

Oklahoma's Life-Sentenced Population Rising Faster than National Trends



Oklahoma has increased its life-sentenced population steadily over the past 20 years to the point where one in eight prisoners is now serving life. To stem the continued rise in imprisonment (the state ranks second in the country in terms of incarceration rates) and its associated costs, lawmakers have passed bills designed to reduce the number of people sentenced to life without parole for nonviolent drug crimes. These are promising approaches but the state will need to pursue even bolder reforms to make a noticeable difference in the correctional population. The increased prevalence of life sentences stands at odds with attempts to scale back overcrowded prisons.

Lengthy imprisonment is a costly investment and Oklahoma's corrections costs are rising in large part due to the growing population of elderly prisoners in the state. Between fiscal year 2006 and fiscal year 2015, the state experienced a 25 percent rise in the cost of health care for prisoners.¹

This briefing paper is designed to inform policy discussions on long-term incarceration. It begins with an examination of trends in life sentences over time, followed by an assessment of the diminishing returns of life sentences for public safety and a review of factors that help to explain the expansion of life sentences in Oklahoma.

GROWTH IN LIFE SENTENCES IN OKLAHOMA

In 2016, 161,957 people were serving life sentences across the United States, including 108,667 people with parole-eligible life sentences (LWP, or life with

the opportunity for parole) and 53,290 people with parole-*ineligible* life sentences (LWOP, or life without parole). Another 44,311 people were serving terms of 50 years or more and are likely to die in prison if their maximum sentence is carried out. Altogether, these lifers and long-term prisoners make up 13.9 percent of the overall number of state and federal prisoners, meaning that one of every seven prisoners is in prison for life in the United States.

In Oklahoma, 2,908 people are serving life in prison either with or without parole and an additional 682 people have sentences that are 50 years or more. This amounts to 12.4 percent of the overall prison population, or one in eight prisoners.

The life-sentenced population is at an all-time high both in Oklahoma and the nation as a whole. The pace of growth in life sentences has been swifter in Oklahoma than in nearby states and the national average, as depicted in Figure 1 and Figure 2 below. There were nearly twice as many people serving LWOP sentences in Oklahoma in 2016 compared to 2003. A likely explanation for the continued expansion of life sentences is that crime convictions that previously would have received shorter, non-life sentences now receive life sentences due to the upward drive of all prison sentences that gained momentum in the tough on crime era. Partially due to the prevalence of the life-sentenced population, the segment of aging prisoners has risen sharply. Whereas in 1994 there were fewer than 900 inmates aged 50 or older in the state's prisons, 2014 data shows that this population is now more than 5,000. The cost of prisoner health care alone is now approaching \$85 million annually in Oklahoma.

Figure 1. Percentage growth in life with parole sentences: Oklahoma compared to neighboring states, 2003-2016

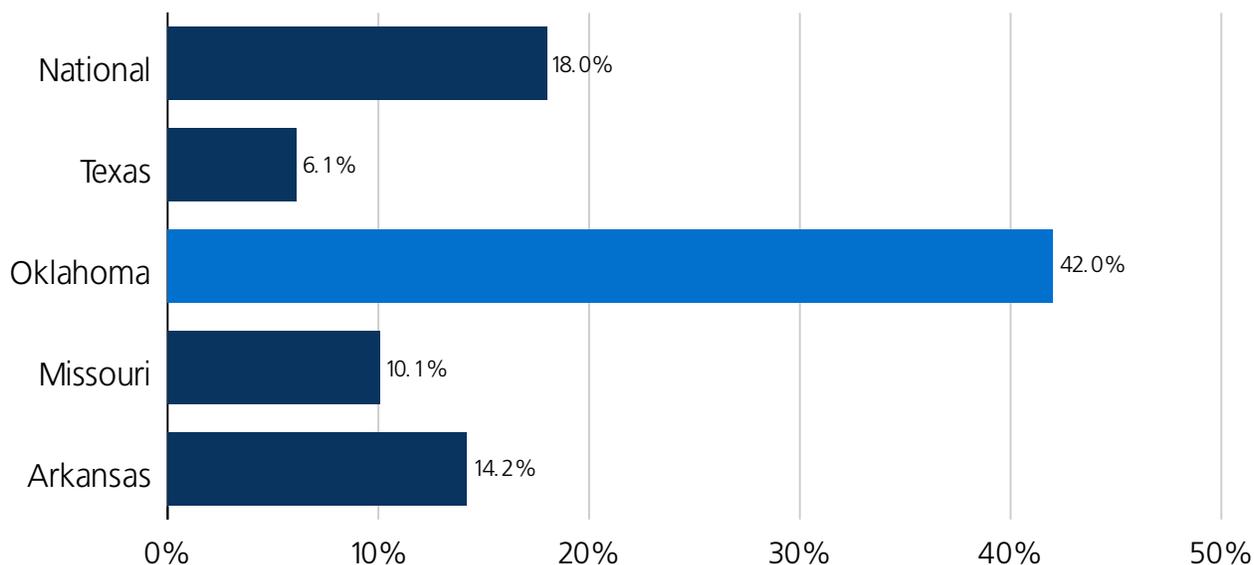
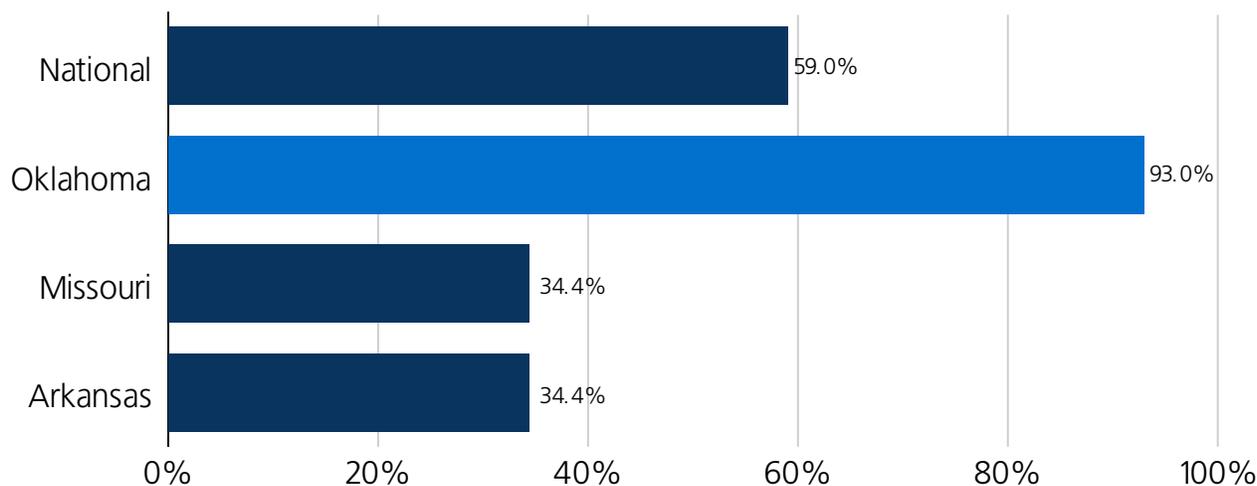


Figure 2. Percentage growth in life without parole sentences: Oklahoma compared to neighboring states, 2003-2016



Notes: Kansas and Texas did not have prisoners serving LWOP in 2003 and are therefore excluded from Figure 2.

DIMINISHING PUBLIC SAFETY IMPACT OF LIFE SENTENCES

Aging Out

Imprisonment for those who commit serious crimes can serve to protect society as well as apply an appropriate level of punishment for the offense. Indeed, public concerns about serious crime and maintaining public safety are among the drivers of support for long prison sentences. Yet aside from

their high cost, life sentences are problematic for multiple reasons. First, there are diminishing benefits of lengthy terms of imprisonment on improvements to public safety. A prominent reason is that the impulse to engage in crime, including violent crime, is highly correlated with age, and by one's early 40s even those identified as the most chronic "career criminals" have tapered off considerably.²

Deterrence

Researchers have established through multiple empirical studies that, at best, lengthy prison sentences provide only a modest deterrent effect but the costs of heavy reliance on life sentences far outweighs its hoped-for benefits.³ Some reason that the expansive and somewhat arbitrary use of lengthy imprisonment weakens its general deterrence value. Instead, a wide body of research has concluded that the deterrent effect is more a function of certainty of punishment rather than severity.

A more reasonable term of imprisonment would limit incarceration to 20 years except in unusual cases. This would allow a sufficient punishment purpose of incarceration to be served but also afford the prisoner the opportunity to demonstrate reform and readiness for release to society. If he or she did not demonstrate this in 20 years, another chance at parole after a few more years could be awarded. As a policy this would free up prison space by releasing those who were rehabilitated but keep those incarcerated who truly appeared to be a danger to public safety.

POLICIES THAT EXPAND THE POPULATION OF LIFE-SENTENCED PRISONERS

Statutory changes over the past three decades have extended prison sentences to include or mandate life in prison for certain crimes. This has been accomplished through crime-fighting policies adopted in various states that include habitual offender laws, truth-in-sentencing laws, mandatory minimums, and the outright abolition of parole.

“Tough on crime” rhetoric that dominated the 1980s and 1990s in Oklahoma and the nation underplayed the severity of life sentences. By spreading the idea that life-sentenced prisoners only served a fraction of their original punishment and thus harsher sentencing laws were necessary, the public was led to believe that life-sentenced prisoners were released after only a short prison stay. One study of Texas jurors who served in capital murder trials

found that they routinely underestimated the number of years to be served for a capital murder conviction in the absence of the death penalty, with most believing that a life-in-prison sentence was 15 years before parole. In fact, support for “truth-in-sentencing” laws (which require a set percentage of the sentence—often 85 percent—to be served before parole consideration) derive from the belief that the public has been misinformed in regard to the amount of time served in prison. Under Texas law at the time of the study mentioned above, prisoners would have had to serve a minimum of 40 years before parole consideration.

It is not “tough” to imprison people long past their proclivity— or even physical ability—to commit crime; to the contrary, it is a poor use of resources that could be put toward prevention.

BACKGROUND: RACE, ETHNICITY, GENDER, JUVENILE STATUS, AND CRIME OF CONVICTION

In the United States, people of color, especially black men, are disproportionately represented in the criminal justice system.⁴ State prisons incarcerate African Americans at more than five times the rate of whites. One in 15 adult black males in Oklahoma is incarcerated, ranking it as highest in the country.⁵

Racial disproportionality exists among life or virtual life-sentenced prisoners as well. At the national level, one in five African American prisoners is serving life in prison or de facto life; in Oklahoma it is one in six.

Most people serving life sentences in the United States are men; three percent are female. In Oklahoma, which has the highest female incarceration rate in the country, six percent of people serving life are women, twice the national average.

Young people are sentenced to life in prison in nearly all states, including Oklahoma. Nationwide, 11,745 people are serving a life or de facto life

sentence for a crime that occurred before they reached 18 years of age. This means one of every 17 life-sentenced prisoners is serving life for a crime committed in their youth.

Three separate U.S. Supreme Court rulings since 2010 have significantly narrowed the ability to sentence juveniles to life in prison because of the brain science on adolescent development. These rulings rest on the evidence of the association between maturity of young adults and sharp declines in criminal engagement. Yet in Oklahoma, there are 61 juveniles serving life in prison; 51 have life with parole and 10 have life without the opportunity for parole.⁶

Most people serving life sentences have been convicted of a serious crime, usually murder. Nationally, 59 percent of people serving life and de facto life committed a murder and 91 percent have been convicted of a violent crime. In Oklahoma, the majority (64 percent) has been convicted of a murder, but a greater proportion has been convicted of a nonviolent offense (17 percent) than the 6.8 average for all states.

RECOMMENDATIONS

IMPROVE THE PROCESS OF PAROLE

Many parole boards either through policy or practice take it upon themselves to incorporate the severity of the crime into the decision to grant or deny parole, a practice which amounts to re-litigating the case. Most parole systems rely heavily on the crime of conviction in deliberating the parole decision. Prioritizing an individual's in-prison record and demonstrated effort of rehabilitation must guide parole decisions.

AUTHORIZE 20 YEAR MAXIMUM SENTENCE

Lawmakers should establish an upper limit of 20 years in prison as a maximum penalty, except in highly unusual cases. Time-appropriate prison terms are grounded in humanitarian and public-safety concerns. Life sentences deprive the person of the chance to turn his or her life around. Moreover, it is well-established through viewing crime trends over time that most individuals "age out" of crime.

- 1 Oklahoma Department of Corrections (2016). Annual Report, 2015. Oklahoma City: Oklahoma Department of Corrections. Available online: <http://doc.ok.gov/Websites/doc/images/Documents/Newsroom/Annual%20Reports/annual%20report%202015.pdf>.
- 2 Blumstein, A., Cohen, J., & Hirsch, J. (1982). The duration of adult criminal careers: Final report. Pittsburgh: Carnegie-Mellon University; Blumstein, A. & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 46, 327- 359.
- 3 Nagin, D. (2013). Deterrence: A review of the evidence by a criminologist for economists. *American Review of Economics* 5, 83-105.
- 4 Nellis, A. (2016). *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. Washington, DC: The Sentencing Project.
- 5 Nellis, A. (2016). *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. Washington, DC: The Sentencing Project.
- 6 Oklahoma Department of Corrections reports zero prisoners serving de facto life sentences for crimes committed under age 18.