



## **Oklahoma Sentencing and Punishment: Two Decades of Rising Imprisonment**

### **Key Findings**

- Oklahoma has the third highest rate of incarceration in the nation.
- Since 1989 the number of persons in prison has more than doubled.
- Half (50%) of Oklahoma prisoners are incarcerated for nonviolent property and drug offenses.
- Oklahoma incarcerates a higher proportion of persons for drug offenses than other states, 27% of the prison population, compared to 20% nationally.

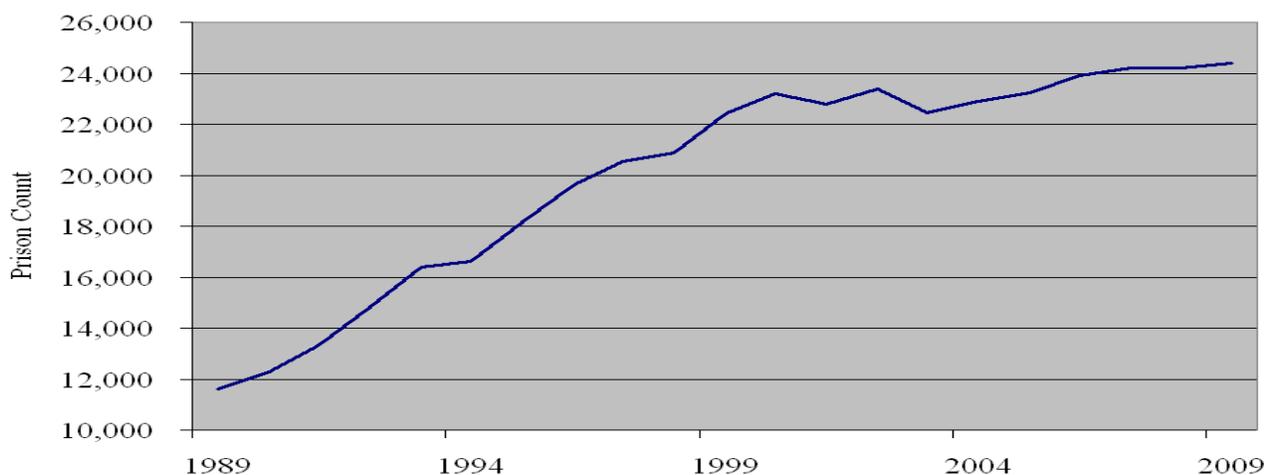
### **Overview**

Oklahoma has experienced a dramatic increase in the number of persons in prison over the last two decades. Since 1989, the total number of persons in prison in Oklahoma has more than doubled, increasing by 127% (see Figure 1) from 11,608 to 26,397 in 2009.

Oklahoma also incarcerates its citizens at a higher *rate* than other states. The state's rate of incarceration of 661 per 100,000 population is third in the nation, trailing only Louisiana and Mississippi. The state imprisons people at a rate 48% higher than the national average for the states of 445 per 100,000.

As the number of people in prison has grown in Oklahoma, a substantial proportion of that growth has consisted of prisoners sentenced to nonviolent property and drug offenses, who now comprise 50% of state prisoners; this includes 27% of the prison population whose primary

**Oklahoma Prison Population 1989-2009**



Source: Bureau of Justice Statistics

offense was a drug crime. The expenditure associated with incarcerating prisoners convicted of nonviolent offenses cost over \$218 million in 2010.

In recent years Oklahoma lawmakers have engaged in efforts to control prison growth, including a measure that allows sentences to be served concurrently unless a judgment determines that they are to run consecutively, and expanded eligibility for community sentencing, which will allow more defendants to qualify for community punishment in lieu of incarceration in a state prison facility.

**Harsh Penalties. Wasted Resources.**

Data from the Department of Corrections indicates that persons incarcerated for first time drug crimes are sentenced on average to lengthy prison terms: nearly five years for crack cocaine and six years for powder cocaine offenses ranging in offense category from possession to trafficking.<sup>1</sup>

**Prison Admissions for First Time Incarcerates FY 2007-2011**

Drug Offense	Crack Cocaine Offenders		Powder Cocaine Offenders	
	Percent	Avg. Sentence (years)	Percent	Avg. Sentence (years)
Possession	50.0%	3.30	36.6%	3.71
Distribution	37.1%	5.20	40.3%	6.60
Manufacturing	4.8%	5.04	3.7%	6.51
Maintaining Place	0.8%	3.00	1.0%	3.78
Trafficking	7.3%	12.56	18.4%	9.83
Total	<b>100.0%</b>	<b>4.80</b>	<b>100.0%</b>	<b>6.11</b>

Source: Oklahoma Department of Corrections

Lengthening prison terms in an effort to deter drug use is a “tough on crime” strategy that has been a key element of crime control policy since the 1980s. However, research finds that lower-risk offenders are more likely to be negatively affected by incarceration. Typically, prisoners sentenced to longer sentences are more likely to become institutionalized, lose pro-social contacts in the community, and become removed from legitimate opportunities, all of which promote recidivism.<sup>2</sup> Among low-risk offenders, those who spent less time in prison were 4% less likely to recidivate than low-risk offenders who served longer sentences.<sup>3</sup> Sentencing practices that allow offenders to maintain their ties to family, employers, and community promote successful reentry into society and strengthen public safety.

**Crack Cocaine Disparity in Oklahoma**

Oklahoma lawmakers enacted a sentencing disparity for crack and powder cocaine in 1990. The 6-to-1 quantity-based sentencing disparity results in a ten-year mandatory minimum sentence triggered for offenses involving 28 grams of powder cocaine, but only five grams of crack

<sup>1</sup> Oklahoma Department of Corrections. (2011, August). *FY 2007 to 2011 First time incarcerates and First time drug offenders*. Oklahoma City, OK.

<sup>2</sup> Thomas Orsagh and Jong-Rong Chen, “The Effect of Time Served on Recidivism: An Interdisciplinary Theory,” *Journal of Quantitative Criminology*, 4(2):155-171, 1988.

<sup>3</sup> Paul Gendreau, Claire Goggin, and Francis T. Cullen, “The Effects of Prison Sentences on Recidivism,” Ottawa, Ontario, Canada: Public Works and Government Services Canada, 1999.

cocaine. In recent years, bipartisan support led federal lawmakers to modify penalties for crack cocaine sentencing; currently only 11 other states in addition to Oklahoma maintain such disparities. The current penalty structure for crack cocaine subjects even low-level offenders to lengthy prison terms.

### **Racial Disparity**

Nationally, studies show that blacks and whites use drugs at similar rates, yet more than one-third of all drug arrests are of African Americans and they are serving state prison sentences on drug charges at a rate ten times higher than whites.<sup>4</sup>

Although punitive drug penalties never explicitly refer to race, the “tough on crime” rhetoric in response to the crack epidemic demonized crack as a “black” drug and thereby shaped the drug problem among political leaders and law enforcement. Statistics from the Substance Abuse and Mental Health Services Administration (SAMHSA) indicate that nationally, whites constitute 50% of crack users, blacks 37%, and Latinos 13%.<sup>5</sup> However, in Oklahoma racial and ethnic minorities constitute 86% of persons admitted to prison for crack offenses compared to 14% of whites for the same offense.<sup>6</sup>

#### **Percentage of Crack Cocaine Admissions to Oklahoma Prison FY 2007-2011**

<b>Race</b>	<b>Crack Cocaine</b>
African American	82.2%
Asian	0.4%
Caucasian	14%
Latino	0.4%
Native American	3.0%

Source: Oklahoma Department of Corrections

### **Conclusion**

Oklahoma has one of the highest rates of incarceration in the nation; the state maintains sentencing laws that mandate severe penalties for certain criminal offenses. This framework can deny judges the discretion for low level drug offenses and can result in long sentences for first time, non-violent defendants.

Currently, Oklahoma policy makers are reviewing policies that have contributed to increases in the state’s prison population. Examining the mandatory minimum policies that have contributed to prison overcrowding should be under consideration. Exploring opportunities to modify punitive sentencing policies will result in cost savings that can be reallocated to constructive initiatives that include substance abuse treatment and rehabilitation services.

*This briefing paper was authored by Nicole D. Porter, State Advocacy Coordinator of The Sentencing Project. 11/11*

<sup>4</sup> Fellner Jamie, Targeting Blacks: Drug Law Enforcement and Race in the United States, *Human Rights Watch* May 2008.

<sup>5</sup> Substance Abuse and Mental Health Services Administration, Division of Population Survey, Office of Applied Studies, National Survey on Drug Use and Health, 2008 and 2009.

<sup>6</sup> Oklahoma Department of Corrections. (2011, August). *FY 2007 to 2011 First time incarcerates and First time drug offenders*. Oklahoma City, OK: