

D R A F T

SUMMARY

Establishes procedure by which district attorney and incarcerated person may jointly petition sentencing court for reconsideration of conviction and sentence. Authorizes court to, upon granting petition, resentence person on original conviction, vacate previous judgment of conviction, accept plea to new offense and impose sentence on new offense. Directs district attorney to notify victim or survivor of victim of reconsideration hearing and process.

A BILL FOR AN ACT

Relating to petitions for conviction reconsideration.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1)(a) Notwithstanding ORS 138.540, a person who was sentenced for a felony offense other than aggravated murder and the district attorney of the county in which the person was sentenced may jointly petition the sentencing court for reconsideration of a conviction or sentence if the original sentence no longer advances the interests of justice. The petition shall specify each conviction to be reconsidered and the terms of the agreement between the district attorney and the person, which may include the dismissal of charges, the vacating of previous convictions, a plea to a new alternative offense, resentencing for the original conviction or sentencing on the new offense.

(b) If the court is not authorized to impose the new sentence requested in the petition on the original crime of conviction due to the fact that the new sentence is lower than a sentence required by ORS 137.690, 137.700, 164.061, 475.907, 475.925, 475.930 or 813.011, the terms of

1 the agreement shall include the vacating of the original judgment of
2 conviction, and may include the preparation by the district attorney
3 of a new charging instrument with an alternative offense, a plea by
4 the person to the alternative offense and waiver of any challenges to
5 the conviction for the alternative offense and the imposition by the
6 court of the new sentence on the alternative offense.

7 (2)(a) Upon receipt of the petition described in subsection (1) of this
8 section, the court shall hold a hearing. The court may grant the peti-
9 tion if the court determines that the original sentence no longer ad-
10 vances the interests of justice.

11 (b) If the court grants the petition, but the court is not authorized
12 to impose the new sentence requested in the petition on the original
13 conviction due to fact that the new sentence is lower than a sentence
14 required by ORS 137.690, 137.700, 164.061, 475.907, 475.925, 475.930 or
15 813.011, the court shall vacate the original judgment of conviction and
16 proceed in accordance with the agreement. If applicable, the district
17 attorney shall prepare a charging instrument charging the person with
18 an alternative offense, the court shall proceed with taking a plea to
19 the alternative offense, the person shall waive any challenges to the
20 conviction for the alternative offense and the court shall impose the
21 new sentence requested in the petition.

22 (c) If the court grants the petition and the court is not prohibited
23 from imposing the sentence requested in the petition as described in
24 paragraph (b) of this subsection, the court shall proceed in accordance
25 with the agreement.

26 (d) If the court imposes a new sentence on the original conviction
27 under this section, the court shall resentence the defendant in the
28 same manner as if the person had not previously been sentenced,
29 provided that the new sentence, if any, is not greater than the original
30 sentence. The court shall impose the new sentence as specified in the
31 petition notwithstanding any other law mandating or requiring a spe-

1 **cific sentence.**

2 **(3) The court may consider post-conviction factors when determin-**
3 **ing whether to grant a petition under this section, including but not**
4 **limited to:**

5 **(a) The person's disciplinary record and record of rehabilitation**
6 **while incarcerated;**

7 **(b) Evidence that reflects whether the person's age, time served and**
8 **diminished physical or mental condition, if any, have reduced the**
9 **person's risk for future violence;**

10 **(c) The amount of the original sentence already served by the per-**
11 **son; and**

12 **(d) Evidence that reflects changed circumstances since the person's**
13 **original sentencing and shows that the person's continued incarcer-**
14 **ation no longer advances the interests of justice.**

15 **(4) The district attorney shall make all reasonable efforts to provide**
16 **notification to the victim associated with each conviction in the peti-**
17 **tion and, if applicable, any survivors of the victim, of the fact that a**
18 **petition has been filed and the date of the hearing. The district attor-**
19 **ney shall explain the petition process under this section and provide**
20 **opportunities for input by the victim, survivor or representative of the**
21 **victim or survivor. The district attorney shall provide victims and**
22 **survivors access to available victim advocates and other related ser-**
23 **vices. At the hearing described in subsection (2) of this section, the**
24 **court shall provide an opportunity for victims, and survivors of vic-**
25 **tims, to make a statement in person, in writing or through a repre-**
26 **sentative.**

27 **(5) When a person is resentenced under this section, the person**
28 **shall receive credit for time served under ORS 137.370. If the person**
29 **is convicted of a new offense under this section, the court shall indi-**
30 **cate that the new crime of conviction was committed as part of the**
31 **same criminal episode as the original crime of conviction.**

1 **(6) A resentencing under this section does not revive any challenge**
2 **to the resentenced conviction if the challenge would have been barred**
3 **at the time of resentencing due to the passage of time.**

4
