

Discretionary Resentencing Review

Pursuant to SB 819, the Lane County District Attorney's Office will begin to review requests for sentencing modification on January 1, 2022. The Lane County District Attorney's Office will only agree to file a joint petition for resentencing under the terms of the Office's Criteria for Discretionary Resentencing policy.

In order to request a sentencing review, a convicted defendant or her attorney must specify the conviction(s) to be reviewed and the desired terms of sentencing modification sought. The request for review must also include: (1) a justification for why the original sentence no longer serves the interests of justice; (2) evidence reflecting the convicted persons age, time served, and/or diminished physical or mental capacity; (3) an admission of facts and expression of contrition; (4) work history; (5) vocational, educational, treatment and infraction history while in custody; (6) any psychological or medical documentation; (7) a release plan demonstrating re-entry readiness; and (8) a statement of support network and plans upon release.

Absent extraordinary circumstances that include newly identified evidence that significantly calls into question the integrity of the evidence upon which defendant was convicted, the Lane County District Attorney's Office will not consider sentencing modifications for any level of homicide, violent sexual offenses, sexual offense involving abuse, solicitation or unlawful depictions of a child, violent felony convictions, case with defendants that have an extensive violent criminal history, cases where incarceration was imposed after the defendant violated probation on a downward dispositional departure, cases where the defendant benefitted from a significant reduction of charges during negotiations, cases where defendant has not served at least 50% of the original imposed sentence, and cases that involve enhancements for use of a firearm or deadly weapon.

While all submissions for resentencing review will be examined, only the rare and extraordinary case will result in a decision to file a petition for sentencing modification.

Criteria for Discretionary Resentencing

SB 819 permits a person sentenced for a felony offense and the district attorney of the county in which the person was sentenced to jointly petition the sentencing court for reconsideration of a conviction or sentence if the original sentence no longer advances the interests of justice and the conviction is not eligible to be set aside under ORS 137.225. Any petition for reconsideration must specify the conviction(s) to be reviewed and the terms of the agreement between the district attorney and the convicted individual. The sentencing modifications that can be considered include: (1) dismissal of charges; (2) vacating previous convictions; (3) a plea to new alternative offenses; (4) resentencing for the original conviction; or (5) sentencing on the new offense. This avenue is in addition to the standard appeals process, but is only available when the defendant and District Attorney jointly petition the court. The following policy will provide guidance as to how requests for sentencing reconsiderations under SB 819 will be reviewed and handled in Lane County.

Purpose and General Criteria for Review

The finality of sentences has been a long-standing and fundamental principle in criminal law and remains a guiding principle for this office. The Lane County District Attorney's Office is, however, committed to the just exercise of prosecutorial discretion where it advances the legitimacy of the criminal justice system and public safety while recognizing the law's bearing on victims and the families of survivors who have been impacted by a defendant's conduct. The purpose of these standards for discretionary resentencing is to ensure that prosecutors exercise their discretion in a manner consistent with the interests of justice. In analyzing petitions for reconsideration of sentencing, the Chief Deputy and assigned Prosecuting Attorney shall consider the following guiding principles:

- To ensure that prosecutors exercise their discretion in a manner consistent with the interests of justice;
- To ensure that the victim and survivors have a significant voice in any sentence modification process;
- To promote respect for the law and the legitimacy of the criminal justice system;
- To promote consistency in punishments and sentences imposed on individuals who committed similar offenses and have similar criminal histories;
- To promote a reentry readiness process by conditioning the Prosecutor's filing of a petition on the requestor providing proof of available safe housing, family ties and/or community support;
- To promote public safety and community wellness; and
- Minimize the risk of reoffending and further harm to the community.

Non-Exclusive List of Cases Not Subject to Sentencing Reconsideration

Absent extraordinary circumstances that includes newly identified evidence that significantly calls into question the integrity of the evidence that formed the basis for the original conviction, the following types of cases will not be reviewed for sentencing reconsideration:

- Any level of homicide;
- Any violent sexual offense;
- Any sexual offense involving the abuse, solicitation or unlawful depictions of a child;
- Any violent felony conviction;
- Cases with defendants with an extensive violent criminal history;
- Cases where incarceration was imposed after the defendant was found to be in violation of probation on a downward dispositional departure;
- Cases where the defendant benefitted from a significant reduction in charges as a product of negotiations;
- Cases where the defendant has not already served at least 50% of the original imposed sentence; and
- Cases involving enhancements for firearm and use of deadly weapons.

Other Considerations for Denial of a Resentencing Review

- The original sentence is appropriate under current sentencing laws;
- The crime victim strongly opposes a resentence;
- A request from the same party was declined within the past 24 months;
- The requesting defendant has an open appeal or post-conviction petition filed; and
- A court would be required to impose the same sentence, such as a case subject to a mandatory minimum sentence.

Required Documentation by Defendants for Resentencing Review

Any request submitted to the Lane County District Attorney's Office for consideration must include a submission letter by the defendant or the defendant's attorney seeking relief. The letter shall summarize the basis for the request consistent with the resentencing statute. The submission letter shall, at a minimum, include the following:

- Justifications for why the original conviction(s) or sentence(s) no longer serve the interests of justice;
- Evidence that reflects the age, time served, and/or diminished physical or mental capacity of the defendant, if any, that reduces the societal risk of future victimization of the community;
- An admission of the facts and expression of contrition/remorse for the crimes committed;
- The desired sentence at resentencing;
- A work history;
- Any vocational achievements while in custody;

- Any educational achievements while in custody;
- Any treatment records while in custody;
- Any infraction history while in custody;
- Any psychological evaluations or risk assessment completed while in custody;
- Any medical documentation (if relevant to the request);
- A release plan demonstrating the defendant's re-entry readiness; and
- A statement of the defendant's support network and plans upon release.

Resentencing Review Assignment & Procedure

Petitions to resentence will be initially reviewed by the Chief Deputy of the Lane County District Attorney's Office to ensure that all required documentation has been provided by the defendant. The Chief Deputy will review the facts of the case, negotiations, the original sentence imposed by the court, any pre-conviction and post-conviction documentation submitted by the defendant, solicit input from the victim(s), and review the request with the assigned Prosecuting Attorney, if still employed in the office. Any preliminary decisions regarding the merits of the petition will be discussed with the elected District Attorney for a final decision. The Chief Deputy will notify the petitioning defendant or defense attorney when any final decision is reached. The Lane County's District Attorney's Office will also notify the victim(s) of any decision made regarding the petition for resentencing.

If the decision is made to explore a resentencing of the petitioning defendant, that determination will be conditional. The Chief Deputy and/or assigned Prosecuting Attorney shall discuss with the petitioning defendant or defense attorney the desired resentencing recommendation. An agreement to file a Petition for Resentencing requires mutual accord of the parties to all conditions of the resentencing recommendations. In the event a mutual accord cannot be reached, no Petition for Resentencing will be filed.

Victim Notification and Input

SB 819 is designed to include victim and survivor involvement and input whenever possible. Victim and survivor input is critical to advancing justice and it is in the interests of justice that the victim or survivor's voice be included in any sentence review or sentence modification process.

When the Chief Deputy decides to engage in an in-depth individualized assessment of a requesting defendant, the Chief Deputy and or Victim Services shall provide notification of the decision to review to any victim of a convicted offense. Notification to victim(s) and survivor(s) is intended to solicit their input.

If the Chief Deputy and assigned Prosecuting Attorney determine that a sentence modification petition should be filed, the Chief Deputy, assigned Prosecuting Attorney and/or Victim Services will provide victim(s) and survivor(s) with their intent to file a joint petition for resentencing. The victim(s) and survivor(s) shall be notified at least 14 days prior to any scheduled sentence modification hearing.

The Chief Deputy, assigned Prosecuting Attorney and/or Victim Services will also provide notification to victim(s) and survivor(s) of any decision to decline to file a modification petition after an individualized review.

Any requesting defendant that makes unauthorized or unwanted contact with a victim(s) and/or survivor(s), either directly or indirectly through a third party contact, may be subject to receiving a declination to review or file a sentence modification petition.

The list of factors, the policies and procedures contained herein, or any portion of this document are not intended to, and do not, create a right or benefit, whether substantive or procedural. Similarly, the Chief Deputy and assigned Prosecuting Attorney's decision to petition or not petition for a modification of conviction or sentence under SB 819 is not intended to, and does not, create any rights, benefits or harms for which a requestor could seek legal redress.

While the Chief Deputy will thoroughly review all submissions, it is only the rare and extraordinary case that will result in a petition for modification of conviction or resentencing. If the original sentence is lawful, it is very unlikely that a petition will be filed.