

COMMUNITY WEBINAR ON SB 819 (PART ONE)

PRESENTED BY

DON'T SHOOT PDX AND THE OREGON JUSTICE RESOURCE CENTER



This webinar is a joint project between Don't Shoot PDX and the Oregon Justice Resource Center's FA:IR Law Project.

Nothing contained herein constitutes legal advice.

This webinar is being recorded and will be posted on Youtube and other public internet channels.

■ Part I Webinar Overview

- What is SB 819?
- Who is eligible for SB 819?
- What relief is available under SB 819?
- What does it mean for a conviction or sentence to “no longer serve the interests of justice”?
- What is the process for seeking relief?
- Other considerations in deciding whether to seek relief.
- How did we get here and where is SB 819 going
- Q+A

Part II will focus on specific policies and questions raised here. Date TBD.



Available resources

- The statute:
<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB819/Enrolled>
- La ley:
<https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/62560af784f9dc0bc1b59a53/1649806074260/SB+819+Enrolled+ESPANOL.pdf>
- OJRC's FAQs about SB 819: www.ojrc.info/819
- OJRC's FAQs en español:
<https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/62560d68cb8e5c343f83c032/1649806700431/SB+819+FAQs+ESPANOL.pdf>
- 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>
- Los requisitos por condado en español:
<https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/62560b3a6b16e17bc3bb5112/1649806140548/SB%2B819%2BWebsite%2BPDF+ESPANOL.pdf>





■ Understanding SB 819



■ What is SB 819?

- 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.
- The goal of SB 819 is to allow relief for people whose sentences/convictions no longer “advance the interests of justice.”
- **Relief under SB 819 is only available if the office of the sentencing district attorney agrees to file a joint petition seeking relief with the sentencing court.**
- There is no right to counsel for SB 819 petitions.



■ Who is eligible for SB 819 relief?

- To be eligible, a person has to meet the statutory eligibility requirements and any additional requirements or considerations imposed by the sentencing district attorney.
 - Even if all are met, the sentencing DA still has discretion to agree or not agree.



■ Requirements for eligibility

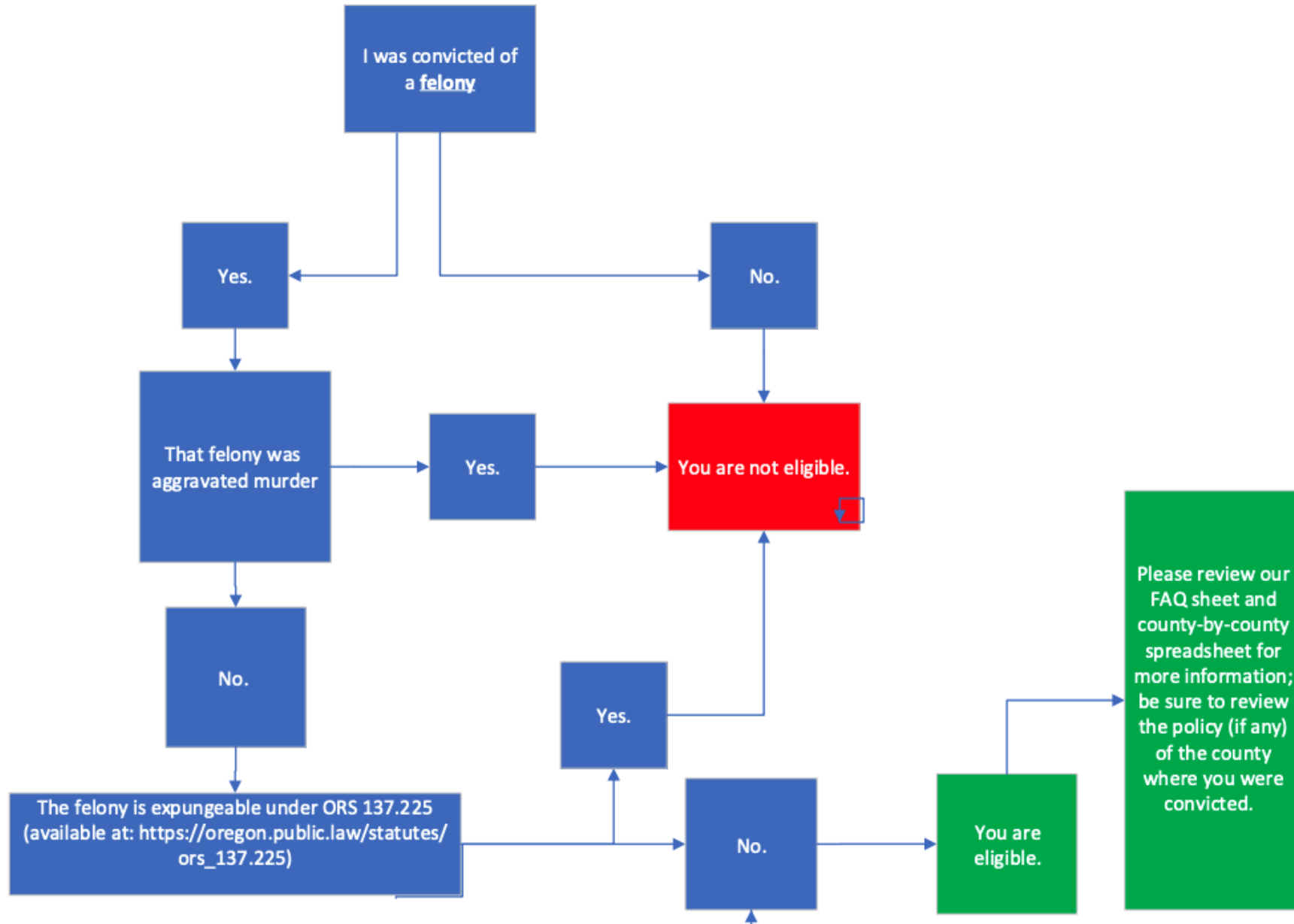
UNDER THE STATUTE:

- Persons convicted of felonies (not misdemeanors or violations)
- The felony cannot be aggravated murder
- The felony cannot be expungeable under ORS 137.225

INDIVIDUAL DA POLICIES MAY ADD ADDITIONAL REQUIREMENTS – must carefully review the applicable policy



Am I eligible for relief under SB 819?





What crimes are expungeable under ORS 137.225?

- Class B or C Felony or a Class A, B, or C Misdemeanor, and non-traffic violations
- You have “fully complied with and performed the sentence of the court for the offense.” This means you have:
 - Completed any sentence of incarceration;
 - Completed any term of probation (or, if probation was revoked, at least three years have passed since date of revocation); and
 - Paid all related fines, fees, and restitution.
- You do not have any currently pending criminal cases in any court, state or federal, in the United States.
- The relevant waiting period has passed from your most recent conviction in any court, state or federal, in the United States, or from the date of your release if you were incarcerated. If you are trying to expunge:
 - a Class B Felony: 7 years from the date of your most recent conviction or release from prison
 - a Class C Felony: 5 years from the date of your most recent conviction or release from prison
 - a Class A Misdemeanor: 3 years from the date of your most recent conviction or release from prison
 - a Class B or C Misdemeanor or Violation: 1 year from the date of your most recent conviction or release from prison



Is My Record Eligible for Expungement?

1

Is it an eligible offense?



(unless it was dismissed)

— and —



Not one of the ineligible conviction types

2

Have you fully completed the sentence?

including...



Incarceration



Probation

(or three years has passed from probation being revoked)



Paid all related fines, fees, and restitution?

3

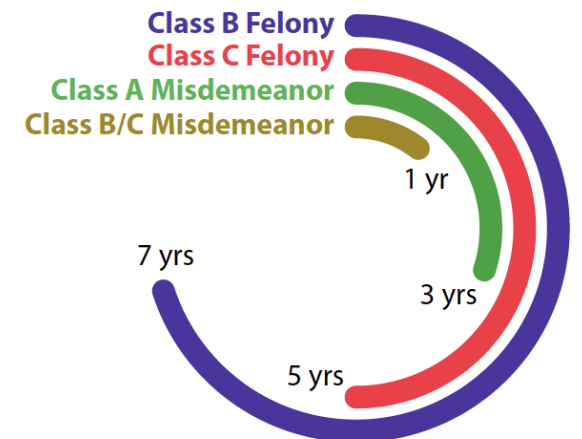
No pending criminal cases?



4

Enough time passed since your most recent conviction?*

Starting from the date of your most recent conviction (in any court in the US), based on the class of your expungement offense, has the minimum time passed to seek expungement?



■ Convictions Ineligible for Expungement

- Any Class A felony
- "Person felonies" classified by the Oregon Criminal Justice Commission
- Traffic convictions (charged under 800s of the Oregon Revised Statutes)
- Almost all sex crimes


Free expungement help in Portland – [PCC CLEAR Clinic](#)



■ What relief is available under SB 819?

- 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.
- 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.
- 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.
- 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.





What does it mean for a conviction or sentence to “no longer serve the interests of justice”?

- the sentence you have already served is sufficient to deter you (and/or others) from committing future crimes;
- you have demonstrated that you have been rehabilitated during your incarceration;
- you are unable or unlikely to commit future crimes;
- continued incarceration is harmful to others and/or the community;
- when viewed today, the sentence previously imposed was excessive to the crime of conviction or was otherwise unfair;
- the sentence previously imposed would not, or could not, be imposed today.



■ Statutory considerations

- Disciplinary history and record of rehabilitation during incarceration.
- Likelihood that the person will commit future crimes or engage in violence.
- How the release would affect the safety of the victim (if any) associated with the conviction.
 - ***Do not contact the victim/complaining witness in your case.***
- Amount of original sentence served.
- Any changed circumstances since the original sentencing that shows that the person's continued incarceration no longer advances the interests of justice



■ Other relevant considerations

- Factual innocence;
- New information renders the conviction and/or sentence fundamentally unfair;
- Collateral consequences are unfair;
- Continued incarceration or record of conviction is harmful to others.
- Communal or social norms have changed and undermine the fairness of the previously imposed sentence.
- The previously imposed sentence was excessive or otherwise unfair.
- Any other individualized consideration that speaks to the sentence or conviction no longer serving the interests of justice.
- The previously imposed sentence would not or could not be imposed today.



■ Specific changes to the law that may be relevant to SB 819 relief

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




■ The process for seeking SB 819 relief

- 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>
- 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.
- 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.





Final notes on the joint application requirement

- 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
- 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.
- 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. 

■ Should you seek relief, if eligible?

Consider the particular risks and costs to applying.

- Statements in an SB 819 application could negatively affect you
 - Can be used against you in other proceedings, such as clemency;
 - Could in theory result in additional criminal charges if the application contains statements deemed to be false/inaccurate
- The process of applying may take up significant valuable resources (time, energy, money) especially as some DA policies require the collection and submission of lots of documents
- Your application will become a public document subject to release pursuant to public records requests
- Statements in your application could waive the attorney-client privilege for earlier conversations.





How did we get here and where are we going?

- Senate Bill 819 passed in the 2021 session, 26-2 in the Senate and 36-16 in the House.
- The Oregon District Attorneys Association did not oppose SB 819.
 - As discussed, SB 819 requires DA agreement.
- SB 819 is an improvement and will benefit some Oregonians, but additional legislation is needed to address cases where cooperation of a District Attorney cannot be obtained.
 - For example, based on innocence when new evidence is discovered/becomes available, people convicted of crimes that are later decriminalized, when new constitutional law is recognized, or when the interests of justice require relief.
- We will share updates and further efforts related to SB 819 with community members on OJRC/OIP socials and website.
- Community members are encouraged to contact their representatives to support legislation addressing cases where cooperation of a District Attorney cannot be obtained.



■ Questions + Answers

- We cannot provide legal advice.
- We cannot answer case-specific questions.
- Please remember that this webinar is being recorded and will be made available on public websites.



■ Thank you + Stay tuned for Part II

- We will post the date and time of Part II on DSP and OJRC's social media channels.
- We anticipate covering specific DA policies based on the geographic location of participants.
- We will also address any questions posed here or posted to our social media channels that we did not address today.

