

# Senate Bill 819

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Criminal Justice Reform Clinic, Lewis and Clark Law School)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

1  
2 Relating to petitions for conviction reconsideration.

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

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

12 **(b) If the court is not authorized to impose the new sentence requested in the petition**  
13 **on the original crime of conviction due to the fact that the new sentence is lower than a**  
14 **sentence required by ORS 137.690, 137.700, 164.061, 475.907, 475.925, 475.930 or 813.011, the**  
15 **terms of the agreement shall include the vacating of the original judgment of conviction, and**  
16 **may include the preparation by the district attorney of a new charging instrument with an**  
17 **alternative offense, a plea by the person to the alternative offense and waiver of any chal-**  
18 **lenges to the conviction for the alternative offense and the imposition by the court of the**  
19 **new sentence on the alternative offense.**

20 **(2)(a) Upon receipt of the petition described in subsection (1) of this section, the court**  
21 **shall hold a hearing. The court may grant the petition if the court determines that the ori-**  
22 **ginal sentence no longer advances the interests of justice.**

23 **(b) If the court grants the petition, but the court is not authorized to impose the new**  
24 **sentence requested in the petition on the original conviction due to fact that the new sen-**  
25 **tence is lower than a sentence required by ORS 137.690, 137.700, 164.061, 475.907, 475.925,**  
26 **475.930 or 813.011, the court shall vacate the original judgment of conviction and proceed in**  
27 **accordance with the agreement. If applicable, the district attorney shall prepare a charging**  
28 **instrument charging the person with an alternative offense, the court shall proceed with**  
29 **taking a plea to the alternative offense, the person shall waive any challenges to the con-**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **viction for the alternative offense and the court shall impose the new sentence requested in**  
2 **the petition.**

3 **(c) If the court grants the petition and the court is not prohibited from imposing the**  
4 **sentence requested in the petition as described in paragraph (b) of this subsection, the court**  
5 **shall proceed in accordance with the agreement.**

6 **(d) If the court imposes a new sentence on the original conviction under this section, the**  
7 **court shall resentence the defendant in the same manner as if the person had not previously**  
8 **been sentenced, provided that the new sentence, if any, is not greater than the original**  
9 **sentence. The court shall impose the new sentence as specified in the petition**  
10 **notwithstanding any other law mandating or requiring a specific sentence.**

11 **(3) The court may consider post-conviction factors when determining whether to grant**  
12 **a petition under this section, including but not limited to:**

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

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

16 **(c) The amount of the original sentence already served by the person; and**

17 **(d) Evidence that reflects changed circumstances since the person's original sentencing**  
18 **and shows that the person's continued incarceration no longer advances the interests of**  
19 **justice.**

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

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

33 **(6) A resentencing under this section does not revive any challenge to the resented**  
34 **conviction if the challenge would have been barred at the time of resentencing due to the**  
35 **passage of time.**

36