



## Rod Underhill, District Attorney

1021 SW Fourth Avenue, Room 600  
Portland, OR 97204-1193  
Phone: 503-988-3162  
www.mcda.us

Fax: 503-988-3643

### Second Look Policy 2014

Under ORS 420A.203, offenders in the legal custody of the Department of Corrections and the physical custody of the Oregon Youth Authority are eligible for a second look hearing to consider a conditional release into the community if they were under age 18 when they committed their crime and received at least a 24-month sentence after waiver into adult court. Those offenders serving a sentence under ORS 137.707 (BM 11) are not eligible for a second look hearing. If a juvenile BM 11 offender is convicted of a lesser-included offense instead of the BM 11 crime, that offender can be eligible for a second look hearing.

For the last several years offenders in Multnomah County have waived their right to a second look hearing as part of the plea negotiation process. Conversations, initiated by the Multnomah County District Attorney's office, have occurred with the Oregon Youth Authority (OYA) leadership beginning in early 2013 to explore ways to improve the second look process. As a result of those conversations, OYA has updated and improved the packet of information forwarded to the court for a second look hearing. Consequently, the Multnomah County District Attorney's office has revised its second look policy which is outlined below.

#### Non-Eligible Crimes

Defendants who are indicted or indictable for the following list of crimes will **not** be eligible for second look consideration as part of the plea negotiation process:

- Murder; Attempt or Conspiracy to Commit Aggravated Murder; Attempt or Conspiracy to Commit Murder; Manslaughter in the First and Second Degree; and Aggravated Vehicular Homicide;

- Assault in the First Degree;
- Compelling Prostitution;
- Kidnapping in the First Degree;
- Rape in the First Degree;
- Rape in the Second Degree;
- Robbery in the First Degree;
- Unlawful Sexual Penetration in the First Degree;
- Unlawful Sexual Penetration in the Second Degree;
- Sodomy in the First Degree;
- Sodomy in the Second Degree;
- Using a Child in the Display of Sexually Explicit Conduct.

### **Eligible Crimes**

Eligibility for second look consideration as part of a plea agreement to a lesser-included offense is restricted to those defendants where the only indicted or indictable crimes are:

- Sexual Abuse in the First Degree based upon the victim being under a specified age;
- Assault in the Second Degree;
- Arson in the First Degree;
- Robbery in the Second Degree; and
- Kidnapping in the Second Degree.

### **Case and Offender Factors**

#### **A. Mitigating Factors:**

If the indicted or indictable crimes fall into the eligible category, plea negotiations that allow for a second look hearing following a plea to a lesser-included offense will only be considered after careful review of the factors listed

below. This is a non-exclusive list recognizing that cases and offenders are unique and may present with unforeseen mitigating information.

- The offender's criminal history is minor with no prior felony convictions or misdemeanor person crimes as an adult or juvenile;
- The offender acted under a form of duress;
- The offender's mental capacity was diminished. This diminished capacity does not substantially affect the offender's amenability to treatment;
- The degree of harm or loss was significantly less than typical;
- The offense was principally accomplished by another;
- The underlying behavior of the victim substantially contributed to the offense by precipitating the attack;
- The offender presents information indicating amenability to treatment. For example, a psychosexual evaluation and a full disclosure polygraph indicating defendant is amenable to treatment;
- There is only one victim charged and there is no credible evidence of any additional victims. Defendant presents information, such as a full disclosure polygraph, supporting that there are no additional victims;
- The criminal conduct did not expose the victim to any health risks, such as a sexually transmitted disease. There is no diagnostic evidence of sexual abuse demonstrating physical injury to the victim;
- The offender is cooperating with the state, including accepting responsibility by admitting the offender's criminal conduct.

**B. Aggravating Factors:**

Countervailing factors that indicate the allowance for a second look hearing may not be appropriate include, but are not limited to the factors listed below. This is a non-exclusive list recognizing that cases and offenders are unique and may present with unforeseen aggravating factors.

- Deliberate cruelty to victim;
- Permanent injury to victim;
- Offender motivated in part by victim's race, color, religion, ethnicity, national origin or sexual orientation;

- Degree of harm or loss was significantly greater than typical;
- Offender exploited a particular vulnerability of the victim, such as extreme youth, old age, disability, etc.

Where the charge is Sexual Abuse in the First Degree, there is a significant age spread between the offender and the victim;

- Offender violated a public trust or professional responsibility;
- Offender has demonstrated persistent involvement in similar offenses or repetitive assaults;
- There were multiple incidents and/or multiple victims;
- Offender has a concerning mental health history indicating risks to the community or non-treatability;
- Offender denies the offender's criminal conduct;
- Offender does not forward any information demonstrating amenability to treatment.

### **Victim Input and Consultation**

Consistent with the Oregon Constitution and the philosophy of the Multnomah County District Attorney's office the assigned Deputy District Attorney shall solicit input from the victim and consult with the victim during the plea negotiation process.

### **Final Decision**

The final decision on whether the state will agree to participate in a second look process in a given case rests with the informed discretion of the District Attorney. Cases which appear to meet criteria announced elsewhere in this document may nonetheless be inappropriate for second look for reasons which will be articulated, and which may differ from the criteria listed in this document.

### **Content of Offer**

If the pretrial offer allows for second look consideration, the offer shall specify the following:

- That at the second look hearing the defense shall present to the court a proposed detailed plan for the defendant's transition from the defendant's custodial setting to the community. Such a plan will include where defendant will reside; what treatment programs the defendant will be participating in; when that

treatment will commence; and what other services will be in place to meet the defendant's needs as identified in the second look report;

- The Deputy District Attorney shall list anticipated post-custody conditions should the defendant be granted release by the court. For example, the sex offender package should be listed for a sex crime case;
- The offer shall specify that the victim has the right to be present and to be heard at the second look hearing.