



"I've never been concerned whether the school officials opposed what I was doing or not. I was black before I was a schoolteacher, and I'm retiring black." —CLARA LUPER

Felony Convictions

State QUESTION

805

BALLOT TITLE

This measure seeks to add a new Article II-A to the Oklahoma Constitution. This new Article 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.

Shall The Proposal Be Approved?

FOR THE PROPOSAL – YES

AGAINST THE PROPOSAL – NO

SUMMARY

State Question 805, a constitutional amendment, would prohibit a person's past nonviolent felony convictions from being considered when he or she was sentenced to a new nonviolent felony. This measure does not apply to offenders who have ever been convicted of a violent felony. The proposal would prohibit using a person's past nonviolent felonies, such as drug or property crimes, to impose on the person a greater, or "enhanced," sentence.

Under Oklahoma law, prosecutors can seek enhanced sentencing for those charged with a felony within 10 years after completing a sentence for a previous felony. If the earlier crime was nonviolent and the person's first felony, the sentence for the second nonviolent offense could be twice as long. For example, if the minimum sentence for the first offense was five years in prison or less, the sentence for the second crime could be up to 10

years. A third nonviolent offense could be enhanced to between three times the minimum for the first sentence and life in prison. If the first offense had no minimum, the sentence for the third felony could range from an additional four years to life.

The question would eliminate enhanced sentencing for all nonviolent felonies regardless of the number of repeat offenses. It would not apply to offenders who've ever committed a violent crime as defined in Section 571 of Title 57 of the Oklahoma Statutes on Jan. 1, 2020. It also wouldn't apply to misdemeanors, which can currently be enhanced to felonies for repeat offenses.

People serving or facing enhanced sentences for repeat nonviolent felonies, and those with sentences greater than the current maximum allowed for their first felony conviction, could petition a court to have their sentences reduced.

FOR MORE INFORMATION

<https://www.sos.ok.gov/documents/questions/805.pdf>

https://www.claremoreprogress.com/news/sq-805-earns-place-on-nov-ballot-receives-local-criticism/article_97be91d4-d338-11ea-bec2-9b9742e80c45.html

<https://www.news9.com/story/5e627caecd4aa89d1b92f8cd/state-question-805-seeks-to-rid-enhancement-sentencing-but-also-draws-criticism>

PROPOSERS SAY: YES

BOTH SIDES

OPPOSERS SAY: NO

- Oklahoma is imposing cruel and unfair sentences on people for minor crimes. A second conviction for a minor crime can lead to sentences out of proportion to the crime.
- Research shows longer sentences do not deter crime or lower recidivism rates.
- Oklahoma's incarceration rates stand out internationally. Research in 2018 showed Oklahoma has the highest incarceration rate in the U.S., higher than more than 100 countries.
- The measure could reduce by 8.5 percent the number of incarcerated individuals, saving the state an estimated \$142 million or more over 10 years, one study found.
- State money would be better spent on mental health, reentry, or victim services.
- Repeat offenders of misdemeanor domestic abuse or drunk driving could still see charges enhanced to felonies and receive tougher sentences. Lawmakers retain the option of raising or lowering maximum sentences.

- Repeat offenders would always be punished as first-time offenders, weakening deterrence.
- A drop in the prison population is not guaranteed because courts could still sentence defendants to the maximum allowable time.
- Budget cuts could negate predicted savings.
- Repeat offenders of felony domestic abuse won't face enhanced sentences because a new law making domestic abuse a violent crime was approved after Jan. 1 this year.
- Passage will lead to more efforts to relax punishments, such as lowering maximum sentences for many crimes.