

e. Sentencing Reconsideration Review Policies and Procedures (Senate Bill 819—ORS 137.218)

A prosecutor is tasked with always seeking justice while working a case. When a case concludes with a conviction and sentence the duty to ensure justice does not end. With the passage of Senate Bill 819 (which will be codified into ORS 137.218) in 2021, the Oregon Legislature created a mechanism for prosecutors to review sentences for certain convicted individuals.

With that said, the finality of sentences has been a long-standing and fundamental principle in criminal law and remains a guiding principle for the Jackson County District Attorney's Office. However, the District Attorney's Office is committed to the just exercise of prosecutorial discretion where it advances the legitimacy of the criminal justice system, public safety for victims and their families, and justice for defendants.

The policy below will set out the process and criteria for consideration, in order to ensure the District Attorney's Office exercises the discretion in sentencing reconsideration in a consistent manner.

i. Eligibility and Qualifying Convictions:

1. ORS 137.218 explicitly excludes misdemeanors, aggravated murder, and convictions eligible for set aside under ORS 137.225;
2. Absent extraordinary circumstances that include newly identified evidence that significantly calls into question the integrity of a conviction, the District Attorney's Office will not consider sentencing modifications for any level of homicide, violent sexual offenses, sexual offenses involving child abuse, solicitation or unlawful depictions of a child, and firearm enhanced sentences;
3. At least 50% of the original imposed sentence must be served by a defendant in order to be considered by the District Attorney's Office;
4. A defendant who has previously requested and been denied a sentencing reconsideration, under ORS 137.218, on the same matter within the previous 24 months will not be considered; and
5. The District Attorney's Office will only consider felony convictions that are no longer eligible for appeal, post-conviction relief, or habeas petition

ii. Process and Information Necessary for Requesting Sentencing Reconsideration:

1. The convicted defendant or their attorney should submit the request in writing to the District Attorney's Office via hand-delivery or US Mail to: Jackson County District Attorney's Office, Sentencing Reconsideration, 815 W. 10th Street, Medford, OR 97501;
2. The request must contain the following items:

- a. The specific convictions requested for review (case number, counts, etc...);
 - b. Desired outcome of the review (dismissal, conviction different crime, reduction in sentence, or reduction in fine);
 - c. Reasons why the original sentence no longer serves the interests of justice;
 - d. Information addressing factors listed in ORS 137.218:
 - i. Person's disciplinary record in jail/prison and records of rehabilitation;
 - ii. Evidence that reflects whether the person's age, time served and diminished physical or mental condition, if any, have reduced the person's risk for future violence;
 - iii. The safety of the victim associated with each conviction being reviewed;
 - iv. The amount of the original sentence already served by the person; and
 - v. Evidence that reflects changed circumstances since the person's original sentencing and shows that the continued incarceration no longer advances the interests of justice
 - e. Work history since incarceration;
 - f. Vocational, educational, and treatment history while incarcerated and since incarceration;
 - g. Any psychological or medical documentation showing mitigation;
 - h. If restitution was ordered, how much has been paid?
 - i. If incarcerated, a release plan demonstrating re-entry readiness; and
 - j. If incarcerated, a statement from individuals in a support network and plans upon release
3. All requests for sentencing reconsiderations and material submitted in those applications will be retained in the Jackson County District Attorney's case file.

iii. Process and Review Criteria

1. Upon receipt of a defendant's request for sentencing reconsideration the Chief Deputy District Attorney will make an initial determination if the appropriate information is included in the submission and if the conviction qualifies on its face:
 - a. If a request does not pass the initial review, the Chief Deputy District Attorney will send a letter to the defendant or defendant's attorney notifying the reason for denial
 - b. If a request meets the initial criteria to be considered, the Chief Deputy District Attorney will alert the Victim Advocate Program (see below) and determine the appropriate Deputy District Attorney to review the request
2. The Chief Deputy District Attorney will alert the Victim Advocate Program of the request for sentencing reconsideration, if it meets the initial submission criteria, and:
 - a. The Victim's Advocate Program will use reasonable efforts to contact and inform, in a trauma informed manner, victims of each conviction being reconsidered;
 - b. When the victim(s) are informed of the request, their opinion should be requested and documented regarding whether the conviction/sentence should be reconsidered; and
 - c. After the initial notification to victim(s), they should be informed regarding the decision to file or not file a petition with the Circuit Court, and if a petition is filed, should be notified at least 30 days prior to the Court hearing on the matter

3. Criteria for Considering a Request for Resentencing

The assigned Deputy District Attorney will review the facts of the case, negotiations, the original sentence imposed by the court, the documents/statements submitted by defendant, and solicit input from the victim regarding a request.

After reviewing the items above, the assigned Deputy District Attorney will assess the request looking at this non-exclusive list of criteria:

- a. Are the interests of justice served in altering the conviction/sentence?
- b. What is the victim's position regarding the request?
- c. Is the original sentence consistent with individuals who committed similar offense(s) and have similar criminal histories?

- d. What is the defendant’s criminal history prior to the conviction request under consideration, and after the conviction request under consideration?
- e. What is the risk of reoffending and causing further harm to the community?
- f. If restitution was owed, how much has been paid?
- g. Is the original sentence appropriate under current sentencing laws?
- h. What steps has the defendant taken to ensure this conduct does not occur again? (ie—employment, education, vocational training, addiction/mental health counseling, etc...)
- i. If currently incarcerated, what is the re-entry plan look like for housing, support network, employment, and other important factors.

4. After Assessing a Sentence Reconsideration:

a. Denial

The assigned Deputy District Attorney should discuss their position on the request with the Chief Deputy District Attorney. If it is determined that a sentencing reconsideration should not be granted, the assigned Deputy District Attorney should prepare a denial letter to send to the defendant or defendant’s attorney.

The denial letter should include the reasoning behind the denial based upon the assessed criteria. If the Deputy District Attorney believes there is other information that could be provided by the defendant or defendant’s attorney that may change the assessment that request for information should be included in the letter. The letter should be reviewed by the Chief Deputy District Attorney and District Attorney.

b. Approval

The assigned Deputy District Attorney should discuss their position on the request with the Chief Deputy District Attorney. If it is determined that the request should be granted, this is only conditional until final approval by the District Attorney.

If a request is to be granted, the reviewing Deputy District Attorney and Chief Deputy District Attorney should decide if the sentencing reconsideration request should be granted as requested by the defendant or defendant’s attorney or if the District Attorney’s Office is suggesting a different agreement. At this stage of the process, the defendant or defendant’s

attorney should be contacted and the actual agreement finalized. The possibilities for the agreement are as follows:

- i.** Dismissal of the charge(s);
- ii.** Resentencing for the original conviction (less confinement; less fine; etc...); or
- iii.** Plea to a new alternative offense and sentence

When an agreement is reached, the Deputy District Attorney and Chief Deputy District Attorney should present the reasons supporting resentencing and the agreement to the District Attorney for final approval. If approved the assigned Deputy District Attorney should notify the victim(s), and the assigned Deputy District Attorney should file a petition (a motion for sentencing reconsideration) and any other necessary documents with Jackson County Circuit Court. The petition should state the reasons why the District Attorney's Office believes it is appropriate and also include that this is a joint petition with the defendant and, if applicable, defendant's attorney.

In a case where the District Attorney disagrees with the assessment to petition for resentencing and/or the agreement reached, the assigned Deputy District Attorney will contact the defendant or defendant's attorney to notify them of the decision. The District Attorney will then prepare a denial letter, explaining the reason for denying resentencing. If the disagreement is with the recommended agreement, the District Attorney will amend the agreement and present to the defendant or defendant's attorney the agreement that is amenable to the District Attorney.