

## **SQ 805: CRIMINAL HISTORY IN SENTENCING AND SENTENCE MODIFICATION INITIATIVE**

### **THE GIST**

State Question 805 would amend the Oklahoma Constitution to end the use of sentence enhancements for people convicted of nonviolent crimes.

Right now, people who are sentenced to prison can have their sentences extended if they have prior felony convictions. Under SQ 805, people convicted of nonviolent felonies could still receive the maximum sentence for that crime, but would not receive additional time — called a “sentence enhancement” — due to past convictions. In addition, this measure would allow people to petition a court to have their sentences shortened if they are currently in prison for nonviolent convictions and had received a sentence enhancement.

#### **State Question 805**

would amend the Oklahoma Constitution to end the use of sentence enhancements for people convicted of nonviolent crimes.

### **BACKGROUND INFORMATION**

For decades, Oklahoma has maintained the highest incarceration rate for women and one of the highest overall incarceration rates in the United States. Oklahoma courts sentence people to prison more often and for longer periods of time when compared to the rest of the country. Sentence enhancements are a major contributor to those trends. Oklahoma courts levied sentence enhancements against about 80 percent of people eligible for them. Those enhancements caused their sentences to be 36 percent longer — nearly two years — when compared to those who did not receive the enhancements, according to an analysis by the Oklahoma Council for Public Affairs.

The state’s prison population has declined in recent years following justice reform efforts, most notably the passage of SQ 780 and SQ 781 and a package of parole and sentencing reforms passed by the Legislature in 2018.

Oklahomans for Criminal Justice Reform, the group that sponsored SQ 780 and 781, leads the campaign for SQ 805. The group collected more than 260,000 signatures from Oklahoma voters for the initiative petition, which exceeded the approximately 178,000 needed to place a constitutional amendment on the ballot.

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## SUPPORTERS SAY...



Sentence enhancements have no proven public safety benefit, but cost the state millions in unnecessary incarceration.



People sentenced to prison can still be given the maximum sentence under current law, and those maximums can still be changed by the Legislature. SQ 805 would simply disallow a longer sentence than the maximum because of a prior nonviolent conviction.



A fiscal analysis of SQ 805 by the Oklahoma Council for Public Affairs estimates that the ballot measure would reduce the prison population by about 8.5 percent and save the state up to \$186 million over the next 10 years.

## OPPONENTS SAY...



SQ 805 would prevent future changes to the list of offenses classified as violent for the purposes of sentence enhancements. Some offenses — simple and domestic assault and battery — should be included, but cannot be added later if SQ 805 passes.



Sentencing enhancements are important to maintain because they allow prosecutors to step up punishments for repeat offenders, and this takes away their ability to increase punishments beyond the statutory maximum.



Amending the Constitution goes around the legislative process and prevents lawmakers from making adjustments to the law.

## BALLOT LANGUAGE

“ This measure seeks to add a new Article II-A to the Oklahoma Constitution. This new Article A excepts and does not apply to persons who have ever been convicted of a violent felony. It would prohibit the use of a former felony conviction to increase the statutorily allowable base range of punishment for a person subsequently convicted of a felony. Individuals who are currently incarcerated for felony sentences that were enhanced based on one or more former felony convictions, and whose sentences are greater than the maximum sentence that may currently be imposed for such felonies, may seek sentence modification in court. The new Article sets forth a detailed process for such sentence modification, including but not limited to requirements for a hearing, appointment of counsel for indigent petitioners, and notification of victims, and requires that the court impose a modified sentence no greater than the current maximum sentence which may be imposed on a person convicted of the same felony with no former felony convictions, and which results in no greater time served in prison than under the original sentence. It establishes an appeal procedure, provides an effective date, and contains a severability clause.

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