

SENTENCING REFORM

Interim Study IS-2021-13, Senate Public Safety
Requested by Senator Dave Rader

Sentencing Reform in Oklahoma

Ryan Gentzler
Research Director
October 5th, 2021

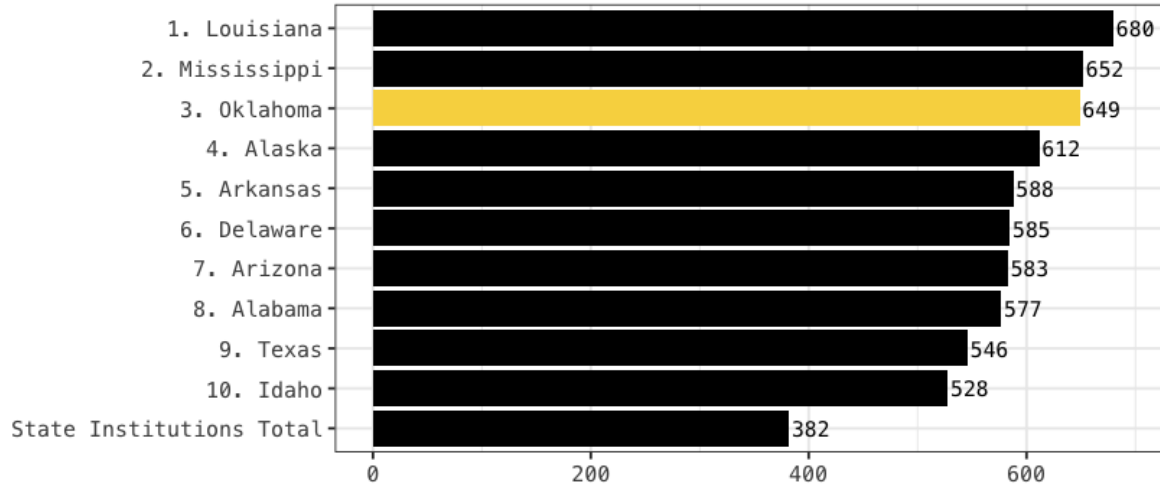


OKPOLICY.ORG
Oklahoma Policy Institute

Oklahoma remains third nationally in imprisonment

Oklahoma has the third highest imprisonment rate in the country

Number of people imprisoned per 100k, 2019



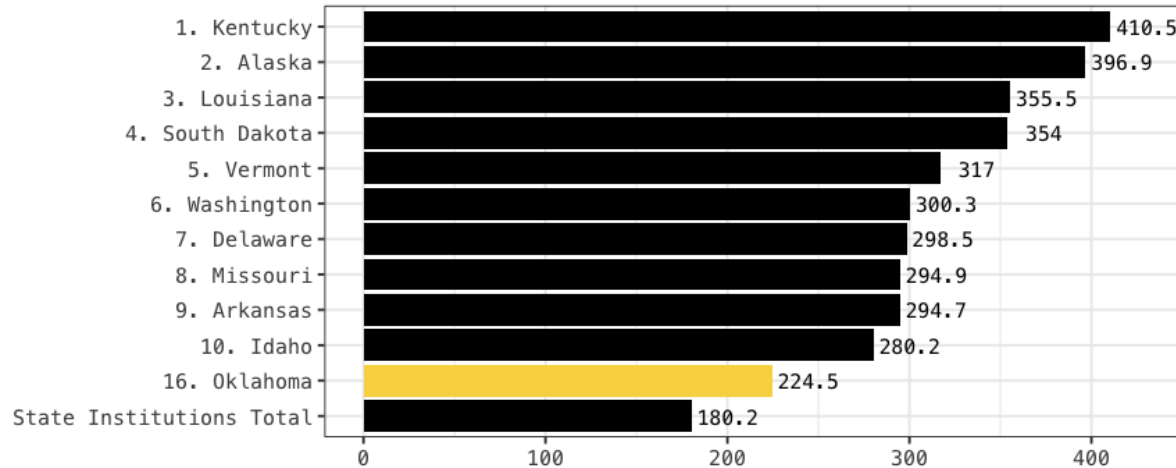
Source: Bureau of Justice Statistics, Total Jurisdiction Population 2019



Oklahoma is close to average in rate of admissions to prison each year

Oklahoma ranks 16th in prison admissions over the last 10 years

Number of prison admissions per 100k population



Source: Bureau of Justice Statistics, Total Admissions 2010-2019



**How can Oklahoma be ranked #16 in
prison admissions but #3 in
incarceration?**

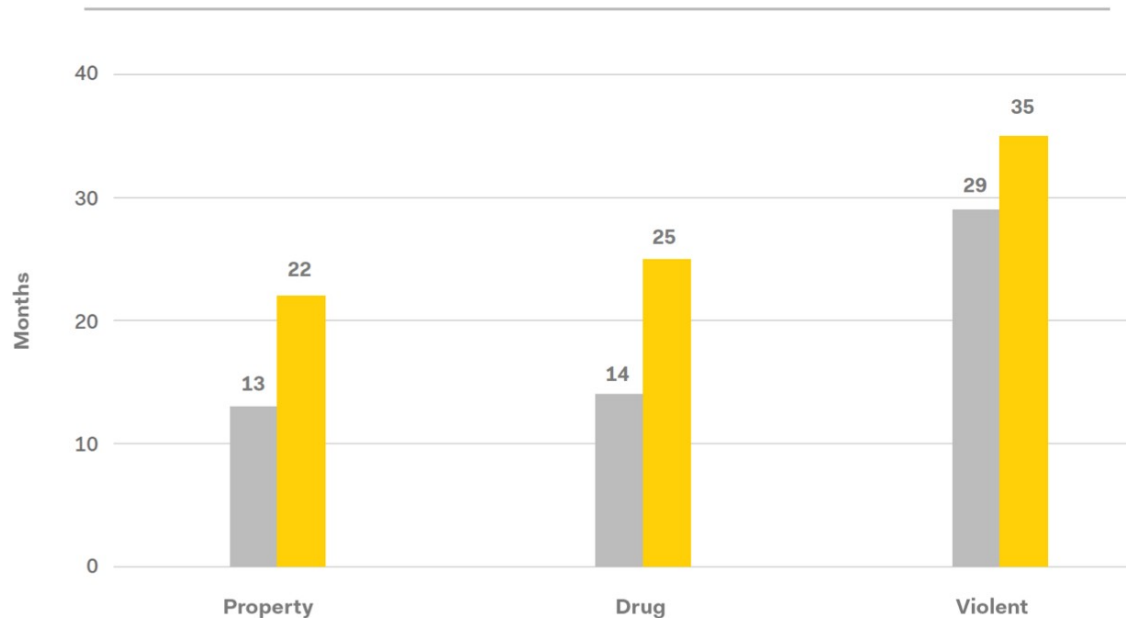


Differences in sentence lengths mean fewer people stay in prison longer than in other states

Figure 1

PEOPLE IN OKLAHOMA STAY IN PRISON FAR LONGER THAN THE NATIONAL AVERAGE FOR DRUG AND PROPERTY CRIMES

Median Length of Stay, Oklahoma Department of Corrections, FY 2018 vs National Average, 2016

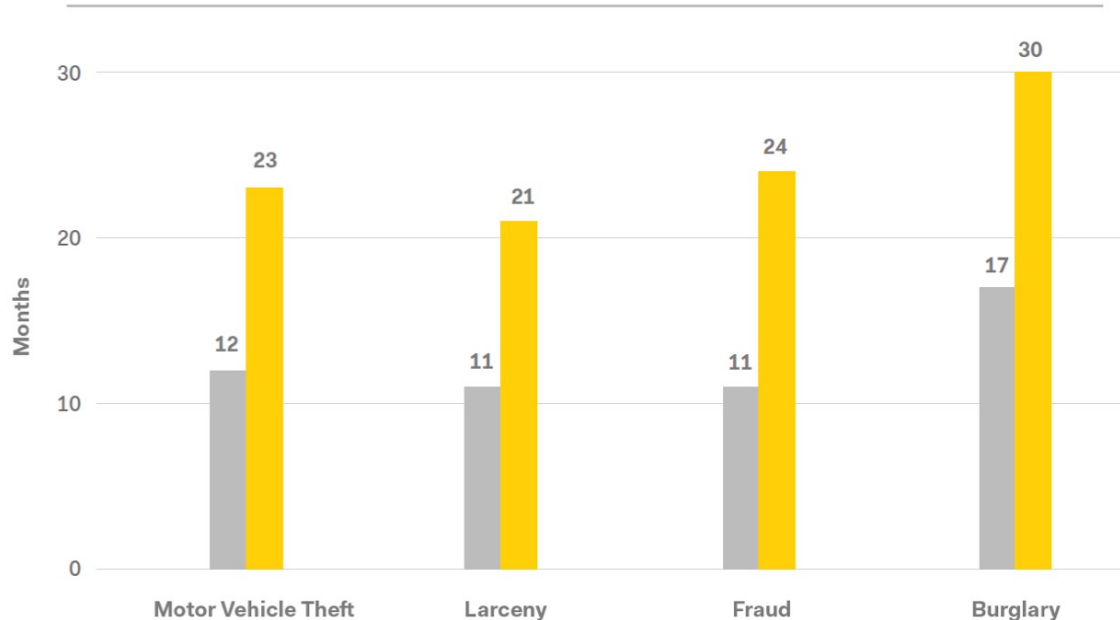


Oklahomans serve nearly twice as long for common property crimes

Figure 2

OKLAHOMANS CONVICTED OF COMMON PROPERTY CRIMES SPEND NEARLY 100 PERCENT LONGER IN PRISON THAN THE NATIONAL AVERAGE

Median Length of Stay, Oklahoma Department of Corrections, FY 2018 vs National Average



Oklahoma's criminal code needs an overhaul, but holding our prison population neutral maintains our needlessly punitive and expensive status quo.





Accurately Predicting Impact

Felicity Rose, Director of Research and Policy, Criminal Justice Reform - [FWD.us](https://www.fwd.us)

Methodology - Framework

- We use a baseline that assumes that prison admissions will return to their pre-pandemic levels but there will not be a surge in admissions because of a backlog of cases.
- We adjust based on the proposed changes to time served requirements and maximum sentence lengths for the 50 most common offenses (covering 90% of prison admissions), by offense.
 - Our analysis is based on the March recommendations, there have been some minor changes since then.
- We then compare how many people are projected to be in prison on a given date in the baseline or with the recommendations in effect.

Methodology - Assumptions

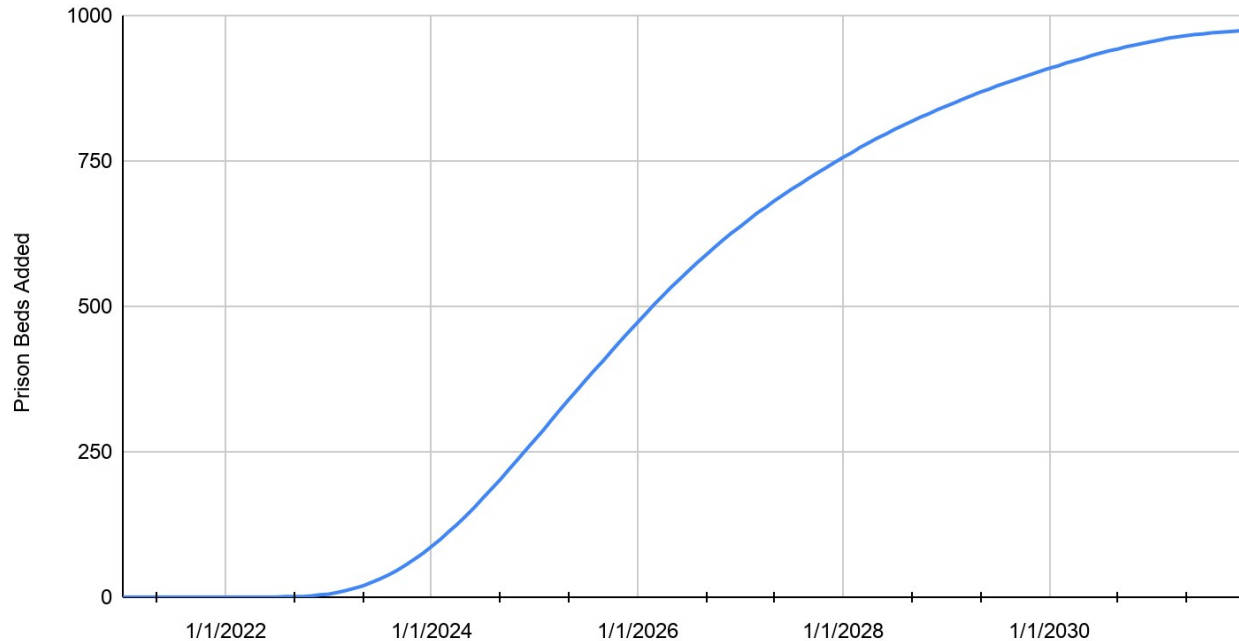
- How do we adjust based on proposed changes to time served requirements and maximum sentence lengths?
 - Using individuals who served a sentence and were released for only 1 count, we calculate current percentage of sentence served. (This is because the data we have does not include total sentence, only the longest sentence, so we can only accurately calculate what percent is being served now for people with a single sentence.) We then adjust time served upward or downward based on the new requirements.
 - For example, if an individual served a sentence for PWID and served 30% of their sentence behind bars, and has 2 priors, this person would be adjusted to serve 40% under the new proposal.
 - The change for individuals with 1 count was then extrapolated to other individuals in the data using the percentage of people with 1 count who are projected to be impacted as well as the size of the impact.

Methodology - Conservative Assumptions

- For all low-level property and theft offenses impacted by value amounts, we assume people were in the lowest category.
- We adjust sentences downward for people who currently have habitual sentences above the proposed maximum sentence lengths (for example current habitual is life, new habitual is 10 years, we adjust people over 10 years down to 10 years).
- We do not project any impact on admission numbers for newly added mandatory minimums because current mandatory minimums can be suspended.
- We project no change in sentencing behaviors due to time served requirements.

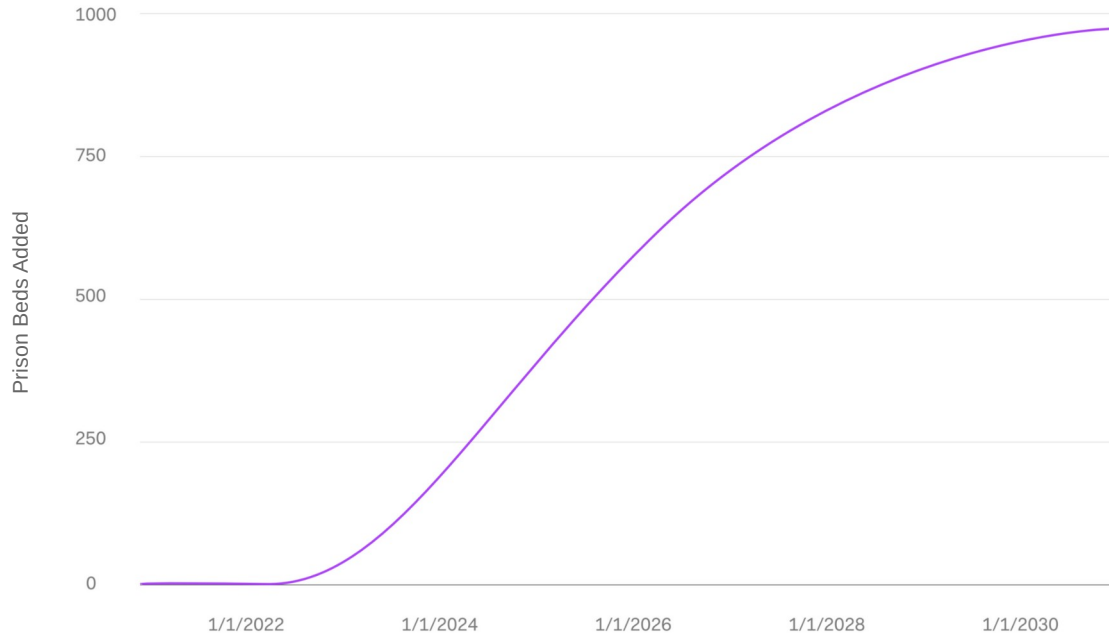
Prison Population Findings

Oklahoma's prison population will increase by nearly 1,000 over the next 10 years under the Council's proposal.



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Differences with DOC Analysis

- The DOC analysis looked at six crimes covering approximately 25% of prison admissions, ours looked at the top 50 most common crimes covering 90% of admissions.
- For those six crimes, the DOC analysis used average adjustments, our analysis adjusted each individual and then aggregated up to a total.
- The DOC analysis did not account for recent sentencing changes, and therefore overestimated the impact of some of the sentencing changes proposed. We adjusted for recent sentencing changes in the baseline.

KEY PRINCIPLES OF SENTENCING REFORM

Sarah Edwards, Of Counsel - Hartzog Conger Cason

KEY PRINCIPLES OF SENTENCING REFORM

- Sentence Lengths and Length of Stay in Prison Should Be Reduced
- Sentence Ranges Should Not Be Enhanced Beyond the Range Maximum
- Mandatory Minimum Sentences Should Be Eliminated
- People Should Be Able to Earn Time Toward Release
- Prison Admissions Should Be Reduced by Prioritizing Diversion, Supervision, and Rehabilitation

RECENT EXAMPLES OF SENTENCING REFORM IN OTHER STATES

UTAH

-Projected to avoid all prison growth and save the state over \$500 million once fully implemented

-3 class system (0-5 years, 0-15 years, indeterminate (0-life))

-Reduced penalties for drug crimes

-Shortened ranges on lower half of the sentencing grid (low to mid level felonies)

COMMON SENSE TWEAKS TO IMPROVE THE CURRENT PLAN

Colleen McCarty, Deputy Director - Oklahomans for Criminal Justice Reform

RECENT EXAMPLES OF SENTENCING REFORM IN OTHER STATES

KANSAS

- Sentencing Commission

- Evaluates criminal felonies and misdemeanors every year

- Does prison population projections

- Kansas has similar population and geographic makeup, but 13,340 fewer people in prison than Oklahoma (KS = 8,556 on July 1st, 2021 vs. OK = 21,340 on Sept. 27 2021)

Violent/Nonviolent → Person/Nonperson

Under current Oklahoma law, we have a list of “violent” crimes - however there is no criteria or definition for adding a crime to the violent list. In order to have a sentencing matrix that delivers accurate and consistent punishments, operative definitions must be in place. This allows standardization.

Recommendation: *Repeal 57 O.S. 571 and create a definition/list of “Person” and “Non-Person” Crimes. This will eliminate the subjective nature of adding crimes to the violent list.*

Sample Definition of “Person Crimes:”

Crimes against Persons means a crime that has as an element the use, attempted use, or threatened use of physical force or other abuse of a person and includes, but is not limited to, homicide; assault; kidnapping; false imprisonment; reckless endangerment; robbery; rape; sexual assault, molestation, exploitation, contact, or prostitution; and other sexual offenses.

Alternative Grid - Recommendation (1 of 2)

	Non-Drug Offenses											
	3 + person felonies in criminal history	2 person felonies in criminal history	1 person felony & 1 nonperson felony in criminal history	1 person felony in criminal history	3+ Nonperson Felonies in criminal history	2 Nonperson Felonies in criminal history	1 Nonperson Felony in criminal history	2+ Misd. in criminal history	No Record or 1 Misd. in criminal history	Max Fines		Presumptive Probation
Y	30-LIFE/LWOP/Death (85%)	30-LIFE/LWOP/Death (85%)	30-LIFE/LWOP/Death (85%)	30-LIFE/LWOP/Death (85%)	25-LIFE (85%)	25-45 (85%)	25-45 (85%)	25-45 (85%)	25-45 (85%)	\$10,000.00		Border Box
A1	10-45 (65%)	10-45 (65%)	10-45 (65%)	10-45 (65%)	5-45 (65%)	5-45 (65%)	5-45 (65%)	5-45 (65%)	5-45 (65%)	\$9,000.00		Presumptive Detention
A2	5-40 (60%)	5-40 (60%)	5-40 (60%)	5-40 (60%)	0-40 (60%)	0-40 (60%)	0-40 (60%)	0-40 (60%)	0-40 (60%)	\$8,000.00		
A3	2-40 (55%)	2-40 (55%)	2-40 (55%)	2-40 (55%)	0-40 (55%)	0-40 (55%)	0-40 (55%)	0-40 (55%)	0-40 (55%)	\$7,000.00		
B1	0-20 (50%)	0-20 (30%)	0-20 (25%)	0-20 (22%)	0-20	0-20	0-20	0-20	0-20	\$6,000.00		
B2	0-20 (45%)	0-20 (30%)	0-20 (25%)	0-20 (22%)	0-20	0-20	0-20	0-20	0-20	\$5,000.00		
B3	0-15 (45%)	0-15 (30%)	0-15 (25%)	0-15 (22%)	0-15	0-15	0-15	0-15	0-15	\$4,000.00		
B4	0-10 (25%)	0-10 (22%)	0-10 (20%)	0-10 (17%)	0-10	0-10	0-10	0-10	0-10	\$3,000.00		
B5	0-5 (20%)	0-5 (18%)	0-5 (15%)	0-5 (12%)	0-5	0-5	0-5	0-5	0-5	\$2,000.00		
B6	0-2 (18%)	0-2 (16%)	0-2 (14%)	0-2 (12%)	0-2	0-2	0-2	0-2	0-2	\$1,000.00		
C1	0-10	0-10	0-10	0-10	0-10	0-10	0-10	0-10	0-10	\$750.00		
C2	0-7	0-7	0-7	0-7	0-7	0-7	0-7	0-7	0-7	\$500.00		
D1	0-5	0-5	0-5	0-5	0-5	0-5	0-5	0-5	0-5	\$250.00		
D2	0-2	0-2	0-2	0-2	0-2	0-2	0-2	0-2	0-2	\$200.00		
D3	0-2	0-2	0-2	0-2	0-2	0-2	0-2	0-2	0-2	\$100.00		



**AMERICANS FOR
PROSPERITY.**

OKLAHOMA

FINANCIAL IMPACTS OF INCARCERATION AND SENTENCING REFORM

Adam Maxey, Deputy State Director - Americans for Prosperity

CURRENT COSTS OF INCARCERATION & FAMILY SEPARATION

- FY 2022 Appropriation for Department of Corrections **\$544,278,904**
- The annual cost of incarcerating someone in the state's prisons ranges from **\$20,947** to **\$39,482** depending on the security level of the facility
- The annual cost of supervising someone on probation or parole in the state is only about **\$1,000**
- The annual cost to the state for a child in DHS Custody is roughly **\$20,000**

GUARDING AGAINST SYMBOLISM OVER SUBSTANCE

-A whole body of research over recent decades reveals that imposing harsher sentences for criminal acts does not deter individuals who wish to do so from engaging in criminal. The deterrent function of any form of punishment in our justice system is largely a function of the *certainty* for punishment not the severity of the punishment

-There is also a significant amount of research exploring and proving that people “age out” of crime, with their likelihood of criminal conduct declining rapidly as they enter their mid- to late twenties

-Unnecessary extensions to prison sentences through mandatory minimums that are based upon preventing crime rather than proportional accountability do not significantly improve public safety. These only undermine the ability for capable and intelligent judges to look at the specific facts of the case and determine the punishment justified by those facts