



SB 819 APPLICATION INFORMATION SHEET

This sheet has information about the SB 819 Application and petition process with the Multnomah County District Attorney Office's Justice Integrity Unit (JIU). It also has definitions of terms. Terms are underlined and bolded in the section below. Please note that the JIU can only accept applicants whose convictions are from Multnomah County.

PROCESS

The JIU begins accepting SB 819 Applications for screening and review on December 1, 2021. SB 819 becomes effective on January 1, 2022. There are 3 types of SB 819 Applications. The 3 types are explained more in the following pages.

What does the JIU do with an SB 819 application after the applicant submits it?

Step 1: The JIU does an initial screening to decide whether the JIU will accept review of the case.

Step 2: The JIU either issues an acceptance of review or issues a rejection. There are three kinds of rejections: tentative rejections, conviction specific final rejections, and final rejections. In all cases, the applicant will be notified about the JIU's decision in writing.

Step 3: If review is accepted, the JIU will begin their review process to decide whether the JIU will agree to complete a Joint Petition for Reconsideration, and if they do, what relief is appropriate. The review process includes investigating any claims and carefully considering information in the application in-depth. It can involve looking at all court documents the JIU has access to, looking through all files within the possession of MCDA, and looking at other lawyer's files if the applicant has given their consent for the JIU to look at their lawyers' files. Depending on the type of SB 819 Application, the review process can take a long time.

Step 4: Once the review has ended, the JIU will contact the applicant in writing to tell the applicant either that the JIU will decline to jointly petition, or that the JIU will agree to jointly petition.

Step 5: If the JIU agrees to jointly petition, the JIU will prepare a Joint Petition for Reconsideration together with the applicant, and file the Petition with the Court. The JIU and the applicant will attend a court hearing where the Judge will determine whether to grant the joint petition for reconsideration.

TERMS

SB 819 Application: This is the special application forms that were created by the JIU for SB 819. There are 3 types of SB 819 Applications:

1. SB 819 Application- Actual Innocence.
2. SB 819 Application- Excessive Sentencing.
3. SB 819 Application- Collateral Consequences.

The SB 819 Applications may only be filled out and submitted by a convicted person or their designee.



JIU: Multnomah County District Attorney Justice Integrity Unit. This is the unit that handles SB 819 Applications for convictions from Multnomah County.

SB 819: Refers to the law known as "Senate Bill 819" which was passed in the 2021 legislative session. This law allows for a District Attorney, along with a convicted person, to petition a court to reconsider a previously imposed conviction or sentence, depending on the type of the conviction and certain other criteria. This law becomes effective on January 1, 2022.

Applicant: Refers to the individual who has the conviction(s) and is applying for the JIU to review their conviction(s), or to the designee that the convicted person has allowed to fill out their application for them.

Screening: The initial step by the JIU after they get an application. The screening involves reading through the application to ensure that the individual is eligible for relief and that there are one or more avenues of investigation available to the JIU in order to complete a successful review. The screening results in a determination of either tentative rejection, final rejection, or acceptance of review.

Tentative rejection: This outcome means that the JIU is, for the time being, rejecting the SB 819 Application. The applicant may apply again if they address the reason for the rejection as stated in the tentative rejection letter. This may occur if an application was not filled out all the way, or if an applicant has declined to authorize release of attorney files that the JIU needs in order to have enough information to review.

Final rejection: This outcome means the JIU is rejecting the SB 819 Application and that the JIU will not consider any new SB 819 application from the applicant for a period of at least 2 years and until circumstances have changed. Changed circumstances include a different theory of relief, new information, changes in the eligibility criteria set forth by the JIU, or the fulfillment of other criteria.

Conviction Specific Final rejection: This outcome means the JIU is rejecting the SB 819 Application with regard to a particular conviction in the application. The result of this type of rejection is that the JIU will not consider any further SB 819 applications about that conviction. This type of rejection only happens if the conviction the person applied about is one that the JIU can't legally consider. The applicant may still apply for other convictions, if they meet the specified criteria.

Acceptance of review: This outcome means the JIU has screened the application and determined that they will accept the SB 819 Application and complete a full review of the claims raised in the application. A letter expressing acceptance of review by the JIU triggers a review process, and does not yet mean the JIU has made a final decision. After the review is over, the JIU will write to tell the applicant whether they will agree to submit a joint petition for reconsideration.

Joint petition for reconsideration: This refers to the legal documents that are submitted to the Court by the JIU and the applicant to request relief under SB 819 (2021). The joint petition for reconsideration is prepared after the JIU has finished their screening and full review and determined that they will seek relief for the claims raised by the applicant. The District Attorney makes the final call on whether the JIU agrees to jointly petition with the applicant.



SB 819 APPLICATION CRITERIA AND TYPES

Main Criteria:

The law under SB 819 only allows the Multnomah County District Attorney Office's JIU to consider certain kinds of convictions. Under the law, the JIU can only jointly petition with an applicant if:

- The applicant's conviction(s) come from Multnomah County,
- The applicant's conviction(s) is/are not expungeable under ORS 137.225,
- The applicant's conviction(s) was/were sentenced as a felony/felonies, and
- The applicant's conviction was not aggravated murder.

If any of those conditions are not met, the JIU can't help the applicant. The applicant will receive a rejection letter from the JIU.

1. SB 819 Application - *Actual Innocence*

An actual innocence claim is one in which an individual asserts that they are innocent of the crime.

Beginning on December 1, 2021 The JIU will screen and review applications, received on a rolling basis, requesting a joint petition for reconsideration under SB 819 (2021) based on actual innocence. Until further notice and subject to the discretion of the District Attorney, the JIU will accept for review actual innocence applications that, in addition to meeting the main criteria stated above, meet the following criteria:

- The JIU can identify one or more avenues of investigation that have the potential to substantiate the applicant's claim(s) of innocence.

2. SB 819 Application - *Excessive Sentencing*:

An excessive sentencing claim is one that alleges that the sentence of incarceration in the case was excessive and that their incarceration no longer serves the interests of justice. This type of application should be filled out by applicants who are still incarcerated.

Beginning on December 1, 2021, and subject to the discretion of the District Attorney, the JIU will screen and review applications of this type where the main criteria are met and the following criteria are met:

- The applicant is currently incarcerated,
- The applicant has served at least 5 years of the term of incarceration on their sentence,
- The conviction was not part of a global plea deal with multiple counties,
- The applicant's conviction(s) is/are not subject to ORS 137.690 or ORS 137.719,



And any of the following statements are true:

- The applicant was sentenced as a juvenile, they have a term of incarceration remaining on their sentence, are approaching age 25 and will be transferred to adult prison; or
- The applicant committed the crime when they were under 18; or
- The applicant is over the age of 60, or has a terminal or debilitating illness (suffering from an incurable condition that is likely to lead to death within two years or suffering from an illness that requires chronic assistance with a necessary daily function, such as eating, breathing, toileting, walking, or bathing), or is currently on hospice care; or
- The applicant's conviction(s) is/are for non-person crime(s) and the sentence or sentences are longer than 10 years in total; or
- The applicant's conviction(s) is/are for person crime(s) and the sentence or sentences are longer than 16 years in total.

What the JIU considers when they review an SB 819 Application-Excessive Sentencing:

The JIU will consider the statutory factors under Senate Bill 819 (2021) when determining whether jointly to petition for reconsideration. Those factors include:

- The person's disciplinary record and record of rehabilitation;
- The person's age;
- Any evidence of diminished physical or mental condition;
- Time served;
- Any evidence of changed circumstances;
- Impact on the victim's safety of granting the petition;
- Other information that may show why continued incarceration no longer advances the interests of justice.

The JIU will also consider whether, based on data concerning average comparable sentences, the sentence was unjustifiably disproportionate to the seriousness of the person's conduct or the offense, whether the person has demonstrated substantial rehabilitation, the perspective of victims involved in the case, and whether the person's continued incarceration still meaningfully promotes public safety.

3. SB 819 Application - *Collateral Consequences*:

A collateral consequence claim is one where a person with a conviction is requesting relief in the form of getting their conviction off their record or modifying their conviction in some way. This type of application should only be filled out by applicants who have fully completed their sentence, including all post-prison supervision or probation. An applicant must demonstrate that



there is a manifest and particularized hardship associated with their conviction, and that they are substantially rehabilitated and present low risk for future criminality.

Beginning December 1, 2021, and subject to the discretion of the District Attorney, the JIU will screen and review applications of this type where the main criteria are met, and the following criteria are met:

- The applicant's conviction(s) is/are not registerable sex offenses and did not involve domestic violence, unless the domestic violence conviction(s) was/were committed while the applicant was a juvenile and did not involve an intimate partner,
- The applicant demonstrates substantial rehabilitation and presents as a low risk for further criminality, and
- The applicant demonstrates that their conviction causes manifest and particularized hardship.

What the JIU considers when they review an SB 819 Application-Collateral Consequences:

An applicant must demonstrate substantial rehabilitation and low risk for future criminality, and must show that there is a particularized hardship associated with their conviction.

"Substantial rehabilitation" can include any action taken by the applicant which tends to demonstrate a deliberate and intentional attempt to address the factors which motivated the underlying criminal act. "Low risk for further criminality" suggests that the petitioner has engaged in productive and pro-social activity which suggests that they are unlikely to engage in future criminal acts. The factors to be weighted include but are not limited to:

- Completion or participation in courses of treatment, including substance abuse, mental health, anger management and other treatment.
- Full payment of any financial obligations, or demonstrated efforts to pay financial obligations.
- Rigorous compliance with all court-ordered conditions.
- Evidence of pro-social community involvement, broadly defined.
- Evidence of stable employment.
- Academic or professional certifications or accomplishments, or academic efforts.
- No subsequent criminal convictions. While the fact of an arrest or criminal conviction is not categorically disqualifying, it will be weighted against the petitioner in most cases.

"Manifest and particularized hardship" means a consequence of conviction which is more severe than a typical similarly situated individual. This can include significant implications to housing, professional licensure, professional licensing, continued employment or the ability to receive necessary medical treatment or therapy.