



Mike Schmidt, District Attorney

1200 SW First Avenue, Suite 5200
Portland, OR 97204-1193
Phone: 503-988-3162 Fax: 503-988-3643
www.mcda.us

MEMORANDUM

TO: Honorable Sen. Floyd Prozanski, Chair

FROM: Aaron Knott, MCDA Policy Director

SUBJECT: Testimony re: SB 819

DATE: 3/31/21

BACKGROUND

Prosecutors in California and Washington can petition a sentencing court to resentence a person when their sentence no longer serves the interest of justice. This mechanism allows prosecutors to realign sentences in the pursuit of fairness, proportionality and public safety, to reduce wasteful spending on incarcerating people who no longer pose a significant risk to society, and to build safer communities by incentivizing incarcerated people to actively engage in rehabilitation. No such ability exists in Oregon.

SB 819 provides Oregon's prosecutors with the ability to review and correct sentences which no longer serve the interests of justice. Based closely on Washington's SB 6164 (2019), SB 819 will allow prosecutors to petition a sentencing court to make any needed modifications to the term of a sentence, provided that they are more lenient than the original sentence. The sentencing court will make the ultimate determination on whether to grant the petition, considering factors such as the inmate's rehabilitative progress, evidence that suggests that the person's age, time served or diminished physical and mental condition may have reduced their dangerousness, and any other evidence suggesting the sentence no longer serves the interests of justice. SB 819 also requires that a victim be notified of the resentencing hearing, be provided the right to be heard if desired, and be provided with victim advocacy services.

This legislation has been successfully implemented in California and Washington, where prosecutors in various counties have developed carefully crafted eligibility

criteria to guide them in their methodical review of sentences. Case categories which could be appropriate for consideration include:

- A juvenile defendant who has shown strong evidence of real reformation but is about to transition to the adult system;
- An older adult prisoner who suffers a severe stroke and has no real potential for future dangerousness;
- A prisoner of color whose sentence can be shown to be demonstrably longer than other comparable sentences given to white defendants at the same time, with no other evidence supporting that departure;
- A prisoner whose sentence is based in part on bad forensic science, or testimony that is later proven to be unreliable.

As this law is discretionary, prosecutors would have broad discretion in how best to apply it. Prosecutors would simply gain an additional tool to both uphold justice and protect the communities they serve. As such, it can be tailored to each county and community and does not represent a “one size fits all” model to criminal justice. Prosecutors do their absolute best to deliver the fairest results to all defendants who enter the criminal justice system. But no system is perfect or free of bias. SB 819 provides prosecutors with a crucial tool to ensure that the sentence imposed is the right one.

PROPOSED AMENDMENTS

The Multnomah County District Attorney’s Office appreciates the partnership of the Oregon Sexual Assault Task Force, Oregon Law Center, Oregon District Attorneys Association and others in helping to recommend consensus amendments to SB 819 that will help the bill be as protective of victim’s rights as possible and will assist in managing the workflow burden on DA’s offices. These anticipated amendments will:

- Specify that SB819 is not meant as a substitute for the expungement statute for individuals who are otherwise eligible to petition for expungement;
- Provide that victims are entitled to receive any petition filed under SB 819 no later than 30 days prior to the hearing, and to receive notice of the petition in a trauma-informed manner;
- Instruct judges that victim safety should be a statutory factor to be considered in determining whether to grant a petition.

With these amendments, we believe that SB 819 will be the most victim protective statute of its kind. We urge the passage of SB 819.

Contact: Aaron Knott – Policy Director (aaron.knott@mcdca.us).