

*FISCAL ANALYSIS OF
SENATE BILL 704:
OKLAHOMA TAXPAYERS
COULD SAVE
\$137 MILLION*

Oklahoma Senate Bill 704 is projected to reduce Oklahoma’s prison population by almost 1,400 people over the next 10 years and save the state at least \$137 million. This would result from eliminating sentence enhancements for people convicted of most nonviolent offenses. People with drug and property crime convictions currently receive the harshest sentence increases when enhancements are applied. SB 704 is much more limited than State Question 805; it would not impact people convicted of violent offenses, domestic abuse felonies, animal cruelty, offenses requiring sex offender registration, or DUI that results in great bodily injury. Because of these limits, SB 704’s projected reduction of Oklahoma’s prison population is 6.3% less than SQ 805’s.

After the first 10 years, Oklahoma taxpayers would continue to save up to \$26 million each year as a result of SB 704. Savings could be reinvested into services for domestic violence survivors, mental health treatment, reentry support, and crime prevention programs.

BACKGROUND

Sentence enhancements in Oklahoma dramatically increase the prison time faced by persons with prior felony convictions, regardless of whether those prior convictions were for serious or violent crimes. As the law is written today, a conviction for stealing from a vending machine is treated the same as many offenses requiring sex offender registration. Many states have sentence enhancements but unlike Oklahoma, they are not applied across all felonies.

Research has consistently shown that long sentences for low-level nonviolent crimes do not make communities safer. In Oklahoma, these enhancements could increase sentences up to life in prison, even for individuals with only current and prior nonviolent convictions. However, the enhancement is not mandatory — district attorneys choose when and how to apply this penalty based on the charges they bring. Analysis of sentence enhancements shows that they are applied in 80% of eligible nonviolent cases.

SB 704 IS DIFFERENT THAN SQ 805

In November 2019, a bipartisan coalition filed a ballot initiative, [State Question 805](#), to limit sentence enhancements in Oklahoma to crimes that the legislature defines as violent. This ballot initiative did not pass when voted on in November 2020.

SB 704, authored by Senator Dave Rader for the 2021 legislative session, will limit Oklahoma's sentence enhancements. Unlike SQ 805, SB 704 is not a constitutional amendment, and it excludes domestic abuse felonies, animal cruelty, offenses requiring sex offender registration, and driving under the influence resulting in great bodily injury. These offenses will continue to receive the repeat sentence penalty along with offenses defined as violent under § 57-571. Because of these exclusions, SB 704 is more restrictive than SQ 805. More offenses could receive a sentence enhancement under SB 704 than under SQ 805. SB 704 would largely apply to nonviolent drug and property offenses.

Though SB 704 would remove sentence enhancements for fewer offenses than SQ 805 and impact fewer people, it would still safely and significantly reduce Oklahoma’s prison population and the costs of operating the Department of Corrections, which currently has an annual budget of more than half a billion dollars. While Oklahoma’s prison system population has declined during COVID-19, the population is projected to grow once the pandemic ends without a change in policy.

WHO RECEIVES A SENTENCE ENHANCEMENT AND HOW DOES IT AFFECT SENTENCE LENGTH?

While SB 704 impacts a smaller number of people than SQ 805 due to its offense restrictions, the rate at which prosecutors apply sentence enhancements to the impacted population is similar. **Prosecutors apply sentence enhancements to a high proportion (approximately 80%) of people convicted of SB 704 nonviolent offenses who have only nonviolent priors, regardless of their race or gender.**

The use of sentence enhancements for SB 704’s impacted offenses, primarily nonviolent property and drug offenses, is also associated with longer sentences. Sentence enhancements were associated with 61% (from 5.3 to 8.5 years) and 47% (from 3.9 to 5.7 years) longer sentences for people convicted of drug and property crimes respectively compared to those sent to prison for the same crimes, who also had prior convictions but were not given a sentence enhancement.

These findings come from an extensive review of Oklahoma court case files conducted in early 2020. See the Methodology section for more information on the file review.

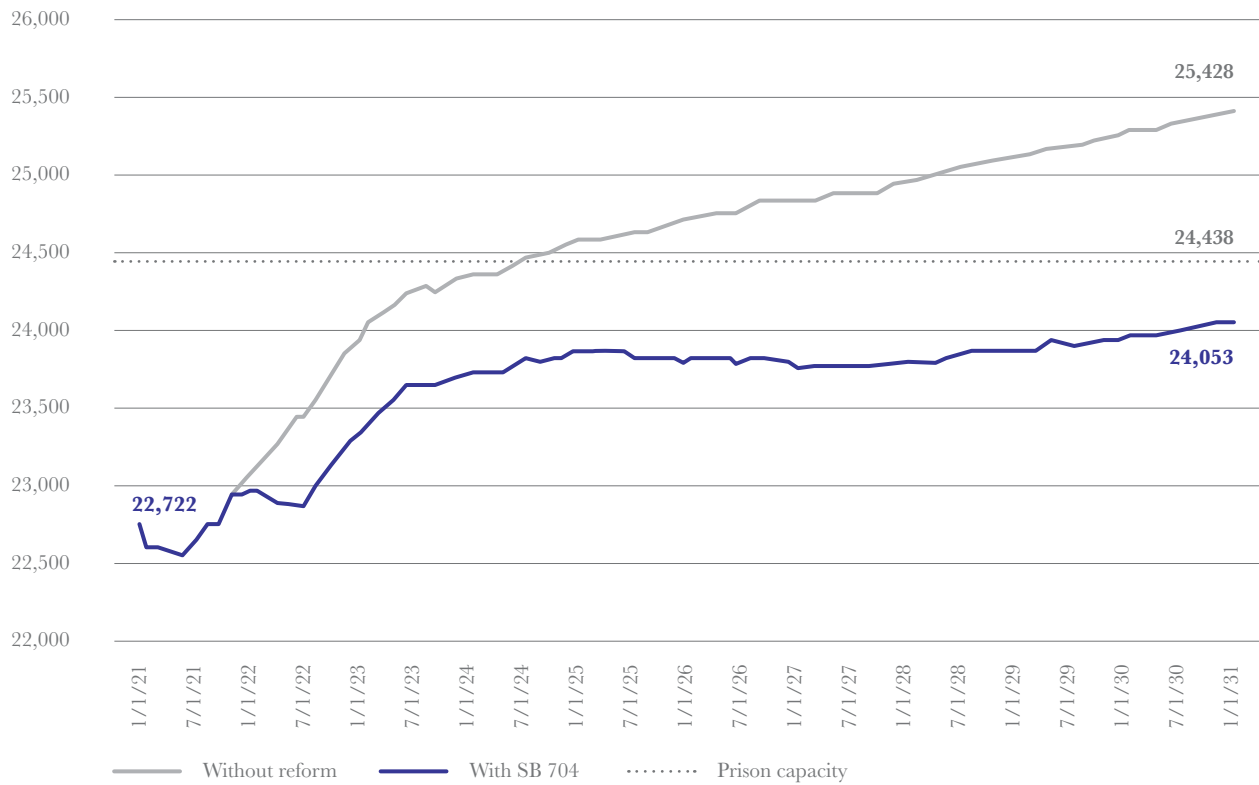
HOW WILL SB 704 IMPACT THE PRISON POPULATION?

SB 704 is projected to reduce Oklahoma’s projected prison population by almost 1,400 people over the next 10 years. SB 704’s impact is 6.3% smaller than SQ 805’s 1,470 bed savings due to SB 704’s exclusion of domestic abuse felonies, animal cruelty, offenses requiring sex offender registration, and driving under the influence resulting in great bodily injury.

SB 704’s projected reduction would keep the prison population below 24,000 people until 2030—allowing the state to close aging facilities and reallocate resources—and would result in substantial cost savings.

This impact estimate is built on a baseline estimate of how the prison population would grow over the next 10 years with no reform. This baseline assumes that after the COVID-19 pandemic ends, prison admissions will return to their pre-pandemic levels but there will not be a surge in admissions because of a backlog of cases. Returning to “normal” admissions levels will lead to immediate growth of the prison population back to its pre-pandemic levels over the next ten years. This is a conservative estimate; if a surge of prison admissions does take place, prison population growth may be significantly higher than projected. The impact of SB704 would likely be larger in that case due to the larger number of people moving through the prison system.

Oklahoma Projected Prison Population



HOW MUCH TAXPAYER MONEY WILL BE SAVED BY SB704?

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 SB 704¹ and a marginal cost figure (\$4,726/year).² See the Methodology section for more information on how cost savings were estimated.

SB 704 Expected Savings per Year (Millions)



- 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 SB 704 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.

Oklahoma has 16 state institutions housing fewer than 1,500 people each. How and when the state responds to a lowered prison population or a prison population above capacity could result in a range of fiscal savings resulting from SB 704. 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 SB 704 from **\$40 million** (with no facility closures) to as high as **\$161 million**.

While these scenarios present a wide range of outcomes, our expected savings, **\$137 million**, assumes that Oklahoma would be able to close several aging state prisons and not build more.

These savings are based primarily on reductions in sentence length rather than diverting individuals from prison. In other words, people convicted of nonviolent, repeat offenses would still go to prison, but most would serve shorter sentences. SB 704 would shave off months or years from sentences for nonviolent offenses that research shows do not make a difference to public safety.³ Most of the individuals impacted by these changes are in prison for drug or property crimes.

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.ijay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.

CONCLUSION

Existing data shows that Oklahomans serve much longer prison terms than people in other states, particularly for drug and property crimes.⁴ Sentence enhancements are a significant contributor to sentence lengths for these nonviolent offenses.

This is borne out in our projections of SB 704’s impact on Oklahoma’s prison population. Our projections show that with SB 704’s passage and the removal of sentence enhancements for most nonviolent offenses, Oklahoma’s projected prison population would be reduced by almost 1,400 people over the next 10 years. These reductions could save the state as much as \$161 million, and should save at least \$40 million, over the same period. These funds could be returned to Oklahoma taxpayers or dedicated to victim services, mental health treatment, reentry support, or crime prevention programs.

With all of these changes, however, SB 704 would still only reduce Oklahoma’s prison population by 5%. This is a common-sense, limited adjustment that would mostly apply to drug and property sentence lengths that will make Oklahoma’s failing criminal justice system more efficient and more fair.

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

FILE REVIEW

A first-of-its-kind file review undertaken in December 2019 and January 2020 helped provide information on how Oklahoma uses sentence enhancements. This data 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 on the number and type of priors alleged, as well as whether sentence enhancements were charged and applied 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 SB 704 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 drug 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 SB 704.

IMPACT PROJECTION

The data and findings collected from the file review detailed above allow us to predict the effects of SB 704 on Oklahoma’s prison population and state spending. These projections are based on individual-level Oklahoma Department of Corrections data from FY2019 and FY2020.

Baseline

To predict Oklahoma’s prison population with SB 704, we first created a “baseline” prison population projection. This is an estimate of how the prison population would grow over the next 10 years with no reform. The baseline projection accounts for recent trends in Oklahoma prison admissions, sentence lengths, and length of stay in prison. Because of recent changes in Oklahoma criminal justice policies, as well as a reduction in prison admissions during the COVID-19 pandemic, this projection relies mostly on prison admissions from March 2019-February 2020 and prison releases from FY2019 and FY2020, with adjustments for recent reforms that have not yet been fully implemented. It also looks at the remaining sentence lengths for people currently in prison, as well as their age, to estimate how long they will remain behind bars. This baseline assumes that after the COVID-19 pandemic ends, prison admissions will return to their pre-pandemic levels without but there will not be a surge in admissions because of a backlog of cases. If there is a surge of prison admissions, prison population growth may be significantly higher than projected in the next few years, absent further reform. The baseline provides a counterfactual to compare to the projected prison population if SB 704 passes.

SB 704’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 SB 704. 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 SB 704. We also calculated, based on the file review, how many people currently in prison would be eligible for commutation under SB 704, and estimated when they would get out of prison.

These calculations conservatively estimate how much less time SB 704-eligible people with nonviolent convictions would spend in prison if SB 704 becomes law compared to how much longer they would spend in prison under the current law.

Cost savings associated with SB 704 are based on the difference between the baseline prison projection and the prison projection under SB 704. 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 SB 704 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 SB 704 projection but assuming that prison closures or other major adjustments based on the lower prison population would kick in during 2025, resulting in average cost savings being a more appropriate measure.

