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**CONVICTION RECONSIDERATION POLICIES AND PROCEDURES**  
**Senate Bill 819, soon to be ORS 137.21**

A prosecutor's job is to seek justice. When we become aware of an injustice related to a case previously prosecuted, if there is a legal means available to us, we will seek to undo that injustice. The Oregon Legislature recognized this duty and encouraged prosecutors to do so more broadly when they passed Senate Bill 819 in the 2021 Legislative session. This will be codified at Oregon Revised Statute 137.218.

ORS 137.218 authorizes a person convicted of a felony crime in Malheur County, together with the Malheur County District Attorney, to jointly petition the Malheur County Circuit Court for reconsideration of a conviction and/or a sentence.

If a petition is submitted, ORS 137.218 grants the court the authority to dismiss the conviction, to resentence a person to a lesser sentence for the same crime of conviction, or to sentence a person for a new crime (if the DA files a new charging document and the defendant pleads guilty to the new charge in lieu of the old charge).

This document sets forth the Conviction Reconsideration process for the Malheur County District Attorney's office:

**A. Eligible Convictions:**

- ORS 137.218 explicitly excludes misdemeanors, aggravated murder and convictions eligible for expunction under Oregon's expunction statute (ORS 137.225).
- The Malheur County District attorney will consider requests for conviction and sentence reconsideration for eligible crimes (felonies, other than aggravated murder, that are not eligible for expunction) as long as they are not currently on direct appeal. This being said, the Malheur County District Attorney shall need particularly powerful mitigation and/or justification to ever consider joining petitions for crimes of child sex abuse or domestic violence matters for reconsideration. The Malheur County District Attorney shall consider all matters, but said cases will be approved for submission to the court only in the rarest of circumstances.

**B. How to Initiate Request for Conviction and/or Sentence Reconsideration:**

- Our office does not provide a specific form to initiate this process. Rather, an individual should submit a request via U.S. Mail to: Malheur County District Attorney, 251 B Street West, Ste 6, Vale, Oregon 97918.
- To maximize the chance of a positive decision for reconsideration, petitioners should include the following:
  - Conviction(s) underlying the sentence.
  - Whether there is a direct appeal pending (if it is, the case is ineligible).
  - Reasons why the original sentence no longer serves the interest of justice.

- The petitioner's desired result: For example: No conviction at all; Conviction of a different crime; Reduction of a prison sentence; Reduction of a fine.
- A narrative of their current life path, successes, schooling, employment, plans, and what they learned from their error embodied by their conviction;
- Letters of reference including contact name, telephone number and/or emails, in particular from treatment providers, probation officers, employers, teachers, professors, and others who have seen the petitioner's success and can vouch for the length and permanency of stable changes they've made in their life.
- Information that addresses concerns under ORS 137.218:
  - Petitioner's disciplinary record in jail or prison (if applicable) and the record of rehabilitation while incarcerated.
  - If a prison sentence has been completed, or if no prison sentence imposed, evidence of rehabilitation while on probation/parole and disciplinary record therein;
  - Evidence that reflects whether the petitioner's age, time served in-custody and diminished physical or mental condition, if any, have reduced the petitioner's risk for future violence.
  - The amount of the original sentence already served by the petitioner.
  - The future safety of the victim(s) of the crime(s) for which the petitioner seeks conviction or sentence reconsideration.
  - Evidence that reflects changed circumstances since the petitioner's conviction and shows that the petitioner's sentence no longer advances the interests of justice.
- Information that addresses whether the petitioner's conviction fits under the following:
  - Oregon law relevant to the crime of conviction, the circumstances of law enforcement interaction with the suspect, and/or the sentence imposed, has changed in a significant way since the conviction. The following are specific relevant areas, though not exclusive:
    - **Boyd Delivery cases** (see, State v. Hubbell, 314 Or App 844 (2021));
    - **Arreola-Botello stops** (see State v. Arreola-Botello, 365 Or 695 (2019));
    - **Merger issues** (see State v. Paye, 310 Or App. 408 (2021)).
  - The defendant was under 25 years of age when they were convicted;
  - The defendant is a survivor of sexual or physical violence at the time they committed the act that resulted in their conviction.

### C. Victim Notification and Input:

- Our Victims Advocate Office uses all reasonable efforts and resources to contact and inform, in a trauma-informed manner, the victims of crime associated with each conviction or sentence reconsideration request. We solicit their opinion regarding whether reconsideration should be pursued.
- After initial notification to victims of crime, they are kept apprised of the reconsideration process, including being notified at least thirty days prior to any court hearing in the matter as required by ORS 137.218.

### D. District Attorney Decision

- The Malheur County District Attorney considers all information submitted by the petitioner, input from the victim(s) regarding the reconsideration, the input of the lead law enforcement officer involved in the matter, as well as any and all character references in determining whether or not to join in a petition to the court for conviction or sentence reconsideration.
- The District Attorney's decision is communicated in writing to requestors and to victims of crime.