



Testimony in Support of Senate Bill 819

Steven Wax, Oregon Innocence Project

Senate Committee On Judiciary and Ballot Measure 110 Implementation

March 31, 2021

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee,

My name is Steven Wax. I am the legal director for The Oregon Innocence Project (OIP). OIP launched in 2014, with a mission to exonerate the wrongfully convicted, train law students, and promote legal reforms aimed at preventing wrongful convictions and enhancing the pursuit of justice more generally.

The Oregon Innocence Project **STRONGLY** encourages your **support of SB 819**, which would establish a procedure that allows a district attorney and incarcerated person to jointly petition the sentencing court for reconsideration of a conviction or sentence.

The extraordinary number of exonerations throughout the United States has proven that our criminal justice systems are systemically flawed. Oregon is not exempt from error. According to the National Registry of Exonerations, there have been 21 exonerations in Oregon since 1991. Like every other state, Oregon, is susceptible to the same causes of wrongful convictions, including mistaken eyewitness identification, false confessions, invalidated or improper forensic science, ineffective lawyering, and prosecutorial and police misconduct. OIP has received more than seven hundred and fifty requests for assistance since 2014. Of those, we have investigated approximately 550. Currently OIP has 5 active cases and has secured 3 exonerations.

SB 819 is a significant step toward addressing the gaps and flaws in our law that have led to unjust convictions or sentences. This bill will open a new path in the courts to justice for some incarcerated individuals. The current post-conviction law is interpreted by the state and courts to limit the types of claims that can lead to relief. That is, a petitioner must prove that his lawyer, the prosecutor, the court, or jury made a mistake or did something wrong. Moreover, innocence is **not** considered a viable claim. SB 819 will make it clear that relief can be obtained: 1) based on innocence; 2) without assigning fault; 3) based on important considerations such as changed circumstances, new evidence, or changes in sentencing structure or beliefs, or when it is generally in the interests of justice.

While we strongly support SB 819 as a first step, it is important to bear in mind that currently incarcerated individuals who will realistically be able to avail themselves of this bill will likely be limited to those convicted in only a few jurisdictions because it requires agreement from the district attorney. OIP's experience, and the stated positions of many district attorneys on this bill, is that while DA agreement is often sought in wrongful conviction cases, it is rarely forthcoming. Indeed, even after judicial exoneration, in Oregon and across the country, we have seen numerous cases where a DA refuses to acknowledge that an individual is innocent.



While SB 819 would be a significant improvement and greatly benefit currently incarcerated Oregonians, the Oregon Innocence Project hopes to see additional legislation in subsequent sessions to address cases where cooperation of a District Attorney cannot be obtained.

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.

Additionally, for individuals in jurisdictions where the district attorney refuses to utilize SB 819, there would be 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.

In conclusion, the Oregon Innocence Project **strongly urges the Committee to vote in favor of SB 819** and hopes to see additional legislation addressing the above-mentioned concerns in subsequent sessions.

Thank you for your consideration. I will be happy to answer your questions.