

A Look at Prison Overcrowding from the Inside

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Analyzing the problem of prison overcrowding led the Council of State Governments (CSG Justice Center) to presume that the enactment of Oklahoma's 85% law would cause dangerous levels of prison overcrowding as "[v]iolent offenders [would be] serving longer sentences in prison than ever before".¹ This is simply not true. Had the CSG Justice Center conducted in-person meetings with people currently inside corrections, they would have discovered that: 1) prior to the enactment of the 85% law, people convicted of crimes classified as violent have and are currently serving the longest prison sentences in Oklahoma's history; and 2) the Pardon and Parole Board's unwillingness to pass applicants who have served 25 consecutive calendar years or more in the Department of Corrections to a stage-two parole and/or commutation hearing is significantly contributing to the problem of prison overcrowding.

People convicted of crimes classified as violent prior to the enactment of the 85% law have, and are currently serving, the longest sentences in Oklahoma's history. To date, the longest consecutive term of incarceration served by a person convicted of a crime classified as violent under the 85% law² is 21 years. The longest consecutive term of incarceration served by a person convicted of a crime classified as violent prior to the 85% law is over 50 years.³ It is an unfortunate truth, but in Oklahoma a person serving 21 consecutive calendar years of incarceration inside the Department of Corrections shocks the conscience of few in this state, not even the incarcerated person or his family.

To better illustrate the point, this writer conducted a survey of the 40 men assigned to the living quarters on D-2-Right at the Joseph Harp Correctional Center on the evening of 28 October 2021. It was discovered that 18 of the 40 men assigned to the housing unit were serving sentences for crimes classified as violent under Oklahoma's 85% law. Collectively, these 18 men had served a total of 229 years in the Department of Corrections at an approximate cost of \$3,893,000 to the Oklahoma taxpayer. The remaining 22 men were serving sentences for crimes classified as violent, which were imposed prior to the enactment of the 85% law. Collectively, this group of 22 men had served a total of 708 years in the Department of Corrections at an approximate cost of \$12,036,000 to the Oklahoma taxpayer – with no mercy insight! Indeed, the actual cost of incarcerating these 22 men is much higher than estimated in this article, as the majority of them are over 50

years and older, meaning they are prisoners who generally have high health care costs when compared to their younger counterparts.

These figures tend to support the conclusions of several long-term studies⁴ that have revealed that merely warehousing people until they die, despite the criminal offense, is not an effective strategy for ensuring public safety. These arbitrary sentencing practices not only significantly contribute to the problem of prison overcrowding, but they are also responsible for the mental and physical deterioration of those who have had to endure a lifetime of hyper-vigilance and hopelessness.

In Oklahoma, the Pardon and Parole Board's unwillingness to pass applicants who have served 25 consecutive years or more in the Department of Corrections to a stage-two parole and/or commutation hearing is significantly contributing to the problem of prison overcrowding. Of the 22 men on my unit that were serving sentences imposed prior to the enactment of the 85% law, all of them expressed feelings of hopelessness and despair because they believe they will die in prison without a meaningful opportunity to prove they no longer pose a threat to public safety. Those feelings stemmed from the Board's unwillingness to look past their commitment offense in deciding whether or not to pass them to stage two.

In Oklahoma, all applicants convicted of crimes classified as violent are reviewed for parole and/or commutation in two-stages. During the initial review, or first-stage, the Parole Board considers only the applicant's commitment offense, or nature of the crime, as the relevant factor in making the decision as to whether or not to pass the applicant to the second stage. Despite strong arguments that commitment offense alone is an insufficient factor in determining suitability for clemency⁵ Oklahoma appears to be on the path of excluding a particular category of prisoners from back-end release mechanisms, such as parole and/or commutation, based on that very metric.

Oklahoma only has a part-time Parole Board that meets twice a month on the call of the Chair Person. The purpose of the meeting, in part, is to initially review all scheduled applications for parole and/or commutation on behalf of the Governor. During said meetings, the members of the Board routinely deny approximately 300 applicants without explanation each morning before lunch, which adds up to just over 60 seconds of consideration per application. It is the manifest indifference exhibited by the Board during the performance of a constitutionally prescribed duty that works to effectively repeal the Governor's power to grant clemency to all

deemed worthy. Simply stated, it is unconstitutional for the Board to use an incarcerated person's commitment offense as the basis to forever exclude them from the privilege of executive clemency.

Moreover, the law requiring the Board's investigator to compile a report detailing the incarcerated life of the applicant, which is necessary to the "deemed worthy" metric, is not triggered unless the applicant is passed to stage two. Meaning that the vast majority of people, especially those sentenced prior to the enactment of the 85% law, will never be afforded a meaningful opportunity to demonstrate their worthiness of executive clemency because they cannot outlive their commitment offense.

From the outside of corrections looking inward, it is easy to justify the Board's actions during the initial review process as a consequence of its part-time status. However, that perspective becomes distorted when the facts are made clear. A look at the initial review process from the inside of corrections will bring the Board's actions into sharper focus. From this perspective, it is clear that no one convicted in the past 21 years of a crime classified as violent, under the 85% law, has ever appeared on the parole docket of the Board for initial review. The reason is because everyone serving a term-of-year sentence under the 85% law accrues earned credits that are immediately applied to the remaining 15% of their sentence the day they reach the 85% point.

This means two things: 1) every person serving a term-of-year sentence under the 85% law will discharge their sentence the day he or she reaches the 85% point; and 2) the only people placed on the regular parole docket of the Parole Board for "initial review" are those that were sentenced prior to the enactment of the 85% law.

POLICY RECOMMENDATIONS

Major reforms that go far beyond the scope of this article are needed at the Oklahoma Pardon and Parole Board. However, I will make two policy recommendations that I think would have the effect of undermining our State's misguided assumption that the best strategy for ensuring public safety is incarcerating people, without meaningful review, until they die.

First, I recommend a new administrative policy mandating a stage two parole and/or commutation hearing for every incarcerated person after they have served 25 years in the custody of the Oklahoma Department of

Corrections. At a minimum, this would provide at least one meaningful in-person opportunity for an applicant to demonstrate that they have done the necessary work to transform themselves into someone who is willing and able to live within the confines of the law.

Second, I recommend that the Pardon and Parole Board hire a formerly incarcerated person to work as a parole and/or commutation liaison assisting only those incarcerated applicants who have served 25 years or more in the Department of Corrections. This would not only facilitate the process, but it would also bring hope to the hopeless.

ENDNOTES

- ¹ The Council of State Governments (2012) *Justice Reinvestment in Oklahoma*, page 18.
- ² In 1999, House Bill 1008 created two new sections of law, Title 21 O.S.1999 §§12.1 and 13.1, colloquially known as the 85% law.
- ³ Ronald T. Koonce #76423 has been incarcerated in the Oklahoma Department of Corrections since 1967.
- ⁴ Clear, Todd (2009) *Imprisoning Communities: How Mass Incarceration makes Disadvantaged Neighborhoods Worse*, Oxford: Oxford University Press.
- ⁵ Rapaport, Elizabeth (2003) "Straight is the Gate: Capital Clemency in the United States from Gregg to Atkins", *NML Rev.*, 33, 349.

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