

OKLAHOMA'S 2018 CRIMINAL JUSTICE POLICY SOLUTIONS
Data-Driven Policies for Better Public Safety

OCTOBER 2018

The Crime and Justice Institute (CJI), a division of Community Resources for Justice, works to improve public safety and the delivery of justice by providing nonpartisan technical assistance, research, and other services to improve outcomes across the spectrum of the adult and juvenile justice systems, from policing and pretrial through reentry. CJI provides direct technical assistance, assessment, implementation, research, data analysis, training, facilitation, and more. We take pride in our ability to improve evidence-based practices in public safety agencies and gain organizational acceptance of those practices. We create realistic implementation plans, put them into practice, and evaluate their effectiveness to enhance the sustainability of policies, practices, and interventions.

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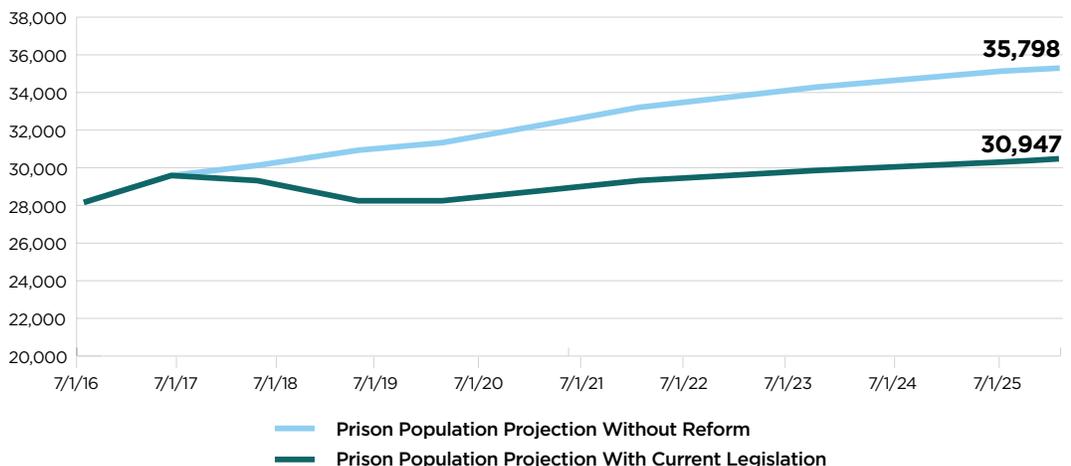
Overview

On April 26, 2018, Oklahoma Governor Mary Fallin (R) signed into law seven criminal justice measures that will reverse Oklahoma's steep and unsustainable prison growth trends while enhancing public safety, reducing recidivism, and keeping families together. This data-driven policy package was the result of nearly two years of bipartisan policy development and advocacy driven by the Oklahoma Justice Reform Task Force.

The effort was supported by the Justice Reinvestment Initiative, a partnership between Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance. The Crime and Justice Institute (CJI) provided technical assistance to the Task Force, including data analysis and policy development facilitation.

This process resulted in a policy package projected to avert 67 percent of the anticipated growth in Oklahoma's prison population over the next decade, avoiding the need for 4,800 additional prison beds. By changing course, Oklahoma will save over a billion dollars of spending on new prisons and instead invest in treatment and rehabilitation proven to reduce recidivism and protect public safety.

Figure 1. Reforms Projected to Avert 67% of Prison Growth



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



The people of Oklahoma have decided that we can no longer afford to fill our prisons with individuals suffering from addiction; that strategy has been far too costly in dollars and in lives.”

– GOVERNOR MARY FALLIN

BACKGROUND

As states across the country decreased imprisonment rates and saw crime rates drop, Oklahoma’s prison population grew by 9 percent from 2011 to 2016, reaching 28,580 inmates. Oklahoma had the second-highest imprisonment rate in the country, 78 percent higher than the national average in 2015. More striking, Oklahoma has had the highest female imprisonment rate in the country since 1991; the female prison population grew 30 percent between 2011 and 2016, and in 2015 Oklahoma incarcerated more than two-and-a-half times as many women per capita as other states. These trends burdened state taxpayers with extraordinary costs, with Oklahoma spending over half a billion dollars on corrections in FY2015. At the same time, this unchecked growth left Oklahoma’s prisons overcrowded and unsafe. In 2016, there were more than 2,300 temporary beds in the prison system, a growing county jail back-up, and an additional 7,800 expensive contract beds being used to house the existing population.

In 2016, Oklahoma’s prison population was projected to grow 25 percent, adding 7,218 inmates by 2026. A projected 60 percent increase in the female prison population would have driven one-quarter of that overall growth. Even with the reforms advanced in the 2016 session and the defelonization of drug possession through State Question 780 in November of 2016, growth was expected to continue. The projected prison population growth would have cost the state at least \$1.2 billion in capital expenditures for three new prisons and an additional \$700 million in operating costs over 10 years.

OKLAHOMA JUSTICE REFORM TASK FORCE

PROCESS

In July of 2016, Governor Fallin established the bipartisan, inter-branch Oklahoma Justice Reform Task Force, with support from the Senate President Pro Tempore and the Speaker of the House. 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 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 21-member Task Force included law enforcement, legislators, judges, prosecutors, a public defender, agency leaders, representatives from the business community, and advocates for crime victims. Bringing together expertise from across the criminal justice system, the Task Force 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 charge. The Task Force convened for seven months starting in the summer of 2016, issuing final recommendations in February of 2017 for consideration during the 2017 and 2018 legislative sessions.

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

TASK FORCE MEMBERS

Director Joe M. Allbaugh	<i>Oklahoma Department of Corrections</i>
Administrative Director Jari Askins	<i>Oklahoma Administrative Office of the Courts</i>
Jennifer Chance	<i>Office of the Governor, General Counsel</i>
The Honorable Doug Drummond	<i>Tulsa County District Court</i>
District Attorney Mike Fields	<i>District 4 (Blaine, Canadian, Garfield, Grant, and Kingfisher Counties)</i>
Secretary Mike Hunter	<i>Oklahoma Secretary of State</i>
Adam Luck	<i>E Foundation, Policy Director, and Board of Corrections</i>
Mike Neal	<i>Tulsa Regional Chamber of Commerce, President and CEO</i>
The Honorable Irma Newburn	<i>Comanche County District Court and Board of Corrections</i>
Janet Peery	<i>YWCA Oklahoma City, CEO</i>
Representative Terry O'Donnell	<i>Oklahoma State House of Representatives</i>
District Attorney David Prater	<i>District 7 (Oklahoma County)</i>
Chief Public Defender Robert Ravitz	<i>Oklahoma County Office of the Public Defender</i>
Cara Rodriguez	<i>Office of the Attorney General, First Assistant Attorney General</i>
Director John Scully	<i>Oklahoma Bureau of Narcotics and Dangerous Drugs</i>
Speaker Kris Steele	<i>The Education and Employment Ministry (TEEM), Director</i>
Layne Subera, D.O.	<i>Oklahoma Bureau of Narcotics Commission, Chairman</i>
Commissioner Michael Thompson	<i>Oklahoma Department of Public Safety</i>
Senator Greg Treat	<i>Oklahoma State Senate</i>
Commissioner Terri White	<i>Oklahoma Department of Mental Health and Substance Abuse Services</i>
Roy Williams	<i>Greater Oklahoma City Chamber of Commerce, President and CEO</i>

KEY FINDINGS

The Task Force identified four primary factors driving Oklahoma's unsustainable prison growth.

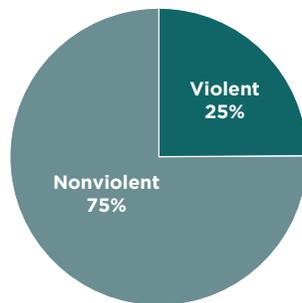
- Continued growth in admissions for nonviolent crimes
- Long sentences and limited use of parole
- Disproportionate incarceration of women
- Limited resources impeding effective supervision

CONTINUED GROWTH IN ADMISSIONS FOR NONVIOLENT CRIMES

In examining the use of incarceration as a post-conviction sanction in Oklahoma, the Task Force focused 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 (See Figure 2). Fifty-six percent of nonviolent offenders sentenced to prison had little or no serious criminal history (See Figure 3).

Figure 2. 75% of Prison Admissions Sentenced for Nonviolent Offenses

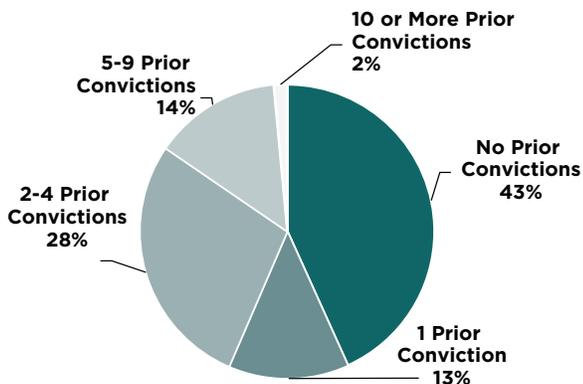
ADMISSIONS BY VIOLENT/NONVIOLENT CURRENT OFFENSE, FY2015



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

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

CRIMINAL HISTORY FOR NONVIOLENT NEWLY SENTENCED PRISONERS, FY2015



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



We're past a state of emergency in Oklahoma's criminal justice system; we've reached the point of desperation. We must engage on these issues and make progress very quickly. As business leaders, we support the Governor's statewide criminal justice reform efforts, and we stand ready to support bold recommendations from the Oklahoma Criminal Justice Reform Task Force."

— CLAY BENNETT, OKLAHOMA CITY THUNDER OWNER AND CRIMINAL JUSTICE REFORM ADVOCATE

The Task Force was able to examine felony case filings and conviction records from Oklahoma and Tulsa counties for FY2011 and FY2015 and found that large increases in the number of felony cases filed drove the growth in admissions. 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, even as crime rates continued to decline. Many of those sentenced to prison were first-time felons. In particular, the number of first-time drug possession offenders sentenced to prison more than doubled from FY2011 to FY2015.

From FY2011 to FY2015, admissions to prison for drug sentences in Oklahoma grew 22 percent. Thirty-one percent of all prison admissions were for drug offenses, over a third of which (37 percent) were for drug distribution and manufacturing offenses. The average sentence length for possession with intent to distribute (PWID) and distribution was more than 8.5 years. In other states, a sentence of that length would typically indicate that the person has a violent criminal history, yet 81 percent of drug offenders sentenced to prison in Oklahoma had no prior violent crimes.

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 sentence lengths for property crimes grew 11 percent to 68 months. Property offenders admitted to prison in Oklahoma are disproportionately female and most often charged with "paper crimes," such as fraud, forgery, and writing a bad check.

The Task Force compared Oklahoma with neighboring states to better understand Oklahoma's relative use of incarceration. While Missouri and Texas have similar crime rates to Oklahoma, an examination of admissions to prisons from court found that Oklahoma admitted nonviolent offenders to prison at a much higher rate (48 percent higher than Missouri).

LONG SENTENCES AND LIMITED USE OF PAROLE

In comparing Oklahoma to Missouri and Texas, the Task Force found that Oklahoma imposed longer sentences on average than Missouri or Texas, despite a higher proportion of nonviolent offenders in its admissions cohort. Long sentences combined with habitual offender enhancements and low parole rates mean that Oklahomans serve long prison terms, even when incarcerated for nonviolent crimes.

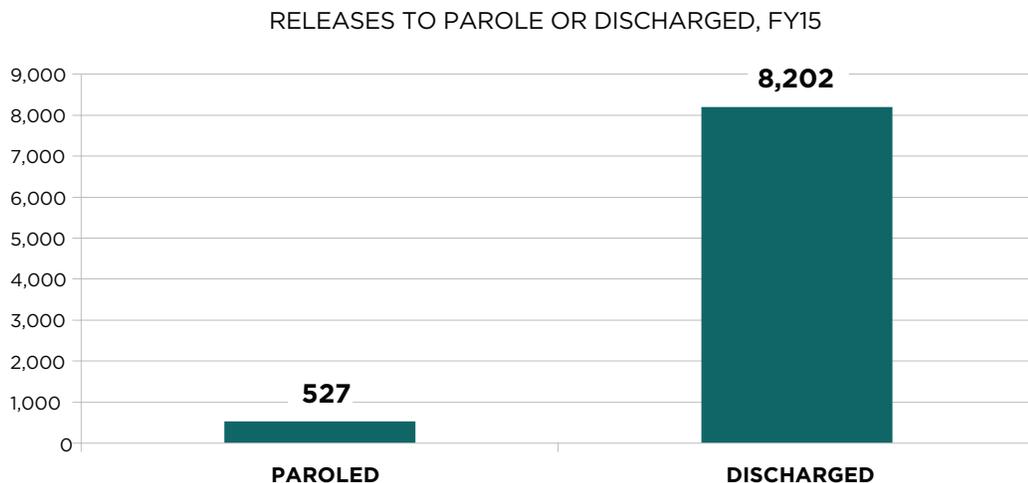
Oklahoma's habitual offender law dramatically increased penalties for a second or subsequent felony conviction, and often increased the maximum punishment to life in prison. These long sentences were well beyond the penalty ranges of neighboring states. The law did not distinguish the seriousness of the prior offense and therefore treated a prior nonviolent felony conviction the same as a violent conviction. Offenders sentenced to prison in FY2015 for a nonviolent crime were more than

twice as likely to have a sentence of at least 12 years if they had more than one prior felony conviction.

Prior to the 2018 bill, almost all inmates in Oklahoma were eligible to be released on parole once they served a third of their sentence. There were a small number of drug crimes with parole eligibility at 50 percent of their sentence and very serious crimes eligible at 85 percent. Yet very few people were released on parole in Oklahoma. In FY2015, only 6 percent of offenders released from prison were released onto parole, a decline from 12 percent in FY2011. This is one of the lowest parole rates in the country and is especially impactful because parole is the primary mode of early release in Oklahoma (See Figure 4). The Task Force determined that this parole rate was due to a combination of factors: low approval rates by the Pardon and Parole Board; a widespread lack of confidence in the hearing process; and a desire to leave prison without supervision to follow, leading some offenders to waive their right to a parole hearing.

While those with drug convictions were most likely to be released on parole, only 11 percent of those released for a drug offense were paroled. Those convicted of drug offenses served 50 percent of their sentence in prison on average, despite the overwhelming majority of drug offenders reaching parole eligibility at 33 percent of their sentence. Those with drug and property offenses served an average of nine months past parole eligibility.

Figure 4. Less Than 10% of Prison Releases Paroled



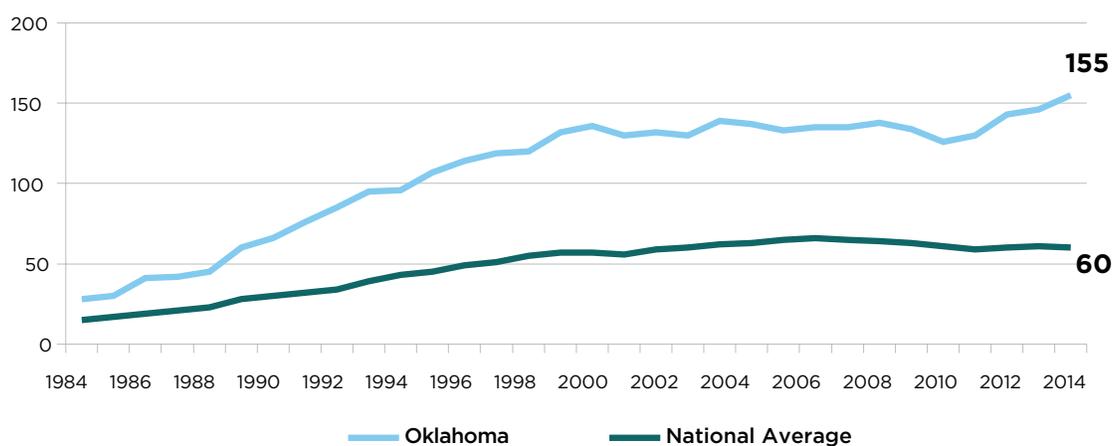
Source: Data from the Oklahoma Department of Corrections, Analysis by CJI

DISPROPORTIONATE INCARCERATION OF WOMEN

Oklahoma has long had the highest female imprisonment rate in the nation, but in the last few years the gap between Oklahoma and the rest of the country has continued to widen. Between FY2011 and FY2015, the female prison population grew 30 percent.

Figure 5. Oklahoma Has the Highest Female Imprisonment Rate in the Nation, More Than Twice as High as the National Average and Growing

FEMALE IMPRISONMENT RATES, 1984-2015



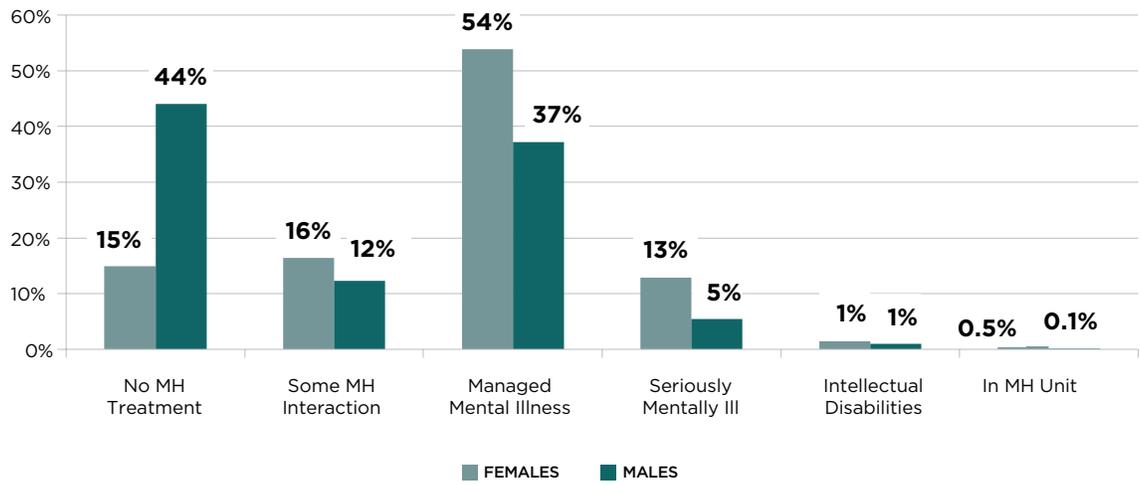
Source: Data from the Bureau of Justice Statistics, Correctional Statistical Analysis Tool

The vast majority of women going to prison in Oklahoma were serving time for drug-related crimes. Eighty-three percent of female prison admissions were for nonviolent crimes, with 42 percent for drug crimes alone. Women serving time for nonviolent offenses comprised nearly two-thirds (64 percent) of the female prison population in June 2016. The female prison population was projected to continue to grow at an alarming rate over the next 10 years.

Women in Oklahoma's prisons are much more likely to suffer from mental illness and substance abuse disorders than incarcerated men. Nearly 70 percent of Oklahoma's incarcerated women in 2016 had an actively managed or serious mental illness, compared to 44 percent of incarcerated men (See Figure 6).

Figure 6. 69% of Women in Prison in Oklahoma Have an Actively Managed or Serious Mental Health Issue

PRISON POPULATION BY MENTAL HEALTH NEED AND GENDER, JUNE 2016



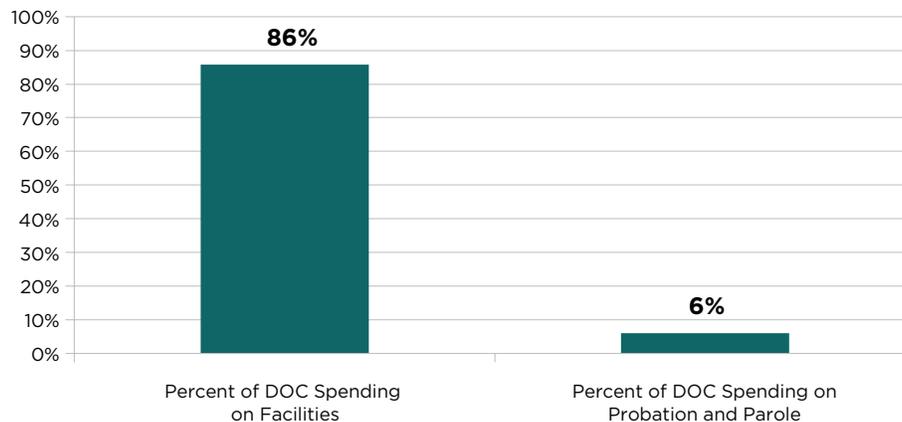
Source: Data from the Oklahoma Department of Corrections, Analysis by CJI

LIMITED RESOURCES IMPEDING EFFECTIVE 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. Despite the critical importance of effective supervision for recidivism reduction, resources for probation and parole are limited by Oklahoma's reliance on costly incarceration over community-based supervision. 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 prevention tool. In FY2015, the Department of Corrections (DOC) spent 86 percent of its budget on prison facilities and only 6 percent on probation and parole despite having 45 percent of offenders supervised in the community (See Figure 7).

Figure 7. The Department of Corrections Spends 86% of its Budget on Prison Facilities and Only 6% on Probation and Parole

DEPARTMENT OF CORRECTIONS SPENDING, FY2015



Source: Oklahoma Department of Corrections Actual Spending, FY2015

“
Diverting low-level, nonviolent offenders into effective alternatives such as supervision with treatment makes our communities stronger and saves resources for services for domestic violence victims.”

- JAN PEERY AND DIANE BARKER-HEROLD, CRIME VICTIMS' ADVOCATES

While growth in the number of felony filings across the state contributed to an increase in the prison population, it had an even greater impact on the Department of Corrections' supervised population. Between FY2011 and FY2015, the community supervision population grew 16 percent. At the same time, success rates on probation as well as parole supervision fell. The Task Force found that in recent years more than half of probation revocations and 37 percent of parole revocations were for technical violations. In examining the allocation of staff resources, the Task Force discovered that Probation and Parole Services focused many of its supervision resources on low- and moderate-risk offenders rather than on high-risk offenders who are the most likely to reoffend. This practice runs counter to best practices for recidivism reduction and is an ineffective use of scarce resources.

COMPREHENSIVE LEGISLATIVE PACKAGE

In February 2017, the Task Force presented Governor Fallin and the Oklahoma Legislature with 27 policy recommendations. The legislative package, which included three bills passed in the 2017 session and seven bills in the 2018 session, reflects more than a dozen of the original Task Force recommendations. Together, the 10 bills expand access to alternatives to incarceration, adjust sentences for nonviolent offenders, and create release opportunities and improved reentry processes for those posing minimal risk to public safety. The 10 measures passed with large bipartisan majorities in both chambers after extensive vetting in legislative committees.

The legislation has four primary objectives:

Prioritize prison space for serious and violent offenders

- Applies the felony theft threshold established in 2016 to a broader group of low-level property offenses (HB 2281)
 - o Adjusts penalties for a range of low-level property offenses to match the felony theft threshold established by the legislature in 2016
 - o Creates a tiered penalty structure for property offenses by value
 - o Protects small businesses by authorizing multiple thefts committed in separate incidents or the items stolen in a single incident by multiple offenders to be combined to reach the felony threshold

VALUE OF PROPERTY	SENTENCE
\$0-\$1,000	Up to 12 months in jail
\$1,000-\$2,500	Up to 2 years in prison
\$2,500-\$15,000	Up to 5 years in prison
\$15,000+	Up to 8 years in prison

- Revises sentencing enhancements for nonviolent offenders (SB 649)
 - Distinguishes between individuals convicted of violent offenses and those with no history of violent offenses in the habitual offender statute
 - For certain eligible nonviolent offenses, revises the enhancement structure to remove any minimum sentence for offenders with a current nonviolent conviction and a nonviolent criminal history, and allows such offenders to be sentenced to no more than two times the maximum sentence otherwise authorized for a first offense
- Modifies burglary sentencing provisions to focus on those who jeopardize public safety (SB 786)
 - Establishes Burglary 3rd Degree for breaking and entering into vehicles, and eliminates the two-year mandatory minimum for Burglary 2nd Degree
- Reduces sentences for commercial drug offenses (SB 793)
 - Eliminates mandatory minimum sentences for possession with intent to distribute and reduces sentences for distribution, manufacturing, and trafficking offenses
 - Allows those convicted of possession with intent to distribute, distribution, or manufacturing to be eligible for a suspended, deferred, or probation sentence
 - Removes the sentence enhancement under the habitual offender statute and replaces it with a tiered penalty structure for repeat drug offenses
- Improves parole and release processes
 - Creates an administrative parole process for offenders convicted of nonviolent offenses who comply with case plans in prison, allowing the Pardon and Parole Board to focus on more serious offenders (HB 2286)
 - Establishes a geriatric parole release mechanism for inmates 60 or older to apply for parole consideration (HB 2286)
 - Lowers parole eligibility from one-third to one-fourth of the sentence for offenders convicted of a nonviolent offense (HB 2286)
 - Enables offenders serving life without parole for a nonviolent offense who no longer pose a threat to public safety to apply for resentencing after serving 10 years, making them eligible for parole and rehabilitation (SB 689)
 - Allows the court to depart from a mandatory minimum sentence for certain nonviolent crimes, if the mandatory sentence is not necessary for the protection of the public (SB 689)

Strengthen community supervision

- Strengthens parole and probation supervision practices (SB 689)
 - Establishes specialized supervision for sex offenders and domestic violence offenders

- Expands access to alternatives to incarceration for deferred and suspended sentences (SB 689)
 - o Allows those with a prior deferred sentence to be eligible to receive a deferred sentence, and places limitations on periods of incarceration as a result of a technical violation
- Reduces financial barriers (SB 689)
 - o Requires that the Court of Criminal Appeals implement procedures and rules for establishing payment plans of fines, costs, fees, and assessments for indigent offenders

Reduce recidivism and remove barriers to successful re-entry

- Enhances in-prison case planning (SB 603)
 - o Requires the DOC to administer a risk and needs assessment on new inmates, and to use the results of the assessment to develop an individualized case plan to guide rehabilitation and reduce the likelihood of recidivism
- Expands opportunities for expungement (SB 650)
 - o Authorizes offenders convicted of no more than one nonviolent felony offense to apply for expungement if they have no new convictions or pending charges within the last seven years, rather than 15 years under prior law
- Improves training on effective recidivism reduction for criminal justice practitioners (HB 2284)
 - o Requires the District Attorney Council, the Administrative Office of the Courts, the Board of County Commissioners, public defenders, and the Oklahoma Indigent Defense System to provide training on evidence-based practices related to behavioral health and substance abuse treatment

Support victims of crime

- Improves training for those working with victims of crime to increase protection, address trauma, and improve domestic violence intervention
 - o Requires trainings provided by the District Attorney Council and the Administrative Office of the Courts to include training on domestic violence and victim trauma (HB 2284)
 - o Requires the Council on Law Enforcement Education and Training to train law enforcement on personal-safety planning for victims of crime during the pretrial stage of the case (SB 604)
- Establishes specialized caseloads for high public safety threats (SB 689)
 - o Strengthens supervision for repeat offenders, sex offenders, and domestic violence offenders by creating specialized caseloads for offenders convicted of these offenses and allowing the court to order batterers' assessments and participation in batterers' intervention programs

INVESTING IN PRACTICES PROVEN TO REDUCE RECIDIVISM AND IMPROVE OUTCOMES IN THE COMMUNITY

Illustrating her commitment to improved public safety and funding that supports effective recidivism reduction, Governor Fallin invested more than \$12 million in corrections and treatment programs in the 2018 budget:

\$12 MILLION IN CORRECTIONS AND TREATMENT PROGRAMS IN THE 2018 BUDGET:

\$7.1 MILLION:

- **\$5 million to the Department of Mental Health and Substance Abuse Services:**
 - \$4 million to fund risk/needs assessments
 - \$1 million to fund drug and mental health treatment courts
- **\$2 million to restore treatment provider rate cuts**
- **\$111,000 to the Pardon and Parole Board to fill two new field staff positions to improve the processing of pardons and paroles**

\$4.8 MILLION to THE DEPARTMENT OF CORRECTIONS

To fund a new Offender Management System that will allow DOC to collect important data and track probationers in a statewide unified system

\$500,000 to *PAY FOR SUCCESS*

The program is proven to reduce the number of women sent to prison and mitigate the resulting impact of incarceration on their children

Supporting Organizations

Oklahoma's legislative package received support from a broad group of stakeholders, including:

BancFirst	Oklahoma County Criminal Justice Advisory Council
CEO Works Tulsa	Oklahomans for Criminal Justice Reform
Crowe & Dunlevy	Oklahoma Department of Corrections
Devon Energy	Oklahoma Department of Mental Health and Substance Abuse Services
Dorchester Capital Corporation	Oklahoma District Attorneys Council
Family and Children's Services	Oklahoma Indigent Defense System
Family Policy Institute of Oklahoma	Oklahoma Pardons and Parole Board
Fwd.us	Oklahoma Policy Institute
George Kaiser Family Foundation	Oklahoma Right on Crime
Greater Oklahoma City Chamber	Oklahoma State Bureau of Investigations
Inter-Tribal Council of the Five Civilized Tribes	Oklahoma State Chamber of Commerce
MACH Resources	Oklahoma Women's Coalition
Mental Health Association Oklahoma	ReMerge
Oklahoma ACLU	The Education and Employment Ministry (TEEM)
Oklahoma Administrative Offices of the Courts	The Oklahoma Academy
Oklahoma Behavioral Health Association	Tulsa Regional Chamber of Commerce
Oklahoma Bureau of Narcotics	Tulsa Community Foundation
Oklahoma Center for Community and Justice	Urban League of Greater Oklahoma City
Oklahoma City YMCA	Women in Recovery
Oklahoma Conference of Churches	Workforce Tulsa
Oklahoma Corrections Professionals PAC	YWCA Tulsa
Oklahoma Council of Public Affairs	

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Acknowledgements

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