

APRIL 8, 2020

**Fiscal Analysis of
State Question 805:
Oklahoma Taxpayers
Could Save Up to
\$186 Million**

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Summary

Oklahoma criminal statutes typically provide a sentencing range for each offense. A separate law allows even longer sentences—sometimes including life in prison—for persons with prior felony convictions. People convicted of non-violent property and drug offenses are the most likely to receive enhanced penalties under this law and also receive the harshest sentence increases.

State Question 805 would limit this sentence enhancement to crimes that the legislature considers violent. This should reduce Oklahoma’s prison population by 8.5% over the next 10 years. That would reduce state expenses between \$45 million and \$186 million, with expected savings of at least \$142 million. Taxpayer savings of up to \$27 million per year would continue indefinitely into the future. These funds could be directed to substance abuse and mental health services, victim’s services, reentry programs, or other public safety priorities.

Background

In November 2019, a bipartisan coalition filed a ballot initiative, [State Question 805](#), to limit Oklahoma’s repeat offender sentencing enhancement to crimes that the legislature considers violent. Under current law, the repeat offender penalty increases the time of incarceration based on prior felony convictions, regardless of whether those prior convictions were for serious or violent crimes. This can increase sentences up to life in prison, even for people who have never committed a violent offense.

SQ 805 would leave this additional penalty in place for offenders who have committed a crime that is classified by the legislature as violent, but would remove the additional penalty for nonviolent offenses. This would have significant ramifications for Oklahoma’s incarceration rate as well as the Department of Corrections budget—currently over half a billion dollars a year.

There has previously been no data available on the frequency with which the repeat offender penalty is applied, or its effect on sentence length. Without this information, it was impossible to know how much this change would effect incarceration, either in terms of the total reduction or which particular offenders would receive shorter sentences.

In December 2019 and January 2020, a first-of-its-kind file review was undertaken to investigate how Oklahoma uses the repeat offender penalty. This also allows for predictions of how SQ 805 would change the prison population and state budget. A ballot measure that significantly reduces Oklahoma’s prison population without compromising public safety would save taxpayer dollars—potentially tens or hundreds of millions of dollars. Funds not spent on imprisonment could go to alternatives such as victim’s services, reentry programs, and substance abuse treatment, or be returned to Oklahoma’s taxpayers.

This file review was conducted by obtaining and reviewing available public court records for a representative sample of SQ 805’s impacted population: individuals admitted to or in prison for nonviolent crimes in FY2019 with one or more prior nonviolent convictions. These records allowed us to measure how the current repeat offender penalty is used and its corresponding impact on sentence lengths. Analysis of these data led to several significant findings, detailed below. And using these findings, we were able to create a model

that estimates SQ 805’s potential impact on Oklahoma’s incarceration rate and corresponding savings for taxpayers. See the Methodology section for more information on the file review and impact estimates.

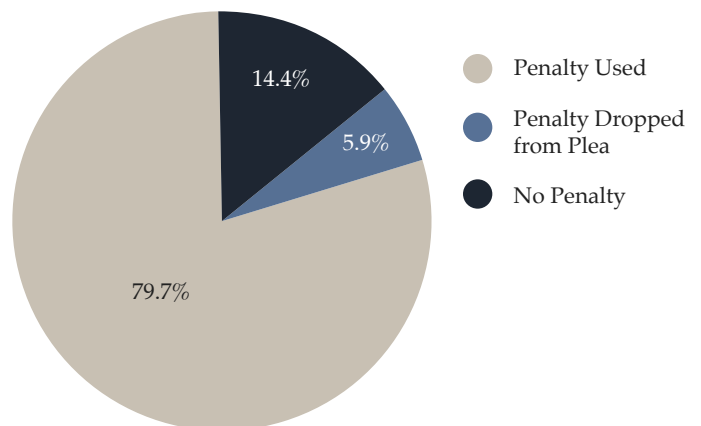
Who receives repeat sentence penalties and how do they affect sentence length?

Oklahoma’s District Attorneys decide whether to use the repeat offender penalty enhancement. The file review conducted in December 2019 and January 2020 found that District Attorneys seek the enhancement frequently for individuals with nonviolent current and prior offenses. Eighty percent of studied individuals who were eligible for the enhanced penalty (individuals sentenced to prison for nonviolent crimes with nonviolent prior offenses) received it. Six percent had supplemental information filed alleging that they had prior felonies but the penalty was later dropped during the plea bargaining phase, and 14% had no prior offenses alleged.

This review found very little variation in how sentence penalties were applied based on race or gender. In other words, prosecutors apply the repeat offender penalty to a high proportion (approximately 80%) of people convicted of nonviolent offenses who have only nonviolent priors, regardless of their race or gender.

80% of Eligible Individuals Received Sentence Penalty

Share of Samples Sentences by Penalty Type



Background

The use of this penalty enhancement was associated with significant increases in sentence lengths, particularly for individuals convicted of non-person drug and property offenses, such as larceny or possession with intent-to-distribute. On average, an individual in the file review sample with a repeat penalty received a sentence of 6.4 years, 36% longer than the average sentence (4.7 years) for someone who did have prior convictions but did not receive a sentence enhancement.

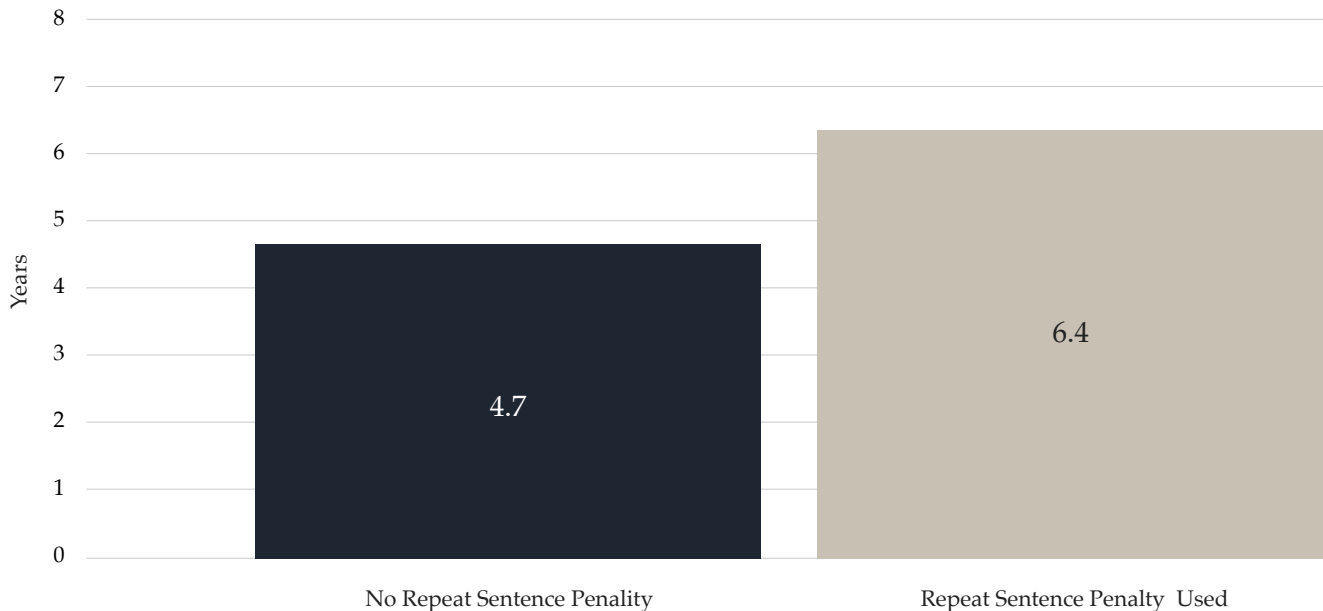
Repeat sentence penalties were associated with increased sentence lengths of 61% (from 5.3 to 8.5 years) for people convicted of drug crimes and 47% (from 3.9 to 5.7 years) for people convicted of property crimes when compared to those sent to prison for the same crimes, who also had prior convictions but did not receive a sentence enhancement.

By contrast, our data indicate the repeat offender penalty is less significant for nonviolent (as defined by the legislature) crimes against people. Individuals convicted of these crimes

receive a smaller increase, 36% (from 4.8 to 6.5 years) in their average sentence length compared to individuals without the enhancement. This includes crimes like domestic assault and battery, which the legislature considers to be nonviolent, but those with prior domestic violence offenses make up a very small portion of the people potentially effected by SQ 805. Only 8% of those who received a repeat sentence penalty for any crime had domestic violence-related priors alleged. Individuals convicted of public order offenses, such as DUI or possession of a weapon after a felony, receive similar average sentences (5.0 to 5.4 years) whether they are convicted using the enhancement or not.

This data means that most of the effects of SQ 805 would be on people going to prison for drug and property offenses. These crimes account for the majority of nonviolent offenses with repeat sentence penalties, and these offenders receive the largest increases, on average, in sentence lengths.

Penalties Led to 36% Longer Sentences on Average
Average Length of Sentence



How will SQ 805 impact the prison population?

The data and findings collected from the file review detailed above allow us to predict the effects of SQ 805 on Oklahoma’s prison population and state spending. These projections are based on individual-level Oklahoma Department of Corrections data from FY2019.

Baseline

To predict Oklahoma’s prison population with SQ 805, we first created a “baseline” prison population projection. This is an estimate of how our prison population would grow over the next 10 years with no reform. The baseline projection accounts for current trends in Oklahoma prison admissions, sentence lengths, and length of stay in prison. Because of recent changes in Oklahoma criminal justice policies, this projection relies mostly on admissions information from FY2019, with adjustments for recent reforms that have not yet been fully implemented. It also looks at the remaining sentence length for people currently in prison, as well as their age, to estimate how long they will remain behind bars. The baseline provides a counterfactual to compare to the projected prison population if SQ 805 passes.

SQ 805’s Impact

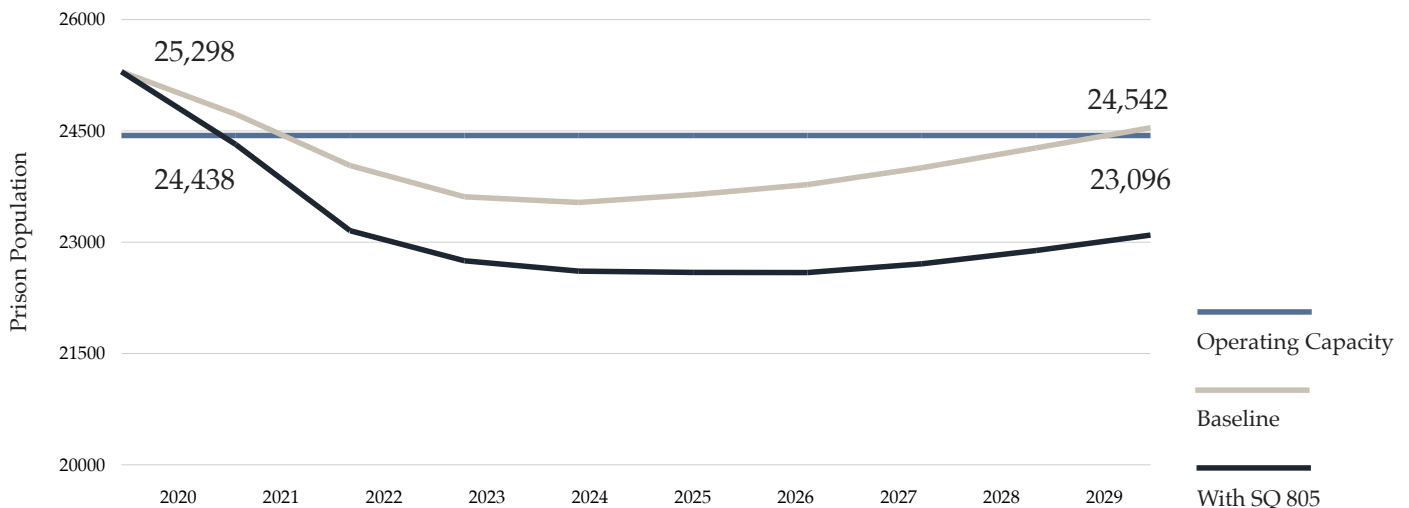
We then calculated how many people who are newly sentenced to prison would be in prison (on a month to month basis) if the state were to adopt SQ 805. We used our file review detailed above to estimate how many people in the current prison population and in each admissions cohort were sentenced with an enhancement, and to estimate how much of a sentence reduction those individuals would receive under SQ 805. We also calculated, based on the file review, how many people currently in prison would be eligible for resentencing under SQ 805, and estimated when they would get out of prison.

These calculations conservatively estimate how much less time nonviolent offenders would spend in prison if SQ 805 becomes law compared to how much longer they would spend in prison under the current law.

Findings

Our projections show SQ 805 would reduce Oklahoma’s prison population by 8.5% over the next 10 years (through 2030). This reduction would take the prison population well below the current rated capacity of 24,438 people—preventing any need to build more prisons or rely on more beds in private prisons or county jails—and would result in substantial cost savings.

SQ805 Projected to Reduce Prison Population 8.5%
Oklahoma Projected Prison Population



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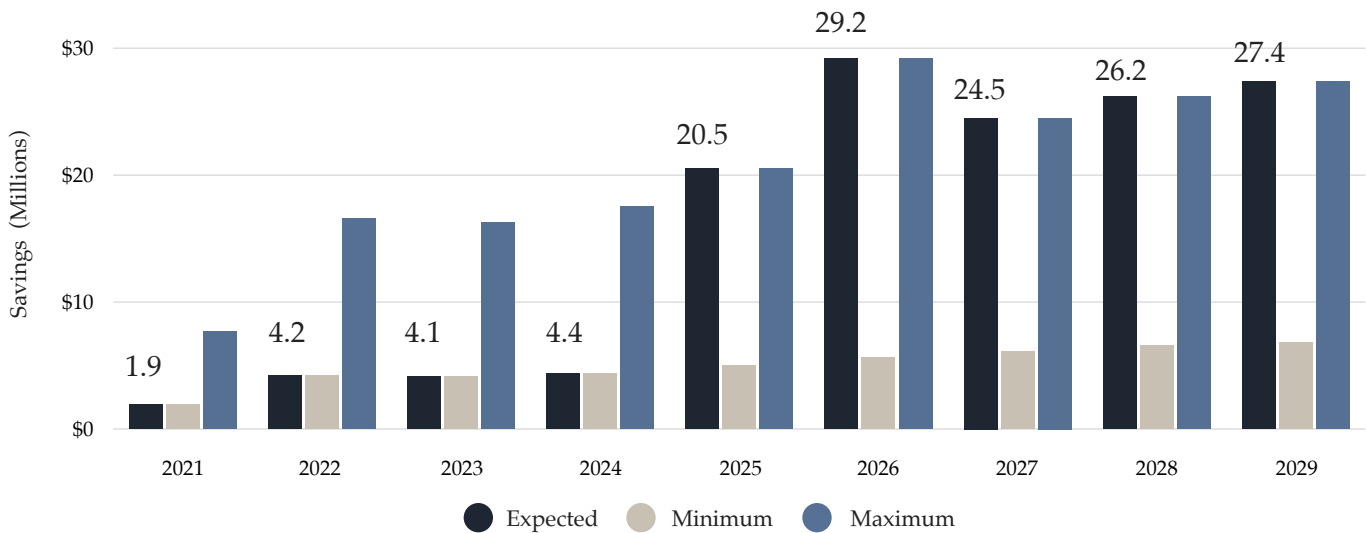
Based on our estimates of the prison population reduction, we calculated a range of possible fiscal savings from a reduced prison population using an average cost figure (\$18,939/year) based on an estimate of the security level of individuals impacted by SQ 805 and marginal cost figure (\$4,726/year). See the Methodology section for more information on how cost savings were estimated.

Oklahoma has 16 state institutions housing fewer than 1,500 people each. How and when the state responds to a lowered prison population could result in a range of fiscal savings resulting from SQ 805. Our calculations based on the possible scenarios concerning the use and maintenance of state facilities resulted in a range of 10-year savings after the passage of SQ 805 from **\$45 million** (with no facility closures) to as high as **\$186 million**.

While these scenarios present a wide range of outcomes, our expected savings, **\$142 million**, assumes that Oklahoma would be able to close several aging state prisons.

These savings are based primarily on reductions in sentence length rather than diverting individuals from prison. In other words, nonviolent, repeat offenders would still go to prison, but serve shorter sentences. SQ 805 would shave off months or years from sentences for nonviolent offenses that research shows do not make a difference to public safety. Most of the individuals impacted by these changes are in prison for drug or property crimes, including 83% of individuals currently in prison who would receive relief from the resentencing provision in SQ 805.

SQ805 Projected to Reduce State Spending by \$142 Million Expected Savings Projection with SQ805



1. The Oklahoma Department of Corrections provides average cost figures for each security level (<http://doc.ok.gov/frequently-asked-questions1#ccc>). This total average cost was calculated based on an estimate of how many individuals impacted by SQ 805 would be housed in each security level. This makes it a more conservative estimate than the overall average cost figure for the department, since these individuals are less likely to be housed in maximum security facilities.

2. The marginal cost of \$4,726/year or \$12.94/day is from a Department of Corrections letter regarding SQ 781 savings calculations from FY18. It may be slightly low since it does not factor in recent inflation.

Conclusion

Existing data show that Oklahomans serve much longer prison terms than people in other states, particularly for drug and property crimes, without a commensurate public safety benefit. This new evidence suggests the repeat sentence penalty is a significant contributor to sentence lengths for these nonviolent offenses.

This is borne out in our projections of SQ 805's impact on Oklahoma's prison population. Our projections show that with SQ 805's passage and the removal of this repeat sentence penalty for nonviolent offenses, Oklahoma's prison population would be reduced by 8.5% over the next 10 years. This could save the state as much as \$180 million, and should save at least \$45 million, over the same period. These funds could be returned to Oklahoma taxpayers or dedicated to mental health or substance abuse treatment, victim's services, workforce development, or other programs.

With all of these changes, however, SQ 805 would still only reduce Oklahoma to the fourth-most incarcerated state in the nation. Rather than the radical reductions opponents claim, this is a common-sense, limited adjustment to drug and property sentence lengths that will make Oklahoma's failing criminal justice system more efficient and more fair.

3. Travis, B. Western, and S. Redburn, Editors; *The Growth of Incarceration in the United States: Exploring Causes and Consequence*, National Research Council, 2014, https://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.

4. "Long Sentences Drive Oklahoma's High Imprisonment Rate," FWD.us, 2020, https://www.fwd.us/wp-content/uploads/2020/03/OCJR_LongSentences.pdf.

Methodology

This data used in this report was collected by analyzing a representative sample of the following available public court records:

Information documents

- Supplemental information/second page information documents
- Plea form/record of plea/sometimes called “summary of facts” / jury instructions
- Judgment and Sentence (J&S) documents

Information was collected from the below on the number and type of priors alleged, as well as whether sentence enhancements were charged and sentenced for each individual offense. Sentences were marked as enhanced if the plea or J&S documents indicated the defendant’s sentence was enhanced by prior felony convictions and the sentence length for the given offense was in the enhanced sentence range.

Our representative admission sample was obtained through a 15% random sample drawn from the full population (2,693) of individuals admitted to prison in FY2019 with a new court commitment, a current non-violent offense, and at least 1 prior non-violent offense. These are the individuals who might be impacted by SQ 805 moving forward. Admissions with court cases filed in 2019 were sampled at 100% because of recent law changes that went into effect in November of 2018. Individuals with only current possession convictions were dropped from the sample, because these individuals may already have been released under HB 1269. A similar sample was drawn from the snapshot population in July 2019, allowing further review of individuals who were admitted to prison at an earlier date, to see whether they differed from recent admissions.

Of the 678 individuals for whom court files were sought, 590 (87%) had one or more court files available (458 in the admissions sample and 132 in the snapshot sample) and 528 (78%) had all files available. We were able to review all requested files for Oklahoma and Tulsa counties, but were not able to get all sampled cases from rural counties, therefore urban counties are slightly overrepresented in our final sample, however the final sample is otherwise representative of the full drawn sample, including by gender and race.

These records were matched to Department of Corrections records including:

- Race
- Gender
- Offense sentence length
- Offense type

Using the information gathered in this file review, a model was created to estimate how many and which specific individuals in the most recent admissions cohort and in the most recent prison population snapshot would be most likely to receive enhancements based on sentence length, number and type of current and prior offenses, gender, race, location in the state, age, and other factors. Individuals modeled to have an enhancement then had their sentence reduced in the projection model to estimate the impact of SQ 805.

Cost savings associated with SQ 805 are based on the difference between the baseline prison projection and the prison projection under SQ 805. Either the marginal cost (the cost to feed and provide medical care to one person in prison per year) or the average cost (the full cost to incarceration a person for a year, including staffing, facility, and other fixed costs) was applied to the monthly savings in the prison population and then summed up to approximate the annual savings.

The minimum savings estimate uses only the marginal cost savings for the entire period. This is likely far too low because of the significant reduction below capacity. The maximum savings estimate uses the average cost savings for the entire period. This is likely too high because in the first year or two of SQ 805 being in effect, it would not be possible to close a facility or otherwise cut fixed costs enough to achieve this level of savings. The expected savings estimate combines these two approaches by using the marginal cost savings for the first several years of the SQ 805 projection but assuming that prison closures or other major adjustments based on the lower prison population would kick in during 2025 and 2026, resulting in average cost savings being a more appropriate measure. In addition, the expected and maximum savings estimates include savings from deferred maintenance on several older facilities. For the sake of this estimate, two facilities that currently house larger numbers of people in the impacted group were used (William S. Key Correctional Center and Jackie Brannan Correctional Center). Estimates of facility-specific savings came from the [FY2020 Department of Corrections budget request](#). If different facilities were closed this could increase or lower the total savings slightly.

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