



March 31, 2021

Re: [SB 819](#) (Joint petitions for reconsideration of conviction and sentence)

Dear Chair Prozanski, Vice Chair Thatcher, and Members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation:

The Office of Public Defense Services (OPDS) is neutral on SB 819 but seeks to provide context within which this proposal would improve Oregon's criminal legal system. Unjust convictions and sentences are corrosive to the interests of justice, the rule of law, and the public's trust in its government. Poor persons and their communities suffer the sharpest effects of unjust convictions and sentences. SB 819 would create a new tool to confront and undo system inequities.

SB 819 allows a person sentenced for a felony offense, other than aggravated murder, and the district attorney of the county in which the person was sentenced, to jointly petition the sentencing court for reconsideration of a conviction or sentence if the original sentence no longer advances the interests of justice.

Examples of real-world circumstances in which this joint petition may arise include:

- Convictions for which the underlying evidentiary circumstances have changed, such as discredited forensic science (like bitemark evidence);<sup>1</sup>
- Instances of wrongful conviction based on other faulty evidence<sup>2</sup> or official misconduct (such as the state not turning over evidence pointing to a person's innocence or fabricating evidence of a person's guilt);<sup>3</sup>
- Instances in which the Oregon Legislature or voters have changed the law but persons convicted under old law do not receive the benefit of retroactivity; and
- Circumstances where the person's conviction integrity is sound but other factors undermine whether continuation of the sentence imposed is fair, such as instances in which a person has made such personal progress and growth while incarcerated that continuation of the sentence imposed would not do the State of Oregon or its people any benefit, and a change in sentence would allow the person to participate in the community sooner than later.

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<sup>1</sup> See, e.g., Texas Forensic Science Commission, Forensic Bitemark Comparison Complaint Filed by National Innocence Project on Behalf of Steven Mark Chaney – [Final Report](#), 11-12 (2016) (The Texas Forensic Science Commission concluded that, “there is no scientific basis for stating that a particular patterned injury can be associated to an individual's dentition” and “[a]ny testimony describing human dentition as ‘like a fingerprint’ or incorporating similar analogies lacks scientific support.”).

<sup>2</sup> See generally, Gerald LaPorte, [Wrongful Convictions and DNA Exonerations: Understanding the Role of Forensic Science](#), National Institute of Justice Journal, Office of Justice Programs (2017).

<sup>3</sup> See generally, National Registry of Exonerations, [Governing Misconduct and Convicting the Innocent](#) (2020).



With those examples in mind, SB 819 would allow the prosecutor and convicted person to come to an agreement as to a different outcome, be it dismissal of charges, vacating of previous convictions, a plea to a new alternative offense, resentencing for the original conviction, or sentencing on the new offense.

SB 819 also requires the prosecutor to make all reasonable efforts to notify victims and survivors and explain the process at hand. Additionally, the bill requires that victims and survivors must have an opportunity to be heard on the petition, allowing for victim and survivor input on whether the petition should or should not succeed.

We would be happy to answer any questions you might have about the impacts SB 819 will have on Oregon's public defense clients and criminal legal system. Thank you for the opportunity to provide this information.

Sincerely,

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