

## SB 819 Policy

It is the policy of the Marion County District Attorney's Office to uphold Oregon's constitutional and statutory principals related to sentencing of convicted persons. Those principles include protection of society, victim safety, personal responsibility, accountability, reformation, and public faith in the criminal justice system.

Beginning January 1, 2022, applications may be submitted to the Marion County District Attorney's Office for consideration of a petition pursuant to SB 819. Incomplete applications will not be considered. Applications must comply with the requirements listed below. Consistent with this policy, completed applications will be screened and reviewed by designated personnel. Any decision to file a joint petition will be made by the District Attorney.

### **Section 1**

#### Who may apply under the language of SB 819?

- Any person previously sentenced in Marion County, Oregon for a felony offense that is not eligible to be set aside under ORS 137.225<sup>1</sup>, *except* a person convicted of Aggravated Murder

### **Section 2**

#### Whose application will not be considered by the Marion County District Attorney's Office?

- Any person who may apply to the court pursuant to ORS 161.705 to reduce a felony to a misdemeanor
- Any person convicted of any degree of homicide (Aggravated Murder, Murder, Murder in the First Degree, Murder in the Second Degree, Manslaughter in the First Degree, Manslaughter in the Second Degree, Criminally Negligent Homicide) after April 1, 1995, *unless* the person is asserting actual innocence
- Any person whose conviction is on direct appeal or who is challenging their conviction in a post-conviction or habeas corpus proceeding or appeal from a post-conviction or habeas corpus judgment

---

<sup>1</sup> The following links can provide access to Oregon laws related to set aside (aka "expungement"): [https://oregon.public.law/statutes/ors\\_137.225](https://oregon.public.law/statutes/ors_137.225); <https://www.courts.oregon.gov/courts/marion/help/Pages/setaside.aspx>. The Marion County District Attorney's Office is prohibited from giving legal advice on eligibility for set aside.

### **Section 3**

#### **Contents of Application**

Applications **must** include the following documentation; incomplete applications will not be considered.

- A copy of the Judgment from any case where the applicant is seeking relief  
**(Item 1)**
  
- A copy of any appellate judgment or post-conviction/habeas judgment related to the underlying conviction(s), or a statement that no appeal, post-conviction, or habeas proceeding was filed  
**(Item 2)**
  
- A copy of the applicant's DOC supervision, disciplinary, programming, educational and vocational record, available upon request to:  
OISC Information Request Specialist  
Oregon Department of Corrections  
24499 SW Grahams Ferry Road  
Wilsonville, OR 97070-5670  
Email: OISCINFO@doc.state.or.us  
Phone: (503) 570-6919, Fax: (503) 570-6902

If the applicant is in custody, the request should be directed to the housing facility's Legal Information Officer (LIO).

The applicant may, but is not required to, include a copy of any DOC substance abuse or mental health treatment records.  
**(Item 3)**

- A statement of facts, written by the applicant, concerning the crime(s) of commission resulting in the judgment of conviction. The statement should include the applicant's account of any crimes dismissed or not filed as a result of plea negotiations known to the applicant. The applicant's statement should focus on personal responsibility and accountability, or, in the case where the applicant asserts actual innocence, why the applicant is innocent of the crimes of conviction. This document should be titled, "*Statement of Accountability*" or "*Statement of Actual Innocence*"  
**(Item 4)**
  
- A statement by the applicant of the relief sought and why (e.g. release from custody, reduction in sentence, dismissal of charge). In explaining why the relief sought should be allowed, the applicant should focus on: protection of society, victim safety, personal responsibility, accountability, reformation, and

public faith in the criminal justice system. This document should be titled, "*Statement of Relief*"  
**(Item 5)**

#### **Section 4**

##### Application Considerations

The Marion County District Attorney's Office will only consider complete applications. If an application is incomplete, the application will be returned to the applicant along with a rejection letter. Any person seeking reconsideration will have to resubmit a completed application; the Marion County District Attorney's Office will not hold incomplete applications awaiting additional information.

Only the rare and extraordinary case will be considered for a joint petition for reconsideration of a conviction or sentence.

Absent extraordinary circumstances, the Marion County District Attorney's Office will not consider sentencing modifications for any sexual offense, violent felony involving the use or threatened use of a firearm, cases where the defendant's criminal history or history of violence is extensive, cases where the defendant was afforded a downward departure or participation in a treatment court or 416 program, cases where the defendant stipulated to the sentence in exchange for dismissal of charges or avoidance of a departure sentence, and cases where the victim opposes modification or the victim's safety is compromised by the applicant's release.

#### **Section 5**

##### Review Process

1. Applications will be received and reviewed for completeness as defined in **Sections 1, 2 and 3**. Incomplete applications will be returned to the applicant.
2. Completed applications will be screened by personnel from the Marion County District Attorney's Office to determine if the application is eligible for review.
3. A designated deputy district attorney will be assigned to review the application. Particular attention will be given to any case where newly identified or discovered evidence calls into question the integrity of the original conviction. The investigating law enforcement agency should be notified about the new evidence and any further request for investigation should go through the agency, absent extraordinary circumstances. The designated deputy district attorney will recommend denial or further review of

the applicant's request by the SB 819 Review Committee based on the criteria set out in SB 819.

4. The SB 819 Review Committee will be comprised of at least one Deputy District Attorney, one Trial Team Supervisor and/or one Major Case Chief. The SB 819 Review Committee will make the final decision regarding denial of an applicant's request or decide whether the applicant's request should be forwarded to the District Attorney for consideration of a Joint Petition for Reconsideration of a Conviction or Sentence.

In making its determination, the SB 819 Review Committee should make an evidence-based decision about whether the court would grant the petition at a hearing based on the criteria designated in SB 819.

If the SB 819 Review Committee forwards an application to the District Attorney recommending that a joint petition be filed, the SB 819 Review Committee shall explain why the conviction(s) and/or sentence no longer advances the interests of justice.

5. If the District Attorney determines that a joint application may be warranted, the District Attorney shall request that the Victim Assistance Division contact the victim or victims of the crime and the District Attorney will meet personally with any victim who requests such a meeting to hear their position on the petition.

Only after consideration of the victim's or victims' position will the District Attorney make a final decision on the matter.

## **Section 6**

### **Re-application**

1. Applicants whose applications are rejected as incomplete may re-apply at any time with a completed application for consideration.
2. Previously denied petitions will not be re-considered until 5 years have lapsed from previous denial. An applicant must re-submit a new application in compliance with **Section 3**.