



Matthew Ellis, District Attorney  
Sally Carpenter, Senior Deputy District Attorney  
Caleb Berthelsen, Deputy District Attorney  
Danielle DeCant, Deputy District Attorney  
Kara Davis, Special Deputy District Attorney  
511 Washington St., Ste. 304 • The Dalles, OR 97058  
p: [541] 506-2680 • f: [541] 506-2681 • [www.co.wasco.or.us](http://www.co.wasco.or.us)

## **CONVICTION RECONSIDERATION POLICIES AND PROCEDURES**

A prosecutor's job is to achieve justice: yesterday, today, and tomorrow. Never should prosecutors close a file and consider our work completed. If we become aware of an injustice related to a case we previously prosecuted, and there are legal means available to us to undo the injustice, we must do so. The Oregon Legislature recognized this when it passed Senate Bill 819 in the 2021 legislative session (codified at Oregon Revised Statute 137.218)

ORS 137.218 authorizes a person convicted of a felony crime in Wasco County, and the Wasco County District Attorney, jointly to petition the Circuit Court for reconsideration of a conviction or 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).

This document sets forth the Conviction Reconsideration process in the Wasco County District Attorney's office.

### **A. Eligible Convictions:**

- ORS 137.218 explicitly excludes misdemeanors, aggravated murder, and convictions eligible for expunction pursuant to Oregon's expunction statute (ORS 137.225).
- Our office will consider requests for sentence reconsideration for all eligible crimes (felonies, other than aggravated murder, that are not eligible for expunction) that are not currently on direct appeal. However, convictions for crimes of child sex abuse and domestic violence will be approved for submission only in rare circumstances.

### **B. How to Initiate a Request for Conviction Reconsideration:**

- Our office does not have a form that must be filled out in order for a request for Conviction Reconsideration to be considered. Requests should be submitted via email to: [wcd@co.wasco.or.us](mailto:wcd@co.wasco.or.us) or via US Mail to: Wasco County District Attorney, Conviction Reconsideration, 511 Washington Street, Suite 304, The Dalles, OR, 97058.

- Requests can come from the person seeking reconsideration, a friend or family member of the person, or a law enforcement agent that has observed extraordinary rehabilitation in the person.
- To maximize chances of receiving a favorable decision, requestors should address the following:
  - The conviction(s) underlying the sentence for which the requestor seeks Conviction Reconsideration, along with the case number.
  - Whether your conviction is on direct appeal (if it is, your case is ineligible for consideration)
  - Reasons for why the original sentence no longer serves the interests of justice. Please include any community service or rehabilitation steps you have taken.
  - The requestor's desired result: No conviction at all? Conviction of a different crime? Reduction of prison sentence? Reduction of fine? Etc.
  - Information that addresses the considerations listed in ORS 137.218:
    - The requestor's disciplinary record in jail or prison (if applicable) and record of rehabilitation while incarcerated.
    - Evidence that reflects whether the person's age, time served in-custody, and diminished physical or mental condition, if any, have reduced the requestor's risk for future violence.
    - The future safety of the victim of the crime(s) for which the requestor seeks Conviction Reconsideration.
    - The amount of the original sentence already served by the requestor.
    - Evidence that reflects changed circumstances since the requestor's conviction and shows that the requestor's sentence no longer advances the interests of justice.
- Information that address District Attorney Ellis's priorities in Conviction Reconsideration cases:
  - Whether the requestor was under the age of 25 when he committed the crime.
  - Whether Oregon law related to the crime of conviction, or the sentence received, has changed in a significant way since the conviction.
  - Whether the person has demonstrated an acceptance of responsibility, remorse, and/or atonement.
  - Whether the person has demonstrated extraordinary rehabilitation and contributions to the community.
  - Whether the conviction is for a crime of child sex abuse or domestic violence (in which case, the requestor will be looked upon with disfavor).

### **C. Victim Notification and Input:**

- Our Victims Advocate Program uses all reasonable efforts to contact and inform, in a trauma-informed manner, victims of crime associated with each Conviction Reconsideration request. When we inform victims of crime of Conviction Reconsideration requests, we solicit their opinion regarding whether the conviction should be reconsidered.
- After initial notification to victims of crime, victims are kept apprised of the Conviction Reconsideration process, including being notified at least 30 days prior to any court hearing in the matter as required by ORS 137.218.

### **D. Conviction Reconsideration Committee:**

- A committee reviews all Conviction Reconsideration requests submitted to our office that are eligible for consideration (prior to submission to the committee, DA staff will screen out requests for reconsideration of misdemeanors, aggravated murder, and felonies eligible for expunction).
- The total number of committee members is not fixed and will always include at least four members from the following:
  - A person who has been a victim of a crime of violence.
  - A person who has served time in prison or on felony probation.
  - A current or former criminal defense attorney.
  - The Wasco County Chief Deputy District Attorney or a Deputy District Attorney.
  - A current or retired police officer or corrections officer.
  - A Probation Officer.
  - If the case involved a juvenile defendant, sentenced as an adult, then the Wasco County Youth Services Director shall be on the committee.

Conflict protocols are in place that prohibit committee members from participating in the review of cases in which they were personally involved.

- The committee reviews the information submitted by a requestor and asks the requestor to supply additional information if the committee deems it necessary for their review.
- After obtaining all the information it deems necessary for its review, the committee applies the criteria set forth in section B, above, and considers the input of the victim of the crime of conviction, if submitted.

- The committee then forwards its recommendation to the District Attorney regarding whether the District Attorney should join in a petition to the court for conviction or sentence reconsideration. In its submission to the District Attorney, if the recommendation is not unanimous, the committee will include the viewpoint(s) of the dissenting committee members.
- If the committee recommends that the District Attorney join in a petition to the court for conviction or sentence reconsideration, the committee recommends what the District Attorney should request (complete dismissal/Conviction of a different crime/Same crime of conviction, but a specific lesser sentence).
- The committee meets as needed to review and consider requests as they come in.

#### **E. District Attorney Decision**

- The District Attorney considers committee recommendations and then conducts an independent assessment, and makes the ultimate decision whether to join in a petition to the court for conviction reconsideration.
- The ultimate decision to grant or deny the request rests with the District Attorney. However, petitions with unanimous committee approval will likely be granted, and petitions with unanimous committee denial will likely be denied.
- If the District Attorney has a conflict with the case, the ultimate decision to grant or deny the petition rests with the Chief Deputy District Attorney.
- The District Attorney's decision is communicated in writing to requestors, and in a trauma informed way to victims of crime.

#### **F. Disclaimer**

- No portion of this document is intended to, and does not, create a right or benefit, whether substantive or procedural. Similarly, the State's decision to petition or not to petition for resentencing under ORS 137.218 is not intended to, and does not, create any rights, benefits, or harms for which a requestor can seek legal redress. Further, nothing in this document is intended to be enforceable at law by a party in litigation within the County or the State.