



# Criminal Justice Reform in Oklahoma—Next Steps

by Adam Luck

## Key Points

- With corrections populations and costs skyrocketing, Oklahoma needed to make changes to their entire criminal justice process.
- The 2015 legislative session was very productive for criminal justice reform.
- Even with these reforms, there is still work to be done.

## Executive Summary

This was a great year in Oklahoma for criminal justice reforms. Not since the passage of justice reinvestment legislation in 2012 have we seen such significant measures make it through the legislative process.

In 2016, the Legislature passed four key pieces of criminal justice reform legislation. House Bill 2479 eliminated mandatory minimum sentences for first and second felony drug possession charges and lowered the mandatory minimum sentence for third and subsequent charges. The bill also lowered the maximum sentences as well for each category. Previously, a first felony drug possession conviction in Oklahoma carried a potential sentence of two to ten years, a second conviction was four to 20 years, and third and subsequent convictions were six to 20 years. The ranges are now zero to five years for first, zero to ten for second, and four to 15 for third and subsequent convictions. This bill passed the Oklahoma House 76-15 and the Senate 45-2.

HB 2751 increased the felony property crime threshold from \$500 to \$1,000. This threshold was last changed in 2001 when a mere \$50 in stolen money or goods was considered a felony. This change reflects a greater trend nationwide to adjust these thresholds not only for inflation, but in recognition of the impact of a felony conviction and in reevaluation of what a felony conviction is worth. Recent research released by the Pew Charitable Trusts' Public Safety Performance Project found that increases in felony property crime thresholds over the last 15 years have not resulted in higher property or larceny crime rates ([Pew Charitable Trusts](#)). This suggests that we are headed in the right direction, especially given that even at a \$1,000 threshold we are

still behind other states like Texas, which has increased the same threshold up to \$2,500. This bill passed the House 80-8 and the Senate 43-3.

HB 2753 expanded the availability of community sentencing and drug court in Oklahoma by eliminating the prior felony conviction requirement. The legislation also requires an approved risk and needs assessment identifying community sentencing or drug court as the most appropriate sentence. The services and treatment made available through these sentencing options are now available to individuals earlier in their lives and before they have a felony conviction on their records. The logic behind the felony conviction requirement reasoned that these services should be reserved for those we know are headed to prison; however, these services are often extremely effective in earlier interventions as well. This legislation passed the House 90-0 and the Senate 42-1.

HB 2472 provides Oklahoma district attorneys discretion to file any charge as a misdemeanor rather than a felony offense. The offense cannot be listed as an 85 percent crime, and the district attorney must consider the nature of the criminal offense, the age, background and criminal history of the offender, the character and rehabilitation needs of the offender, and whether it is in the best interest of justice to file the charge as a misdemeanor rather than a felony. This bill passed the House 63-27 and the Senate 45-0.

What do these reforms mean for Oklahoma children? Under these new laws, teenagers who steal a \$600 iPhone will no longer have a felony on their records that prevents them from getting a job as adults. Parents with drug problems are more likely to get treatment they

need and get sober. And fewer families will be torn about by laws that emphasize long prison terms for nonviolent offenses, rather than rehabilitation and treatment.

## **What should be truly heartening for justice reform advocates was the emergence of a policy-crafting process that has finally broken a legislative logjam that had, in the past, derailed legislation.**

All of these reforms are significant, but what should be truly heartening for justice reform advocates was the emergence of a policy-crafting process that has finally broken a legislative logjam that had, in the past, derailed similar legislation. The Oklahoma Justice Reform Steering Committee, as well as its four sub-committees, has become a successful incubator of justice reform initiatives, allowing proposals to be vetted by DAs, law enforcement agents, reform advocates, and legislators. All of the significant criminal justice legislation in 2016 was crafted within the steering committee. The process was so successful that several of the reform items mentioned above passed and were signed into law without a single vote being cast against them.

The steering committee has worked hard to include voices from across the state and from both sides of the political aisle, all with a focus on improving Oklahoma's criminal justice system. There was a concerted effort to include perspectives that opposed reform in the past with the aim of producing consensus recommendations that had a shot at making it through the Legislature. The result was a series of long-term negotiations that enabled legislators, law enforcement professionals, and other stakeholders to come together and agree upon the best step forward for Oklahoma.

Although the process and the passage of these bills were a success, additional reforms are needed. We are a long way from declaring "Mission Accomplished"; these measures are just starting points from which we must move in the future if we are to address the issue of incarceration in Oklahoma. We must take stock of where we are

and recognize we still have a difficult road ahead. Our prisons are well above capacity at 122 percent, which in practice translates to bunk beds in dayrooms, storage closets, and programming rooms that were used for rehabilitative courses. In the last two years alone we added over 1,400 new beds to our prison system without building a single new facility ([Murphy; Hoberock 2016](#)).

Additionally, our prisons are dangerously understaffed, giving us the distinction of the highest inmate-to-staff ratio in the nation ([Hoberock 2013](#)).

Logistical dangers aside, the impact of how we incarcerate reverberates throughout our communities and families in ways seen and unseen. Just over 10 years ago it was estimated that one in 12 Oklahomans had been on probation or in prison for a felony conviction ([Oklahoma Criminal Justice Resource Center](#)). Considering the impact a felony conviction has on employment prospects as well as access to transportation and affordable housing, that number should be startling. Studies also suggest the children of incarcerated parents are significantly more likely to be incarcerated themselves.

### **Executive Summary**

Moving forward, we should reconvene the Oklahoma Justice Reform Steering Committee and subcommittees to assess what to target next. There is also discussion of engaging with the Pew Research Center to start another round of the Justice Reinvestment Initiative, which would bring their researchers in-state for close to six months and produce an objective, evidence-based set of recommendations for the 2017 Oklahoma Legislature. The policy recommendations that will result from the justice reinvestment process should be carefully considered and viewed as the next best policy options for criminal justice reform in Oklahoma. The rigorous research and analysis involved in this process will be an enormous asset to the state as we aim to capture the momentum of this year's reforms and identify legislative priorities for the years to come.

We should continue focusing on sentencing statute changes and begin looking at our juvenile justice system as well as our adult system. Again, we can look to states like Texas for proof that better outcomes can be achieved outside of incarceration. Since 2007, Texas has closed eight juvenile centers and cut their juvenile incarcerated population by 52 percent. Combined with the reforms to

their adult system, Texas has saved an estimated \$3 billion all while maintaining the lowest violent and property crime rates the state has seen since 1968 ([Right on Crime](#)).

We must also consider the two state questions Oklahomans will likely be voting on this November that could have significant impacts on our criminal justice system. State Question 780 reclassifies **simple** drug possession as a misdemeanor and increases the felony property crime threshold to \$1,000. While the property crime threshold was already increased through the Legislature, the drug possession reclassification goes much further than the sentence modifications accomplished in HB 2479. Whereas the bill passed this year modifies the minimum and maximum sentences for felony drug possession, the state question gets rid of the felony classification altogether and makes drug possession a misdemeanor, *unless the person had an intent to distribute or the amount involved met the trafficking threshold, which for crack is five grams.*

It is worth noting that if voters support State Question 780, Oklahoma would not be the first state to institute such changes. Just last year the governor of Utah signed

into law a bill making first- and second-degree drug possession a misdemeanor rather than a felony ([Manson](#)). In Oklahoma, misdemeanors are still punishable by up to a year in county jail and \$1,000 in fines.

State Question 781 proposes to direct any savings resulting from this policy change to counties for rehabilitative programming that meets the particular needs of that county. Reinvesting these savings is an important component in reorienting our criminal justice system towards rehabilitation and treatment instead of incarceration for non-violent drug and property crimes. Oklahomans for Criminal Justice Reform is the organization advocating for the two state questions. Their membership represents a similar coalition that aided in passing reform legislation this year.

We took important steps in the right direction this session but we must continue. Future reforms should follow the successful model proved over the last year and continue focusing on sentencing statute changes as well as begin looking at our juvenile justice system. Reforming our criminal justice system will not only benefit our state, it will better serve the public and address an issue that has plagued our great state for far too long. ★

## References

- [HB 2479](#). 2016. 55<sup>th</sup> Oklahoma Legislature (R 2<sup>nd</sup> sess.)
- [HB 2751](#). 2016. 55<sup>th</sup> Oklahoma Legislature (R 2<sup>nd</sup> sess.)
- [HB 2753](#). 2016. 55<sup>th</sup> Oklahoma Legislature (R 2<sup>nd</sup> sess.)
- [HB 2472](#). 2016. 55<sup>th</sup> Oklahoma Legislature (R 2<sup>nd</sup> sess.)
- Hoberock, Barbara. 2016. "[Oklahoma Must Close Some State Prisons, New DOC Interim Director Says](#)." Tulsa World, February 11. Last updated April 11.
- Hoberock, Barbara. 2013. "[Oklahoma's Prison Staffing Levels at Bottom of 49-State Survey](#)." Tulsa World, December 18. Last Updated July 29, 2014.
- Manson, Pamela. 2015. "[New Utah Drug Laws Favor Treatment over Incarceration](#)." Salt Lake Tribune, October 4. Last updated October 5.
- Murphy, Sean. 2014. "[Oklahoma Prison Boss Clearing County Jails](#)." Washington Times, April 5.
- Oklahoma Criminal Justice Resource Center. 2006. [Estimated Prevalence of Felons Among the Oklahoma Adult Population](#). Oklahoma Criminal Justice Resource Center.
- Pew Charitable Trusts. 2016. [The Effects of Changing State Theft Penalties](#). Pew Charitable Trusts.
- Right on Crime. 2016. "[Texas](#)." Accessed September 1.

## About the Author



**Adam Luck** was formerly the state director for Oklahoma at Right on Crime. An Oklahoma native, he left the state to serve five years in the U.S. Air Force as a Korean Cryptologic Linguist. Luck has a B.S. degree in Global Security and Intelligence Studies from Embry-Riddle Aeronautical University and a Master of Public Policy degree with a concentration in democracy, politics, and institutions from the John F. Kennedy School of Government at Harvard University.

While at Harvard, Luck was selected as a Michael S. Dukakis Governor's Summer Fellow and worked for Governor Fallin to produce a report on the status of the Justice Reinvestment Initiative in Oklahoma. Luck continued his study of the Oklahoma criminal justice system through his master's thesis in which he analyzed the successful reforms in Texas with an emphasis on how lessons could be applied to Oklahoma.

## About the Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

