



Oklahoma Justice Reform Task Force

Final Report

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Executive Summary

Since 2010, 31 states across the country have decreased imprisonment rates while reducing crime rates. Yet Oklahoma's prison population has grown by nine percent in the last five years, reaching 28,580 inmates as of June 2016. As a result of the large and growing inmate population, Oklahoma has the second highest imprisonment rate in the country, 78 percent higher than the national average in 2015. More concerning, since 1991, Oklahoma has had the highest female imprisonment rate in the country. These trends have burdened state taxpayers with extraordinary costs, with Oklahoma spending over half a billion dollars on corrections in FY2015.

At this rate, Oklahoma's prison population is projected to grow 25 percent or 7,218 inmates by 2026. One-quarter of this overall growth will be driven by increases in the female prison population, which is projected to grow by 60 percent over the next ten years. The projected prison population growth is estimated to cost the state at least \$1.2 billion in capital expenditures to build or lease three new prisons and an additional \$700 million in operating costs over ten years.

Seeking a better public safety return on corrections spending, state leaders from all three branches of government joined together in May of 2016 to request technical assistance through the Justice Reinvestment Initiative, a public-private partnership between the U.S. Department of Justice, Bureau of Justice Assistance, and The Pew Charitable Trusts (Pew), to be provided by the Crime and Justice Institute (CJI). Governor Fallin issued Executive Order 2016-24 in July of 2016, establishing the bi-partisan, inter-branch Oklahoma Justice Reform Task Force (Task Force) and charging it with "develop[ing] comprehensive criminal justice and corrections reform policy recommendations designed to alleviate prison overcrowding and reduce Oklahoma's incarceration rate while improving public safety."

Over a six-month period, the Task Force analyzed the state's sentencing, corrections, and community supervision data and reviewed the latest research on reducing recidivism and improving public safety. The Task Force found that:

- Seventy-five percent of people admitted to prison were sentenced for nonviolent crimes; over half of individuals sentenced to prison for nonviolent offenses have one or no prior felony convictions, and 80 percent have no history of violent crimes. Research demonstrates that incarceration is no more effective at reducing recidivism than alternatives to prison and can actually increase the recidivism rates of lower-level individuals. Despite the risk of increasing recidivism for lower-level, non-violent offences, Oklahoma uses prison over alternatives more often than other states and has focused many of its prison beds on those sentenced for nonviolent crimes with limited criminal history.
- Sentences for nonviolent offenders in Oklahoma are longer compared to other states, and release options are underutilized and/or delayed. Despite research demonstrating that longer prison terms do not reduce recidivism more than shorter prison terms, less than 10 percent of the individuals released from prison are paroled, and drug and property offenders are released on average nine months past their parole eligibility date.

Based on this analysis and the directive from Governor Fallin, the Task Force developed a comprehensive, data-driven, evidence-based package of 27 policy recommendations, supported by a substantial majority of Task Force members, and specifically aimed at improving public safety by holding offenders accountable and reducing recidivism. These policies, if signed into law, would avert all of the projected prison population growth, and ultimately reduce the current prison population by seven percent, saving \$1.9 billion in prison costs over the next ten years.

Oklahoma's Justice Reform Process

Governor Mary Fallin initiated criminal justice reform during the 2016 legislative session. Four bills supported by the governor and the legislative leadership passed with overwhelming majorities in the House of Representatives and the Senate, successfully making changes to drug and property offenses and generating the momentum for greater reform efforts.

In July of 2016, Governor Fallin issued Executive Order 2016-24, establishing the bi-partisan, inter-branch Oklahoma Justice Reform Task Force. The Task Force was charged with:

1. Developing comprehensive criminal justice and corrections reform policy;
2. Identifying more cost-effective, evidence-based sentencing and supervision practices aimed at holding offenders more accountable and reducing recidivism;
3. Estimating any resulting savings from the policy recommendations; and
4. Identifying opportunities to reinvest the resulting savings into policies shown to increase public safety, reduce recidivism, and improve offender reentry outcomes.

The Task Force, comprised of 21 stakeholders and their designees, including legislators, judges, district attorneys, law enforcement officials, the Director of the Department of Corrections, Board of Corrections members, the Commissioner of the Department of Mental Health and Substance Abuse Services, a victims' advocate, Oklahoma County's Chief Public Defender, medical professionals, and business leaders conducted a comprehensive analysis of Oklahoma's criminal justice system, reviewed the latest research on the most effective strategies to reduce recidivism and improve public safety, and developed recommendations in accordance with the governor's executive order.

Beginning in the summer of 2016, and extending through the beginning of 2017, the full Task Force met nine times. To provide an opportunity for further analysis and discussion of specific policy areas, Task Force members worked in three subgroups focusing on sentencing policies, supervision and treatment practices, and release and reentry policies. Each subgroup crafted recommendations within their criminal justice policy area designed to meet the governor's charge to the Task Force. Subgroups reported their policy recommendations to the larger Task Force for consideration.

During the Task Force process, in November 2016, Oklahoma voters continued the momentum for criminal justice reform by passing State Questions 780 and 781. These ballot measures required significant change to drug possession crimes and reallocated resources from prison beds to community drug treatment, thereby establishing a different response to drug-related conduct, with regard to low-level drug offenses. In this environment, the Task Force sought to expand upon the shift away from long prison sentences and toward proven risk-reduction strategies intended to improve public safety, improve health and family outcomes, and use taxpayer resources more effectively.

Throughout the process, in addition to receiving input and advice from prosecutors, defense attorneys, behavioral health experts, and other criminal justice stakeholders, Task Force members held three roundtable discussions with victims, survivors, and victim advocates including members of the Seminole Nation and Cherokee Nation, and Oklahoma City victim advocates, to identify key priorities for victims and victims' advocates.

National Picture

While Oklahoma's imprisonment rate is the second highest in the nation, Oklahoma's challenges with long-term prison growth are not unique. Across the country, state prison populations expanded rapidly starting in the early 1970s, and state officials have spent an increasing share of taxpayer dollars to keep pace with soaring prison costs. From the mid-1980s to the mid-2000s, spending on corrections was the second-fastest growing state budget category, behind only Medicaid.¹ Nationally, in 2015, 1 in 15 state general fund dollars went to corrections.²

However, in recent years many states have successfully taken steps to curb their prison population growth while holding public safety paramount. After 38 years of uninterrupted growth, the national prison population declined 5.5 percent between 2009 and 2015.³

The national crime rate has been falling since the early 1990s and is now at its lowest level since 1968.⁴ However, the strongest research credits prison growth with at most one-quarter to one-third of the crime drop since its peak in the early 1990s. Other major factors behind the crime decline include better policing, changing demographics, increased private security, and improved theft prevention technologies.⁵ In short, the increased use of incarceration had an important but minor role in improved public safety. Additionally, there is general consensus among experts that, as states have incarcerated higher numbers of lower-level offenders and held them for longer periods of time, the country has passed the point of diminishing returns, meaning that the additional use of prison has little if any crime reduction effect today.⁶

Instead, states are recognizing the value of using research and implementing best practices to address crime and reduce recidivism. Since 2010, 31 states have reduced both their imprisonment and crime rates.⁷

Dramatic reforms in law-and-order states like Texas and increasingly supportive public opinion⁸ have combined with state budget pressures to create a growing national conversation that puts prison spending under greater scrutiny than ever before. For the better part of the past four decades, the most common question that policymakers have asked about their state corrections budgets was, "How many more prisons do we need?" Today, state leaders from both parties are asking a much tougher question: "How do we get taxpayers a better public safety return on their corrections dollars?"

Many states have adopted policies to rein in the size and cost of their corrections systems through a "justice reinvestment" strategy. Alaska, Georgia, Kentucky, Mississippi, North Carolina, Oregon, Texas, Utah, and many others have implemented reforms to protect public safety and control corrections costs. These states revised their sentencing and corrections policies to focus state prison beds on violent and career offenders and then reinvested a portion of the savings from averted prison growth into more cost-effective strategies to reduce recidivism.

In 2011, for example, policymakers in Georgia faced a projected eight percent increase in the prison population over the next five years, at a cost of \$264 million. Rather than spend additional taxpayer dollars on prisons, Georgia's leaders looked for more cost-effective solutions. The state legislature unanimously passed a set of reforms that controlled prison growth through changes to drug and property offense statutes and improved public safety by investing in drug and mental health courts and treatment.⁹ Between 2012 and 2015, Georgia's crime rate fell 10 percent and the prison population declined 5.9 percent, giving taxpayers better public safety at a lower cost.¹⁰

In these and other states, working groups have focused on research on how to improve public safety and have integrated the perspectives of the three branches of government and key system stakeholders. This data-driven, inclusive process resulted in wide-ranging innovations to the laws and policies that govern who goes to prison, how long they stay, and how they return to their communities.

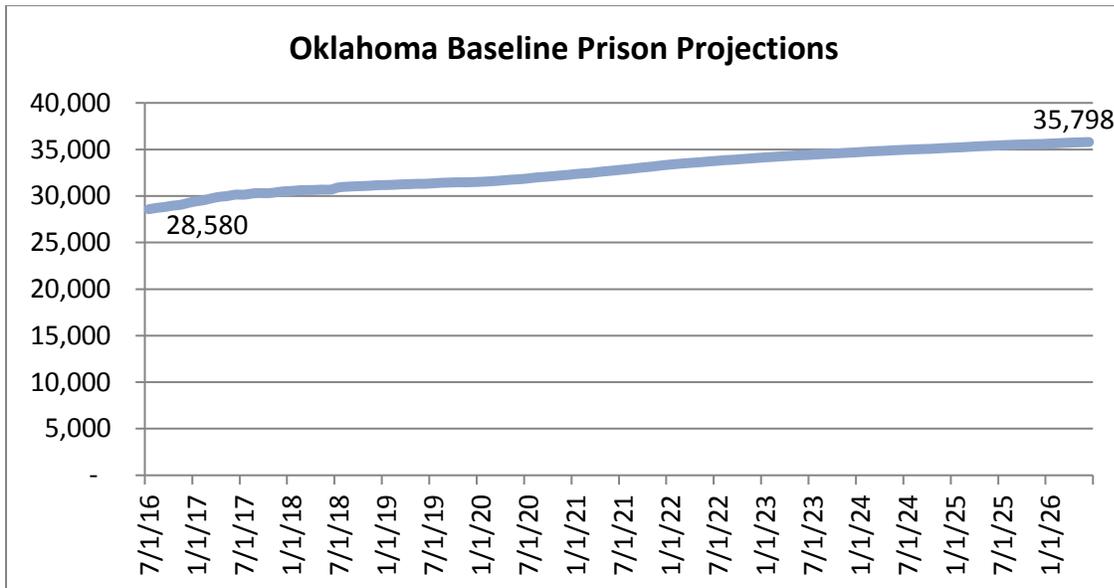
Key Findings in Oklahoma’s Correctional System

To evaluate Oklahoma’s criminal justice system, the Task Force reviewed the research on what works to change criminal offending behavior and safely reduce prison populations, and assessed Oklahoma’s practices and policies against these standards.

Oklahoma’s prison population has grown by nine percent since 2011. It has the second highest imprisonment rate in the country and the highest for incarcerated women, the latter being a distinction the state has held since 1991. While prison populations across the country have stabilized or declined, Oklahoma’s has risen. The female prison population alone grew 30 percent between 2011 and 2016. In 2015 Oklahoma incarcerated more than two and a half times as many women per capita as other states.

All this growth has left Oklahoma’s prisons overcrowded and unsafe. There are currently more than 2,300 temporary beds in use in the prison system, including a growing county jail back-up, and an additional 7,800 expensive contract beds being used to house the current population. Even with the reforms advanced in the 2016 session and the defelonization of drug possession through State Question 780, this growth is expected to continue, costing the state over \$1.9 billion in the next 10 years unless further changes are made.

Figure 1. Oklahoma Prison Population Projected to Grow 25 Percent in the Next Decade



Source: Projection by CJI, Using Data from the Oklahoma Department of Corrections

For many offenders, incarceration is less effective at reducing recidivism than non-custodial sanctions

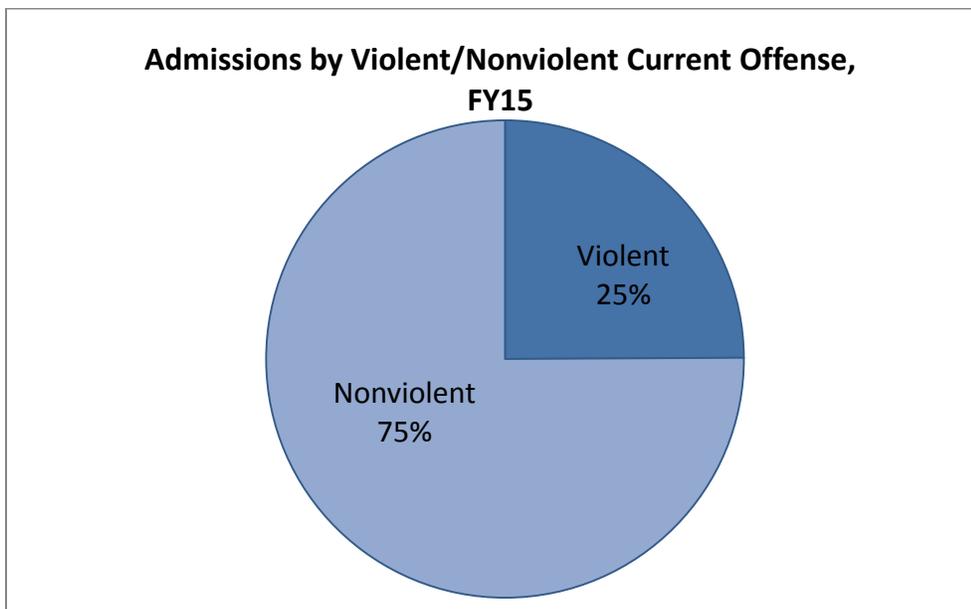
The Task Force examined the value of prison sentences compared to non-custodial sanctions such as drug court, probation, or electronic monitoring. Researchers have studied this question by matching samples of individuals sent to prison with those sent to non-custodial sanctions and have consistently found that prison either does not impact or actually increases re-arrest or re-conviction rates, both in short-term and in long-term analyses, even when controlling for individuals' education, employment, drug abuse status, and current offense.¹¹

The crime-producing effect of prison seems to be concentrated among low-level and first-time offenders.¹² Research around the “schools of crime” theory suggests that for many types of nonviolent offenders, the negative impacts of incarceration outweigh the positive: that is, sending people to prison may cause them to commit more crimes upon release. Specific studies of drug offenders, technical violators, and first-time offenders all show this negative impact.¹³

Compared to other states, Oklahoma uses prison more frequently than state-run community supervision: in Oklahoma, 54 percent of state felony offenders were incarcerated and 46 percent were on probation and parole in 2015, compared to 31 percent in prison and 69 percent on community supervision nationally.¹⁴

In examining the use of incarceration as a post-conviction sanction in Oklahoma, the Task Force focused closely on the number of individuals entering prison for statutorily defined nonviolent offenses. Between FY2011 and FY2015, prison admissions grew 20 percent, with much of that growth driven by nonviolent offenders sentenced directly to prison. Three out of every four people entering prison in Oklahoma were sentenced for nonviolent crimes. Fifty-six percent of nonviolent offenders sentenced to prison had little or no serious criminal history.

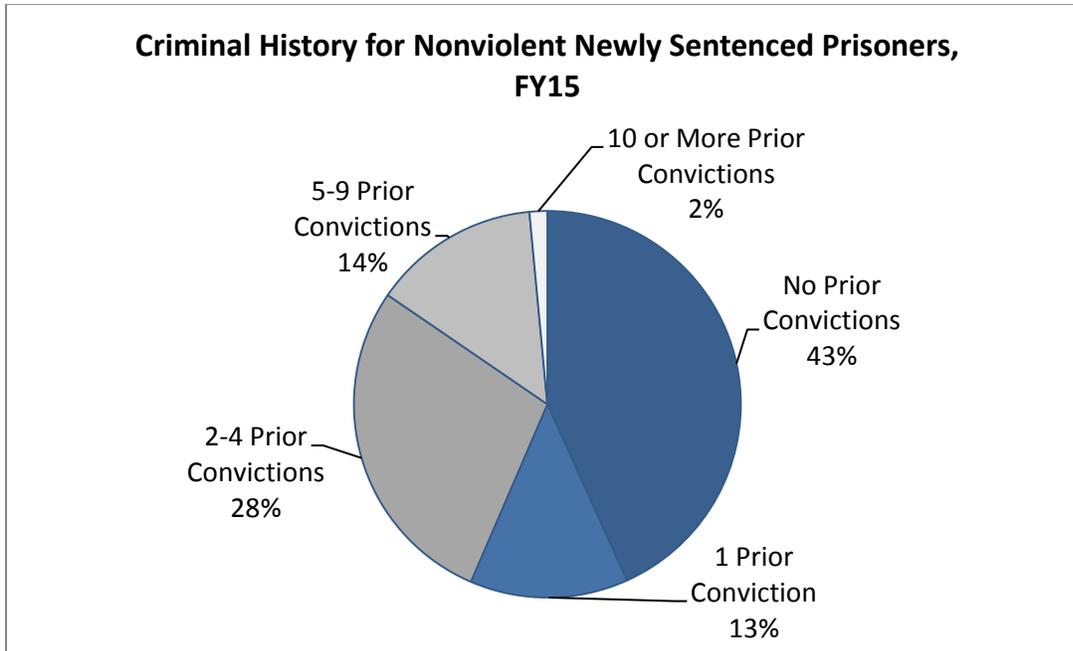
Figure 2. 75 Percent of Admissions Sentenced for Nonviolent Offenses



Source: Data from the Oklahoma Department of Corrections, Analysis by CJI

The Task Force was able to examine felony case filing and conviction records from Oklahoma and Tulsa counties for 2011 and 2015 and found that the growth in admissions was driven by large increases in the number of felony cases filed; this pattern was consistent across more than two-thirds of counties. While the rate at which felony cases received prison sentences did not increase, the sheer volume of cases being processed meant that more offenders were sentenced to prison. Many of these new prison sentences were for first-time felons. In particular, the number of first-time drug possession offenders sentenced to prison more than doubled from FY2011 to FY2015.

Figure 3. 56 percent of Nonviolent Offenders Sentenced to Prison Have 0 or 1 Prior Felony Conviction

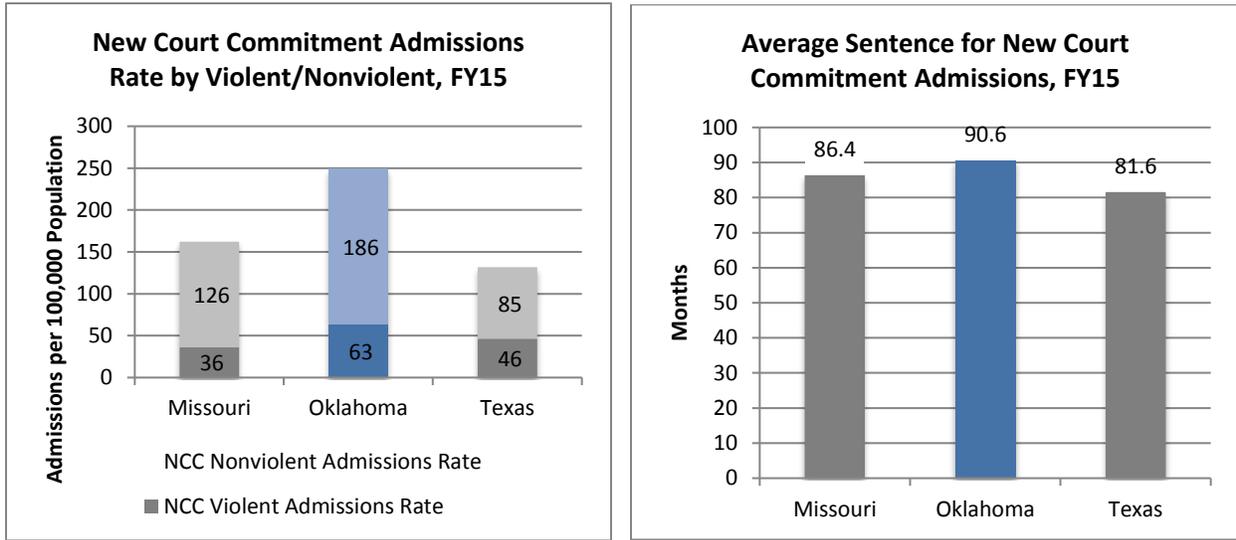


Source: Data from the Oklahoma Department of Corrections, Analysis by CJI

Additionally, the Task Force examined the growing number of inmates in Oklahoma entering prison for a technical violation of their probation or parole conditions, defined as a violation of supervision conditions that does not rise to the level of new criminal conduct. These people are admitted to prison for not complying with the terms of their supervision, such as failing a drug test or missing a meeting with their supervision officer. Around one-quarter of prison admissions in FY2015 were for a violation of supervision, of which just over half (55 percent) did not include a new conviction.

The Task Force compared Oklahoma with neighboring states in order to better understand Oklahoma's relative use of incarceration. While Missouri and Texas have similar crime rates to Oklahoma, an examination of admissions to each state's prisons from court found that not only does Oklahoma admit nonviolent offenders to prison at a much higher rate (48% higher than Missouri), but Oklahoma also imposes longer sentences on average for offenders coming to prison. Such a comparison would typically see one state with a higher nonviolent admission rate but a lower average sentence length than the comparison states because the overall prison cohort would be less serious. In this case, Oklahoma sends more nonviolent offenders to prison and sentences them to longer sentences despite having a larger nonviolent admissions cohort.

Figure 4. Compared to Neighboring States, Oklahoma Admits More Nonviolent Offenders and Yet Has Higher Average Sentence



Source: Data from the Oklahoma Department of Corrections and Missouri and Texas Department of Corrections Websites, Analysis by CJI

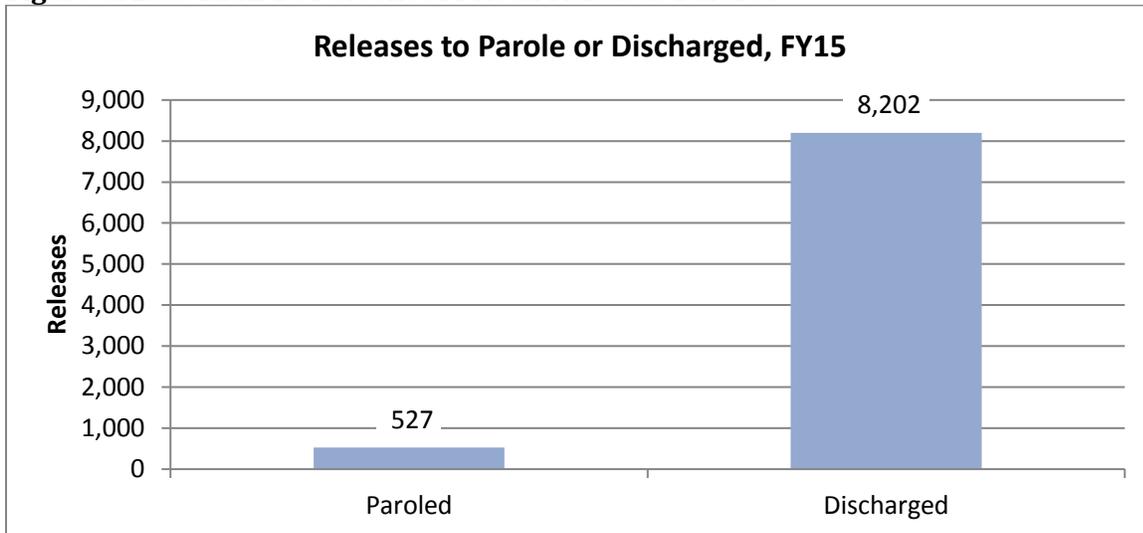
Longer prison stays do not reduce recidivism more than shorter prison stays

The Task Force also considered the relationship between the length of prison terms and recidivism. The best measurement for whether longer lengths of stay provide greater deterrence is whether similar people, when subjected to different terms of incarceration, recidivate at different levels. Rigorous research studies find no significant effect, positive or negative, of longer prison terms on recidivism rates.¹⁵

Examining length of stay in Oklahoma presents a mixed picture: in recent years, sentence length has gone up, but length of stay in prison is down. This may mean that the new sentences have not yet worked their way through the system and into the release cohorts and the full effect is not yet being measured. Despite this, nonviolent offenders serve relatively long lengths of stay, including over three years on average for drug crimes.

Almost all inmates in Oklahoma are eligible to be released on parole once they have served 33 percent of their sentence, with a small number of drug crimes eligible at 50 percent, and very serious crimes eligible at 85 percent. Yet very few people are released on parole in Oklahoma. In FY2015, only six percent of offenders released from prison were released onto parole, a decline from 12 percent in FY2011. This is a very low parole rate given the high level of eligibility in the population. The Task Force determined that this grant rate was due to a combination of low approval rates by the Pardon and Parole Board and the fact that many offenders waive their hearings due to a lack of confidence in the hearing process as well as a desire to leave prison without supervision to follow.

Figure 5. Less Than 10 Percent of Prison Releases Paroled

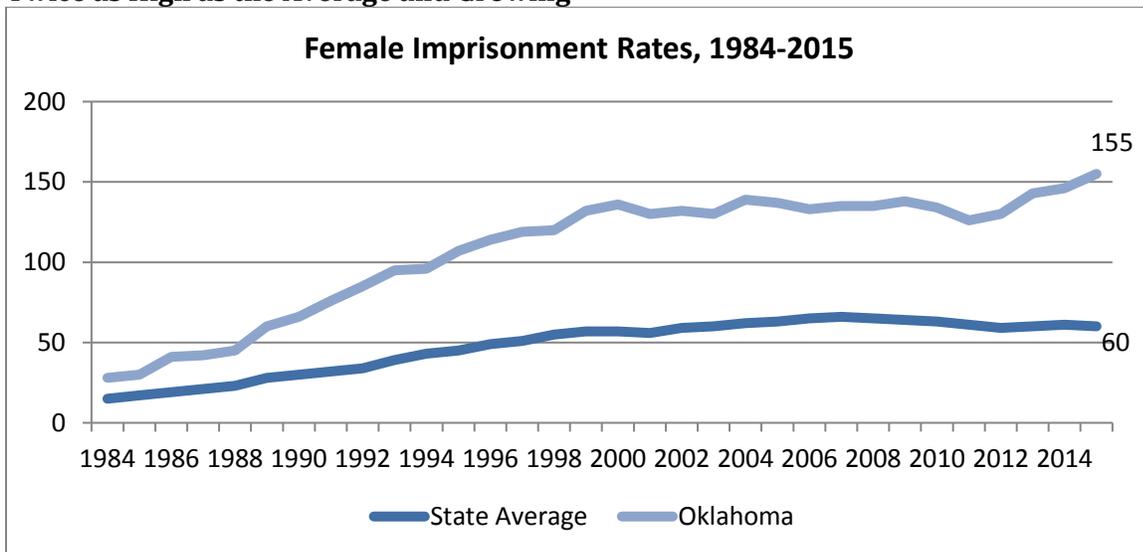


Source: Data from the Oklahoma Department of Corrections, Analysis by CJI

Female Prison Population

Oklahoma has long had the highest female imprisonment rate in the nation, but in the last few years, the gap has continued to widen as the female prison population grew 30 percent since 2012.

Figure 6. Oklahoma Has the Highest Female Imprisonment Rate in the Nation, More Than Twice as High as the Average and Growing

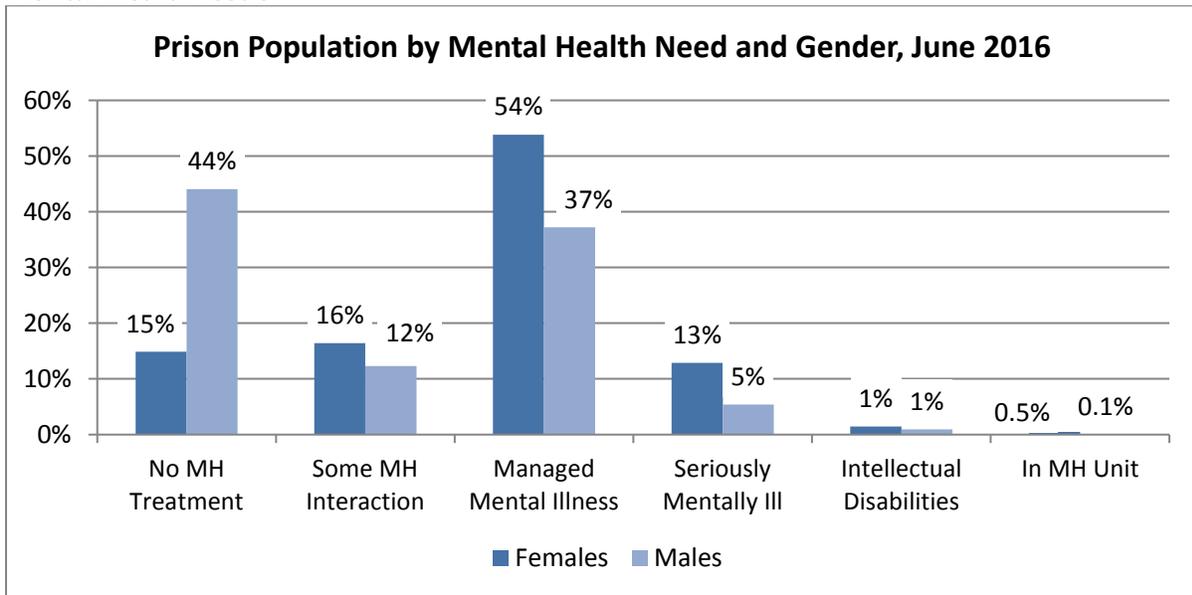


Source: Data from the Bureau of Justice Statistics, Correctional Statistical Analysis Tool

The vast majority of women going to prison in Oklahoma are serving sentences for drug-related crimes. Eighty-three percent of female prison admissions were for nonviolent crimes, with 42 percent for drug crimes alone. The standing prison population also consists of many women serving time for nonviolent offenses (64 percent). The female prison population is projected to continue to grow at an alarming rate in the next ten years.

Women in Oklahoma’s prisons are much more likely to suffer from mental illness and substance abuse problems than incarcerated men. Just under 70 percent of incarcerated women in June of 2016 had an actively managed or serious mental illness, compared to 44 percent of incarcerated men. Imprisoned women are also more likely to be assessed with a substance abuse problem than male prisoners.

Figure 7. 69 Percent of Women in Prison in Oklahoma Have an Actively Managed or Serious Mental Health Issue



Source: Data from the Oklahoma Department of Corrections, Analysis by CJI

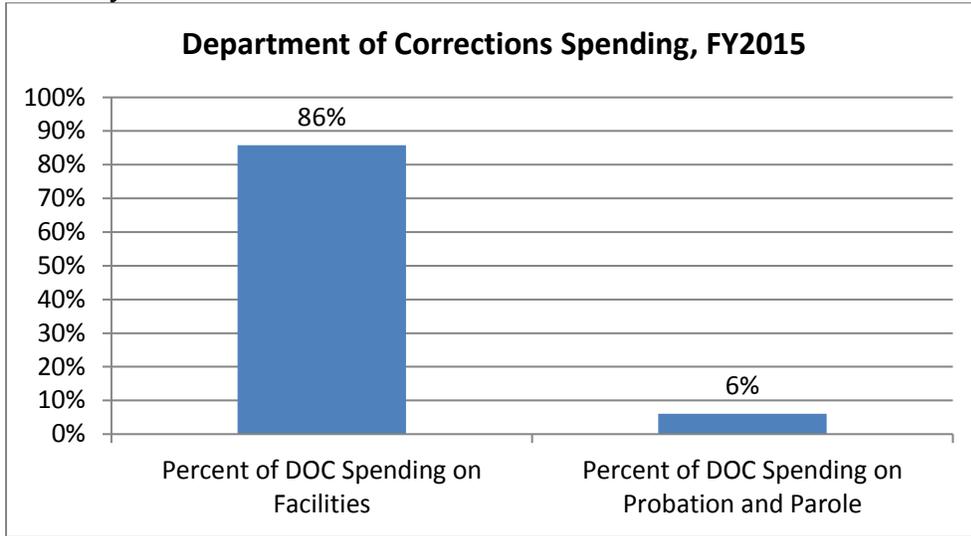
Community Supervision

Ninety-four percent of Oklahoma’s prison inmates eventually return to their communities, and many more individuals are placed directly on supervision at sentencing. Over the last thirty years, a growing body of research supports several primary strategies for boosting successful reentry and reducing the rates at which offenders return to crime. These strategies include: identifying and focusing resources on higher risk offenders; using swift, certain, and proportionate sanctions; incorporating rewards and incentives; frontloading resources in the first weeks and months following release from prison; and integrating treatment into supervision, rather than relying on surveillance alone.

The Task Force found inconsistencies in the use of community supervision and treatment across the state. The availability and quality of services such as specialty courts, community sentencing, private probation, and specialized parole and probation caseloads differ across agencies and regions. This variability reduces consistency in the delivery of treatment, programming, and supervision for individuals sentenced in different counties, and hampers data collection and performance evaluation across programs.

Due to the use of costly incarceration over supervision throughout Oklahoma, the Department of Corrections (DOC) spends 86 percent of its budget on prison facilities and only six percent on probation and parole despite having 45 percent of offenders under correctional control in the community. (See Figure 8.)

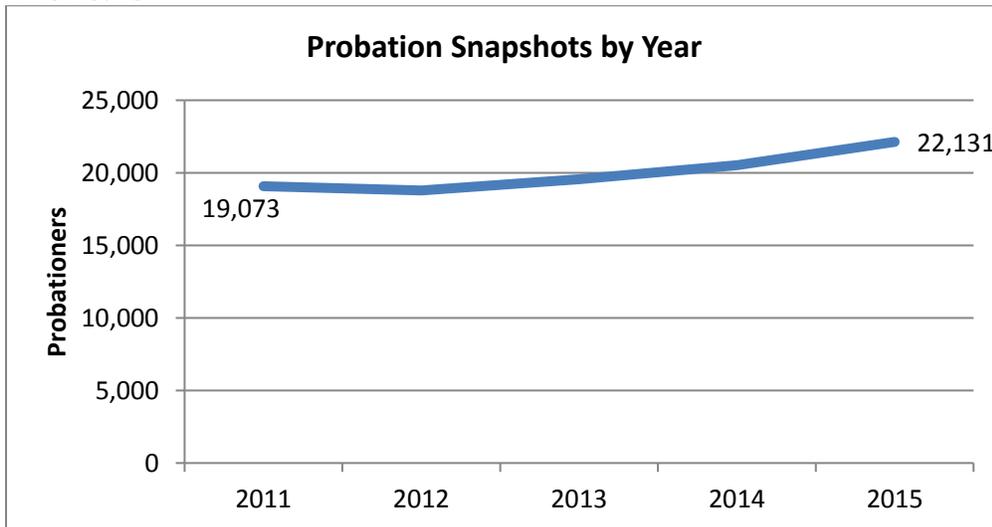
Figure 8. The Department of Corrections Spends 86 Percent of its Budget on Prison Facilities and Only 6 Percent on Probation and Parole



Source: Oklahoma Department of Corrections Actual Spending, FY2015

The Task Force was able to collect data on those offenders who are supervised by DOC, either on probation or parole, and found that although the number of felony filings across the state increased the prison population, it had an even greater impact on Department of Corrections' supervised population, which grew 16 percent since 2011. At the same time, success rates on probation as well as parole supervision fell.

Figure 9. The Department of Corrections Probation Population Grew 16 Percent in the Last Five Years



Source: Data from the Oklahoma Department of Corrections, Analysis by CJI

Identify and focus supervision resources on high-risk offenders

Research has consistently shown that offenders' likelihood to recidivate – that is, to commit new crimes upon release – can be accurately predicted with the use of a validated risk and needs assessment tool, an actuarial tool shown to predict the likelihood of recidivism for a specific population.¹⁶ Many states have adopted the use of validated risk and needs assessment tools to identify offenders' likelihood of recidivism and allocate resources accordingly. Using a validated risk assessment, supervision agents can focus their oversight and resources on those who pose the highest risk of reoffending, a practice that provides the biggest return on investment. Conversely, low-risk offenders who engage in intensive supervision or treatment programs may be made worse by over-engagement with the criminal justice system and increased contact with antisocial peers in that system. The use of a needs assessment also helps agents identify offenders' criminogenic needs (those changeable attributes such as antisocial attitudes and behavior, unstable employment and housing, and substance abuse) that can be targeted, and when addressed, can reduce an offender's risk of recidivism.¹⁷

Some, but not all, of Oklahoma's supervision providers use a risk and needs assessment tool. For individuals under private supervision or district attorney supervision, court orders, rather than risk assessments, are used to guide levels of contact. While DOC currently utilizes risk and needs assessments to inform supervision levels, a sizeable portion of the state's community supervision resources remain focused on low-risk offenders. In June of 2015, 45 percent of active DOC probationers were on low-risk or administrative caseloads. Despite processes that exist to move offenders to lower levels of supervision and intervention, these low-risk offenders make up a large share of caseloads and require staff resources that could otherwise be dedicated to those with a higher likelihood of reoffending.

Use swift, certain, and proportionate sanctions

Research has also demonstrated that offenders are more responsive to sanctions that are swift, certain, and proportionate rather than those that are delayed, inconsistently applied, and severe.¹⁸ Swift and proportionate sanctions work both because they help offenders see the sanction as a consequence of their behavior rather than a decision levied upon them, and because offenders heavily weigh the present over the future (consequences that come months and years later are steeply discounted). Certainty establishes a credible and consistent threat, thereby creating a clear deterrent for non-compliant behavior.¹⁹

In Oklahoma, some providers including DOC and specialty courts use swift, certain, and proportionate sanctions. However, opportunities remain to ensure this best practice is applied more broadly and consistently. While DOC has a formal graduated sanctions matrix, officers have broad discretion in responding to violations, leading to significant interpersonal and geographic inconsistencies. Similarly, while specialty courts use graduated sanctions, each court develops its own matrix, to be approved by Oklahoma's Department of Mental Health and Substance Abuse Services (ODMHSAS).

Incorporate rewards and incentives

Historically, probation and parole supervision was focused on surveillance and sanctioning in order to catch or interrupt negative behavior. However, research shows that encouraging positive behavior change through the use of incentives and rewards can have an even greater effect on

motivating and sustaining behavior change than using sanctions alone.²⁰ For example, the use of incentives such as earned discharge encourages offenders to comply with the conditions of supervision in exchange for a reduction in the period of time spent on supervision. At least 15 states have implemented earned discharge policies which allow offenders to earn time off supervision, reducing caseloads while encouraging positive behavior.¹

Department of Corrections probation and parole does use an advanced termination process for offenders who are evaluated as low-risk and have completed treatment modules. Unlike DOC's earned credit system, there is no system-wide earned compliance program that incentivizes month-to-month compliance for people on supervision. Similarly, DOC probation and parole allows less intensive reporting requirements for those complying with supervision conditions but the process is largely based on the discretion of individual officers. Private probation providers are able to use less frequent reporting or decreased drug testing as an incentive, but are unable to terminate supervision without judicial approval.

Frontload resources in the first weeks and months following release

Long-term success for individuals returning home from prison is closely tied to accountability and support during the period immediately following release. Research shows that people released from prison are most likely to reoffend or violate the terms of their community supervision in the initial days, weeks, and months after release. The likelihood of violations and the value of ongoing supervision diminish as they gain stability and demonstrate longer-term success in the community.²¹

Research has shown that supervision resources have the highest impact when they target this critical period. By frontloading limited resources, states can better target offenders at the time when they are most likely to reoffend, thereby reducing future violations through addressing non-compliant offender behavior early in the process.²²

For inmates leaving prison, DOC conducts a pre-release plan six months prior to projected release, prioritizing inmates with severe mental health needs. The pre-release plan identifies organizations and agencies that can support inmates' immediate basic needs (ID, residence, transportation, financial situation, medical coverage, legal assistance, employment, treatment programs and aftercare, child care, and other services). Yet, while these needs are identified, some resources are still only accessible via referrals and can be cost prohibitive.

Integrate treatment into surveillance

Lastly, research shows that a combination of surveillance and treatment focused on an individual's criminogenic needs is more effective at reducing recidivism than supervision consisting of surveillance alone.²³ Supervising officers should be trained to use cognitive behavioral techniques to support rehabilitation through prosocial reinforcement, rather than simply monitoring the individual until he or she fails.

In Oklahoma, probation and parole officers currently use a risk and needs assessment to both inform offenders' supervision levels (as outlined earlier) and to identify their criminogenic needs

¹ States that have earned compliance credits: Alaska, Arizona, Arkansas Kansas, Kentucky, Georgia, Maryland, Mississippi, Missouri, Nevada New Hampshire, Oregon, South Carolina, South Dakota, Texas, and Utah.

with top priority needs forming the basis of case management plans. However, the Task Force heard a number of anecdotal reports regarding insufficient or cost-prohibitive treatment beds in their jurisdictions as well as regional disparities in the availability of community-based treatment and programming.

Although supervision providers, including DOC probation and parole, specialty courts, and private supervision providers, try to connect people with treatment vouchers or sliding scale programs, the responsibility of paying for treatment largely falls to the offender. Only the specialty court and Community Sentencing programs systematically cover some or all of the treatment costs of their participants.

While individual officers and supervising authorities support behavior change, there is no system-wide integration of cognitive behavioral techniques into supervision practices, and many providers rely heavily on drug testing and other surveillance methods rather than prosocial case management.

Policy Recommendations

Based on the Task Force's review of evidence-based practices and an evaluation of the state's alignment with those practices in the areas of sentencing, release, and supervision, the Task Force developed 27 policy recommendations that together are projected to avert all the growth in the prison population through 2026 and reduce the prison population by seven percent, providing an avenue for Oklahoma to avoid \$1.9 billion in additional spending over the next decade.

These policy recommendations, although not unanimous, were supported by a significant majority of Task Force members. This allowed the recommendations to present a broad and comprehensive response to the Governor's charge. Additionally, the Task Force recognizes the need for and recommends additional and appropriate funding dedicated to the expansion of community supervision as well as mental health and addiction treatment for offenders. Appropriate funding of alternatives to incarcerations will reduce recidivism, improve health outcomes, lower incarceration rates, and improve public safety.

These following 27 policy recommendations will:

- Strengthen supervision and interventions to reduce recidivism;
- Focus prison resources on serious and violent offenders;
- Improve and enhance release and reentry practices;
- Provide better support to victims of crime; and
- Ensure oversight and accountability for the criminal justice system.

Task Force's Recommendations

Strengthen supervision and interventions to reduce recidivism

Recommendation 1: Use a validated risk and needs assessment tool to determine supervision levels

In the last several decades, the body of research on what works to reduce recidivism has grown significantly. The foundational principle of this research is the use of risk and needs assessments to guide decision-making in the correctional system. While the use of risk and needs assessments is

has recently become more widespread in Oklahoma, it is not universal, and none of the tools currently being used have been validated on Oklahoma's justice-involved population.

The Task Force recommends:

- a. Requiring all supervision providers, including private providers and district attorneys' offices, use a risk and needs assessment tool, validated on the appropriate Oklahoma population, to identify an individual's risk of recidivism and treatment needs, and use the results to guide decision-making related to supervision intensity and case planning in the community.

Recommendation 2: Establish evidence-based standards for supervision practices

States who have shifted their resources to policies and practices that adhere to research on what works to reduce recidivism have realized a greater public safety return on their correctional investments. Research shows that it is more effective to focus supervision resources on people who are most likely to recidivate.²⁴ Currently, DOC Probation and Parole Services focuses many of its supervision resources on low- and moderate-risk offenders rather than on high-risk offenders who are the most likely to reoffend. Forty-five percent of probationers and 71 percent of parolees are on low or administrative levels of supervision.

The Task Force recommends:

- a. Requiring DOC to establish guidelines on the use of risk and needs-based supervision to be used by all vendors that supervise felony offenders.
- b. Requiring DOC to establish specialized training to properly address violations related to domestic violence.
- c. Requiring DOC to develop specialized supervision or case management for violators of conditions of supervision that involve a victim of domestic violence.

Recommendation 3: Use swift, certain, and proportional responses to behavior while on probation and parole

Currently, no statewide standardized framework guides supervision officers' responses to technical violations, such as missing a treatment appointment or failing a drug test, or for responding to positive behavior and achievements, like graduating from a treatment program or maintaining employment. Incentives and sanctions that are swift, certain, and proportional are more effective at discouraging antisocial behavior and criminal activity while encouraging positive behavior.²⁵

The Task Force found that in recent years more than half of probation revocations and 37 percent of parole revocations were for technical violations. Even when sentenced to prison for non-criminal conduct, offenders serve significant amounts of time, in addition to time spent incarcerated while awaiting revocation processes. To ensure there is existing prison space for the most serious and violent offenders and to respond with certainty and proportionality to non-criminal behavior, many states have placed caps on the length of time a probationer or parolee can be revoked to prison for a technical violation.

The Task Force recommends:

- a. Requiring all supervision providers who supervise felony probationers and parolees to respond to technical violations of supervision with swift, certain, and proportional sanctions and provide positive reinforcement through incentives when the person exhibits positive behavior or attains certain goals. Supervision providers will be required to use best practices such as a graduated matrix, before pursuing a formal revocation process.
- b. Streamlining revocation hearings based upon technical violations through the use of a summons when an application to accelerate or a motion to revoke is filed with the court or by DOC. A district attorney may petition the court to issue a warrant for a compelling reason in the interest of public safety. If a warrant is issued, probationers or parolees will receive a dispositional hearing within 10 days of arrest.
- c. Limiting the length of stay for offenders revoked or accelerated for technical violations: up to 15 days for the first application for revocation; up to 30 days for the second application for revocation; up to 60 days for the third application for revocation; and up to five years for a fourth and subsequent application for revocation. At the discretion of the revoking authority, revocation days may be served non-consecutively.
 - i. Motions to revoke probationers and parolees or an application for acceleration shall only be based upon violations that have occurred within the last 60 days provided the DA has received adequate notice.
 - ii. The revoking or accelerating authority may give consideration to the person's current employment status.
 - iii. The revoking authority may impose revocation periods outside of the caps for people on probation or parole for 85% crimes.
- d. Absent willful nonpayment, failure to pay court-ordered financial obligations including but not limited to fees and fines, cannot serve as a basis for a revocation.

Recommendation 4: Establish a system of earned compliance credits on supervision

Earned compliance credits can provide a powerful incentive for offenders to participate in programs, obtain and retain a job, and remain drug- and alcohol-free.²⁶ As compliant and low-risk offenders earn their way off supervision, earned compliance credits also work to focus limited supervision resources on the higher-risk offenders who require the most supervision. Oklahoma's data revealed that regardless of supervision level, all successful supervisees were spending roughly the same amount of time on probation, with moderate- and low-risk offenders spending slightly longer.

The Task Force recommends:

- a. Establishing a system of earned compliance credits for supervised probationers and parolees who are complying with the conditions of their supervision and engaged in programming that addresses criminogenic needs. Each month of compliance on supervision will result in 30 days credit.
- b. Further incentivizing positive behavior by allowing offenders on a suspended or deferred sentence who comply with the conditions of supervision to reduce their suspended or deferred sentence by 15 days for every month of compliance, excluding 85% crimes and all domestic violence-related offenses.

Recommendation 5: Establish specialty court eligibility criteria

Research on best practices for recidivism reduction holds that intensive treatment and supervision programs like specialty courts should target individuals whose risk and needs profile matches that specific program. Targeting intensive interventions on low-risk individuals has been shown to increase the risk of recidivism for those individuals.

When ODMHSAS establishes contractual relationships with counties for the creation and funding of drug courts, it also identifies in the contract which individuals are appropriate for the court's services based on the individual's risk and needs profile. The Task Force recognizes that these contractual standards should be adopted statutorily to more effectively direct state resources toward those with a higher risk to reoffend.

The Task Force recommends:

- a. Requiring that ODMHSAS determine treatment eligibility for drug courts through the use of a screening instrument and prioritize access to individuals with high criminogenic risk and high treatment needs. Determination of the risk profile shall be based solely on the risk assessment. The policy will preclude low-risk individuals from participating in any specialty court.
- b. Establishing performance measurements for drug court as part of the contract with ODMHSAS.
- c. Allowing offenders facing revocation or acceleration to be reassessed for potential drug court eligibility.

Recommendation 6: Minimizing financial barriers to successful reentry

A huge hurdle for people upon release from prison are the fines, fees, court costs, restitution, and child support payments that accumulate across jurisdictions even while an offender is incarcerated. Many individuals are unaware of the fines and fees owed in different courts, which can lead to warrants being issued in multiple jurisdictions. Child support payments can accumulate during incarceration and increase to the tens of thousands of dollars. Further, having a felony conviction carries a number of collateral consequences. One report found that incarceration reduces the wages that ex-offenders earn by 10 to 20 percent²⁷ and can inhibit wage growth, reducing earning capacity by 30 percent compared to those who were not incarcerated.²⁸

Prosocial interactions, such as work and effective programming, can offer a sense of accomplishment and stability. By helping offenders reestablish themselves as productive citizens, recovery and reentry support programs can also make Oklahoma communities safer. The Task Force recognizes the need to lessen financial barriers so that returning citizens who are making an effort to be productive are not hampered in their rehabilitation process.

The Task Force recommends:

- a. Absent a finding of willful nonpayment, eliminating the extension of supervision for failure to pay court-related financial obligations including but not limited to fines and fees.
- b. Establishing a realistic payment plan, for anyone who requests it, based on discretionary income, which is calculated as income in excess of 150 percent of the federal poverty line, with reasonable and fair payments defined as 10 percent of this discretionary income.

- c. Requiring all courts to defer payments of fines and fees upon reentry for all probationers, parolees, and those being released from prison for the first six months after release from state prison, modifying HB 3160 enacted in 2016.
- d. Incentivizing payments through participation in a CareerTech, higher education, GED programs, or workforce training programs intended to expand future employment opportunities. Waived fines and fees are based on the earnings achieved through completion of each week of the program (based on Oklahoma's hourly minimum wage, \$7.25, and a 40 hour work week).

Recommendation 7: Establish a certificate of rehabilitation and an expungement process for offenders who successfully complete supervision

Many professional licenses are unattainable for individuals with criminal convictions. In order to support effective reintegration into the community, reduce recidivism, and incentivize supervision completion, a number of states have authorized a releasing authority to issue a certificate of rehabilitation for people who have successfully completed probation or parole to assist the individual in restoring certain licenses.²⁹

In addition to having a felony record and being incarcerated or supervised by the criminal justice system, Oklahoma has 177 mandatory collateral consequences for a felony conviction and 200 additional discretionary consequences that are based on the determination of the court. The state does provide some relief: if a person was given a delayed or deferred sentence for a nonviolent offense, successfully completed that sentence, and had no further arrests in a given time period, they may expunge their record.³⁰

The Task Force recognizes the importance of promoting employment and reducing the collateral consequences of felony convictions for people who have demonstrated their long-term commitment to rehabilitation, regardless of their income level.

The Task Force recommends:

- a. Allowing felony offenders who are compliant with their case plan (while in prison) and released on administrative parole; or felony offenders who do not enter prison and are placed directly on supervision to apply for a certificate of rehabilitation. This certificate will be issued by DOC Probation and Parole Services, and restricted as follows:
 - i. Those on supervision who do not enter prison will qualify for a certificate of rehabilitation after six months of compliant behavior while on supervision.
 - ii. After six months of compliant behavior on supervision, the individual will be eligible to apply for a certificate of rehabilitation. If no current license restrictions exist based on a criminal conviction, the individual on supervision may apply for the license at his or her volition.
 - iii. The certificate of rehabilitation will preclude a licensing board from disqualifying an applicant from professional or occupational licensure or certification only due to the underlying criminal conviction, but an individual may be disqualified if the underlying criminal conviction has a direct nexus to the professional or occupational licensure being sought.
- b. Statutorily defined nonviolent offenders would be allowed to apply for expungement seven years after the completion of their current sentence, and if the individual has had no new

convictions, records can be sealed for nonviolent offenses. If the person has prior violent offenses, they can apply for expungement after 10 years without a new conviction.

Focus prison beds on serious and violent offenders

Recommendation 8: Revise drug penalties to focus the most severe punishments on higher-level drug offenders

Since 2011, admissions to prison for drug sentences in Oklahoma have grown by 22 percent. Thirty-one percent of all prison admissions are for drug offenses, over a third of which (37 percent) are for drug distribution and manufacturing offenses. The average sentence length for possession with intent to distribute (PWID) and distribution is 104.6 months – more than 8.5 years. This period of incarceration typically indicates the person has a serious or violent criminal history yet 81 percent of drug offenders sentenced to prison had no prior violent crimes.

In addition to research demonstrating that longer prison stays do not reduce recidivism more than shorter prison stays for many offenders, the Task Force reviewed studies pointing to the low deterrent value of long prison terms for drug offenders. Research shows that the chances of a typical street-level drug transaction being detected are about 1 in 15,000.³¹ With such a low risk of detection, drug offenders are unlikely to be dissuaded by the remote possibility of a longer stay in prison. Moreover, there is little disruption to drug markets when low-level dealers are arrested; research demonstrates that street-level drug dealers who are arrested and incarcerated are typically replaced quickly.³²

The Task Force recognizes that low-level drug distribution crimes are often driven by addiction, and under Oklahoma law, any intent to “share” a controlled dangerous substance is defined as possession with intent. Proposed recommendations are designed to distinguish treatable, addiction-driven behavior from purely commercial endeavors.

The Task Force recommends:

- a. Adjusting penalties for possession with intent to distribute (PWID), distribution, and manufacturing, and utilizing a weight-based system that requires more than residue for conviction:

Offense	Amount	Sentence*
PWID and Distribution	Cocaine, Crack– 0.25g to 28g Heroin— 0.25 to 10g Meth— 0.25 to 20g	0 - 5 yrs
	Marijuana—0.25 to 25 lbs	0 - 3 yrs
Manufacturing	Cocaine, Crack– 0.25g to 28g Heroin— 0.25 to 10g Meth— 0.25 to 20g	0 - 8 yrs
Cultivation	Marijuana—0.25 to 25 lbs	0 - 6 yrs
Possession of a Precursor with Intent to Manufacture Meth	Precursor materials in a quantity capable of producing 20g of meth or less	0 - 8 yrs

* Max sentence is doubled for 2nd and subsequent felony drug conviction

- b. Creating tiered sentencing for trafficking, focusing long sentences on high-volume drug traffickers and profiteers:

Degree	Amount	Sentence
3 rd degree	Heroin – 10g to 28g Meth – 20g to 200g Cocaine – 28g to 300g Crack – 28g to 300g	0 - 10 yrs
2 nd degree	Heroin – 28g to 250g Meth – 200g to 450g Cocaine – 300g to 450g Crack – 300g to 450g	2- 15 yrs
1 st degree	Heroin – 250g+ Meth – 450g + Cocaine – 450g+ Crack – 450g+	5 – 25 yrs*
3 rd degree	Marijuana—25 lbs to 100 lbs	0 – 10 yrs
2 nd degree	Marijuana—100 lbs to 500 lbs	2 – 15 yrs
1 st degree	Marijuana—500 lbs+	5 – 25 yrs*
* Sentences may not be completely suspended		

- c. For drug crime enhancements in school zones and other areas frequented by children, focusing on conduct indicating a threat to children by tightening the area around those zones.

Offense	Number	Recommendation
Transport, Distribution, PWID in Specified Zones	1 st	<ul style="list-style-type: none"> • 2 times the maximum sentence authorized • Parole eligibility the same as similar drug distribution offenses • Give judge discretion to suspend sentence when appropriate
	2 nd	<ul style="list-style-type: none"> • 2 times the maximum sentence authorized • Restrict parole eligibility after 85% of sentence and allow release on electronic monitoring at 70% of sentence • Ineligible for a suspended sentence
	3 rd	<ul style="list-style-type: none"> • 3 times the maximum sentence authorized • Restrict parole eligibility after 85% of sentence and allow release on electronic monitoring at 70% of sentence • Ineligible for a suspended sentence

- d. To protect children from exposure to drug dealing, establishing a new offense defined as the distribution or manufacturing in the presence of a child that doubles, and on a third offense triples, the maximum sentence that could be imposed:

Offense	Number	Policy Option
Distribution to a minor OR use or solicitation of minor to distribute, etc.	1 st , 2 nd	<ul style="list-style-type: none"> • 2 times maximum sentence • Give judge discretion to suspend sentence when appropriate
	3 rd +	<ul style="list-style-type: none"> • 3 times maximum sentence • Give judge discretion to suspend sentence when appropriate
NEW SECTION: Distribution or manufacturing in the presence of a child	1 st , 2 nd	<ul style="list-style-type: none"> • 2 times maximum sentence • Give judge discretion to suspend sentence when appropriate
	3 rd +	<ul style="list-style-type: none"> • 3 times maximum sentence • Give judge discretion to suspend sentence when appropriate

Recommendation 9: Expand levels of burglary to distinguish lower-level burglary offenses and adjust sentences

Under current law, there are two levels of burglary that encompass a broad range of conduct. First degree burglary is defined as breaking and entering into a home with a person present, while second degree burglary is very broadly defined and includes breaking and entering any building (including a home without a person present), outbuilding, vehicle, or vending machine. Second degree burglary is one of the top ten offenses at admission for both men and women. On average, people convicted of second degree burglary serve about five-and-one-half years.

A review of court case files and DOC files by the Task Force found that only half of second degree burglaries are of residences and about a quarter are burglaries of vehicles or unattached outbuildings. Those in the file review who had committed burglary of a vehicle or outbuilding received longer average sentences (56 months) than those who had burglarized residences or commercial properties (47 months).

Oklahoma's burglary statutes are out of line with neighboring states, including Texas, where burglary of a vehicle and burglary of a vending machine are both misdemeanors, punishable by no more than a year in county jail.

The Task Force recommends:

- a. Expanding levels of burglary to distinguish lower-level burglary offenses and adjust sentences based on severity.
- b. Reducing mandatory minimum sentence for first and second degree burglary.
- c. Reclassifying burglary of a vending machine as larceny, subject to the felony theft threshold of \$1,000.

Offense/Conduct	Sentence	
Burglary, first degree – home invasion (person present)*	1 st	4 - 20 yrs
Burglary, second degree – residential burglary (no person present) or commercial burglary*	1 st	0 - 7 yrs
Burglary, third degree – burglary of an outbuilding on commercial or residential property, burglary of a vehicle*	1 st	0 - 3 yrs
Burglary of a vending machine becomes “Larceny of a Vending Machine,” with \$1,000 threshold from misdemeanor to felony	1 st	0 - 30 days
*Second and subsequent offenses subject to the revised habitual offender statute		

Recommendation 10: Expand access to alternatives to incarceration

In the last five years, the number of people sentenced to prison has grown 29 percent; three-quarters of these offenders were sentenced for nonviolent crimes. Compared to other states, Oklahoma uses more incarceration resources relative to community supervision, with 54 percent of state felony offenders incarcerated and 46 percent on probation and parole in 2015, compared to 31 percent in prison and 69 percent on community supervision nationally.³³ Significantly, incarceration in Oklahoma is 13 times more expensive than probation or parole supervision (\$16,341 versus \$1,218 annually in FY2015), in addition to being an ineffective crime control tool.

Multiple research studies comparing similarly situated people sentenced to incarceration or community supervision have found that those sentenced to incarceration have the same or higher rates of future criminal behavior (measured through re-arrests and re-convictions). Research has also found that for many lower-level offenders, incarceration can actually increase recidivism. While a number of alternatives to incarceration exist for nonviolent offenders in Oklahoma, the Task Force found many of the programs, including specialty courts, community sentencing, probation, deferred sentencing, and delayed sentencing, have eligibility restrictions that limit participation, even when a person is matched with a program based on an appropriate assessment. Recognizing these findings, the Task Force identified policy options for reducing barriers to successful participation in alternatives to incarceration.

The Task Force recommends:

- a. Adjusting eligibility restrictions on deferred and suspended sentences, community sentencing, and drug court:
 - i. Allowing two deferred sentences within a ten-year period at the discretion of the court and at the discretion of the district attorney after two prior deferred sentences; the district attorney may waive ineligibility based on offenses excluded by statute.
 - ii. Allowing suspended sentences for defendants with no more than two prior violent prior felonies or three prior nonviolent felonies at the discretion of the judge. The district attorney may waive ineligibility based on offenses excluded by statute.
 - iii. Applying those eligibility changes to community sentencing as a condition of a deferred or suspended sentence.
- b. Expanding judicial discretion to ensure the judge can impose appropriate alternatives to incarceration.

- c. Limiting duration of alternatives to incarceration:
 - i. Limiting district attorney supervision to no more than two years.
 - ii. Limiting deferred sentences to not more than four years, with one year of active supervision and the ability for the court to extend, for an additional three years to collect restitution.

- d. Modifying the Regimented Inmate Discipline program:
 - i. Clarifying that the program is not mandatory and requiring preference be given to out-of-custody placement.
 - ii. Limiting supervision after residential placement to six months.
 - iii. Allowing offenses to be eligible for expungement and precluding further imprisonment for that offense after successful completion of the program.

- e. Modifying drug court:
 - i. Establishing statewide minimum criteria for drug courts.
 - ii. Enabling judges to dismiss cases upon successful completion of drug court.

Recommendation 11: Revise the habitual offender statute to focus the most severe punishments on violent offenders

The current habitual offender law dramatically increases penalties for a second or subsequent felony, and often increases the maximum punishment to life in prison. This is well beyond the penalty ranges of neighboring states. Additionally, current law does not distinguish the seriousness of the prior offense(s) and therefore treats a prior low-level, nonviolent offense the same as a serious violent conviction.

Despite having a higher rate of nonviolent admissions, Oklahoma has longer average sentence lengths than neighboring states, likely driven by habitual sentencing enhancements. Nonviolent offenders sentenced to prison in FY2015 were more than twice as likely to have a 12 year or higher sentence if they had more than one prior felony conviction.

Research demonstrates that longer time spent in prison is not associated with lower recidivism and long sentences may be adding significant costs to the taxpayer with very little or no public safety return. Additionally, there is strong evidence that people “age out” of criminal behavior, so even someone committing frequent offenses under the age of 30 may be law-abiding by age 40.³⁴

The Task Force recommends:

- a. Revising the enhancement structure for offenders with nonviolent current offenses and nonviolent history, such that second and subsequent nonviolent offenses for those offenders may be sentenced to a range 25% longer than the maximum sentence for the current offense.
- b. Excluding simple possession of drugs from being used as a prior conviction in order to enhance a subsequent sentence.

Recommendation 12: Expanding the application of the justice safety valve

The “Justice Safety Valve Act” (22 O.S. § 985.1-985.2) was signed into law in 2015. For nonviolent, non-85%, non-registerable sex offenses, the safety valve allows the court to depart from the mandatory minimum sentence if it finds that:

- “1. The mandatory minimum sentence of imprisonment is not necessary for the protection of the public and imposition of the mandatory minimum sentence of imprisonment would result in substantial injustice to the defendant; or
2. The mandatory minimum sentence of imprisonment is not necessary for the protection of the public and the defendant, based on a risk and needs assessment, is eligible for an alternative court, a diversion program or community sentencing, without regard to exclusions because of previous convictions, and has been accepted to the same, pending sentencing.”³⁵

Sentencing decisions that depart from mandatory minimum sentences must be reported annually. The Task Force found that the language of “substantial injustice to the defendant” in the current safety valve makes it difficult for judges to use, and that the purpose of the statute is better served by focusing only on public safety as a consideration in departing from the mandatory minimum sentence.

The Task Force recommends:

- a. Allowing a departure from the mandatory sentence when “the mandatory sentence is not necessary for the protection of the public.”
- b. If the court uses the safety valve, the sentence can be no less than 25 percent of the mandatory term.
- c. Expanding the list of offenses to which the safety valve applies, such that the court may apply it to any nonviolent offense; the following offenses remain ineligible:
 - i. Violent crimes under 57 O.S. § 571
 - ii. Trafficking: First degree
 - iii. Offenses involving a firearm
 - iv. Registerable sex offenses
 - v. 85% offenses
 - vi. Terrorism

Recommendation 13: Reserve 85% crime requirements for violent offenses

Known informally as the “85 percent rule,” O.S. §21-12.1 and 13.1 requires that individuals convicted of certain, serious felony offenses must be incarcerated until 85 percent of their sentences are served. The original list of offenses has grown from a total of 11 in 1999 to 22 in 2016, with at least two other offenses listed in separate statutes. Originally, this list included only the most serious violent offenses, but has since been expanded to include certain nonviolent drug offenses.

Only eight offenders were sentenced to prison for drug crimes covered under the 85% statute in FY2014 and FY2015, however their long sentences (these eight individuals had average sentences of over 20 years) and the requirements of the 85% law mean that they take up a significant amount of prison resources without commensurate public safety return.

The Task Force recommends:

- a. Maintain the following nonviolent, nonperson offenses in the 85% category, but allow the person to be transferred to electronic monitoring when 70% of the sentence has been served:
 - i. Aggravated trafficking
 - ii. Aggravated manufacturing

Recommendation 14: Revise property sentences to match felony theft threshold

The number of property offenders admitted to prison grew 29 percent from FY2011 to FY2015, including 37 percent growth in the number of people sentenced directly to prison for these crimes. At the same time, average sentences for property crimes have grown 11 percent, to 68 months on average. For many nonviolent, lower-level offenders, prison may make them more likely to commit crime in the future, rather than less, and longer lengths of stay in prison offer little or no public safety benefit. Property offenders admitted to prison in Oklahoma are disproportionately female and most often for ‘paper crimes’, such as fraud, forgery, and bad check.

The Task Force recommends:

- a. Adjusting penalties for 24 low-level property offenses to match the felony theft threshold established by the Governor’s 2016 bill as modified below.
- b. Creating a tiered penalty structure for property offenses by value:
 - i. <\$1,000 = 0-12 months (Misdemeanor)
 - ii. \$1,000- \$2,500 = 0-2 years (Felony)
 - iii. \$2,500-\$15,000 = 0-5 years (Felony)
 - iv. \$15,000+ = 0-8 years (Felony)
- c. Creating a tiered penalty structure for theft of a motor vehicle by conduct and property value.

Improve and Enhance Release and Reentry Practices

Recommendation 15: Establish an administrative parole process for individuals serving sentences for nonviolent crimes, and limit hearings to non-compliant offenders

Currently, less than 10 percent of prison releases in Oklahoma are paroled, despite the fact that almost all inmates are eligible for parole. Though parole supervision affords greater accountability than other forms of post-release supervision, the Task Force found that parole is underutilized in Oklahoma, especially for nonviolent offenders. While drug offenders are most likely to be released on parole, only 11 percent of those released for a drug offense are paroled. Drug offenders serve 50 percent of their sentence in prison on average, despite reaching parole eligibility at 33 percent of their sentence for the overwhelming majority of drug sentences. Drug and property offenders serve an average of nine months past parole eligibility.

Many parole-eligible inmates serving sentences for nonviolent crimes waive their parole hearings, both because they perceive the parole hearings to be futile given the extremely low grant rate, and because parole supervision is more demanding than discharging a sentence on earned compliance credits. In addition, individuals who do go before the parole board may not be released because they have not yet completed treatment. Because of the low credibility of the parole process and the delays built in, Oklahoma has a very high rate of “maxing out,” or leaving the prison facility with no

part of the sentence remaining and, therefore, no part of the sentence to revoke in the event of noncompliance with mandatory post-imprisonment supervision.

The Task Force identified solutions from other states to the same problem: Mississippi and South Dakota, among others, have successfully implemented administrative parole processes that allow for inmates to be paroled without a hearing if they meet certain eligibility requirements and have been compliant during their time in prison. The Task Force recognizes that an administrative parole process incentivizes participation in recidivism reduction programming, allows the Pardon and Parole Board (PPB) to focus on the most serious and complex cases, and reduces unnecessary delays for compliant offenders.

The Task Force recommends:

- a. Upon admission to DOC, developing individualized case plans based on needs of the inmate.
- b. Ensuring case plans are achievable by the parole eligibility date, with programming prioritized for inmates within 24 months of their parole eligibility date.
- c. Notifying victims of the administrative parole release date in advance for administrative parole-eligible inmates, and providing them with an opportunity to request a hearing.
- d. Creating an administrative parole process for statutorily defined nonviolent, parole-eligible individuals and limiting hearings to those that are not compliant with their case plans and those who have committed violent offenses according to the following procedures:
 - i. Requiring that the PPB give a favorable parole recommendation, without a hearing, absent a showing of good cause. Good cause is defined as:
 - 1.A willful failure to comply with their individualized case plan;
 - 2.A request for a hearing from a victim, or the District Attorney on behalf of the victim; or
 - 3.Serious infractions within the given windows of time:
 - a) X-1 through X-11 infractions: exclude from consideration for Administrative Parole for 2 years from the date of offense;
 - b) X-12 through X-24 infractions: exclude from consideration for 1 year from the date of offense;
 - c) Class A infractions: exclude from consideration for 6 months from the date of offense.
- e. Allowing inmates currently incarcerated who meet eligibility requirements to participate in the administrative parole process.

Recommendation 16: Implement a specialty parole option for long-term, geriatric inmates

Compared with their younger peers, older inmates have higher rates of both mild and serious health conditions, leading to much greater medical needs. Because of these increased needs, prisons nationwide spend about two to three times more to incarcerate geriatric individuals than younger inmates.³⁶ At the same time, researchers have consistently found that age is one of the most significant predictors of criminality, with criminal or delinquent activity peaking in late adolescence and decreasing as a person ages.³⁷ Studies on parolee recidivism found the probability of parole violations decrease with age, with older parolees as the least likely group to be re-incarcerated.³⁸

In Oklahoma, the population of inmates over age 55 has grown by 43 percent since 2011, making up 12 percent of the standing population in 2016. Department of Corrections medical expenditures in 2016 totaled \$84,762,858 in FY2015, 16.5 percent of DOC's actual spending. Currently, no mechanism or authority exists to parole a person whose advanced age reduces the risk of future criminal behavior.

Constitutionally, the Governor of Oklahoma has a central role in the parole process for offenders convicted of serious crimes. The recommendation for the creation of a geriatric parole process therefore centers on parole eligibility, rather than parole release, for geriatric inmates.

The Task Force recommends:

- a. Establishing a geriatric parole process that allows inmates who have aged out of criminal behavior to become eligible for parole consideration at age 50, after serving 10 years of their sentence:
 - i. Excluding felony sex offenses; and
 - ii. Excluding sentences of death and Life Without Parole.
- b. Establishing a process of administrative parole for inmates who have served 10 years of their sentence and who:
 - i. Have reached the age of 65 or older; OR
 - ii. Are serving a sentence for a nonviolent offense and have reached age 55; OR,
 - iii. Whom the medical director of the Department of Corrections has determined to be medically frail after reaching age 55.

Recommendation 17: Change Pardon and Parole Board qualifications and training

The Oklahoma Constitution requires that the Pardon and Parole Board consist of five members, three appointed by Governor, one by the Chief Justice of the Supreme Court, and one by the Presiding Judge of the Criminal Court of Appeals. By statute, members are required to have:

- A bachelor's degree in the social sciences from an accredited college or university and five years of experience in the criminal justice field;
- A master's degree and four years of experience in the criminal justice field; or
- A juris doctorate and three years of experience in the criminal justice field.

In recognition of the critical function of the Pardon and Parole Board in protecting public safety by making parole decisions grounded on recidivism reduction research, the Task Force sought to permanently incorporate a clinical and criminological knowledge base into the Pardon and Parole Board's decision-making.

The Task Force recommends:

- a. Changing minimum qualifications of Board members to:
 - i. A bachelor's degree from an accredited college or university, and
 - ii. At least five years of training and/or experience in one or more of the following fields: parole, probation, corrections, law, law enforcement, psychology, psychiatry, sociology or social work.

- b. Requiring that at least two members of the Board have five years of training and/or experience in clinical psychology, substance abuse services, or social work.
- c. Requiring that annual Board training incorporate training in evidence-based practices for recidivism reduction, including identifying, understanding, and targeting criminogenic risks and needs; principles of effective risk-reduction interventions; and how to support and encourage compliance and behavior change.

Recommendation 18: Make the general parole process more transparent and coherent

In the course of the policy development process, the Task Force conducted an intensive review of the parole code and found that many years of incremental changes to the parole process have resulted in statutory inconsistencies, which have, in turn, increased the burden on the Pardon and Parole Board to determine parole eligibility and paroling authority. Concurrently, prosecutors, judges, and defense attorneys have struggled to estimate when individuals will be released based on their original sentences and have largely underestimated the time served by most inmates. The Task Force has sought to clarify the purpose of the parole process as a critical public safety tool, while at the same time creating greater certainty at sentencing, by creating clear statutory guidelines for parole processes.

The Task Force recommends:

- a. Establishing general parole eligibility at 25 percent of sentence with a mandatory period of 25 percent to be served prior to any form of release, meaning no person can be released prior to serving 25 percent of their sentence.
- b. Creating a statement of legislative intent that describes the purpose of the parole process as a means of safely releasing compliant inmates in a timely fashion with the resources to be successful in the community.
- c. Defining, in statute, the criteria that the PPB should be using to make the parole decision for those people who do not qualify for administrative parole.
- d. Defining violent crimes for the purposes of the governor's parole consideration by adding statutory citations to 57 O.S. § 571.
- e. Requiring that for all those whose parole is denied, the PPB shall state on the public record the reason for the parole denial and make recommendations to the individual for steps to address the cause of the denial.
- f. Aggregating consecutive sentences for purposes of determining parole eligibility date.
- g. Developing a structured, publically available reporting worksheet for the PPB and their investigators to use in their decision-making.
- h. Requiring that conditions and stipulations given by the PPB as part of parole release be evidence-based.
- i. Allowing eligible inmates to be considered by PPB before their eligibility date, in order to be prepared for release at their eligibility date.

Recommendation 19: Streamline and standardize the parole revocation process

Parolees awaiting revocation proceedings in Oklahoma are currently being held in prison for an average of 100 days before a recommendation is made to the governor, whether they are being revoked for new criminal activity or technical violations of parole. For parolees awaiting revocation for technical violations, these delays disrupt the principle of swift, certain, and proportional sanctioning to promote behavior change and also waste prison resources on individuals who do not represent a threat to public safety.

The Task Force recommends:

- a. Requiring that a summons, rather than a warrant, be issued for technical violators of parole, ensuring that technical violators are not held in prison awaiting parole revocation proceedings.
- b. Requiring that revocation proceedings occur within 10 days of arrest for those being held on warrants, and within 20 days for those who have been issued a summons.
- c. Requiring that time served awaiting revocation be credited upon parole revocation for any violation, and require that “street time” be credited for revocations on technical violations and nonviolent new convictions.

Recommendation 20: Expand GPS program eligibility and affordability

Electronic monitoring offers a more intensive supervision capacity, which DOC utilized as part of a step-down process for inmates returning to the community. Despite 11 percent growth in the number of inmates on electronic monitoring since 2012, GPS program participants made up less than three percent of DOC jurisdictional population for the last five years. In June of 2016, only 753 inmates were participating in the GPS program. Just over 20 percent of releases from GPS were returned to prison in FY2016, a lower failure rate than other forms of DOC supervision despite the fact that GPS participants can be returned to prison much more easily than parole or probation supervisees.

The GPS program has stringent eligibility requirements for participation that exclude:

- Inmates convicted of a violent offense within the previous 10 years or convicted of trafficking;
- Inmates who were denied parole within the previous 12 months;
- Certain inmates not receptive to substance abuse treatment and follow-up treatment;
- Inmates deemed by DOC to be a security risk or threat to the public; and
- Inmates required to register for a sex offense.

In order to be placed in the GPS program, inmates must be serving a sentence of five years or less or must have not more than 11 months left to serve on their total term of incarceration. Even for those inmates that qualify, the cost of the GPS equipment may be prohibitive, reaching as much as \$300 per month.

The Task Force recommends:

- a. Allowing eligible inmates who have 24 months or less remaining on their sentences to be released on GPS supervision, with a current risk and needs assessment administered prior to placement in the GPS program..

- b. Requiring that no inmate be ineligible for the GPS program based on an inability to pay GPS monitoring fees; DOC shall work with the inmate to waive, subsidize, or establish payment plans for GPS costs.
- c. Prioritizing DOC treatment and programming resources for offenders in the GPS program, in accordance with the results of their risk and needs assessment.
- d. Requiring that VINE notification shall alert victims when an inmate is transferred to the GPS program.

Recommendation 21: Sentence modification for nonviolent Life Without Parole sentences

There are currently nineteen individuals serving sentences of Life Without Parole for nonviolent crimes in Department of Corrections custody. Their average age is 53 years old and they have already served over 10 years in prison on average. After recent legislative changes, Life Without Parole has been limited for nonviolent crimes, and the Task Force has sought to give relief to those individuals sentenced under previous statutes. The sentence modification process allows judges to alter the sentence to Life or a determinate sentence, rather than Life Without Parole, giving those individuals a chance at parole and incentivizing institutional compliance.

The Task Force recommends:

- a. Allowing sentence modification for inmates who are currently serving sentences of Life Without Parole for nonviolent crimes after serving 10 years. Inmates whose LWOP sentences are modified may then be eligible for administrative parole or geriatric parole at their appropriate eligibility dates.

Ensure oversight and accountability

The reforms to Oklahoma's corrections and criminal justice systems will require careful implementation and oversight. Moreover, additional legislative and administrative reforms may be needed after implementation to enable the state to realize the goals of justice reinvestment. Data analysis has been a vital component of the Task Force process and has been necessary in order to develop the recommendations. The ongoing collection and analysis of data and performance measures to ensure what is anticipated actually occurs is a necessary component for implementation of these changes, evaluation, and developing corrective action. The Task Force strongly recommends that savings from averted prison costs be reinvested in the following five ways. Furthermore, the Task Force recommends that an appropriate statutory provision be enacted to protect the savings in corrections spending.

Recommendation 22: Require collection of key performance measures and establish an oversight council

The implementation of these reforms will be complex and will require coordination and management. Several states that have enacted similar comprehensive reform packages, including Georgia, South Carolina, and South Dakota, have required oversight councils to track implementation, report on outcomes, and recommend additional reforms if necessary. Many of these states have also charged the oversight councils with helping to administer ongoing reinvestment dollars based upon the savings associated with the reforms.

The Task Force recommends:

- a. Establishing an Oversight Council, comprised of key stakeholders from the legislative, executive, and judicial branches as well as criminal justice practitioners, and supported by research entities, such as an educational institution, that can collect and interpret data. Require the Oversight Council to:
 - i. Meet at least twice per year specifically to monitor the reforms;
 - ii. Review performance measures and if needed, establish new measurements;
 - iii. Report back to state leadership and the legislature on implementation efforts; and
 - iv. Make additional legislative and budgetary recommendations for future data-driven, fiscally sound criminal justice policy changes.

Recommendation 23: Require technological advances for the collection and reporting of key performance measures

To track implementation of the criminal justice reforms recommended by the Task Force, and to assess their ongoing impacts on public safety, recidivism rates, and the prison and community supervision populations, the state must commit to collection, analysis, and public reporting of all relevant data and information. Data will be used to track outcomes, improve agency operations, and inform policy-making and budgetary decisions. The Oversight Council, established above, provides a forum for diverse representation of the criminal justice system and a means to analyze and review the effectiveness of policy reforms with the data and provides a foundation to inform policy-makers' future decision-making.

The Task Force recommends:

- a. Enhancing the state's ability to track data from filing to discharge to improve communication amongst agencies, including requiring DOC, Pardon and Parole Board, ODMHSAS, and the Administrative Office of the Courts to collect and report data to an oversight council on all data points and key performance measures relevant to the implementation and effectiveness of the policy changes recommended in this report.

This recommendation will require an investment of state resources.

Recommendation 24: Establish a risk reduction/reentry fund

State Question 781, approved by the voters in the 2016 November election, established a fund to support reentry programs, including recidivism reduction programming and treatment options. State Question 780 reclassified certain property and drug possession crimes as misdemeanors, and the fund established through SQ 781 was developed to use money saved by that reclassification. The dearth of resources at the local level often makes prison – a state-funded and extremely expensive option – the only viable penalty. Further, counties and judicial districts are often best suited to identify the correctional programming, treatment, and services that would go farthest to reduce recidivism, hold offenders accountable, and control costs.

The Task Force recommends:

- a. Establishing a system that would distribute resources proportionally to counties across the State consistent with State Question 781. This fund would support evidence-based recidivism reduction programming.

This recommendation will require an investment of state resources.

Recommendation 25: Provide enhanced training for decision makers and criminal justice decision makers

Through the use of current research and best practices, criminal justice practitioners can enhance their ability to achieve more successful outcomes with those in their custody and care. Establishing sustainable and effective mechanisms requires regular training.

The Task Force recommends:

- a. Requiring annual trainings for all supervision providers, the Pardon and Parole Board, and parole investigators on evidence-based practices and decision-making, based on guidelines set by nationally recognized organizations like the American Probation and Parole Association and the Association of Paroling Authorities International. Training topics should include identifying, understanding, and targeting criminogenic needs, the principles of effective interventions, core correctional practices, and how to support and encourage compliance and behavior change.
- b. Requiring ODMHSAS to develop specialty training for vendors on best practices in providing treatment to the criminal justice involved population.
- c. Requiring criminal justice stakeholders, such as judges and district attorneys, as well as law enforcement, to receive training on research and evidence-based practices including:
 - i. Training on how to effectively assess victims' mental health, substance abuse, and trauma issues;
 - ii. Judicial training on victims' rights, victim sensitivity, Victim Protective Orders, and Full Faith & Credit under the *Violence Against Women Act*;
 - iii. Training on how to improve victims' rights to be involved in plea agreements;
 - iv. Training on victim notification to enforce victims' rights to participation, information and notification, and community coordinated responses to victims of crime;
 - v. Law enforcement training on personal safety planning to be provided at the pretrial stages of criminal cases.

This recommendation will require an investment of state resources.

Recommendation 26: Enhance programming and treatment options for incarcerated individuals and those on supervision

The Task Force heard from practitioners and other stakeholders about the gap between the treatment needs and the treatment resources available statewide. Community treatment services designed for the general public do not always meet the needs of those who are involved in the criminal justice system. When criminal behavior is related to unmet substance abuse or mental health needs, access to quality treatment can have significant public safety benefits.

The Task Force recommends:

- a. Establishing the use of an effective and validated risk and needs assessment tool to inform treatment, case planning, and supervision practices in the community, in accordance with Recommendation 1.

- b. Expanding programming and outpatient treatment options for individuals leaving prison and reentering the community, including expanding access to clinical services for substance abuse and mental health treatment from licensed providers.
- c. Expand the capacity of the specialty court program and the Community Sentencing program and require an independent evaluation of these programs every three years to ensure that they are operating effectively and efficiently and achieving the expected outcomes.

This recommendation will require an investment of state resources.

Priorities from Oklahoma's Victims, Advocates, and Survivors

Recommendation 27: Provide better support to victims of crime

Often those most affected by crime – victims and survivors– go underserved by the state system established to provide justice. The overuse of state resources on imprisoning nonviolent offenders drains resources from violence prevention and victim protection. The Task Force sought out the voices of crime victims, survivors, and victim advocates in the assessment of Oklahoma's criminal justice system. To inform the process of developing recommendations for legislative and budgetary changes, three Victim/Survivor/Advocate Roundtables were held, one in Oklahoma City, one with the Seminole Nation, and one with the Cherokee Nation. The roundtables focused on addressing victims' needs in urban, rural, and tribal communities. Based on the discussion held across the three roundtables, the Task Force has identified several areas of improvement in victims' services and violence prevention.

The Task Force recommends:

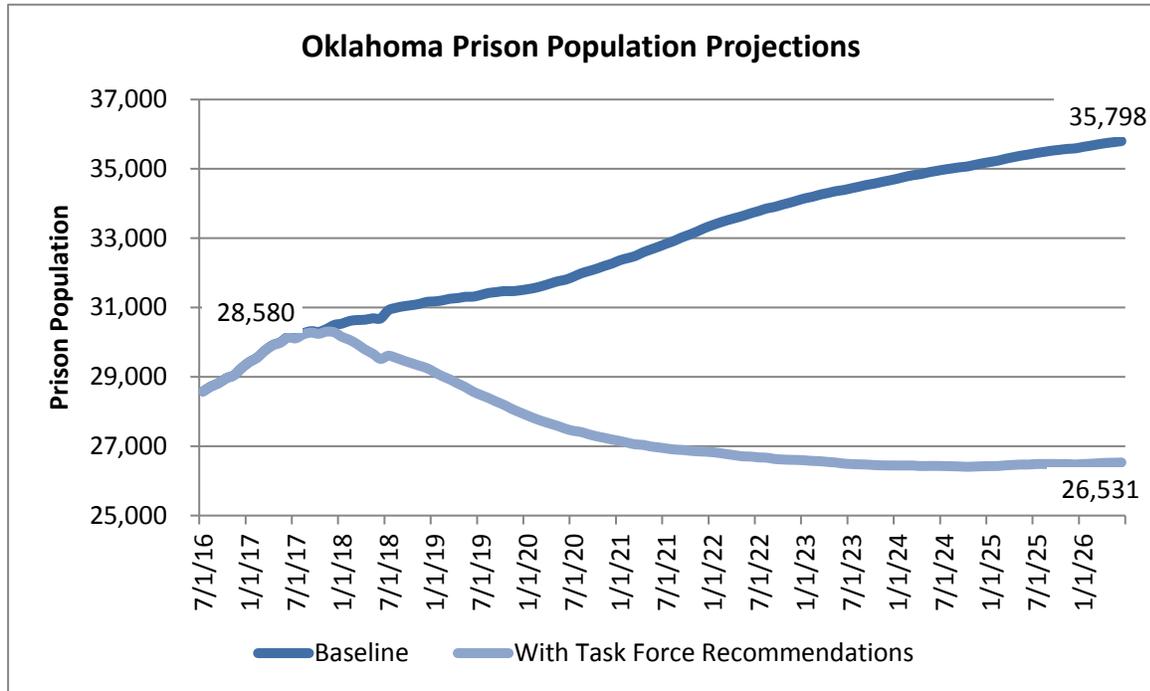
- a. Establishing more effective responses to victims of domestic violence including lethality assessments and improved victim access to and enforcement of Victim Protective Orders, and use of the Batterers Intervention Programs within Oklahoma's Department of Corrections institutions.
- b. Requiring judgment and sentence orders to include a condition that any offender convicted in a domestic violence offense receive a full batterer's assessment through a certified batterer's program.
- c. Establishing a broad certification program for individual victim assistance professionals to ensure that all victim/survivor services across the state are provided by trained professionals who are victim-centered and trauma-informed.
- d. Creating a clerical mechanism to identify domestic violence conduct at sentencing for felonies other than domestic abuse.

This recommendation will require an investment of state resources.

Impacts of the Task Force’s Recommendations

The Task Force’s package of recommendations is projected to reduce the prison population by 9,267 beds from the projected growth, averting all of the projected growth in the next 10 years, reducing the prison population by seven percent, and saving an estimated \$1.9 billion in capital and operating costs through 2026. (See Figure 10.) These impacts are contingent upon successful legislative and executive enactment of the above recommendations.

Figure 10. Projected prison population with and without Task Force recommendations



Source: Data from the Oklahoma Department of Corrections, Analysis by CJI

Policies for Further Review

There were several policy areas that provoked significant discussion by Task Force members but required further analysis and deliberation. The Task Force proposes looking into each of these issues in the near future.

Establishing a clearinghouse of fines, fees, and costs

The first objective is the development of a system to support the payment of financial obligations such as fines and fees. Throughout the state, there is not consistent communication between a person with financial obligations and the courts. Some individuals owe money to multiple courts and the policy requires that each be paid at the specific court. When an individual loses track of what they owe, a warrant is often issued causing that person to be arrested.

The Task Force supports the development of a program to consolidate all the financial obligations including but not limited to fines and fees that are owed by individuals charged with criminal

offenses. The program will make it easier for people to track the amount of money owed and where it is owed. The goal is to eventually create a process that allows offenders to make payments in a centralized location. This effort would likely increase payments for these obligations and minimize confusion leading to additional burdens on the individuals and the criminal justice system.

Incentivizing payments

The second objective is the establishment of a pilot program to incentivize continual and consistent payments. The intent of the pilot program is to determine if individuals can be incentivized to make consistent payments if they know that, once a certain threshold of payment has been met, the remainder of their debt would be forgiven.

To ensure participating courts are not penalized, funds should be allocated to keep the courts whole in the event the pilot program loses expected money. Courts would commit to a three-year program that would waive all remaining fines, fees, and other costs if an offender makes 24 compliant payments. Optimally, participating courts would include rural and an urban representation. The courts would be required to:

- i. Collect baseline data on the amount ordered by the court and the amount collected under current policy;
- ii. Measure the amount collected under the new policy and compare it to the amount collected before the policy; and,
- iii. If courts collect less due to the analysis, the courts would be made whole by the pilot fund.

The Oversight Council will continue to study these additional issues.

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