



SENATE BILL 819 (2021) PETITIONS

**Answers to common questions
about petitioning for reconsideration
of an Oregon conviction and/or
sentence.**

Contacting the Oregon Justice Resource Center does not establish an attorney-client relationship. The information you obtain from this resource is not, nor is it intended to be, legal advice.

Please note that we do not have the resources to help those we do not already represent with SB 819 applications or questions. If you are a current client of ours, you should speak with your attorney about whether they can help you determine if seeking SB 819 relief is right for you.

What is Senate Bill 819?

SB 819 is a law that allows for resentencing of a person who was sentenced to any felony other than aggravated murder when the district attorney for the county where the person was sentenced agrees, and the sentencing court finds, that the sentence no longer advances the interests of justice.

The statute is available at: <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB819/Enrolled>

What relief is available under SB 819?

SB 819 authorizes a wide range of relief for convictions or sentences. A court may:

- 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.

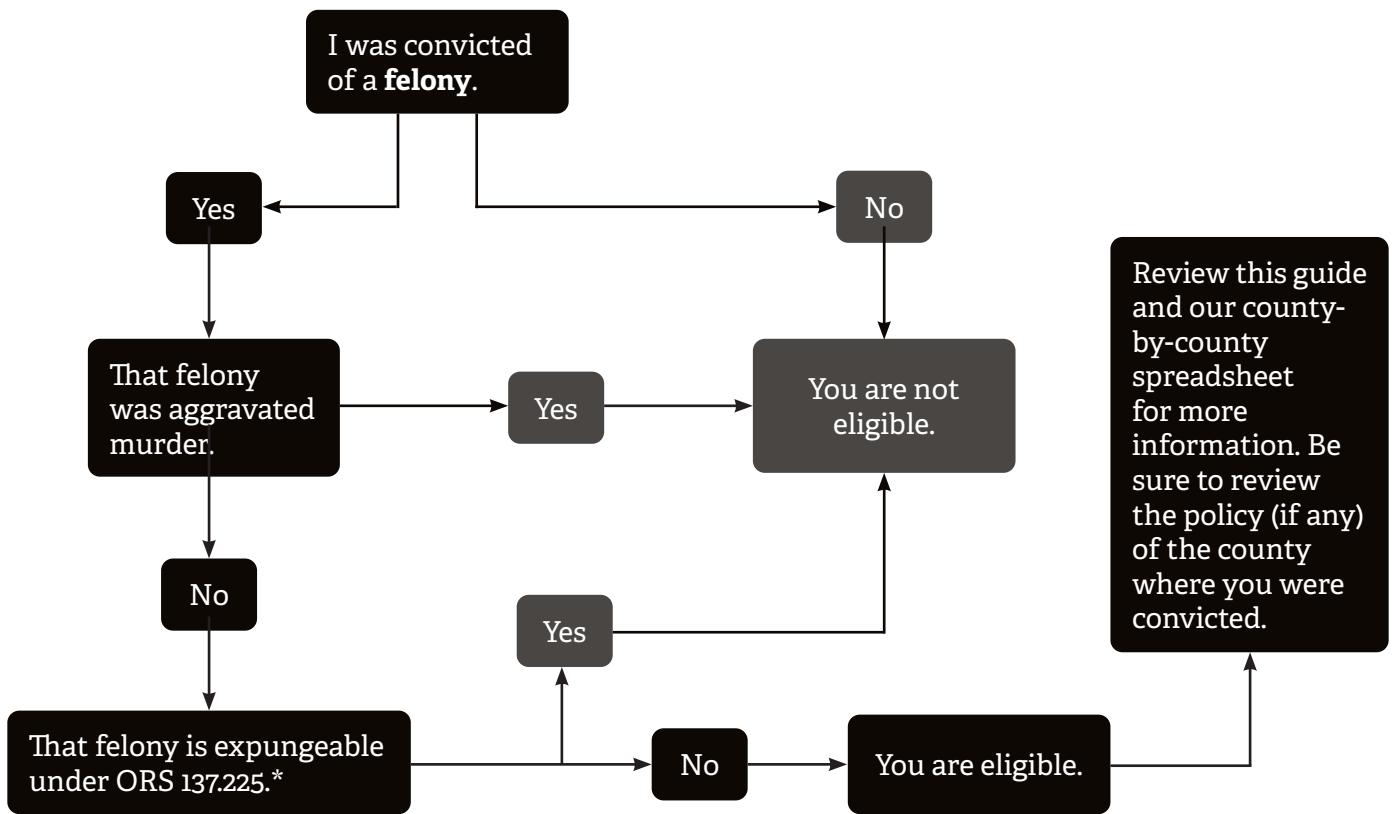
Am I eligible for relief?

While individual counties may have additional requirements, under SB 819 you are eligible for relief if:

- You were sentenced for a felony other than aggravated murder in the state of Oregon;
- Your conviction is not eligible to be set aside under ORS 137.225; and
- The district attorney for the county where you were sentenced agrees that you are entitled to relief.

If the district attorney for the county where you were sentenced does not agree to file a joint petition, you cannot seek or get relief under SB 819.

Relief eligibility under SB 819



* Available at https://oregon.public.law/statutes/ors_137.225.

Who decides if I get relief?

The sentencing court will decide if you get relief under SB 819. Once the district attorney for the county where you were sentenced agrees that you are entitled to relief, you (or your lawyer) and that district attorney will work out an agreement that sets forth the relief you are entitled to. Then you (or your lawyer) and the district attorney will draft a joint petition setting forth the terms of your agreement and asking the sentencing court to grant the requested relief. The sentencing court will then hold a hearing, at which the court may hear from the district attorney, you, and/or the victim (if any) in your case. Following the hearing, the sentencing court will decide whether to grant the petition under the terms of your agreement with the district attorney, grant some other relief, or deny relief.

What is the process for seeking relief?

First, you need to request the support of the district attorney in the county where you were sentenced. How you do this will depend on the county where you were sentenced.

1. Explain why your sentence no longer advances the interests of justice.

Whatever the form of your request to the district attorney, you must explain why your sentence no longer advances the interests of justice. Generally, this may be so because:

- the sentence you have already served is sufficient to deter you (and/or others) from committing future crimes;
- 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.

2. Address the statutory considerations for relief.

SB 819 sets forth some specific considerations for relief, which you should address in your application or request to your sentencing district attorney. The statutory considerations are:

Your disciplinary record and record of rehabilitation while incarcerated.

Your “record of rehabilitation” can be shown by your employment record; your participation in therapeutic, educational, or self-improvement programs; your involvement in religious or other communal programs; and your record of service to others.

Anything that shows that you are not likely to commit future crimes or engage in violence, including your age, time served, or diminished physical or mental condition.

That you are unlikely to commit future crimes can be shown through your record of rehabilitation (see above); through evidence that you are physically or mentally unable to commit future crimes; that the circumstances that led to your original crime are no longer present (for examples, that you are in recovery or have treated mental health issues that may have contributed to your crime); and/or that you will be returning to a supportive community, which may include a stable housing or work plan.

How your release would affect the safety of the victim (if any) associated with your conviction(s).

This may be covered by the previous category (that you are unlikely to commit future crimes), but if there has been some reconciliation with the victim of the crime, or you are aware that the victim is deceased or has moved, you may want to include that information. You should not reach out to the victim of the crime without the assistance of your attorney.

How much time you have served of your original sentence.

Any changed circumstances since your original sentencing that shows that your continued incarceration no longer advances the interests of justice.

Much of this has already been addressed by the prior categories. You should include any evidence that shows that you are not the same person who committed the crime, or that the circumstances that contributed to the crime are no longer present. For example, if your crime(s) were drug-related, it is significant that you are in recovery. If your crime(s) were related to untreated mental health issues for which you have received treatment, you should explain this. If your crime(s) were related to being unhoused or to poverty and you have a release plan that includes stable housing or work, or the financial support of friends or family, you should explain this.

3. Consider what other factors might show that your continued incarceration no longer serves the interests of justice.

The statute makes clear that these are **not** the only considerations for relief. You should consider what other factors might demonstrate that your continued incarceration no longer serves the interests of justice. These might include:

Your continued incarceration is harmful to others.

It may be compelling to show that your continued separation from family and/or the community is harmful to them. Thus, if you can show that family members who are dependent on you for emotional or financial support are being harmed by your separation, you should. This may include elderly and/or sick family members, or minor children.

Your previously imposed sentence would not or could not be imposed today.

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

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

Communal or social norms have changed and undermine the fairness of your previously imposed sentence.

Depending on when you were sentenced, 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 you were under 25 years old when you committed your crime, this evolving understanding may be a relevant fact for you to highlight. This is particularly so if you were 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.

Your previously imposed sentence was excessive or otherwise unfair.

If you can show that your previously imposed sentence was excessive or otherwise unfair as compared with similarly situated people, you should do so. For example, you may be able to show that you received more time than the average person did for the same offense, or that your sentence was increased due to an improper bias such as racial, gender, or sexuality. Likewise, you may be entitled to relief if you were sentenced under an accomplice-liability theory, or a felony-murder theory, but your sentence did not accurately reflect your reduced participation in the crime as compared with the principal, or your differing intent when compared with the principal. 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.).

Some counties have additional requirements for consideration, or require additional information from applicants.

How are different counties handling the implementation of SB 819?

While not all counties have published policies describing SB 819 implementation, we have attempted to collect and describe the policies and have published them at our website at <https://ojrc.info/819>. If your county has a published policy, you should follow the procedures they have identified. Please do not rely on our summary, but check the county website and carefully review the policy as it applies to your case. If you are in another county, you can use the materials created by these counties to guide your application.

Am I entitled to a lawyer to help me seek relief?

Unfortunately, if you cannot afford an attorney to represent you in seeking SB 819 relief, you are not entitled to a lawyer. If and when pro bono assistance becomes available, we will update this guide with that information.

Are there any dangers in seeking SB 819 relief?

The representations you make in your SB 819 application will be a permanent record of your account of events that would be difficult to contest at a later date. For example, if you do not obtain relief under SB 819 and then seek relief through clemency, parole, or by another mechanism, you will likely be bound by whatever you say in your SB 819 application. Your application may also be subject to disclosure under Oregon's public records laws; thus it is not private and you should assume that any information you include may be disclosed to the public. Anything you include in your SB 819 application or in discussions with the district attorney's office is not protected by attorney-client privilege and could be revealed to third parties without your consent. Moreover, to the extent that you reveal matters discussed with your prior counsel(s) or consent to the release of privileged information by your prior counsel(s), you will lose the attorney-client privilege over those matters forever.

Finally, a false statement in an SB 819 application or in discussions with the district attorney's office could expose you to separate criminal charges.

The court cannot impose a sentence greater than your original sentence.

What if my conviction involved district attorneys from multiple counties?

According to the statute, only the district attorney from the county where the sentence was imposed needs to join in the petition. However, it is likely that the district attorney from the county where the sentence was imposed would want the consent or approval of the other district attorney(s) involved in the conviction. You should discuss this with the district attorney of the sentencing county if your application for review is considered. Note: Multnomah County will not consider excessive sentence cases involving global plea agreements with multiple counties.

My crime involved a victim, will they have a say in whether I get relief?

The statute directs the district attorney to inform the victim(s) once a petition for relief has been filed. The victim will be informed of the time, date, and location of the hearing and will be permitted to make a statement at the hearing.

You should be aware that some counties will seek input from victims before a petition for relief has been filed and some counties will deny relief if it strongly opposed by a victim. Please see the county-specific spreadsheet at our website for more information about victim involvement in the 819 process.

Can the OJRC help me with a SB 819 application?

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