by evidence of more recent conduct or a pattern of behavior suggesting some likelihood of similar conduct in the future." This is further supported by the Supreme Court's mandate that "the issue to be decided at the rehabilitation hearing . . . pertains only to personal characteristics of *the prisoner*, it does not focus . . . on the offenses that the prisoner committed[.]"⁴¹ The Court has also declared that:

[a] past act, such as a past crime, does not appear to fit into any of the . . . definitions [of a "characteristic," "trait," or "quality"]. A past act cannot describe a person or thing in the way that present qualities, attributes, and traits do.42

Importantly, however, the Supreme Court stated that "a past crime may be a basis for inferring that one or more traits, qualities, or 'characteristics' presently exists,"⁴³ and the "evidence of more recent conduct or a pattern of behavior" required by the Court of Appeals,⁴⁴ includes things you have done in prison and is not limited only to behavior that was prosecuted. The Board is free to consider any behavior that *could* be charged as a crime (i.e., assaults, drug possession and/or distribution, contraband smuggling, theft, fraud and extortion, sexually aggressive/coercive behavior, weapon possession, etc.).

$\overline{(7)}$

6. How to show capability of rehabilitation?

The inmate's conduct during any previous period of probation or parole;

This includes *all* forms of juvenile and adult community supervision (i.e., probation, bench probation, parole, post-prison supervision, etc.) in Oregon or any other jurisdiction rather than just probation or parole. If you have never served a supervised release term, you can simply say, "None" or "I have never served a term of supervised release," and move on to the next criterion.

If you have served one or more terms of supervised release you should list them by date, including: the type of supervision (i.e., probation, parole, post-prison supervision), the supervising jurisdiction, the charge you were on supervision for, the length of supervision, and the approximate dates of supervision.

For each term of supervision, write down:

6. How to show capability of rehabilitation?

- If you successfully completed supervision with no problems (and provide proof of this fact if it is available);
- If you were released from supervision early;
- If you had difficulties on supervision including but not limited to dirty UAs, failing to report, curfew violations, failing to complete treatment, and/or violations of any other release conditions. Be honest. The Board likely has a record of your supervision history and you will hurt yourself by trying to deny past difficulties.
- How your previous supervision difficulties were dealt with, including but not limited to all low-level intermediate sanctions (e.g. community service, a weekend in jail, etc.) up to extension of your supervision period and/or revocation; and
- What you learned from past supervision difficulties, how you would handle it differently today, and why the Board should believe you will have more success if released on supervision again.

It is very common for people who return to prison for supervision violations to blame their parole/probation officer (PO) and minimize their own choices, attitudes, and behavior that led to the revocation sanction. It is *your* responsibility to do everything your PO tells you to do, whether you think it is fair or you get along with the PO or not. Your supervision difficulties are your fault, not your PO's fault.

If you do not take responsibility for the choices and behavior that led to any supervision difficulties, the Board will likely consider this as evidence that you are not capable of rehabilitation.



Be honest with yourself. Take responsibility for your previous difficulties and failures.

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;

The best evidence you can submit in support of this criterion is the report and/or testimony of a forensic, developmental, and/or clinical psychologist. However, the Board will *not* pay for an independent psychological evaluation or order an evaluation by a board-contract psychologist. Unfortunately, getting a psychologist to conduct an evaluation, write a report, and testify is expensive, typically ranging from \$1,500 to \$3,500. If you can afford to get an evaluation, we recommend it because this is very important evidence that can be used at both your rehabilitation hearing and subsequent Exit Interview hearing when the Board will order you to participate in a psychological evaluation conducted by a board-contract psychologist.



The best evidence you can offer in support of this criterion is a current psychological evaluation report and testimony. If you still have several years to serve before becoming eligible for your hearing, we strongly recommend that you save your prison pay to obtain an independent psychological evaluation.

If you are among the majority of people who cannot afford an independent psychological evaluation, you can submit other types of evidence for this criterion. For example:

1. You may have had a psychological evaluation done during your criminal case. Review the report and decided if you want to submit it to the Board for consideration. Read the report carefully because you do not want to submit a report that supports a finding that you "have a mental or emotional disturbance, deficiency, condition or disorder predisposing [you] to the commission of a crime to a degree rendering [you] a danger to the health and safety of the community."⁴⁶ Keep in mind whether the psychological evaluation(s) was conducted by doctors hired by your defense attorney or by the prosecutor. Unfortunately, most psychological reports are a mixture of good and bad information. If you are not sure whether you should submit an old psychological report for the Board's consideration, talk to an attorney or legal assistant before doing so.

To know what is in any psychological evaluation done during your criminal case, consider contacting your former criminal defense attorney (and/or the doctor directly) to get a copy of the report and/or transcripts of testimony of the examining psychologists. If you did not appeal your conviction (usually because you pled guilty), there likely will not be any transcripts of trial or sentencing testimony. If that is the case, you can contact the records department at the county circuit court where your case was tried and request a copy of an audio or video recording of your trial/sentencing proceedings that may still be available. You'll need to provide your case number and the approximate dates of your court hearings. If the recording is available there will probably be a cost of about \$10-20. If you did appeal, any state and/or federal attorneys who handled your appeal, post-conviction and/or federal habeas corpus proceedings may also have a copy of transcripts from your trial and sentencing.

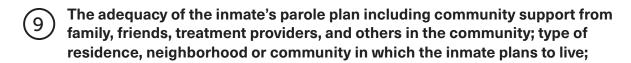
- 2. You may have had an ODOC psychological evaluation or similar assessment conducted to determine treatment needs. This probably happened during intake. So, there may be a psychological evaluation report, mental health status report, or some similar documentation in your ODOC file. Talk to your counselor or Behavioral Health Services (BHS) staff to determine if any such documentation exists in your ODOC file and how you can get a copy.
- 3. If you have never been diagnosed with a mental or emotional disorder, as defined by the *Diagnostic and Statistical Manual (DSM)*, you can say, "I have never been diagnosed with a mental or emotional disturbance, deficiency, condition or disorder."

- 4. ODOC uses a mental health severity rating system to determine treatment need and who will (and will not) receive services, providing:⁴⁷
 - MH-0 = Assigned to an inmate who has been assessed by a BHS treatment provider and does not meet the criteria for a diagnosis that requires mental health services.
 - MH-1 = Assigned to an inmate who has been assessed by a BHS treatment provider and, based on diagnosis with mild acuity (assessment of functioning), **does not meet the criteria for mental health services.**
 - MH-R = Assigned to an inmate who has been assessed by a BHS treatment provider and has been diagnosed with a condition that either needs no active therapeutic intervention or symptoms can be controlled through medication.
 - MH-2 = Assigned to an inmate who has been assessed by a BHS treatment provider and has been diagnosed with one or more of [19] conditions[.]⁴⁸
 - MH-3 = Assigned to an inmate who has been assessed by a BHS treatment provider and has been diagnosed with one or more of [9] conditions.⁴⁹

This is a continuum of severity, with MH-0 being least severe and MH-3 being most severe. This designator is listed in ODOC's computer system for all ODOC inmates. Ask your counselor or a BHS staff member for documentation of your current mental health status, designation, and treatment need/eligibility.

Given that ODOC has determined that incarcerated people with an MH-0, MH-1 or MH-R designator do not need (and will not receive) any treatment, you can offer evidence of your MH designation and the ODOC's definition and classification of each designator as evidence that you do *not* suffer from "a mental or emotional disturbance, deficiency, condition or disorder predisposing [you] to the commission of a crime to a degree rendering [you] a danger to the health and safety of the community[.]"50

Still, the best evidence you can offer in support of this criterion is a current psychological evaluation report and testimony. This is further discussed in Section 12, below. If it is possible for you to get the services of a psychologist, you really should do so. If this is not your first hearing and you had an evaluation done for a previous hearing, you can resubmit that evidence. Keep in mind that if the psychological evaluation report is extremely old, (i.e., 5-10+ year) the findings and conclusion *may* become "stale" and unreliable evidence of your *current* mental and emotional state. Nevertheless, even an old report *can* be better than no report, as long as it is not a report that would support a finding that you "have a mental or emotional disturbance, deficiency, condition or disorder predisposing [you] to the community." Again, if you are not sure whether you should submit an old evaluation report or not, discuss the issue with an attorney or legal assistant before submitting the report.



Again, a rehabilitation hearing is not a release hearing.⁵² Nevertheless, if you are found capable of rehabilitation, it is possible that you *could* be released within a year or two.⁵³ We know that it is difficult to make concrete plans when you do not know if, or when, you will be released. Responding to this criterion does not require you to get solid commitments from people to provide you with housing, employment, financial, or other assistance. All you need is a sense of what you and they think they might be able to do to help you if you are released at some point in the future. **Do not ask your family or friends to take any actions to prepare for your release that will negatively impact them** because it could still be several years before you are released. Think about what you would like to do if you were released and try to prepare a plan that you can submit to the Board.



In your plan, show that you are thinking ahead, attempting to address issues you will likely face, and that your plans are realistic, attainable, and would help you succeed.

6. How to show capability of rehabilitation?

RESIDENCY REQUIREMENT: Oregon law requires that as a condition of parole⁵⁴ or post-prison supervision⁵⁵ you return for six months to the county that last supervised you, if you were on active supervision at the time of your offense.⁵⁶ If you were not on supervision, the law requires you to return for six months to the county you resided in at the time of your offense.⁵⁷ This is determined by the address that was listed on your Oregon Driver's License (ODL) or other records.⁵⁸ On the motion of the Board, the supervisory authority, the person being paroled, a victim, or a district attorney, the Board may waive the residency requirement upon finding that:

- (a) you provide proof of employment with no set ending date in a county other than the county of residence;
- (b) you pose a significant danger to a victim residing in the county of residence, or a victim or victim's family residing in the county of residence is found to pose a significant danger to you;
- (c) you have a spouse or biological or adoptive family residing in a county other than the county of residence who will be materially significant in aiding in your rehabilitation and in the success of the parole;

- (d) you are required by another condition of parole to participate in a treatment program that is not available or located in the county of residence;
- (e) you request to be paroled to another state; or
- (f) the board finds other good cause for the waiver.⁵⁹

If you want to request a waiver of the residency requirement, say so in your parole plan. First, inform the Board of what your county of residency was, where you are hoping to go instead, and the applicable above-listed statutory reasons you are seeking a waiver. Prepare and submit a parole plan for both the county you want to return to and the county you are required to return to. You can submit more than one plan. Submit your best option as your primary plan and a backup plan. However, there is nothing wrong with offering three or four plans, if you have that many options and they all seem viable.

HOUSING: If you have family or friends who have agreed to let you stay in their home, be sure that: they have room for you; it is not going to impose an undue hardship on them; they do not have unlocked guns, alcohol or drugs in the house; there are no supervision conditions you will likely have that might prevent you from residing at that residence or in their neighborhood



6. How to show capability of rehabilitation?

(e.g., sex offender residency restrictions, if applicable); they do not intend for you to stay just a few days or weeks; etc. If you and this person have shared a volatile or rocky relationship in the past, think about whether this will be the best situation for you to return to. Also, if you know that this person – or others in their home – uses drugs or alcohol, that is probably not the best situation for you to be around if you remain committed to your sobriety.

If you plan to rent an apartment, ask someone to help you look into what options are available to you. While you may want to rent an apartment, many apartment complexes will not or cannot (due to federal funding requirements) rent to people with felony convictions, or with specific classes of felony convictions, including violent offenses, sex offenses, and/or drug offenses. Do not assume that you can simply rent a place anywhere you want.

Finally, if you do not have community support who can help you with housing, some counties offer some transitional housing for people released from prison. This should probably be a last resort given that it is not a stable and permanent housing option and you are likely to be housed with or near other formerly incarcerated people who may not be as committed to a sober and crime-free lifestyle as you are.

If one or more people are willing to offer you housing assistance, ask them to write a letter addressed to the Board and send it to you. The letter should say exactly what they are willing and able to offer you. If there are other things they can also offer, like transportation, financial assistance, etc., have them write that in the letter too.

EMPLOYMENT: You do not need to have someone guarantee you a job upon release (but if you have that, be sure to let the Board know). All you need to do here is tell the Board what you hope to do for employment; where you will seek employment; and the kind of work you are

qualified and trained to do. Be reasonable about your expectations of the kind of position (and salary) you can hope to start at after spending so many years in prison. Express a willingness to do whatever it takes to survive; that no job is beneath you.

If someone is willing to offer you a job, you can ask them to write a letter addressed to the Board and send it to you. The letter should detail the position and salary they are offering you.

COUNSELING:



Any parole plan you prepare should include discussion of your willingness to participate in counseling and identify one or more counseling opportunities that may be available in the county you are returning to.

This counseling should be to address issues related to your criminality. If you are among the 70-80%+ of incarcerated people who committed a substance abuse-related crime, identify substance abuse treatment options, Narcotics or Alcoholics Anonymous meetings, and other substance abuse support groups that are available in the county you are returning to that you may be able to participate in.

If you committed a sexually violent homicide or have engaged in other sexual offending behavior, you need to identify sex offender treatment options that are available to you in the county you are returning to.

If you committed a domestic violence-related homicide or have engaged in other domestic violence behavior, explore the availability of domestic violence and/or anger management counseling options that are available in the county you are returning to.

Finally, explore the availability of some type of general mental health counseling that can help you navigate and manage the stresses and difficulties of transitioning back into a world that is *much* different than the one you left.

Once you have identified one or more counseling opportunities that may be available in the county you are returning to, write them a letter explaining your situation and asking if they would be willing to consider accepting you as a client after your release. Also, ask about the cost of their services and if they offer any low-income payment plans. If you get a favorable response from one or more programs, you can submit those letters for the Board's consideration.

SCHOOLING: If you intend to go to college or a vocational school after release, identify the school name and location, program, and your plan. If you are eligible for the PELL grant or

other financial assistance to cover your tuition costs, include that fact.

TRANSPORTATION: Explain what you intend to do for transportation. This may include, available public transportation options; and what you need to do to get your driver's license, a vehicle, and insurance.

COMMUNITY SUPPORT: List the names, contact information, and relationship of all the people who will be a significant part of your support network after release. Ask those people to write letters addressed to the Board and send them to you. The letters should express their willingness to serve as mentors or part of your support network after your release; that they are aware of the details of your crime and your prison rehabilitative efforts; and the type of support they are willing to offer you.

OTHER ISSUES: Include other relevant issues in your parole plan. Your plan should be 1-3 pages in length. Some people also include a list of their short- and long-term goals and their addiction relapse prevention plans and other information. If these things do not take too much room to discuss, you can make them a part of your parole plan. Otherwise, include them in a separate document, e.g. Relapse Prevention Plan.



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 a broad category that allows you to address any issues that you did not discuss in the first nine criteria.

If you got a psychological evaluation, the examining psychologist probably applied one or more recidivism risk assessment tools to determine the level of risk you present. The most common risk assessment tools in the prison context are the Hare Psychopathy Checklist-R2; HCR-20; the Violence Risk Appraisal Guide; and the SVR-20 (for sex offense recidivism). If you were assessed under these or any other risk assessment tools, identify the risk tool the doctor utilized and their findings about your recidivism risk.

ACRS: The Oregon Department of Corrections uses the Automated Criminal Risk Score (ACRS) to predict the likelihood a person will recidivate. ACRS is a mathematical equation that uses static variables. The scores range from 0.0 to 1.0. Scores approximating zero identify people who are very unlikely to recidivate. Conversely, people with high scores are much more likely to re-offend.⁶⁰

Most people serving long sentences have very low ACRS scores. You can ask your counselor for a printout of your score. If your ACRS score "approximat[es] zero," identifying you as someone "who [is] very unlikely to recidivate," include that in this section.

RISK TOOL: The Oregon Criminal Justice Commission and the Oregon Department of Corrections have created "The Public Safety Checklist for Oregon" (PSC), which is a real-time, web-based risk assessment tool used by judges and others within the criminal justice

system to determine a particular person's recidivism risk. The tool assesses a person's risk of being reconvicted of a felony within three years of release and the risk of arrest for a person or property offense within ten years of release.⁶¹ If you fall within the low risk range for recidivism on the PSC risk tool, include that fact in this section and submit a printout of your risk assessment for the Board's consideration.

HOMICIDE RECIDIVISM RATE: Virtually every available study establishes that people convicted of homicide have dramatically lower recidivism rates than the general recidivism rate and recidivism rates of other types of crimes.⁶²

AGE: According to a comprehensive June 2012 report of the American Civil Liberties Union (ACLU), entitled "At America's Expense: The Mass Incarceration of the Elderly,"

Research has conclusively shown that long before age 50, most people have outlived the years in which they are most likely to commit crimes. Even when examining data on arrests that may not lead to conviction or indicate guilt, this holds true... Less than 6% of individuals age 30-34 were arrested [in 2004], whereas a little over 2% of individuals ages 50-54 were arrested and almost 0% of those age 65 and older were arrested. This trend of decreasing crime rates from adulthood to old age has held constant over time, as shown by the 1979 arrest curve... 63

and:

In 2002, BJS researchers Patrick Langan and David Levin released a key study on reimprisonment and reconviction by age. This study tracked 272,111 prisoners for three years in fifteen states – a sample representing two-thirds of all prisoners released in the United States in 1994. This is an important period of time within which to measure return to prison for a new conviction because people are most likely to commit crimes soon after release from prison. . . . [T]he rate of reimprisonment for a new conviction for prisoners released by age 45 and older was 56% lower than the rate for prisoners released between ages 18-24. Only 16.9% of prisoners released at age 45 and older return to prison for new convictions. The driver of reimprisonment for this older age group seems to be parole violations – which could vary from missing a meeting with a parole officer, to a positive drug test, to contact with a victim – and can return individuals to prison without a conviction or a new crime.⁶⁴

If you have served 20+ years in prison, you are likely now in (or approaching) this age group that research consistently shows to present a virtually non-existent recidivism risk. While the recidivism risk of people age 50 and above is 0-2%, the Board reported in 2018 that it has a target recidivism rate of 8.5%. In 2018, 15.8% of those released under the Board's jurisdiction were convicted of a new felony within three years of release. Include your age and potential recidivism risk in this section.

STRONG FAMILY TIES: Research consistently shows that incarcerated people who maintain strong family ties during confinement have a dramatically lower recidivism risk than those who do not. ⁶⁶ If you have maintained strong family relationships and ties throughout your incarceration, include this fact and its correlation with recidivism risk.

PRISON EDUCATION: There is a very large body of research establishing that prison education dramatically reduces criminal recidivism risk. In 2014, the RAND Corporation completed a comprehensive study, finding that "[o]n average, inmates who participated in correctional education programs had 43% lower odds of recidivating than inmates who did not." The RAND study found "a savings of five dollars on reincarceration costs for every dollar spent on correctional education." Similarly, a 2016 United States Sentencing Commission report on recidivism found a significant inverse relationship between recidivism (meaning return to criminal conduct) and educational level, finding: "Offenders with less than a high school diploma had the highest recidivism rates (60.4%), followed by high school graduates (50.7%) and those with some college (39.3%). College graduates had the lowest rates (19.1%)." If you participated in higher education in prison, include the level of education and your resulting reduced risk of recidivism. Also include that your prison educational accomplishments greatly increase the prospect that you will find and maintain employment in which you will earn a living wage.

OTHER ISSUES: There are *many* other issues you could address in this section which constitute evidence of a "reasonable probability that the inmate will remain in the community without violating the law, and . . . a substantial likelihood that [you] will conform to the conditions of parole" including, but far from limited to: (1) if you were a "youthful offender" (ages 12-25) at the time of your offense;⁷⁰ (2) the lack of prison disciplinary violations over an extended period of time; (3) the lack of security threat group (STG)(i.e., gang) affiliation and/or activity; (4) stability in prison employment and housing assignments; (5) available post-prison employment offers; (6) 20+ years of sobriety from drug and alcohol addiction; (7) spiritual development and practice; (8) service work and efforts to give to people in need; etc.

Summary of Preparing for the Board's Rehabilitation Criteria

Provide the Board with evidence to show that you have satisfied each of the ten rehabilitation criteria. The failure to present evidence in support of any single criterion gives the Board a reason to say you failed to give enough evidence that you are capable of rehabilitation.

If you still have a long time to serve before you become eligible for a rehabilitation hearing, think about the issues you are going to have to prove. Ask yourself if you are doing everything you can and should be doing to explore these issues, change your life, and rehabilitate yourself. If there are things you could be doing but aren't, stop letting those opportunities pass you by.

Doing the work to change today, will make it easier for you to talk about your change and prove that you are capable of rehabilitation once you are eligible for a rehabilitation hearing. It is a simple choice: simply serve your time or make your time serve you by taking advantage of every available opportunity. Many incarcerated people before you have made the mistake of thinking that programs are pointless because they have so much time to do and they can do them when they get closer to becoming eligible for a rehabilitation hearing. But programs that are available today may be gone tomorrow without any warning.

Do not wait until you are sitting in front of the Board to try to address the criteria and other issues that you will have to talk about. The more you work to develop insight into why you

committed your crimes, whom you hurt and how you hurt them, the more prepared you will be to prove that you are capable of rehabilitation.

Write out everything you would say about each of the Board's criteria often. Consider working on this each year on the anniversary of your crime – or on New Year's Day. Hold onto what you write each time. Date it and put it in a file.

One year later, answer the criteria again but don't look at your previous answers until you are done. Then compare your current responses with previous ones. How have your answers changed, improved, or deepened? Where and how have you grown?

Fully covering each of the criteria should take *many* pages. If you have only two or three – or even ten (one per criterion) – pages when you are done, you have probably overlooked a lot of important information about who you are, how you have changed and grown, and what you have been doing for the last 20+ years of your life.

Once you have completed a draft of everything you want to say concerning each of the criteria and related issues, share what you have written with someone you trust. Ask them to read it and give you their impression of how it comes across. Have them tell you if they think anything seems to be missing, and if they have any questions or concerns after reading it. This will give you a different perspective. What may make perfect sense to you may not be entirely clear to others who read what you write. Accept their criticism. Think about what they said. Is there a better way you could say it? Is there more you should say? Less?

6. How to show capability of rehabilitation?

Do not have someone else write your responses for you and do not copy what someone else used at their hearing. The Board will definitely ask you questions about the things you submit. If they catch you using someone else's work or trying to give them "the right answer," rather than the truth, you are very likely to be found not capable of rehabilitation.



If you work through the rehabilitation criteria in the way we suggest, you will create a detailed document you can give your attorney and any psychologist you may hire. This will make it much easier for you and your attorney to prepare for your hearing once you are eligible.



B. Evidence Generally, Documents & Witnesses

(i) Evidentiary Standards

Due process requires that "the evidence underlying the board's decision . . . have some indicia of reliability."⁷¹ This requirement has also been expressed in the Board's rules. ⁷² This is the same legal standard imposed by ORS 183.450(1) in requiring that "evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible []" in administrative hearings.

The Board can exclude evidence that is not material, relevant or reliable. The Board may – but usually does not – exclude evidence that you submit in support of your rehabilitation. You may seek to exclude evidence offered by victims, prosecutors, the Board, prison officials, other incarcerated individuals, anonymous parties, or others that you believe is not material, relevant or reliable. However, the Board may overrule your objection and allow the evidence. If the Board finds that you are not capable of rehabilitation and you believe the Board incorrectly excluded your evidence or admitted immaterial, irrelevant or unreliable evidence against you, you might consider raising this issue on administrative and judicial review.

(ii) Documents

Documentary evidence is typically written documents like psychological evaluation reports, court transcripts, police reports, misconduct reports and other prison records, letters, certificates, sworn declarations, or affidavits. It may also include photographs and video/audio recordings.

The Board significantly limits the type and quantity of documents you are allowed to submit. These limitations will be discussed in Section 10. But, as you prepare for your hearing, do not worry about the limitations. At this stage you want to identify and include *all* the evidence you can think of, even if you may not ultimately submit all of it in a particular form. For now, make a list of all the documents you have or can get from somewhere else that you believe might be relevant evidence of an aspect of your rehabilitative efforts, journey and successes. You can catalog your documents using a two-column list format. In column one, list a brief description of the document, including the date and author, if known. In column two, provide a brief description of the issue(s) the document addresses, and each rehabilitation criterion to which the document is relevant.

Example:

| Document description (date, author): | Issue(s) and rehabilitation criteria: |
|--------------------------------------|---------------------------------------|
| | |

Perhaps the most important piece of documentary evidence you can submit is your own sworn declaration. This is a written statement made under oath and subject to the penalty of perjury. Pursuant to the Oregon Rules of Civil Procedure 1E, at the end of your written statement write "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." You can submit your responses to each of the rehabilitation criteria in a prehearing sworn declaration if you want to. This will reduce the number of issues you will need to testify about during the hearing. But it also gives the Board, victims and prosecutors time to review your answers (and prepare rebuttal or objections) before the hearing.

(iii) Witnesses

You have the right to subpoena and call witnesses to testify on your behalf during a rehabilitation hearing. This will be discussed in more detail in Section 13. That testimony can be live – in person or by telephone – or in the form of sworn, written declarations, or affidavits. You are the most important witness who will offer testimony under oath during your hearing.

Think about *all* the people – including you – who know information that they could share with the Board about your rehabilitative efforts, journey, and successes. This might be:

- An expert witness like a psychologist, which we will discuss in more detail in Section 12:
- Retired or current prison volunteers, treatment providers, guards, teachers, work supervisors, and/or administrators;
- Currently and/or formerly incarcerated people;
- Friends and family in the community; people you have helped in some way; etc.

Make a list of all the people and the rehabilitation criteria and other issues that you would like them to testify about. During the early stages of preparation, include everyone you can think of in your list. You will later narrow your list down to the people who can offer the most impactful, relevant, and credible testimony.

One way to make this list is to take a sheet of notebook paper and draw a line down the middle of the page to create two columns. Write "1." on the first line, in the left-hand margin. In column one, write the first person's name; street address or PO Box number; telephone number(s); email address; and any other relevant information about the witness. In column two, write a short paragraph about all the different things the person can testify about. Use as many lines as you need. Once you are done, draw a line across both columns of the page so the person's contact information in column one and testimony topics in column two are above the line. Repeat until you cannot think of anyone else who could testify about something. Use as many sheets of paper as you need.

For current prison employees, contractors and/or volunteers, you should list the prison address as their address. You will likely make changes and add to this list many times before you are done.

Example:

| 1. John Doe 1234 First St. Salem, OR 97310 503-123-4567 jdoe@gmail.com | John Doe was my supervisor in the welding shop for five years (1989-1993). He can talk about the way I got along with staff and other guys, followed directions, completed my work on time and was a good worker. He can also talk about projects I worked on in my spare time to donate to charities. He also saw my efforts to rehabilitate myself, including |
|---|---|
| 2. Jane Brown 555 Second St. Salem, OR 97310 503-555-5555 JaneB@yahoo.com | Jane Brown facilitated the DBT group that I participated in for 12 weeks in 2016. She can talk about the changes that I made in my thinking and dealing with problems in my life |

7. How do I talk to the Board about my crime?

How do I talk to the Board about my crime?

Although the "sole issue" to be considered by the Board is your rehabilitation, you also must be prepared to talk about your crime. This is not easy or fun, but it is absolutely necessary. The Board will find that you are not capable of rehabilitation if you cannot talk about your crime in a way that shows insight, accountability, empathy, and remorse.

First, and foremost, *you must speak honestly* about your crime, choices and behavior. The Board has an "official version" of your crime that may be included in a Presentence Investigation Report (PSI) or similar report, police reports, or other law enforcement documents. If your version of the crime is different than the official version, you will need to provide solid documentary proof to support your version of the facts. Without such evidence, the Board will likely believe the "official version" over your version. Furthermore, if the Board believes that your testimony is not credible or truthful, the Board will likely rule against you.

In addition to being honest, be prepared to tell a detailed explanation about what you did and why you did it. Be prepared to explain without comments that may be heard as excuses, blaming others for your choices, and/or a lack of accountability. Also, in your explanation, show that you understand and care about the ways that you have harmed others and that you feel regret and remorse for your crimes and other harmful choices.

There are generally four major issues you should be prepared to address about your crime during a rehabilitation hearing:

1. Do you take full responsibility for your crime?

- Do you fully admit to your offenses without excuses?
- Can you speak truthfully about all of your intentions and choices before, during and after the crime?
- Have you thought deeply about how your choices impacted others?

• Do you understand and care about the effect your crime has had on others (i.e., the victim(s), the victim's family and friends, your family and friends, the community, etc)?

2. Do you understand why you committed your crime(s) (the underlying factors that contributed to your crime)?

- Have you thought deeply about the things that led you to commit your crime? It is
 important that you speak openly about the circumstances of your childhood that
 may have contributed to you acting out, abusing drugs and alcohol, shutting down
 emotionally, and harming others.
- What kind of person were you at the time of the crime? What kind of lifestyle were you living?
- Can you describe the choices you made, the perspectives you had, the situations you
 put yourself in that led you to commit the crime?
- Have you faced, understood, and worked to heal the traumas in your life that may have influenced your choices or character?

3. What have you done to address the things in your life that led to you committing the crime(s)?

- Have you sincerely faced the issues in your life that led to criminal behavior?
- How are you different today? How does the way you live your life now show that you
 have addressed and overcome the factors underlying and contributing to your crime?
- Does your disciplinary history reflect who you are today?

7. How do I talk to the Board about my crime?

- How do you make choices today? What values guide your choices?
- What are some specific lessons or skills that you have learned from programs that you've completed in prison?
- How have you grown and matured? Part of maturity is understanding both our strengths and weaknesses what are your biggest strengths and weaknesses of character? What are your greatest difficulties in relationships with others?

4. Do you understand and care about the harm you have caused others?

- Can you articulate how your choices hurt others including: the victims; the victim's family and friends; your family and friends; others in the community; etc? With respect to your own family and friends, can you talk about how your incarceration hurts the people who continue to love and support you?
- Can you demonstrate with words and emotion that you feel remorse for what you did and the harm you have caused others?
- Can you show examples of how your actions in prison to change your own life and to help others demonstrate your remorse, regret, and desire to atone for your crimes and other harms you have caused?

When and how do I request a hearing?

You must request a rehabilitation hearing. The Board will *not* automatically schedule one for you. You are eligible for a hearing once you have served the required time discussed in Section 3. Also, you are entitled to have the Board appoint an attorney (at no cost to you) to represent you. If you want an attorney appointed to represent you, you must make the request to the Board. The Board will *not* automatically appoint an attorney for you.

To request a rehabilitation hearing and an appointed attorney, send a simple letter to the Board. Send the letter before you are eligible for your rehabilitation hearing. Consider sending it as early as six months before the date you are eligible for the hearing. Example letter:

| I was convicted of Aggravated Murder (or Murder) for a crime I committed on | |
|---|--|
| | |

I am eligible for a Murder Review Hearing on or after ______. Please schedule me for a hearing as soon as possible after my eligibility date. Also, please appoint an attorney to represent me at the hearing.

Thank you.

8. When and how do I request a hearing?

Sincerely, [Your name] SID# [Your SID #]

Keep a copy of the letter for your records.

Dear Board Scheduling/Hearings Clerk:

Send the letter to:

Board of Parole and Post-Prison Supervision 1321 Tandem Ave., NE Salem, Oregon 97301.

9. Appointment of counsel at a rehabilitation hearing

Appointment of counsel at a rehabilitation hearing

Hiring an attorney for a rehabilitation hearing can get expensive. Many attorneys typically charge between \$250 and \$350 an hour. The rehabilitation hearing itself can last 4-8 hours and the attorney will also need to spend several hours preparing, which will include traveling to the prison to talk with you; obtaining documents; contacting your potential witnesses and preparing them to testify; preparing and filing a hearing memorandum and any necessary prehearing motions; and more. It can easily take an attorney more than 25 hours to prepare your case. As such, hiring an attorney can cost upwards of \$10,000. However, you may be able to find one who is willing to do it for \$5,000 to \$7,500. The more work you do, i.e. identify your witnesses (and the subject-matter they will testify about), gather your documents, etc., the less time a hired attorney will have to spend on your case and therefore lower your costs.

If you are among the majority of people who cannot afford to hire an attorney, the Board must appoint one to represent you in preparing and presenting your case.⁷⁷ The appointed attorneys are paid significantly less than a hired attorney would be paid. As of August 1, 2018, the Board policy states that the "Board will pay an hourly rate of \$110 an hour for a maximum of 15 hours per case.⁷⁸ This fee is equivalent to a maximum fee of \$1,650 per case.⁷⁹

A statutory right to counsel includes a right to "adequate counsel." The Oregon Supreme Court has determined that the appropriate adequacy standard to be employed concerning a statutory right to counsel is "fundamental fairness," which is defined as "the opportunity to be heard at a meaningful time and in a meaningful manner." Fundamental fairness emphasizes factfinding procedures." The Board's attorney fee/hour cap has the potential and likelihood to deprive you of a meaningful opportunity to be heard if the attorney does not do everything you need him or her to do to prepare and present your case.

As such, you could possibly address the Board's attorney fee/hour cap in your case. The options described here, just as all the comments about legal challenges or arguments in this guide, are suggestions for your consideration and exploration, and should **not** be read as directions or instructions as to what action you should or must take in your specific situation.

First, you could ask your attorney to file a pre-hearing motion to waive or exceed the attorney fee/hour cap referred to in OAR 255-032-0025(2)(b), arguing: that the Board's limitation of

your attorney's time and compensation deprives you of a meaningful opportunity to be heard on the issues before the Board because it prevents counsel from doing the things that are necessary to prepare and present your case, and/or that the fee/hour cap deprives indigent incarcerated people of due process and equal protection of the law.⁸⁴ If the Board-appointed attorney is unwilling to file the motion, you could file it yourself. This would preserve the argument so you could raise it on administrative and judicial review if the Board finds that you are not capable of rehabilitation.

Second, you could consider asserting on administrative and judicial review that you were deprived of "adequate counsel" when your attorney failed to do something that was necessary to prepare and present your case. ⁸⁵ If you decide to do this, you will need to identify something specific that your attorney failed or refused to do and argue that his or her failure deprived you of a meaningful opportunity to be heard on the issues being considered by the Board, in violation of your rights to due process and equal protection of the law. ⁸⁶

9. Appointment of counsel at a rehabilitation hearing

0. Victim and prosecutor hearing participation

Victim and prosecutor hearing participation

The Board is required to provide notice of your rehabilitation hearing to the victims⁸⁷ and prosecutors at least 30-days prior to the hearing.⁸⁸ Victims and the prosecutor have a right to participate in your hearing.

The Board typically sends notice to the victims and prosecutors 90 days before the hearing. This is important to remember if you are hoping to have your hearing scheduled in a particular month. You must request your hearing at least 90 days before you want the Board to schedule it so the Board can provide the required notice.

The victim has the right to attend the hearing in person, by phone, or other technology.⁸⁹ The victim also has the right to be represented at the hearing by counsel.⁹⁰

Both the victim and the prosecutor have the right to:

- Receive copies of the information that the Board will rely on during the hearing.⁹¹ This includes information the Board sends you before the hearing, as discussed in Section 11, and any information you and your witnesses submit for the Board's consideration. Ask the Board to redact contact information for your witnesses from the materials it gives victims, prosecutors and the public, or do so yourself.
- Rebut any evidence you present.92
- Submit written and/or oral statements to the Board expressing any views concerning the crime and/or the offender.⁹³

You have the right to rebut any statement the victim and/or prosecutor offers. But, as discussed in Section 13, you are not allowed to cross-examine the victim or prosecutor. Victims and prosecutors are not considered witnesses.

Victims and prosecutors typically have little or no knowledge about your rehabilitative journey, efforts, and successes in prison. Their statements generally focus on the crime and its impact

on their lives. One possible way to rebut such a statement is to point out that "the sole issue" before the Board is your likelihood of rehabilitation, which must focus on your personal characteristics and not the crime. You can note that their statements are not relevant or material evidence of the issue before the Board as required by OAR 255-032-0030(1) because they focus on your crime rather than your rehabilitation and, therefore, that evidence may not be considered in the Board's decision-making process. You could also ask the Board to exclude or strike their statements for that reason. The Board will likely deny your request. That could give you the potential to challenge the Board's decision on administrative and judicial review, if the Board finds that you are not capable of rehabilitation.

10. Victim and prosecutor hearing participation

11. Board Review Packet and Notice of Rights

Board Review Packet and Notice of Rights

You have a right to have access to all the evidence the Board will consider at the rehabilitation hearing, except for information that the Board determines is exempt from disclosure.⁹⁵ Typically, the only exemptions the Board applies are when a victim asks that their written statement be held confidential.⁹⁶

When the Board schedules your hearing, it sends you a letter with the **hearing date** and stating:

If you plan to submit any additional written documentation to the Board, one copy will be sufficient and please send all documents so that they are received by the Board at least two weeks before your hearing. Documents you send or that are sent on your behalf are considered public documents and cannot be held confidential. Documents received less than two weeks prior to your hearing may not be considered by the Board.

Following are the criteria for any submissions:

- Send only one copy.
- All documents must be single-sided.
- Do not send DVD or other submissions intended to be viewed through electronic means
- Do not send duplicate copies of your own documents or of Board documents.
- Do not submit copies of legal decisions or scholarly articles; summarize the content in a cover letter, if it is relevant.
- Do not send certificates. Provide a list programming completed, awards received, etc. and the dates.
- Do not send multi-page brochures or lists for treatment programs, housing, or AA, etc.
- Handwritten documents must be easy to read and suitable for photocopying.
- Documents submitted for previous hearings are not part of the record unless resubmitted.

If you believe that one or more of these limitations prevent you from proving your case, you can ask the Board to waive the limitation and argue that the Board's restriction denies you a meaningful opportunity to be heard. However, you can usually find another way to put this information before the Board. You can simply talk about these issues in a declaration in which you swear under oath that the content is true and correct, see Section 6B(ii), above.

Approximately 30 days before your rehabilitation hearing, the Board will send you a packet of paperwork. This is called the Board Review Packet, which is the information the Board will consider at the hearing. This information typically includes: the Hearing Notice and Notice of Rights Packet, Presentence Investigation Report or Parole Analyst Report, your Judgment (sentencing order), ODOC facesheet and other ODOC printouts including your program history and trust account history for the last 12 months, any previous Board Action Forms, correspondence, any psychological evaluations that may be in the Board's file, and other information the Board believes will be relevant during your hearing. The Board occasionally includes police reports, autopsy reports, and ODOC disciplinary orders in the Board Review Packet.

A copy of the Hearing Notice & Notice of Rights Packet ("Notice of Rights") that the Board includes in the Board Review Packet is found in Appendix One. This Notice of Rights is an exhibit to the Board's rules. Please be sure to consult the most recent version before your hearing.

11. Board Review Packet and Notice of Rights

12. Expert witnesses

Expert witnesses

An expert witness such as a forensic, developmental, or clinical psychologist, psychiatrist or addiction medicine specialist may offer evidence that is very helpful to: addressing the Board's eighth criterion, whether you have a mental or emotional disorder for criteria (OAR 255-032-0020(8)); and explaining the factors that contributed to your past criminality and violence, your rehabilitative efforts and successes, and your current recidivism risk. Unfortunately, this type of expert testimony can be expensive, typically ranging between \$1,500 and \$3,500. As discussed previously, the Board will not provide for a psychological evaluation. Note that people have been found capable of rehabilitation without presenting expert testimony.

If you believe an expert witness is necessary to help you address the issues before the Board, you could consider filing a pre-hearing motion for expense to retain an expert witness, given that: (1) you have a protected liberty interest in a capable of rehabilitation finding; (2) the Board has put your mental and emotional state at issue through the adoption of OAR 255-032-0020(8); and (3) you should be afforded a meaningful opportunity to be heard. In your motion, you might include identifying a specific expert and indicate the doctor's hourly rate and approximate fee (or hourly rate). You could consider attaching a letter from the expert to your motion. The Board will likely deny your motion, but you will have preserved the argument so you can raise it on administrative and judicial review, if the Board finds that you are not capable of rehabilitation.

13. Subpoenas, calling witnesses and cross-examination

Subpoenas, calling witnesses and cross-examination

You are entitled to have witnesses testify on your behalf at your rehabilitation hearing.¹⁰⁰ You must make your own arrangements for calling and presenting witnesses.¹⁰¹ However, upon your request, "and upon a showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas on behalf of the inmate."¹⁰² Also, witnesses can participate by phone and "are not required to appear in person unless good cause can be shown why an in-person appearance is necessary."¹⁰³

You do not need to ask the Board to issue subpoenas for your witnesses unless they are reluctant to appear and testify without one. Current and former prison employees, contractors, and volunteers are often some of the most important witnesses you can have testify for you because often they have worked with you and know you better than people outside the prison. However, prison staff and volunteers sometimes get pressured by other prison staff to not appear and testify on behalf of an incarcerated person. A subpoena *requires* them to appear and testify. It can provide a reluctant staff member or volunteer with the protection they need to feel most comfortable to appear and testify at your hearing. They can tell their supervisors or other staff that they had no choice because they were subpoenaed. Some staff and volunteers may be willing to voluntarily appear without a subpoena. Others may not want to appear even with a subpoena.



You should be careful about subpoenaing someone to testify who tells you that they do not want to appear even with a subpoena. You can force them to attend, but you may not like what they will say if you subpoena them against their wishes.

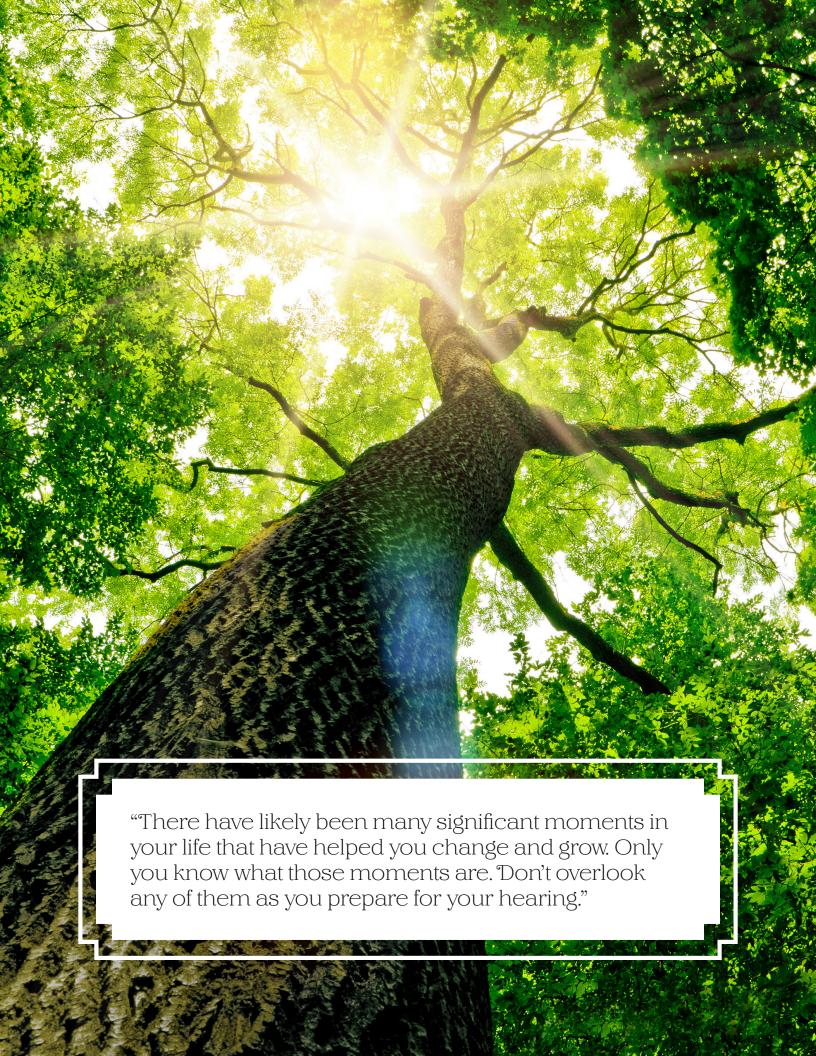
As previously discussed, while preparing for your rehabilitation hearing, make a list of all the people you would like to have attend your hearing and testify on your behalf. Ask them if they would like you to subpoen them or if they are willing to appear voluntarily. Also, let

them know that they can appear and testify by telephone if they would prefer, rather than appearing in person. ¹⁰⁴ If the witness is not incarcerated or a state employee, they are entitled to receive, from the Board, a \$5 appearance fee and mileage reimbursement at a rate of .08¢ per mile. ¹⁰⁵ If you need the Board to issue subpoenas, your attorney will need to give the Board a list of witness names, addresses, phone numbers, email addresses, Oregon driver's license numbers, and dates of birth. Do this *at least* 30 days before your scheduled hearing. Even if you do not need to subpoena any witnesses, your attorney still needs to inform the Board of all the people who will appear at your hearing as a witness or an observer and provide the names, addresses, phone numbers, email addresses, Oregon driver's license numbers, and dates of birth.

During the hearing, the Board will ask you and your witnesses to raise their right hand and swear under oath that the evidence the witnesses will provide is truthful. However, the Board does not require victims and prosecutors to swear that what they will say will be truthful. Victims and prosecutors are allowed to participate in the hearing and "make a statement" pursuant to ORS 144.750. This means that victims and prosecutors are not witnesses and their statements are not testimony. If you believe that a victim or prosecutor offered false or inaccurate information during your hearing, you can consider challenging the Board's failure to administer an oath to them through administrative and judicial review.

You technically have the right to cross-examine witnesses who offer evidence against you. 107 However, the only people who generally testify against you during a rehabilitation hearing are victims and prosecutors and, as previously noted, the Board does not consider them witnesses and their "statements" are not testimony. After the victim and/or prosecutor makes a statement during the hearing, the Board will give you or your attorney the opportunity to make a rebuttal statement. You can use that opportunity to identify portions of their statement(s) you believe to be false. However, if you or your attorney believes that you could prove the falsity of their statement through cross-examination, request that the Board allow you to cross-examine them. The Board will refuse, but you may be able to challenge that refusal on administrative and judicial review. If you do so, you could consider arguing that the denial of your right to cross-examine one or more of those parties denied you a meaningful opportunity to be heard on the issue(s) raised in their statement; this deprived you of due process of law; and also explain why offering your own rebuttal statement was not an adequate substitute for your right to cross-examination.

13. Subpoenas, calling witnesses and cross-examination



Conduct of the hearing

The information discussed in this section is based on how the Board has conducted hearings in the past. The Board is free to change how it conducts hearings whenever and however it chooses. So, the way it conducts your hearing may not look exactly as described in this section. For a better sense of how the Board may conduct your hearing, talk with someone who had a rehabilitation hearing shortly before you did, or have your attorney or family attend and observe a rehabilitation hearing that is scheduled shortly before your hearing.

The Board maintains a list of all scheduled hearings on its website. If your family sees a hearing they would like to attend, they can call the Board's Hearings Clerk to arrange to attend. It is likely that the Board will handle your hearing similar to the way it handles one that is held just a couple months before yours. However, it is important to note that the Board often conducts hearings for people who face considerable opposition much differently than the hearings it holds for people who face little or no opposition.

Nevertheless, the following information will give you a sense of how the Board has generally conducted rehabilitation hearings in the past.

Board hearings are public hearings. Any evidence you submit to meet your burden of proving that you are capable of rehabilitation is a public record. This means that your mental health, substance abuse, and other private information will not be protected from public disclosure.¹⁰⁸ Members of the public, including the following, may attend and observe the hearing:

- Prison employees and volunteers who support you, but whom you do not intend to call as witnesses;
- Victims, victim advocates, prosecutors, law enforcement;
- People who simply want to observe; and
- Members of the media to report on the hearing.

Board hearings are recorded, and the Board must keep a recording of the hearing for four years.¹⁰⁹ For more information about audio recordings of the hearing, see Section 16, below.

The Board holds hearings inside the Oregon State Penitentiary (OSP) and Oregon State

Correctional Institution (OSCI). If you are incarcerated at either prison, you will attend your hearing in person, wearing handcuffs, a belly chain and leg irons. You will remain restrained throughout your hearing. Ask your attorney to request that one or both of your hands be uncuffed so that you can access documents during the hearing. If you are incarcerated in another prison, you will participate in your hearing by videoconference. The Board, your attorney, witnesses and the adverse parties will meet in person in Salem.

The Board must have at least three, but no more than, five members.¹¹⁰ One member is the Board Chairperson and another is the Vice-Chairperson.¹¹¹ The Chairperson decides whether your case will be heard by a three-member panel or all five Board members.¹¹² The Board typically does not announce that decision or the reason for it. Given that most versions of the applicable statutes require a unanimous decision, you may be able to challenge the decision to require a full board on administrative and judicial review as being arbitrary and capricious and prejudicial to you. However, this type of claim rarely prevails in court without evidence that the Board had an improper motive for its decision. For further discussion about the Board's decision, see Section 14, below.

One Board member will be designated as the "Presiding Member" during your hearing. This member is responsible for running the hearing and will likely be the one who asks you most of the questions during the hearing. All members will be given the opportunity to ask questions of you and your witnesses.

At the beginning of the hearing, the Presiding Member will introduce the board members and other hearing participants. This will be followed by a brief explanation of the purpose of the hearing and the way that it will be conducted. The Presiding Member will often say whether a decision will be made at the end of the hearing or if the Board will take the matter under advisement and issue its decision at a later date. This will be discussed more in Section 15, below. The Presiding Member may also announce the Board's decision on any prehearing motions you (or the adverse parties) may have filed.

Once the Presiding Member has addressed all the preliminary matters that the Board wants to put on the record, it will typically turn the hearing over to your attorney for him or her to make an opening statement and begin calling and questioning your witnesses.

When your attorney calls your first witness, the presiding member will ask the witness to raise their right hand and be sworn in. The presiding member will then allow your attorney to begin questioning the witness.

"The initial testimony of each witness shall not exceed ten minutes." 114 Typically, most witnesses should be able to cover everything they need to say about your rehabilitation within 10 minutes. If not, however, "[t]he presiding Board member may grant [a] witness additional time upon finding that further testimony is likely to be relevant to the board's decision." The Board generally does not *strictly* enforce the 10-minute rule and allows witnesses to go a bit beyond the time limit before telling your attorney that the witness has exceeded the time limit. If your witness reaches the 10-minute time limit before they finish testifying, your attorney can request (and will *usually* be granted) a few more minutes to wrap up with the witness. However, if you know before the hearing that a witness will need more than ten minutes to

testify, you may choose to file a prehearing motion requesting additional time. This type of motion is often necessary for the testimony of psychologists and other expert witnesses who will need *much* more than ten minutes to testify about their background, expertise, evaluation, findings, conclusions and recommendations.

In your motion for more time for a witness, you can include: (1) identify each witness you believe will need more than ten minutes, (2) explain why each of those witnesses cannot address everything they need to say within ten minutes, and (3) estimate the amount of additional time you will need for each identified witness. You could consider arguing that the denial of additional time would deny you a meaningful opportunity to be heard on the issues before the Board in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. If the Board denies your written or oral motion to exceed the 10-minute time limit, you can consider challenging the denial on administrative and judicial review.

"The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence." This means the Presiding Member can interrupt your witness or end their testimony altogether, if they ramble on about topics that don't seem to relate to your rehabilitation or they cover the same ground over and over again. This may happen if you have several witnesses testify about the same issue.

Before the hearing, select witnesses who can testify about different issues. Perhaps one witness can talk about a job you held, another can talk about your volunteer efforts, another can talk about your involvement in programs, etc.



It is much better to have ten different witnesses tell the Board about ten different things you've done, rather than have all ten witnesses talk about just one or two of those things.

Know before the hearing what each witness will testify about and prepare them, so they say what *needs* to be said without adding a bunch of information that the Board will not care about.

One way to prepare your witnesses is to ask them to write you a letter, telling you what they want to tell the Board. You (and your attorney) can review that letter and tell them which parts of what they want to say are most important and which are least important. This will also allow you to see if there are other issues they should include in their testimony. You can ask them to be sure to add those issues when they testify. Once you see what everyone would like to testify about, you can identify your strongest one or two people to testify on a particular issue, rather than having everyone repeat the same thing.

After a witness finishes testifying, the Presiding Member may ask the witness questions. Then, each of the other board members can ask the witness questions. Once each board member has asked their questions or declined to ask anything, the Presiding Member will ask your attorney to call the next witness.

\bigcirc —

You are the most important witness. You are who the Board wants to hear from. Your testimony will likely take much more than 10 minutes, as it is important for you to address everything you have done for the last 20+ years to change your life. You will also need to testify about important issues including, but not limited to, your:

- Remorse;
- Insight (understanding) into how your criminality and violence became possible;
- Insight into whom you have harmed and how you have harmed them;
- Empathy for the people you have harmed; and
- Many other important subjects.

Once your attorney is done questioning you, each board member will have the opportunity to question you as well. You should expect that several (if not all) of them will ask you difficult and painful questions about what you did and why.

Once you and your witnesses are done testifying, the Board will give each prosecutor and victim an opportunity to make statements of up to 15 minutes.¹¹⁷ Again, those statements are not made under oath. The Board instructs victims and prosecutors to direct their comments to the Board rather than to you directly.

Victims and prosecutors rarely have much, if any, information about how you have spent the last 20+ years of your life in prison. Their statements generally focus (and often entirely) on the facts of the crime you committed; its impact on the victim's family; and what a horrible and dangerous person they believe you are. Having said that, not all victims and prosecutors are incapable of seeing and believing your change and growth.



During your incarceration, make it a priority to truly understand, both intellectually and emotionally, the ways that you have harmed your victim's family, your own family and others.

Most of us have had little or no contact with our victims in the 20+ years between sentencing and our first rehabilitation hearing. Although hearings are not conducted in a way that promote healing for anyone, your rehabilitation hearing may be the only opportunity you will ever have to speak to your victims. Your hearing may be the first time they will learn about all that you have been doing to change your life. The way you serve your time and the way you talk about your crime and your victims, during your hearing, may be just what a member of the victim's family needs to be able to heal.

After the prosecutor and victims make their statements, the Board will give you an opportunity to offer a rebuttal statement. The Board will also instruct you to address the Board rather than the victims directly. You can use this opportunity to show your victims how much your crime and their pain means to you. You can talk about how your crime and their pain have motivated and helped you change your life. However, you will also have opportunities to address these issues in your own testimony, much earlier during your hearing. Whenever you do it, let your victims see your heart and remorse.

After the prosecutors and victims make their statements, and you offer or decline to offer a rebuttal statement, the Presiding Member will invite your attorney to make a closing statement. If the Board intends to take the matter under advisement and issue its decision at a later date, it will say that and close the hearing. Otherwise, the Board will close the record and go into deliberations as the parties wait for the decision. After deliberations, the Board will go back on the record to announce its decision.

The decision

The Board informs people that:

[a]t 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.¹¹⁸

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.¹¹⁹

In recent years, the Board usually sends their decision in the mail rather than announcing their decision orally at the end of the hearing. The Board has authority to make a decision at the hearing, but it rarely does so. You should expect to wait several weeks after your hearing before learning of the Board's decision. As the Board notes in the Notice of Rights, it may take several months for the Board to prepare the final order. But, it generally mails its final order to you, the victims, and prosecutors within 30-90 days after your hearing.

Since December 6, 1984, you must receive a unanimous vote of all Board members at the hearing to receive a favorable decision. ¹²⁰ If you committed your crime before December 6, 1984, you need only a majority decision. ¹²¹

A. Negative Decision & Subsequent Rehabilitation Hearing Eligibility



The decision

Many people have been denied two *or more* times before the Board finally found in their favor. The Board has denied people for various reasons, including that:

- The Board felt the person had not done enough work to change;
- The person did not explain well enough the changes they've made;
- The Board simply wants to see if the changes are real and lasting;
- The person lacked insight into the reasons they committed the crime; and
- That the person lacked empathy for or a full appreciation for the impact their behavior had on the victim's family, others, and the community.

If the Board identifies any of these issues in its final order, you probably need to spend much more time thinking and talking about these issues. Focus on these issues during your next Rehabilitation Hearing.

If you are denied, do not waste valuable time and energy on anger and self-pity. Immediately get to work building on the rehabilitative gains you've already made. Stay involved in programs. Keep demonstrating that the changes you've made are real and permanent. Keep seeking deeper and better answers to the difficult and painful questions about what brought you to prison. Simply sitting around waiting until the next hearing will do nothing to improve your chances of success. Rehabilitation takes continuing effort. Do what you can to show that despite the setback, you are committed to continuing to change and grow in positive ways.

The Board will review your post-decision misconduct history during future hearings. If you get into fights, get a dirty UA or other disciplinary violations following a negative Board decision, you will be showing the Board that you cannot cope with adversity and would likely be a risk in the community when things do not go the way you want them to.

You can order the audio recording of your hearing, see Section 16, below. If you appeal the Board's decision you will eventually receive a written transcript of the hearing. Review the findings the Board made against you and listen to the recording, read the transcript, or both.

Chances are good that you said – or did not say – something that made the Board believe that you have not yet made enough positive change. Pay close attention to the Board's questions concerning the issues they cited in the order or during the hearing to justify denying you. Consider having the transcript and/or audio recording reviewed by a legal assistant, lawyer, or someone else who is familiar with the "Rehabilitation Hearing" process. Ask them to give you feedback about places they think you could have said more or said something differently



The Board will *not* automatically schedule a subsequent hearing for you. You must petition for a subsequent hearing as you did for your first hearing.

15. The decision

when answering the Board's questions. Think about how you might be able to do a better job of addressing the Board's concerns in the future. Maybe there is nothing you would do differently, but it is a very rare occasion when we do not leave the hearing wishing we would have said something more, better, or differently.

If the Board finds that you are not capable of rehabilitation, you can petition again for subsequent rehabilitation hearings until the Board finds that you satisfy your burden of proof. It is important that you pay attention to when you become eligible for a subsequent hearing and make the request whenever you are ready after that date.

Before 2009, you were required to wait two years before petitioning for a subsequent hearing. However, the 2009 Legislature amended the law to allow the Board to postpone rehabilitation hearing eligibility no less than two years and no more than ten years. The Board will inform you in the final order if it has postponed your rehabilitation hearing eligibility more than two years.

If the Board postpones your eligibility for a subsequent rehabilitation hearing more than two years, you could consider challenging that decision on administrative and judicial review. However, there is another way you can attempt to become eligible before the postponed period set by the Board in your final order. Specifically,

If the board grants a prisoner a hearing that is more than two years from the date parole is denied, the prisoner may submit a request for an interim hearing not earlier than the date that is two years from the date parole is denied and at intervals of not less than two years thereafter. If the board finds, based upon a request for an interim hearing, that there is reasonable cause to believe that the prisoner may be granted parole, the board shall conduct a hearing as soon as is reasonably convenient.¹²⁴

You do not get a hearing simply because you want one. You have to show the Board that you have addressed and resolved the issues the Board relied upon to impose an extended postponement. Those issues will be listed in your Board order. If you intend to request an early interim hearing under this provision, you should consult a legal assistant or attorney to make sure that your request addresses the issues that you need to include for the Board to give your request serious consideration.

If the Board denies your request for an early interim hearing, you could consider challenging the standard required for an interim hearing because it requires you to show "reasonable cause to believe that [you] may be granted parole" but the rehabilitation hearing process is not a parole hearing and has nothing to do with setting a release date.¹²⁵

B. Positive Decision & Additional Board Hearings

If the Board finds you capable of rehabilitation, you are entitled to immediate release consideration. This means that the Board will schedule you for a "**Prison Term Hearing**," soon after your "capable of rehabilitation" decision. The Prison Term Hearing is held to establish your prison term and release date pursuant to ORS 144.120 and the Board's rules that were in effect at the time of your crime. Review the Board's rules and exhibits that were

The decision

in effect at the time of your crime. They are available in your prison law library and on the Board's website. There are many variables that go into setting the correct prison term and release date. Those issues are beyond the scope of this guide.

When the Board sets a release date for you, release becomes a protected liberty interest that may not be taken from you without due process of law.¹²⁹ Once the Board sets a release date, you are entitled to release on that date unless the Board postpones release before that date.¹³⁰ The Board is authorized to postpone a scheduled release date for only three reasons, provided for in ORS 144.125: (1) the person engaged in serious misconduct in prison and the disciplinary hearing's officer recommends postponement; (2) the person has a present severe emotional disturbance that renders the person a danger to the health or safety of the community; and (3) the person's release plan is inadequate.¹³¹ The Board typically postpones release dates for reason (2), a finding of a mental or emotional disturbance.

Approximately six months before the scheduled release date, the Board will order you to undergo a psychological evaluation by one of its contract psychologists. The Board will then consider the doctor's report during an "**Exit Interview**" hearing. If the Board finds that you suffer from a present severe emotional disturbance that renders you a danger to the community, it will postpone release. Otherwise it will confirm your release date.

The Board's release postponement statutes and rules are available in your prison law library and on the Board's website. There are many important issues to consider in preparing for a board-ordered psychological evaluation and Exit Interview hearing. Those issues are beyond the scope of this guide. You should review the Board's statutes and rules that were in effect at the time of your crime and consult a legal assistant or lawyer if you need help preparing for your psychological evaluation and Exit Interview hearing.

The decision

Audio recording of the hearing

The Board is required to retain audio recordings of its hearings for four years. ¹³² You can buy a copy of the audio recording of your hearing by sending the money to the Board. ¹³³ If the Board sends you the recording, you can listen to it on the library computers. You can also ask to have it sent to someone in the community. If you do, tell the Board what format it needs to be saved in so the person in the community can listen to it.

To make your request, you can have a check sent to the Board from your prison trust account or have someone in the community pay the fee. Make the check payable to: "Oregon Board of Parole and Post-Prison Supervision." Include a cover letter to the Board with your name, SID number, a statement that you are requesting a recording of your rehabilitation hearing, the date of your hearing, and, if the recording should be sent to someone in the community, give the person's name, mailing address, and format for the audio recording. Send your request to:

Board of Parole and Post-Prison Supervision 1321 Tandem Ave., NE Salem, Oregon 97301. 16. Audio recording of the hearing

17. Administrative and judicial review of Board orders

Administrative and judicial review of Board orders

You may seek administrative and judicial review of the Board's final order if you think there is insufficient evidence to support its findings or it violated its own rules, statutes, or the Constitution.¹³⁴

An administrative review is a review by the Board of its own decision. It is the first step in your appeal of the order. A judicial review is a review by the courts of the Board's decision after the Board's administrative review of your order. If you want an administrative and judicial review, you must make these requests. They do *not* happen automatically.

The Hearing Notice & Notice of Rights Packet that you receive from the Board includes basic information about the administrative and judicial review process. Pay attention to the deadlines and follow the instructions closely.

If you want to seek judicial review of the Board's order in state and/or federal court, you must properly file a timely request for administrative review, raising all the issues you intend to raise on appeal. If you want to appeal to federal court after your state judicial review proceeding is fully exhausted, you will need to raise federal constitutional claims on both administrative and judicial review.

You can review cases cited in this guide to understand the kinds of issues that can be raised on administrative and judicial review.¹³⁵

In the upper left corner of the first page of the Board Action Form (BAF)¹³⁶ announcing the Board's decision you will see a "Mailing Date." **The Board must receive your administrative review request within 45 days of that date.** As soon as you get the Board's order, calculate your filing deadline and keep track of that date. Do not wait until the last minute to file your administrative review request. **File at least one week before the deadline, to ensure the Board receives it in time.**

The Board's administrative review rules are available in your prison law library and on the Board's website. The Board's administrative review form ("Exhibit O") is also available in all prison law libraries. You can use the Board's form or prepare your own request in substantially the same format.

Your request may not exceed eight pages and you may not attach more than ten pages of exhibits to your request. The Board strictly enforces its rules related to the format and length of administrative review requests. If you violate those rules, your request will not be properly filed and you will be barred from seeking judicial review of your issues. If you need help preparingyour administrative review request, consult a legal assistant or lawyer.

The Board has no time limit for responding to administrative review requests. In the past, the Board has taken more than one year to respond to administrative review requests. When that has occurred, the Oregon Court of Appeals has held that once you've waited one year, you can file a judicial review action without waiting for the Board's administrative review response.¹⁴⁰

However, if it has been less than one year and you file without waiting for the Board's administrative review response, the court will dismiss your appeal.¹⁴¹ The Board has recently started responding to administrative review requests much more quickly, often within 30-90 days.

The Board usually prints its Administrative Review Responses on blue paper. In the upper left-hand corner of the first page, you will again find a "MAILING DATE." **You have 60 days from that date to file your judicial review proceeding.** As soon as you get the Board's Administrative Review Response, calculate your judicial review filing deadline and keep track of that date. **Do not wait until the last minute to file your judicial review proceeding.** File at least one week before the deadline, to make sure the court receives it in time.

You can file your own appeal, but you are also entitled to have the public defender's office file it for you. You can send a letter to the Office of Public Defense Services requesting assistance, and include a copy of the Board's Final Order, Board Action Form and Administrative Review Response. **Do not send your only copy of those documents to the public defender's office.** Always keep a copy for your records. You can get copies made in the prison law library. Mail your request to:

Office of Public Defense Services 1175 Capitol Street, NE, Salem, OR 97310.

17. Administrative and judicial review of Board orders

If you intend to ask the public defender's office to file your appeal, do not wait until the 60-day deadline is about to expire. There is no benefit to delaying the start of your appeal. As soon as you get the Board's Administrative Review Response, send your request to their office to give them plenty of time to file the appeal.

After the initial paperwork is filed, the Board will be required to produce the agency record. This will consist of all the evidence the Board considered and a transcript of your hearing. The public defender will review the record to prepare and file your brief. **Only those issues that you raised in your administrative review request can be raised on appeal.**

After the public defender files your brief, the Board's attorney will file its brief. The Court of Appeals will then hold oral arguments and make a decision. Unfortunately, this process can take 18-24 months, and sometimes longer. You will typically become eligible for a subsequent rehabilitation hearing before your appeal is decided.

If the Court of Appeals denies your appeal, you can appeal to the Oregon Supreme Court. The public defender's office will also help you with that. If the Oregon Supreme Court denies you, it is possible to file a federal habeas corpus petition, if you raised any federal constitutional issues on administrative and judicial review. If you did not raise ("exhaust") any federal constitutional claims, your appeals will end with the Oregon Supreme Court's decision. The public defender's office will not help you file a federal habeas corpus petition. You will need to request the assistance of a legal assistant to prepare the initial paperwork. If you decide to file a habeas corpus petition, do so as soon as the Oregon Supreme Court denies review.

17. Administrative and judicial review of Board orders

Conclusion

The purpose of this guide is to help you understand the rehabilitation hearing process and prepare. If you have questions about anything you have read, consult a legal assistant or attorney. Remember, the law constantly changes. Cases cited here were in effect when this guide was written. Other important cases may have been decided after this guide was published. Do not assume that the cases cited here are still valid without doing your own legal research. Follow the case law that is in effect at the time of your hearing and the statutes and rules in effect at the time of your crime.

Remember, you are responsible for providing enough evidence to prove more likely than not that you are capable of rehabilitation within a reasonable period of time. You should not wait until just before your hearing to start working on rehabilitation. **Becoming rehabilitated and preparing to talk to the Board about your rehabilitation is the most important job you have during your incarceration. Your freedom depends on how well you do.** Spend your entire prison term working to become more rehabilitated and finding the language to talk about your rehabilitation with the Board and your victims (including your own family). You are not alone. Many others have been through this process. Talk to them, but don't expect "magic answers" from them. There are none. Learn from their mistakes. Ask them about difficulties they've had in their efforts to change and in interactions with the Board. Try to avoid those problems.

Do everything you can to develop insight into why you committed your crimes and how your choices and behavior impacted (and still impact) your victims, your family, and others. Learn to show you care about that impact. Only you have the answers as to why you committed your crime and why the Board should believe you have changed and will never hurt anyone ever again.

It seems like a lot of work, because it is. But you can do it, just as hundreds of others before you have. Becoming rehabilitated is not a single act like flipping a light switch on. It is a lifelong journey in which your rehabilitation gradually deepens with each step you make along the rehabilitative path. There may be times when you cannot even see the path. Don't give up. Stay the course and rely on others to walk with you and show you the way. It's there even when you can't see it. In time you will be walking a clear and well-worn path. You will look back on your progress with amazement and pride. Enjoy the journey! Good Luck!

Conclusion

Endnotes

- 1. These terms are used interchangeably to describe the hearing. *See, e.g., Janowski/Fleming v. Board of Parole*, 349 Or 432, 245 P3d 1270 (2010) (en banc).
- 2. As defined by ORS 163.095.
- 3. Pursuant to ORS 163.105.
- 4. As defined by ORS 163.115.
- 5. Pursuant to ORS 163.115.
- 6. See, e.g., Larsen v. Board of Parole, 191 Or App 526, 530, 532, 84 P3d 176 (2004) ("ORS 163.105 does not authorize the board to do anything relating to a release date or parole consideration date [T]he provisions of ORS 163.105(3) and (4) provide a basis for the board to, in essence, shorten the judicially imposed minimum sentences of 20 or 30 years."). See also Janowski/Fleming v. Board of Parole, 349 Or 432, 245 P3d 1270 (2010) (en banc); Miller v. Oregon Bd. of Parole Supervision, 642 F3d 711, 713 (9th Cir 2011) ("To be clear, [ORS 163.105 (3) and (4)] speak only to early eligibility for a parole hearing for persons convicted of aggravated murder; they promise nothing as far as actually being paroled after the hearing." (emphasis in original)).
- 7. See Gaynor v. Board of Parole, 165 Or App 609, 612, 996 P2d 1020, 1021 (2000).

- 8. See ORS 144.025(3); ORS 144.050; ORS 144.140.
- 9. See, e.g., Severy v. Board of Parole, 318 Or 172, 176 n 7, 864 P2d 368, 370 (1993) (en banc) ("The Board could not confer on itself, by enactment of an administrative rule, greater authority than that granted to the Board by the legislature."); State ex rel Engweiler v. Felton, 350 Or 592, 632 n 23, 260 P3d 448, 471 (2011); Jeanes v. Board of Parole, 83 Or App 410, 412, 732 P2d 51 (1987) (Noting that a statutory requirement "cannot be eliminated by an administrative rule. It is elementary that an agency may not amend, alter, enlarge or limit the specific terms of a legislative enactment by rule.").
- 10. See Peek v. Thompson, 160 Or App 260, 264-65, 980 P2d 178, rev dismissed, 329 Or 553, 994 P2d 130 (1999) (en banc) (citing Moore v. OSP, 160 Or App 536, 519 P2d 389 (1974); Aetna Casualty & Surety Co. v. Sue A. Blanton, D.C., 139 Or App 283, 287, 911 P2d 363 (1996); Harsh Investment Corp. v. State Housing Division, 88 Or App 151, 744 P2d 588 (1987).
- 11. See note 10.
- 12. See Or Laws 1977, ch 370, § 2.
- 13. Or Laws 2007, ch 717, § 1; Or Laws 2009, ch 660, § 6.

- 14. OREGON BOARD OF PAROLE & POST-PRISON SUPERVISION, HEARING NOTICE & NOTICE OF RIGHTS PACKET, at 1 (revised June 18, 2012).
- 15. Some people convicted of aggravated murder for crimes committed between October 3, 1977 and December 6, 1984 became eligible for a rehabilitation hearing after serving 15 years.
- 16. ORS 163.105(2) (1995), amended by Or Laws 1999, ch 59, § 31; Or Laws 2001, ch 717, § 1; Or Laws 2007, ch 717, § 1; Or Laws 2009, ch 660, § 6.
- 17. ORS 163.105(2) (1999).
- 18. ORS 163.115(2) (1999), amended by Or Laws 2001, ch 717, § 2; Or Laws 2007, ch 717, § 2; Or Laws 2009, ch 660, § 7.
- 19. ORS 163.105(2) [Aggravated Murder]; ORS 163.115(5)(c) [Murder]; OAR 255-032-0020.
- 20. Severy/Wilson v. Board of Parole, 349 Or 461, 477, 245 P3d 119, 127 (2010) (en banc) (emphasis in original).
- 21. See also V.L.Y. v. Board of Parole, 338 Or 44, 50-51, 106 P3d 145 (2005).
- 22. Simpson v. Board of Parole, 237 Or App 661, 669, 241 P3d 347, 351 (2010).
- 23. ORS 163.105(2)(a) [Aggravated Murder]; ORS 163.115(5)(c)(A) [Murder]; OAR 255-032-0025(2)(a).
- 24. Black's Law Dictionary 1476 (10th ed 2014) ("Rehabilitation" means "[t]he process of seeking to improve a criminal's character and outlook so that he or she can function in society without committing other crimes."); see also Tuel v. Gladden, 234 Or 1, 4, 379 P2d 553, 555 (1963) (en banc) ("Reformation means doing over to bring about a better result, correction, or rectification.").

- 25. See, e.g., In re Griffith, 323 Or 99, 106-07, 913 P2d 695, 699 (1996) (en banc) ("We acknowledge that often it will be very difficult to show . . . reformation, because 'reformation is a very difficult matter for a petitioner to prove and for us to judge because evidence of morality is not ordinarily adducible in positive form.'") (Quoting In re Bernard Jolles, 235 Or 262, 275, 383 P2d 388 (1963)); see also In re Jaffee, 319 Or 172, 177, 874 P2d 1299, 1302 (1994) ("But [despite the difficult showing] reformation can be proved to this court's satisfaction, as this court's past decisions attest." (citing In re Rowell, 305 Or 584, 754 P2d 905 (1988)).
- 26. Nearly 70 percent of incarcerated persons experienced substance abuse problems. See OREGON DEPT. OF CORRECTIONS, INMATE POPULATION PROFILE (May 1, 2019), available at https:// www.oregon.gov/doc/research-andrequests/pages/research-and-statistics.aspx (reporting that of 14,723 prisoners, 55.6 percent had substance "dependence/ addiction," and 12.6 percent reported "some substance abuse." The total of individuals reporting at least some substance abuse equals 68.2 percent. Assessments for another 900 prisoners had not been completed.). See also KATE BROWN & GARY BLACKMER, SECRETARY OF STATE AUDIT REP., REP. NO. 2013-20, DEPT. OF CORRECTIONS: TREATMENT OF THE HIGHEST-RISK OFFENDERS CAN AVOID COSTS 1 (Aug. 2013), available at https://sos. oregon.gov/audits/Documents/auditsearch/ agency/corrections.html (stating that 70 percent of incarcerated individuals had substance abuse problems); Robin Casarjian, Houses of the Healing: A Prisoner's Guide to Inner Power and Freedom 7 (1995) (citing statistics indicating that 66 percent of people entering prison are alcohol or drug abusers); Joan Petersilia, When Prisoners Come Home: Parole and Prisoner Reentry 47 (2003) (finding 74 percent of state prisoners selfreported drug and alcohol abuse).

- 27. ORS 163.105(2)(a) [Aggravated Murder]; ORS 163.115(5)(c)(A) [Murder]; OAR 255-032-0025(2)(a).
- 28. ORS 163.105(3) [Aggravated Murder]; ORS 163.115(5)(d) [Murder]; Dixon v. Board of Parole, 257 Or App 273, 279, 306 P3d 716 (2013) ("Under ORS 163.105(2) (a), Petitioner has the burden to prove that he was capable of rehabilitation."); Wille v. Board of Parole, 287 Or App 709, 713, 404 P3d 1042 (2017) ("Under ORS 163.105(2) (a) it is petitioner's burden to prove that he is capable of rehabilitation in a reasonable time."); King v. Board of Parole, 283 Or App 689, 694, 389 P3d 1171 (2017) (Noting that the ORS 163.105(2) "likely to be rehabilitated" determination is a "determination regarding petitioner's capacity for rehabilitation."); Larsen v. Board of Parole, 191 Or App 526, 534, 84 P3d 176, 180 (2004).
- 29. Norris v. Board of Parole, 152 Or App 57, 66, 952 P2d 1037 (1998) (quoting board order), aff'd 331 Or 194, 13 P3d 104 (2000), overruled on other grounds by Severy/Wilson v. Board of Parole, 349 Or 461, 474, 477-78, 245 P3d 119 (2010) (en banc). See also Roy v. Palmateer, 205 Or App 1, 7, 132 P3d 56 (2006).
- 30. See, e.g., Kohring v. Ballard, 355 Or 297, 303, 325 P3d 717 (2014) (en banc) (where a statute does not define a term, the Court "resort[s] to dictionary definitions and gives the term its "plain, natural and ordinary meaning." (citing PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P2d 1143 (1993))).
- 31. The American Heritage College Dictionary 207 (4th ed 2000); Webster's II New Riverside University Dictionary 226 (1988); Webster's New World College Dictionary 216 (4th ed 2008). See also State v. Briney, 345 Or 505, 511, 200 P3d 550 (2008) (en banc); Barkers Five, LLC v. LCDC, 261 Or App 259, 328 n 38, 323 P3d 368 (2014).

- 32. Riley Hill General Contractor, Inc. v. Tandy Corp., 303 Or 390, 402, 737 P2d 595 (1987) (en banc).
- 33. See, e.g., OAR 291-105-0028(3) ("The term preponderance of the evidence means the greater weight of evidence (e.g., 51% vs. 49%).").
- 34. OREGON BOARD OF PAROLE & POST-PRISON SUPERVISION, HEARING NOTICE & NOTICE OF RIGHTS PACKET 1 (revised June 18, 2012).
- 35. See Dixon v. Board of Parole, 257 Or App 273, 281 n 4, 306 P3d 716 (2013) ("[T] he board is not required to rely on all of the criteria set out in OAR 255-032-0020 to support its ultimate conclusion, so long as that conclusion is supported by substantial evidence.") See also Wille v. Board of Parole, 287 Or App 709, 718, 404 P3d 1042 (2017).
- 36. In 2014, for example, the Rand Corporation completed a comprehensive study, finding that "[o]n average, inmates who participated in correctional education programs had 43 percent lower odds of recidivating than inmates who did not." Lois M. Davis et al, Rand Corporation, How Effective Is Correctional Education and Where Do We Go From Here? The Results of a Comprehensive Evaluation 18 (2014), available at https://www.rand. org/pubs/research_reports/RR564.html. The Rand study found "a savings of five dollars on reincarceration costs for every dollar spent on correctional education." See Davis et al, at iii. Similarly, the United States Sentencing Commission's 2016 report on recidivism found a significant inverse relationship between recidivism (meaning return to criminal conduct) and educational level: "Offenders with less than a high school diploma had the highest recidivism rates (60.4%), followed by high school graduates (50.7%) and those with some college (39.3%). College graduates had the lowest rates (19.1%)." UNITED STATES

SENTENCING COMMISSION, RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW 24 (2016), available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf.

37. See, e.g., Dixon v. Board of Parole, 257 Or App 273, 277-78, 306 P3d 716 (2013) ("The board found that petitioner lacked maturity, stability, and demonstrated responsibility that would promote his conformity to a law-abiding life based on four facts. First, the board found that petitioner's testimony was inconsistent with statement in the [Presentence Investigation Report or Parole Analyst's Report] Second, the board found that petitioner's testimony at the hearing demonstrated minimal ability or willingness to reflect on his crime and minimization of his crime. Third, the board was troubled by petitioner's [long criminal history including crimes he committed while on supervision] . . . Lastly, the board found that the financial dynamic between petitioner and his wife showed that he lacked motivation, maturity, or a sense of responsibility, which would be needed for him to succeed during supervision." (internal quotation marks omitted)). See also Wille v. Board of Parole, 287 Or App 709, 713, 404 P3d 1042 (2017) ("First, petitioner" challenges the board's findings under the fourth factor, regarding the inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law He disputes the board's factual findings that he demonstrated a lack of empathy or remorse, exhibited a lack of insight and sensitivity, exhibited a high level of criminal thinking errors, and failed to accept responsibility for his crime, including the uncontroverted history of domestic violence with [the victim]." (internal quotation marks omitted)); King v. Board of Parole, 283 Or App 689, 692, 389 P3d 1171 (2017) ("In addressing the fourth factor,

petitioner's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law, the board found that petitioner had not repaid the state for his trial expenses and had not reimbursed the state for the costs of his incarceration. From those facts, the board inferred that petitioner lacks a sense of personal responsibility and recognition of his indebtedness to his fellow citizens and Oregon taxpayers; he appears to believe that he is entitled to live off the labors of others. Also addressing the fourth factor, the board found that petitioner had served the state while incarcerated by assisting law enforcement and by aiding a downed corrections officer. However, the board inferred from that conduct – and from petitioner's focus on that conduct at the hearing – that petitioner is still involved in an adventure-seeking, risk-taking lifestyle, as he had been when he murdered his victim." (internal quotation marks omitted)). **NOTE**: The Court of Appeals found that the Board erred in reaching several of these findings. We encourage you to read the entire King decision. See also Rivas-Valle v. Board of Parole, 275 Or App 761, 769, 306 P3d 716 (2015) ("The board based its decision on (1) petitioner's lack of maturity, stability, and insight into his criminal behavior ").

- 38. See note 26.
- 39. *Simpson v. Board of Parole*, 237 Or App 661, 669, 241 P3d 347 (2010).
- 40. Simpson v. Board of Parole, 237 Or App 661, 669, 241 P3d 347 (2010).
- 41. Severy/Wilson v. Board of Parole, 349 Or 461, 474, 477, 245 P3d 119 (2010) (en banc).
- 42. *V.L.Y. v. Board of Parole*, 338 Or 44, 51, 106 P3d 145 (2005).
- 43. *V.L.Y. v. Board of Parole*, 338 Or 44, 51, 106 P3d 145 (2005).

- 44. *Simpson v. Board of Parole*, 237 Or App 661, 669, 241 P3d 347 (2010).
- 45. See Maney v. Board of Parole, 272 Or App 116, 355 P3d 146 (2015).
- 46. OAR 255-032-0020(8).
- 47. Oregon Department of Corrections Policy 90.1.3, Attachment C, *available at https://www.oregon.gov/doc/rules-and-policies/Pages/policies.aspx.*
- 48. Oregon Department of Corrections Policy 90.1.3, Attachment C, available at https://www.oregon.gov/doc/rules-andpolicies/Pages/policies.aspx (Listing the following diagnosed conditions under the MH-2 classification: anorexia, bulimia, eating disorder not otherwise specified, borderline personality disorder, pervasive developmental disorders (autism spectrum disorders (ASD)), major depressive disorder (single episode), schizotypal personality disorder, Tourette's, cyclothymia, agoraphobia, panic disorder, obsessivecompulsive disorder, depression not otherwise specified, mood disorder not otherwise specified, dysthymic disorder, paranoid personality disorder, post traumatic stress disorder, brief psychotic disorder, and general anxiety disorder).
- 49. Oregon Department of Corrections Policy 90.1.3, Attachment C, available at https://www.oregon.gov/doc/rules-and-policies/Pages/policies.aspx (Listing the following diagnosed conditions under the MH-3 classification: psychotic disorder not otherwise specified, schizophrenia (including "all sub-types"), bipolar disorder I and II that is "unregulated with active symptoms", recurrent major depressive disorder, schophreniform disorder, dementia, delusional disorder, schizoaffective disorder, substance-induced psychotic disorder "excluding intoxication and withdrawal," and brief psychotic disorder.)

- 50. OAR 255-032-0020(8).
- 51. OAR 255-032-0020(8).
- 52. See, e.g., Larsen v. Board of Parole, 191 Or App 526, 530, 84 P3d 176 (2004) ("ORS 163.105 does not authorize the board to do anything relating to a release date or a parole consideration date."); Miller v. Oregon Bd. of Parole Supervision, 642 F3d 711, 713 (9th Cir 2011) ("To be clear, [ORS 163.105(3) and (4)] speak only to early eligibility for a parole hearing for persons convicted of aggravated murder; they promise nothing as far as actually being paroled after the hearing." (emphasis in original)).
- 53. This depends on when the Board sets your release date during a subsequent prison term hearing, and on whether the Board finds during a subsequent exit interview hearing that you do not suffer from a present severe emotional disturbance that renders you a danger to the health or safety of the community.
- 54. For crimes committed before November 1, 1989.
- 55. For crimes committed after October 31,
- 56. See ORS 144.102(7)(a); 144.270(6)(a).
- 57. ORS 144.102(7)(b) [post-prison supervision]; ORS 144.270(6)(b) [parole].
- 58. ORS 144.102(7)(c)(A)(i) (iv) [post-prison supervision]; ORS 144.270(6)(c)(A)(i) (vi) [parole].
- 59. See ORS 144.102(7)(d)(A) (F) [post-prison supervision]; ORS 144.270(6)(d)(A) (F) [parole].
- 60. See, e.g., OREGON DEPARTMENT OF CORRECTIONS, AUTOMATED CRIMINAL RISK SCORE (ACRS) 1 (2009), available at https://digital.osl.state.or.us/islandora/

object/osl%3A94126/datastream/OBJ/view; see also Oregon Department of Corrections Policy 90.1.3, § III(A)(5), available at https://www.oregon.gov/doc/rules-and-policies/Pages/policies.aspx.

61. The tool is accessible at THE PUBLIC SAFETY CHECKLIST FOR OREGON, https://risktool.ocjc.state.or.us/psc/.

62. Joan Petersilia, When Prisoners Come

Home: Parole and Prisoner Reentry 140-41 (2003) ("The Bureau of Justice Statistics recently released the results of the largest recidivism study ever conducted in the United States [It] found that 67 percent of former inmates were rearrested for at least one serious new crime within three years after their release in 1994: 47 percent were convicted of a new crime; 52 percent were returned to prison for either a new crime or a technical violation (e.g., failing a drug test). The 272,111 offenders accumulated 744,000 serious criminal charges within the three years after release. Fully one-quarter of all released prisoners (25.4 percent) were resentenced to prison for a new crime they committed in the follow-up period However, according to the study, state prisoners with the lowest rearrest rates – 26 percent lower than the general rearrest rate - had been in prison for homicide." (citing Patrick A. Lanagan & David J. Levin, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1994, (June 2002))). The fact that the homicide recidivism rate is nearly 30 percent lower than the general recidivism rate, is arguably strong evidence that "there is a reasonable probability that [you] will remain in the community without violating the law, and there is a substantial likelihood that [vou] will conform to the conditions of parole." OAR 255-032-0020(10).

63. American Civil Liberties Union, *At America's Expense: The Mass Incarceration of the Elderly* 14, 20, n 32 (June 2012), *available at* https://www.aclu.org/report/americas-expense-mass-incarceration-

elderly.

64. American Civil Liberties Union, At America's Expense: The Mass Incarceration of the Elderly 15, 20, n 34 (June 2012), available at https://www.aclu.org/report/ americas-expense-mass-incarcerationelderly. 15, 20, n 34 (June 2012). See also United States v. Payton, 754 F3d 375, 378-79 (6th Cir 2015) ("The Sentencing Commission has observed that [r]ecidivism rates decline relatively consistently as age increases. Recent analysis from the Bureau of Justice Statistics considering the recidivism rates of released prisoners in 30 states . . . from 2005 to 2010 supported the Commission's conclusion, finding decreased recidivism rates as prisoners age. These statistics suggest that past fifty years old there is a significantly lower rate of recidivism [O]bservers of the criminal justice system have long acknowledged the key argument that elderly offenders pose so low a risk to the public that long or otherwise harsh sentences have little to no utilitarian benefit. Indeed, they observe that because of health or other reasons, elderly offenders have the lowest rate of recidivism of all types of offenders; in fact, only about one percent of elderly offenders ever face a second conviction. Studies indicate that neurotransmitters affecting aggression supplied at the synapses of brain neurons vary based on age, and may explain the observed decline in recidivism among older prisoners." (internal quotation marks and citations omitted)). See also United States v. Wilkinson, 646 F Supp 2d 194, 196 (D Mass 2009) ("Moreover, Wilkinson will be in his mid-fifties when he is released from federal and state custody. The evidence indicates that both Antisocial Personality Disorder and the risk of sexual recidivism diminish substantially by that age all of the evidence indicates that the risk of sexual recidivism declines with age. Even for child molesters released after age sixty, the recidivism rate is very low (3.8%) for individuals convicted of multiple sex

offenses the risk of recidivism dramatically declines at age sixty and the consensus in the learned literature is that people over age sixty do not commit sexual offenses." (citing R. Karl Hanson, *Recidivism and Age: Follow-Up Data From 4,673 Sexual Offenders*, 17 J Interpersonal Violence 1046, 1059 (2002))).

65. See BOARD OF PAROLE AND POST-PRISON SUPERVISION, ANN. PERFORMANCE PROGRESS REP., at 3 (2017) (also reporting recidivism of 6.9 percent in 2015, 17 percent in 2017, and no data for 2014 and 2016).

66. See Joan Petersilia, When Prisoners Come Home: Parole and Prisoner Reentry 41-42 (2003) ("Reviews of prisoners' family relationships yield two consistent findings: male prisoners who maintain strong family ties during imprisonment have higher rates of post-release success, and men who assume husband and parenting roles upon release have higher rates of success than those who do not.") (citing Creasie Hairston, *Prisoners* and Families: Parenting Issues During Incarceration (2002)). Petersilia also pointed to a Vera Institute of Justice study that "found that people with strong family support had lower levels of recidivism. Offenders whose families accepted and supported them also had a higher level of confidence and were more successful and optimistic for their future." Joan Petersilia, When Prisoners Come Home, Parole and Prisoner Reentry 42 (2003) (citing Marta Nelson et al, Vera Institute of Justice, *The First Month Out:* Post-Incarceration Experiences in New York City (1999)).

67. Lois M. Davis et al, Rand Corporation, How Effective Is Correctional Education and Where Do We Go from Here? The Results of a Comprehensive Evaluation 18 (2014), available at https://www.rand.org/pubs/research_reports/RR564.html.

68. Lois M. Davis *et al*, Rand Corporation, How Effective Is Correctional Education and Where Do We Go from Here? The Results of a Comprehensive Evaluation, at iii (2014), available at https://www.rand.org/pubs/research_reports/RR564.html.

69. See U.S. SENTENCING COMM'N, RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW 24 (2016), available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf.

70. See, e.g., Graham v. Florida, 560 US 48, 130 S Ct 2011 (2010); Miller v. Alabama, 567 US 460, 132 S Ct 2455 (2012); Montgomery v. Louisiana, ___ US ___, 136 S Ct 718 (2016).

71. Jancsek v. Oregon Board of Parole, 833 F2d 1389, 1390 (9th Cir 1987). See also Biggs v. Terhune, 334 F3d 910, 915 (9th Cir 2003); McQuillion v. Duncan, 306 F3d 895, 904 (9th Cir 2002); Cuevas v. Ayers, No. CV–99– 02750–CAL (9th Cir Dec 27, 2001).

72. See OAR 255-030-0032(2) ("Evidence of a type that reasonably prudent persons would commonly rely upon in the conduct of their serious affairs shall be admissible in Board hearings"); OAR 255-030-0032(3) ("Reliable, probative, and substantial evidence shall support Board orders."); OAR 255-032-0030(1) ("Irrelevant, immaterial, or unduly repetitious evidence will be excluded All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs will be admissible.").

73. See OAR 255-032-0030(2).

74. See OAR 255-032-0030(3).

75. See OAR 255-032-0030(3).

76. ORS 163.105(2)(c) [Aggravated Murder] and ORS 163.115(5)(c)(C) [Murder] provide that you have "[t]he right to a subpoena upon a showing of the general relevance and

reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board." The Board has also adopted a rule providing:

- (1) Inmates must make their own arrangements for calling and presenting witnesses. However, upon the request of an inmate, and upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas on behalf of the inmate.
- (2) 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.
- (3) Witnesses appearing pursuant to subpoena, other than inmates, state officers, or employees of the Board, must receive fees and mileage payable by the Board, . . . as prescribed by law for witnesses in ORS 44.415(2), provided the Board certifies that the witness's testimony was relevant and material to the hearing.

OAR 255-032-0029.

- 77. ORS 163.105(2)(b) [Aggravated Murder] and ORS 163.115(5)(c)(B) [Murder] provide: "At the hearing, the prisoner has The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense"
- 78. Oregon Board of Parole and Post-Prison Supervision, *Attorney Fees for Appointed Counsel* (Aug. 1, 2018), *available at* https://www.oregon.gov/BOPPPS/docs/ BoardPolicyAttorneyFees.pdf.
- 79. See OAR 255-032-0025(2)(b). Prior to that date, the fee was capped at \$100 per hour for 10 hours, or a total fee of \$1,000.

- 80. State ex rel Juvenile Dept. of Multnomah County. v. Geist, 310 Or 176, 185, 796 P2d 1193, 1200 (1990); Dept. of Human Services v. T.L., 358 Or 679, 369 P3d 1159 (2016); Bahrenfus v. PSRB, 120 Or App 442, 448, 853 P2d 290, 292 (1993).
- 81. State ex rel Juvenile Dept. of Multnomah County. v. Geist, 310 Or 176, 187-88, 796 P2d 1193 (1990).
- 82. State ex rel Juvenile Dept. of Multnomah County. v. Geist, 310 Or 176, 189, 796 P2d 1193 (1990).
- 83. State ex rel Juvenile Dept. of Multnomah County. v. Geist, 310 Or 176, 189, 796 P2d 1193 (1990).
- 84. This would violate the Fourteenth Amendment to the United States Constitution and Article I, section 20 of the Oregon Constitution. Oregon does not have a due process clause, but this may also violate Article I, section 10 of the Oregon Constitution, which mandates: "[E]very man shall have remedy by due course of law for injury done him in his person, property, or reputation." Or Const, Art I, § 10.
- 85. See, e.g., State ex rel Juvenile Dept. of Multnomah County. v. Geist, 310 Or 176, 187, 796 P2d 1193 (1990).
- 86. See note 76.
- 87. The Board defines "Victim" very broadly:
 - (a) Any person determined by the prosecuting attorney, the court or the Board to have suffered direct financial, psychological, or physical harm as a result of a crime that is the subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision.
 - (b) Any person determined by the Board to have suffered direct financial, social,

psychological, or physical harm as a result of some other crime connected to the crime that is the subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision. The term 'some other crime connected to the crime that is the subject of the proceeding' includes: other crime(s) connected through plea negotiations, or admitted at trial to prove an element of the offense. The Board may request information from the District Attorney of the committing jurisdiction to provide substantiation for such a determination.

(c) Any person determined by the Board to have suffered direct financial, social, psychological, or physical harm as a result of some other crime connected to the sentence for which the offender seeks release that is the subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision. The term 'connected to the sentence for which the offender seeks release' includes other crime(s) which were used as a basis for: a departure sentence, a merged conviction, a concurrent or a consecutive sentence. an upper end grid block sentence, a dangerous offender sentence, a sentence following conviction for murder or aggravated murder. The Board may request information from the District Attorney of the committing jurisdiction to provide substantiation for such a determination.

OAR 255-005-0005(59).

88. *See* ORS 144.750(2)(a). Before 2010, this right was provided by ORS 144.120(7).

89. ORS 144.750(1)(b).

90. ORS 144.750(1)(c) and (2)(c).

91. ORS 144.750(2)(c).

92. ORS 144.750(2)(c).

93. See ORS 144.750(2)(b).

94. Severy/Wilson v. Board of Parole, 349 Or 461, 477, 245 P3d 119 (2010) (en banc).

95. OAR 255-032-0027; OAR 255-015-0010.

96. See OAR 255-015-0010(3) ("The Board shall disclose its records to any person or agency unless: * * * The information was submitted to a public body in confidence, the information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and the public interest will suffer by disclosure of the information ").

97. OAR 255-005-0005(8).

98. Miller v. Oregon Bd. of Parole Supervision, 642 F3d 711, 716 (9th Cir 2011); Haynes v. Board of Parole, 362 Or 15, 27 (2017).

99. See Mathews v. Eldridge, 424 US 319, 333 (1976); Portland General Electric Co. v. Ebasco Services, Inc., 353 Or 849, 860, 306 P3d 628, 635 (2013); Koskela v. Willamette Industries, Inc., 331 Or 362, 378, 15 P3d 548, 558 (2000); Woodroffe v. Board of Parole, 219 Or App 87, 96, 182 P3d 202, 207 (2008). But see Maney v. Board of Parole, 272 Or App 116, 355 P3d 146 (2015).

100. See ORS 163.105(2)(c) [Aggravated Murder]; ORS 163.115(5)(c)(C) [Murder]; OAR 255-032-0029.

101. OAR 255-032-0029(1).

102. OAR 255-032-0029(1).

103. OAR 255-032-0029(2).

104. See OAR 255-032-0029(2).

105. See OAR 255-032-0029(3) and ORS 44.415(2).

- 106. See ORS 183.417(6).
- 107. OAR 255-032-0030(5) ("The Board and the inmate will have the right of cross-examination of each witness that testifies, and will have the right to submit rebuttal evidence.").
- 108. You may be able to challenge the Board's public disclosure of your mental health, substance abuse, educational, financial and other information. *See, e.g., NASA v. Nelson*, 562 US 134, 131 S Ct 746 (2011).
- 109. OAR 255-015-0003.
- 110. ORS 144.005. Information about board members' backgrounds is listed on the Board's website.
- 111, ORS 144,025.
- 112. ORS 144.025(5); ORS 144.054.
- 113. See, e.g., OAR 255-032-0030.
- 114. OAR 255-032-0025(3).
- 115. OAR 255-032-0025(3).
- 116. OAR 255-032-0025(3). See also OAR 255-032-0030(1).
- 117. See OAR 255-032-0025(4); OAR 255-032-0025(5).
- 118. OAR 255-032-0031(2).
- 119. OREGON BOARD OF PAROLE & POST-PRISON SUPERVISION, HEARING NOTICE & NOTICE OF RIGHTS PACKET 5 (revised June 18, 2012).
- 120. Compare ORS 163.105 (1981) with ORS 163.105 (1985), ORS 163.105 (2017) [Aggravated Murder], and ORS 163.115(2017) [Murder].

- 121. See, e.g., ORS 163.105(3) (1985).
- 122. ORS 163.105 (before 2009); ORS 163.115 (before 2009).
- 123. See ORS 163.105(4) (2015); ORS 163.115(5)(e) (2015); ORS 144.285 (2009); OAR 255-032-0035 (2010); OAR 255-062-0016 (2010).
- 124. ORS 144.280(2) (2009).
- 125. See note 6.
- 126. Janowski/Fleming v. Board of Parole, 349 Or 432, 456, 245 P3d 1270 (2010) (en banc); State ex rel Engweiler v. Felton, 350 Or 592, 625, 260 P3d 448 (2011).
- 127. See OAR 255-032-0037.
- 128. See OAR 255-030-0010 255-030-0055 and OAR 255-035-0006 255-035-0030.
- 129. See Stogsdill v. Board of Parole, 342 Or 332, 154 P3d 91 (2007).
- 130. See, e.g., Gordon v. Board of Parole, 343 Or 618, 175 P3d 461 (2007); Hamel v. Johnson, 330 Or 180, 998 P2d 661 (2000); Porter v. Board of Parole, 281 Or App 237, 383 P3d 427 (2016); Jones v. Board of Parole, 283 Or App 650, 391 P3d 831 (2017).
- 131. ORS 144.125.
- 132. OAR 255-015-0003.
- 133. In 2018, the cost for the audio recording was \$8.00.
- 134. *See*, e.g., ORS 144.335; ORS 183.482(8); OAR 255-080-0001 255-080-0015.
- 135. See, e.g., Janowski/Fleming v. Board of Parole, 349 Or 432, 245 P3d 1270 (2010) (en banc); Severy/Wilson v. Board of Parole, 349 Or 461, 245 P3d 119 (2010) (en banc); Dixon v. Board of Parole, 257 Or App 273, 306 P3d

716 (2013); Wille v. Board of Parole, 287 Or App 709, 404 P3d 1042 (2017); King v. Board of Parole, 283 Or App 689, 389 P3d 1171 (2017); Maney v. Board of Parole, 272 Or App 116, 355 P3d 146 (2015); Haynes v. Board of Parole, 362 Or 15, 403 P3d 394 (2017); Miller v. Oregon Board of Parole, 642 F3d 711 (9th Cir 2011).

- 136. This form is generally printed on green paper and is 3 to 4 pages long.
- 137. See OAR 255-080-0001 255-080-0015.
- 138. See OAR 255-080-0008(3).
- 139. See OAR 255-080-0008.
- 140. On September 16, 2013, the Court issued an Order of Dismissal in *Maupin v. Board of Parole*, CA A155027 (Or App, Sept. 16, 2013) (Unpublished), holding in relevant part:

Petitioner is correct that this court has held that at some point the Board's failure to act on a request for administrative review is deemed to have exhausted administrative review. However, the appellate commissioner has determined that, as a general rule, one year from the date of the request for administrative review is reasonable and, beyond that, an offender will have been deemed to have exhausted administrative review.

141. See Taylor v. Board of Parole, 200 Or App 514, 115 P3d 256 (2005).

Appendix One

Appendix One

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 | |

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:

| El | 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 | SVPS | SEXUALLY VIOLENT |
| | DESIGNATION | | DANGEROUS OFFENDER |
| | 2_3.0 | | 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.

Revised June 18, 2012 Page 1 of 6 Exhibit NOR-3MR

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 of 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 rending 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;

Revised June 18, 2012 Page 2 of 6 Exhibit NOR-3MR

_

^{* &}quot;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

Revised June 18, 2012 Page 3 of 6 Exhibit NOR-3MR

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.)

Revised June 18, 2012 Page 4 of 6 Exhibit NOR-3MR

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 Denving 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:

Revised June 18, 2012 Page 5 of 6 Exhibit NOR-3MR

- 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.