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Hearing on SB 819
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Chair Prozanski, Vice-Chair Thatcher, and members of the committee—thank you for the opportunity to testify in support of SB 819.

My name is Aliza Kaplan. I am a law professor and the Director of the Criminal Justice Reform Clinic (Clinic) at Lewis & Clark Law School.

Over my 20 plus years of legal experience, I have represented many individuals who were wrongfully convicted. Although the Innocence Project and other organizations secure freedom for a select few, and we see news stories about these exonerations and releases, in reality, in a troubling large majority of cases, prisoners who have strong claims of having been wrongfully convicted have no legal avenue to get back into court and have their innocence claims heard. Unless brand new exculpatory evidence, such as DNA evidence, is discovered in these decades-old cases, most defendants cannot clear procedural hurdles to get their cases adjudicated. This includes cases where convictions were based on facts that have changed or eroded over time; for example, those convicted using forensic evidence that has since been discredited and/or repudiated by law enforcement. There are wrongfully convicted people in Oregon prisons today who can't get back in front of a judge even if witnesses or victims have recanted testimony that was crucial to the jury's guilty verdict, or if their conviction was based upon a false confession or bad eyewitness identifications, even though we now have data proving that both false confessions and incorrect identifications are common in wrongful conviction cases. Sadly, even if all of the factors I have described are present, it can be almost impossible for a post-conviction legal claim to be heard in court, at certain stages. SB 819 would be a critical pathway to allow prosecutors to ask the courts to look at these cases and ensure justice has been served.

I have also represented many people who were not innocent of the crime they were convicted of, but who have truly changed. Often, these prisoners have been in prison for many years, sometimes decades, and I know that some of them are now fully rehabilitated, transformed, and remorseful. Many years later, they simply are not the same people they were at the time of the crime. Both of these categories of people – the wrongfully convicted as well as the truly rehabilitated - would be excellent candidates for District Attorneys to examine through SB 819, should prosecutors choose to.

We all know that the criminal justice system sometimes gets it wrong. In my personal experience over the years, every prosecutor I know, including many of my former students, have spoken about cases that haunt or trouble them for years after the legal proceedings have concluded. Most prosecutors have that one - or more - cases where they would like to retrace their steps and take another look, just to be certain that justice was done and that the outcome is still serving the interests of the public. Sometimes the concern may be that prisoners received too much time in proportion to their precise role in the crime, or in light of who they were at the time, especially if they were a youth or a person dealing with a substance abuse disorder. SB 819 gives DAs the power to re-examine those cases and their sentences.

SB 819 will allow prosecutors to resentence an individual if that person's sentence is no longer advancing the interest of justice nor serving its intended purpose of punishment and rehabilitation. Additionally, prosecutors will be able to revisit sentences where there has been an introduction of new evidence, improper forensic science, and other deficiencies that cast doubt on the case. SB 819 will allow prosecutors to revisit closed criminal cases, especially where the inmates have untarnished disciplinary records, changes in their circumstances, or degenerating health, such as those who are seriously ill. Under this legislation, with the prosecutor in control of the process, the prosecutor and defendant would be able to jointly recommend a new, reduced sentence, when appropriate.

Multiple states around the country have created legal mechanisms for district attorneys to reexamine cases similar to SB 819, including Georgia, Ohio, Missouri, California, and Washington.

In this moment where we are reexamining many of our policies through the lens of racial justice, we must recognize that numerous aspects of Oregon's criminal justice system are disproportionately applied to people of color, especially Black Oregonians. Problematic or unfair sentences impact people from all demographics, but they are profoundly devastating in under-resourced communities. Black, Indigenous, and people of color are more often convicted of longer sentences for the same crimes as their white counterparts. According to the Sentencing Project, there are 5.6 Black men for every white man in Oregon's prisons. Many of these cases deserve another look by our prosecutors. The Oregon taxpayer money that is currently spent to keep a disproportionate number of Black individuals in prison would do more to improve public safety if it was available to be used on effective policies and programs instead.

What I think is most important about this bill and want to stress is that SB 819 is a discretionary option for the DA. If it becomes law, it carries no mandate or requirement. District Attorneys will not be obligated to use the law, nor will they need to spend any additional funds to hire staff to work with this law, unless they choose to because they deem it necessary for the public interest. If passed, the legislature will simply be adding a new tool, used in other states, to Oregon DAs' toolboxes that would allow an avenue for reevaluation, in cases where prosecutors believe it is warranted and want to pursue it.

Chair Prozanski, Vice-Chair Thatcher, and Senators, I am available if you have any further questions. Senators, I urge you to please support SB 819. Thank you again for giving me the opportunity to speak.