OUTLINE OF FLP X DSP COMMUNITY WEBINAR ON SB 819
April 19, 2022

1. Available resources
    a. The statute: https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB819/Enrolled
    b. La ley: https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/62560af784f9dc0bc1b59a53/1649806074260/SB+819+Enrolled+ESPANOL.pdf
    c. OJRC's FAQs about SB 819: www.ojrc.info/819
    1. OJRC's FAQs en español: https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/62560d68cb8e5c343f83c032/1649806700431/SB+819+FAQs+ESPANOL.pdf
    d. Individual DA policies by county with links to the policies: https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/625479ba707f9b23900e955c/1649703355319/Senate+Bill+819+UPDATED%282%29.pdf
    e. Los requisites por condado en español: https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/62560b3a6b16e17bc3bb5112/1649806140548/SB%2B819%2BWebsite%2BPDF+ESPANOL.pdf
2. What is SB 819?
    a. OJRC resource page: www.ojrc.info/819
    b. SB 819 is a "second look" statute that allows some people who have been convicted of some crimes to seek review of their sentence or conviction.
    c. The goal of SB 819 is to allow relief for people whose sentences/convictions no longer "advance the interests of justice."
    d. The most important thing to understand about SB 819 is that a person seeking relief cannot get that relief without the agreement of the office of the district attorney who sentenced you.
3. Who is eligible?
    a. **Under the statute**, the following people are eligible to ask the sentencing district attorney to agree to seek relief:
        i. Persons convicted of certain felonies – misdemeanors/violations are ineligible.
        ii. The felony cannot be aggravated murder.
        iii. The felony is not expungeable under ORS 137.225
    b. Individual district attorneys' offices may have additional eligibility requirements such as the type of crime (e.g., not a sexual offense), nature of the original sentencing (e.g., no prior sentencing benefit as part of a plea deal), the views of the victim (victim must agree to the relief), or jurisdictional requirements (e.g., not part of a global plea agreement in different jurisdictions). See individual policy summaries and links here:

https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/625479ba707f9b23900e955c/1649703355319/Senate+Bill+819+UPDATED%282%29.pdf

4. What relief is available?
    a. Dismiss the charges against you in their entirety, vacating your conviction and releasing you from prison, supervision, and/or other reporting requirements and collateral consequences of your conviction.
    b. Dismiss the charges against you and recharge you with a new alternative offense, and resentence you following a plea to that new, alternative offense. This could result in either a lesser sentence or your release from prison if you have already served the new sentence in full.
    c. Vacate previous convictions that may have enhanced your sentence and resentence you without the previous convictions. This could result in either a lesser sentence or your release from prison if you have already served the new sentence in full.
    d. Maintain your existing conviction but resentence you to a shorter sentence allowed under the law. This could result in either a lesser sentence or your release from prison if you have already served the new sentence in full.
5. What does it mean for a conviction or sentence to "no longer serve the interests of justice"?
    a. 819 is a new statute so courts have not yet defined the meaning of this phrase, but, generally, this may be so because:
        i. the sentence you have already served is sufficient to deter you (and/or others) from committing future crimes;
        ii. you have demonstrated that you have been rehabilitated during your incarceration;
        iii. you are unable or unlikely to commit future crimes;
        iv. continued incarceration is harmful to others and/or the community;
        v. when viewed today, the sentence previously imposed was excessive to the crime of conviction or was otherwise unfair;
        vi. the sentence previously imposed would not, or could not, be imposed today.
    b. The statute identifies certain considerations that can determine whether relief is warranted – but the DA has full discretion to consider or disregard these:
        i. The person's disciplinary record and record of rehabilitation while incarcerated. The "record of rehabilitation" can be established by employment history; participation in therapeutic, educational, or other self-improvement programs; involvement in religious or other communal programs; and record of service to others.
        ii. Likelihood that the person will commit future crimes or engage in violence, including age, time served, or diminished physical or mental condition. That a person is unlikely to commit future crimes can be shown through the record of rehabilitation (see above); evidence that the person is physically or otherwise unable to commit future crimes; that the circumstances that led to the original crime are no longer present (for example, that the person is in recovery or that mental health issues that may have contributed to the crime have been treated); and/or that the

person will be returning to a supportive community, which may include a stable housing or work plan.

iii. How the release would affect the safety of the victim (if any) associated with the conviction(s). This may be covered by the previous category (unlikely to commit future crimes), but if there has been some reconciliation with the victim of the crime, or the person is aware that the victim is deceased or has moved, the person may want to include that information. **The applicant should not reach out to the victim of the crime without the advice/assistance of an attorney.**

iv. Amount of original sentence served.

v. Any changed circumstances since the original sentencing that shows that the person's continued incarceration no longer advances the interests of justice. Much of this has already been addressed by the prior categories. This would include any evidence that shows that the person is not the same person who committed the crime, or that the circumstances that contributed to the crime are no longer present. For example, if the crime(s) were drug-related, it is significant that the person is in recovery. If the crime(s) were related to untreated mental health issues for which the person has received treatment, the person should explain this, too. If the crime(s) were related to being unhoused or to poverty and the person has a release plan that includes stable housing or work, or the financial support of friends or family, this should be explained.

c. The statute makes clear that these are **not** the only considerations for relief. The applicant should consider what other factors might demonstrate that the conviction or sentence no longer serves the interests of justice. The most compelling submissions will include objective evidence and other supporting information that shows a change in law (such as an Oregon Supreme Court decision or new law) or norms (such as news articles, surveys of popular beliefs, etc.), sworn affidavits from affected individuals, or records.

d. These might include:

i. The person is factually innocent, or new information renders the conviction and/or sentence fundamentally unfair – such as if a plea agreement was coerced through false information or false threats.

ii. The continued incarceration or record of conviction is harmful to others. It may be compelling to show that the continued separation from family and/or the community is harmful to them, or that the inability to obtain stable and productive work due to the conviction is harming the ability to support family. Thus, if the applicant can show that family members dependent for emotional or financial support are being harmed, they should. This may include elderly and/or sick family members, or minor children.

iii. The previously imposed sentence would not or could not be imposed today. Changes in the law may mean that the person would not be sentenced today as they were previously. If the person can show that they would be sentenced to less time today, they should do so. Specific changes to the law that may entitle you to relief are:

1. *Boyd* narcotics delivery cases (*State v. Hubbell*, 314 Or. App. 844 (2021) *petition for cert. granted.*);
2. *Arreola-Botello* traffic stops (*State v. Arreola-Botello*, 365 Or. 695 (2019));
3. Merger issues (*State v. Paye*, 310 Or App 408 (2021)).

iv. Communal or social norms have changed and undermine the fairness of the previously imposed sentence. Depending on when the original sentence was imposed, it may be relevant that attitudes or norms in the community have changed with respect to either the crime of conviction, or the factors that contributed to crimes. For example, since 2005 (and particularly since 2010), the United States Supreme Court has decided a number of cases that explain how juveniles are different from adults, and that the brain is continuing to mature in relevant ways until a person is in their early- to mid-20s. If the person was under 25 years old when the crime was committed, this evolving understanding may be a relevant fact to highlight. This is particularly so if the person was sentenced in adult court. Similarly, courts and the community have, in recent years, understood that drug addiction is an illness and not a crime, such that some crimes relating to or arising out of drug addiction may be entitled to leniency. The same may be true for crimes relating to or arising out of untreated mental illness. Finally, as Oregon has decriminalized certain drugs, crimes relating to the use, possession, or distribution of those drugs may be entitled to relief. The most compelling submissions will include evidence showing a change in law (such as an Oregon Supreme Court decision or new law) or norms (such as news articles, surveys of popular beliefs, etc.).

v. The previously imposed sentence was excessive or otherwise unfair. If the person can show that the previously imposed sentence was excessive with respect to the crime, or otherwise unfair as compared with similarly situated people, the applicant should show this. For example, the person may be able to show that they received more time than the average person did for the same offense, or that the sentence was increased due to an improper bias such as racial, gender, or sexuality. Likewise, the person may be entitled to relief if they were sentenced under an accomplice-liability theory, or a felony-murder theory, but the sentence did not accurately reflect the reduced participation in the crime as compared with the principal, or the differing intent when compared with the principal. Another possible basis for relief under this category would be that important mitigating information was not presented to or considered by the court. Examples of this could include: a history of abuse or trauma that contributed to the crime; if the person was a criminalized survivor, or other factors a court today would consider but that the original sentencing court did not consider. The most compelling submissions will include evidence showing a change in law (such as an Oregon Supreme Court decision or new law) or norms (such as news articles, surveys of popular beliefs, etc.).

e. Any specific fact relevant to the underlying crime and sentence, and/or to the individual's unique personal circumstances.
f. Note that individual counties may have identified additional considerations in their specific policies.

6. What is the process for seeking relief?
    a. Note that you do not have a right to counsel at any point in time in this process. If you can afford an attorney, you should hire one but ensure that they have a good understanding of the statute. OJRC will be posting pro bono resources as they become available.
    b. First, a person seeking relief must ask the sentencing district attorney to agree that they are entitled to relief under SB 819. The way this is done will vary by county – some counties have applications that must be completed, others ask for a letter that addresses various questions, and others have no formal process at all. See: https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/625479ba707f9b23900e955c/1649703355319/Senate+Bill+819+UPDATED%282%29.pdf
    c. Second, if the district attorney agrees that the person is entitled to relief, the person (or their lawyer) and the district attorney will reach an agreement as to the appropriate relief. This will then be included in a joint petition that will be submitted to the sentencing court.
    d. Third, the sentencing court will have a hearing to determine whether the person is entitled to relief under SB 819 and, if so, whether that relief should be what is sought in the joint petition or something else.
7. Some final thoughts on the joint application requirement:
    a. DA is the gatekeeper – it's up to them whether a person can even get to court to seek relief. Prosecutorial discretion has not historically been good for criminal defendants, convicted persons, BIPOC people in general – and prosecutorial discretion is at the heart of this statute
    b. This recreates the same relationships between prosecutors and those communities whose members have been most over-policed, over-criminalized, over-prosecuted, and over-sentenced – i.e., those who are most in need of SB 819's relief.
    c. DA's policies vary wildly and some counties' policies make it nearly impossible for an otherwise eligible person to get relief, or so burdensome that it may not be worthwhile.
8. So you're eligible – should you seek relief? Recognize the potential risks and costs:
    a. Statements in an SB 819 application could negatively affect the applicant.
        i. be used against the person in other proceedings such as clemency – whatever the applicant says in this application is going to follow them;
        ii. result in additional criminal charges (if for example, the DA determines that they are sworn false statements or there are admissions to other crimes contained therein)
    b. The SB 819 process may take up valuable resources (time, energy, money) – especially as some DAs require the collection and submission of lots of documents – and may not be successful.
    c. Your application will become a public document subject to release pursuant to public records requests.

    d. Statements contained in your application could also waive the privilege you have in discussions with your attorney(s).
9. How did we get here and where is it going?
    a. SB 819 passed in the 2021 session, 26-2 in the Senate and 36-16 in the House.
    b. The Oregon District Attorneys Association (ODAA) did not oppose the bill.
    c. The Oregon Innocence Project supported the bill and acknowledged SB 819 would be an improvement and benefit currently incarcerated Oregonians, BUT we urged the legislature to pursue additional legislation in subsequent sessions to address cases where cooperation of a District Attorney cannot be obtained.
        i. It is critical to provide a mechanism for the wrongfully convicted to get back into court whether or not a district attorney agrees to, for example, seek relief based on innocence when new evidence is discovered or becomes available, especially if forensic evidence used to convict them is undermined by new scientific or technological advancements, guidelines, or repudiation of expert testimony.
    d. Additionally, for individuals in jurisdictions where the district attorney refuses to utilize SB 819, there's no pathway back into court for people convicted of crimes that were later decriminalized; when new constitutional law is recognized; or when the interests of justice require relief.
    e. We will share updates and further efforts related to SB 819 on OJRC/OIP socials and website for community members.
    f. The community can reach out to their representatives to express the need to broaden SB 819 or provide a different mechanism for relief.
10. Questions & Answers
    a. Unfortunately, we cannot provide legal advice, or answer questions related to specific cases. But we are happy to answer general questions about the statute, its applicability, its history, etc.