

BOARD OF PAROLE HEARINGS

You are receiving this Notice of Hearing Rights because you are scheduled to have a parole consideration hearing or rescission hearing before the Board of Parole Hearings (Board). You will be notified of the date, time, and location of your hearing at least one month before your hearing.

1. Scheduling of Hearing:

The purpose of a parole consideration hearing is to determine if you are suitable for parole. (15 CCR §§ 2281, 2402.) The purpose of a rescission hearing is to determine if a parole date should be taken away. (15 CCR § 2450.)

2. Right to Hearing:

Your first parole consideration hearing is called an initial parole consideration hearing and will be scheduled no later than (1) one year prior to your minimum eligible parole date (MEPD) (Pen. Code, § 3041(a)); (2) six months after your youth parole eligible date (YPED) (Pen. Code, § 3051); (3) one year after your elderly parole eligible date (EPED) (Plata court order dated 2/10/2014; Pen. Code, § 3055); or (4) within one year from being referred to the Board as an indeterminately sentenced nonviolent offender under Proposition 57 (15 CCR § 2449.32). If more than one parole eligibility date applies to you, your first hearing will be scheduled according to the date that will result in the earliest hearing. You can be denied parole for three, five, seven, 10, or 15 years. (Pen. Code, § 3041.5(b)(3).) However, the date of any future parole consideration hearings, called subsequent parole consideration hearings, may be advanced if approved through the Board's Administrative Review Process or in response to a Petition to Advance filed by you. (Pen. Code, §§ 3041.5(b)(4), 3041.5(d)(1).)

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For rescission hearings, if the hearing panel determines that your parole date should be taken away, you will be scheduled for a new parole consideration hearing within 120 days.

3. Right to Be Present and Participate:

You have a right to attend the hearing, ask and answer questions, and speak on your own behalf. (Pen. Code, § 3041.5, subd. (a)(2).) You may waive that right. If you do not attend the hearing, a decision will be made in your absence. (15 CCR § 2247.)

4. Right to Have an Attorney:

You are entitled to be represented by an attorney. (Pen. Code, § 3041.7.) You will be provided an attorney at the state's expense, or you may choose to hire your own attorney. You may waive your right to have an attorney and choose to represent yourself, unless you are required to have an attorney under the *Armstrong Remedial Plan II*. (15 CCR § 2256.)

5. Witnesses:

You may not call witnesses at a parole consideration hearing. (Pen. Code, § 3041.5.) At a rescission hearing, you may call evidentiary witnesses and may request that witnesses (including adverse witnesses) be subpoenaed. (15 CCR § 2465.)

6. Hearings Conducted In-Person or by Videoconference.

The Board schedules all parole hearings to be conducted by videoconference unless it determines an in-person hearing is necessary for the hearing panel to effectively communicate with you. (See 15 CCR §§ 2050-2063.) The Board will notify you at least 120 days before your hearing is scheduled to occur and the notice will specify whether your hearing is scheduled

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to occur in person or by videoconference. If your hearing is conducted by videoconference, you will communicate with the hearing panel by videoconference. This means the hearing panel will not be physically present with you during the hearing; instead, the hearing panel will appear at your hearing by videoconference. Only your attorney is required to be physically present with you during the hearing, unless you waive their physical presence or special circumstances apply. If you waive the physical presence of your attorney, your attorney will also appear at your hearing by videoconference. Victims, victims' next of kin, victims' family members, designated representatives, victims' support persons, representatives of prosecuting agencies, and approved observers may appear by videoconference or telephone only—they will not appear in person.

If your hearing is conducted in person, the hearing panel will be physically present with you during the hearing. This is usually held at the institution where you are housed. All other participants may also be physically present in the hearing room with you and the panel. Your attorney is required to be physically present with you during the hearing, unless you waive their physical presence or special circumstances apply. Victims, victims' next of kin, victims' family members, designated representatives, victims' support persons, representatives of prosecuting agencies, and approved observers may appear in person, by videoconference, or by telephone.

If your hearing is scheduled to be conducted in person, you or your attorney may submit a written request to the Board that your hearing be conducted by videoconference instead. The written request must include an explanation of why an in-

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person hearing is not necessary for the panel to effectively communicate with you. These requests must be sent to the Board at least 100 days prior to the date on which the hearing is scheduled to occur. The Board will review these requests and will notify hearing participants if an in-person hearing is changed to a videoconference hearing.

If your hearing is scheduled to be conducted by videoconference, and you feel that an in-person hearing is necessary for you and the hearing panel to effectively communicate with each other, you should notify the Board immediately and provide the reason(s) as to why it is necessary for the hearing panel to be physically present with you during the hearing to establish effective communication. The Board will review these requests and will notify hearing participants if a videoconference hearing is changed to an in-person hearing.

7. Others Who May Attend the Hearing:

At parole consideration and rescission hearings, the district attorney (or representative) from the county where the offense was committed will be notified of the hearing and may be present to represent the interests of the People. (Pen. Code, § 3041.7.) Notice of parole consideration hearings will also be given to the attorney who represented you at sentencing and the law enforcement agency that investigated the case. (Pen. Code, § 3042.) Victims, victims' next of kin, victims' family members, and designated representatives of victims or their next of kin may also attend parole consideration hearings and address the hearing panel. (Pen. Code, § 3043.) Victims, victims' next of kin, and victims' family members may also have one support person each who can attend the hearing with them but will not speak during the hearing. (Pen. Code, § 3043.1.)

8. Review of File; Opportunity to Present Evidence:

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You have the right to review non-confidential documents in your institutional central file. (Pen. Code, § 3041.5; 15 CCR § 2247.) This review is called an Olson Review. You may present a written response to any material in the file and may present relevant documents to the hearing panel. (15 CCR §§ 2247, 2249.) At least 10 working days prior to a rescission hearing, you may submit a request to your institution's Classification & Parole Representative, or other institutional staff, as appropriate, that relevant documents be subpoenaed. (15 CCR §§ 2465, 2676.)

9. Accommodations in Preparing for the Hearing and at the Hearing:

You may receive reasonable accommodations and assistance in preparing for the hearing. If you are unable to effectively communicate due to language difficulties or a physical, developmental, or mental disability, appropriate accommodations will be provided to you before and during the hearing. (15 CCR § 2251.)

10. Voluntary Waivers:

You may choose to waive your parole consideration hearing. (15 CCR § 2253(b).) If you voluntarily waive your parole consideration hearing, it means you will not have your hearing for a set period of time. You may waive a parole consideration hearing for one, two, three, four, or five years. (15 CCR § 2253, subd. (b)(1).) However, you may not waive more than three parole consideration hearings in a row. (15 CCR § 2253, subd. (b)(5).) You should submit your waiver request in writing (or by filling out the BPH 1003 Hearing Rights Form) at least 45 days before your hearing date. Waiver requests submitted less than 45 days prior to your hearing will not be approved unless you can show a good reason for the request and explain why you

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could not submit the request at least 45 days prior to the hearing. (15 CCR § 2253.) Once the Board approves your waiver request, you cannot rescind the request.

Your attorney may also request to waive your hearing after consulting with you. If you are not capable of making a knowing, voluntary, and intelligent waiver of your hearing, your attorney must affirm that the waiver is in your best interest and provide the reasons for the request. You or your attorney may not waive a rescission hearing.

11. Stipulations:

A stipulation is an agreement between you and the Board that you should not be granted parole. At a parole consideration hearing, you can ask the Board to schedule your next hearing in three, five, seven, 10, or 15 years. Your request should explain why you are currently unsuitable for parole and how long you think it will take for you to become suitable for parole. The Board retains discretion to approve or reject your stipulation that you are unsuitable for parole. (15 CCR § 2253, subd. (c)(1).) To make a stipulation, you or your attorney must make the request to the panel during the week your hearing is scheduled. (BPH Admin. Dir. 2013-03(A).) If the hearing panel accepts your stipulation, you may subsequently submit a request to the Board that the date of your subsequent parole consideration hearing be advanced in accordance with Penal Code section 3041.5 subdivision (d)(1).

12. Postponements:

To postpone a hearing means to move your hearing to a later date. The Board or the hearing panel chair may postpone a parole consideration or rescission hearing for various reasons outlined in the Board's regulations. This includes the absence

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or untimeliness of required notices, documents, reports, or required accommodations; this also includes exigent circumstances, such as illness of attending parties, natural disasters, or institutional emergencies. (15 CCR § 2253, subd. (d)(1).) Furthermore, you or your attorney may request a postponement before or at your hearing “to resolve matters relevant to [your] parole consideration.” (15 CCR § 2253, subd. (d)(2).) When requesting a postponement, you must provide a good reason for the request and show why you did not or could not have known about the need for the postponement any earlier than when you made the request. You may request to postpone your hearing for a period up to 11 months.

Your attorney, after consulting with you, may also request to postpone your hearing for a period up to 11 months. If your attorney is unable to consult with you regarding the postponement, they must affirm that the postponement is in your best interest and provide the reasons why they were unable to consult with you. Once the Board approves your postponement request, you cannot rescind the request.

13. Impartial Hearing Panel:

You are entitled to a hearing by an impartial hearing panel and may request the disqualification of one or more panel members where grounds for disqualification exist. (15 CCR § 2250.)

14. Record of the Decision:

You are entitled to a transcript of the hearing. (15 CCR § 2254.) You are also entitled to a copy of the decision, which includes the information considered and the reasons for the decision. (15 CCR § 2255.)

BPH 1002 – NOTICE OF HEARING RIGHTS –
Initial/Subsequent/Rescission

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I have read and understand the rights and procedures (Items 1 through 14, above), and I have had an opportunity to ask questions about any rights or procedures that I did not understand.

Signature

CDCR Number

Date

I explained the foregoing rights to the incarcerated person, provided them with an opportunity to ask questions, and answered all questions they asked.

Signature

Date

Name (print)

Title