We are at war, and you’re not forgotten

The silent enemy.
That’s the name given to COVID-19. We are at war against a virus we cannot see, hear or smell and we dare not taste or touch it. It sneaks upon us without warning, seemingly striking at random much the way a tornado touches down wherever it wants, striking one target then skipping the most immediate two or three before pouncing again.

COVID-19 (corona virus disease 2019) has wrecked our plans, our livelihood, our economy and way of life. We hold onto the hope that this too will pass, but it’s an educated guess at best to know when that end might be. If you’re locked behind bars, it’s a ticking time bomb that we can only pray will be diffused before it detonates.

Please know that you are not alone in your anxiety as an inmate or a family member of someone incarcerated. COVID-19 affects us all, whether you’re on the inside or outside the criminal justice system. Those of us on the outside have more control over our movements and interactions with others, limiting the opportunities for the virus to spread from one person to another. We recognize that’s not true of anyone locked behind bars.

The comings and goings of guards and other correctional staff provide daily opportunities for COVID-19 to make its way into Oklahoma prisons. Transfers of inmates from one correctional center to another offer more chances that this potentially deadly sickness can spread. At the time of this writing, it’s likely the virus is already among us and we just don’t know it yet. That’s the scariest part of fighting this enemy.

The Oklahoma Department of Corrections has a 34-page policy manual for dealing with a pandemic such as this. Keep in mind, though, our state leaders work in uncharted waters. They must figure out the best options as it’s unfolding with no time for learning curves. The weapons of warfare seem so elementary: washing our hands thoroughly with antibacterial soap, covering our mouths and noses with masks or cloths, and maintaining “social distancing” of 6 feet or more from other people. The same rules apply to the incarcerated and the free, though they are much more difficult to follow in prison.

Nine non-profit organizations in Oklahoma banded together to ask the governor to do more. Those groups include Americans for Prosperity, Still She Rises, Oklahomans for Criminal Justice Reform, ACLU Oklahoma, Mental Health Association of Oklahoma, Oklahoma Women’s Coalition, Oklahoma Policy Institute, Center for Employment Opportunities, and The Oklahoma Conference of Churches. They recommend that Gov. Kevin Stitt do the following:

• Identify incarcerated persons who are elderly, immune-compromised, or meet the requirements for compassionate or elderly release as well as those who are within six months of release from incarceration. Balancing the interests of public health and safety, we recommend these individuals be considered for immediate release from incarceration. If necessary for the balance of the term of incarceration, conditions may be required such as home confinement, but they should not be cost prohibitive, they should not require in person contact that puts people’s health at risk, and they should not create a barrier for accessing medical care. This should also include anyone incarcerated for technical violations like missing a court payment or an assigned meeting.

• Identify and release people who have been detained pretrial if their release would not constitute a threat of imminent harm to public safety. Reduce the use of pretrial booking and detention to the extent consistent with public safety and existing law, focusing on cite and release when possible.

• Suspend all conditions that require mandatory in-person meetings, including but not limited to office check-ins with supervision officers. Phone check-ins or alternative methods should be used instead, for as long as there is a risk

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Containing COVID-19

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to public health for in-person contact. Any in-person contact (such as drug testing) will only be conducted when the risks to both the supervising officer and the supervised person are mitigated; no supervision conditions will require the supervised person to travel to or attend group meetings that may put them at risk.

• Discretionary groups and programming, such as Alcoholics Anonymous (AA) and grief support groups, should use whatever non-contact alternatives are available (phone, video, or online groups).

• Make available to all incarcerated persons at no cost hand sanitizer and soap approved for slowing and preventing the spread of coronavirus. Declas- sify as contraband hand sanitizer with alcohol. Allow correctional staff to carry personal-sized hand sanitizer.

• Increase the number of times cleaning of all shared spaces occurs within custodial facilities and clean with solutions proven to kill the virus. Make available to or provide a schedule for the same cleaning within cells. Make sure phones are sanitized and cleaned before and after every use.

• Testing is key to preventing an outbreak. Provide facilities with adequate testing kits to meet the needs for testing ac- cording to criteria established by the state health authority. Determine the extent of the crisis. Prioritize testing of vulnerable populations and people with symptoms. If testing is unavailable, other screening measures should be implemented. Solitary confinement and other punitive measures should not be used for quarantine or isolation. If quarantine conditions are perceived as punishment people may be less likely to report symptoms. Barriers to testing such as copays or pre-scription costs related to coronavirus treatment and prevention should be removed during this crisis.

• No one should be incarcerated past their release date, even if quarantine is warranted. Confirmed cases requiring medical care must be coordinated with the appropriate hospital to facilitate the transfer from incarceration to medical supervi-sion in a safe and timely manner. Individuals who are isolated for mild symptoms or quarantined as a precaution should be released with a plan for self-quarantine, and both the supervision department and the local health department should be notified to ensure appropriate accommodations are in place.

• Suspend incarceration for a failure to pay court fines and fees as well as all failure to pay arrest warrants for the dura-tion of this health crisis. Courts should also suspend the collection and accrual of fines and fees at least until non-essential employees are safe to return to work.

• In facilities where physical visitation is suspended, there must be secure access to non-contact legal visitation. Phone calls, video visitation, and electronic communication — for all types of visits (family, nonlegal professional visits, legal visits where noncontact visits are not accommodated etc) — must be available without fees.

Similar recommendations are being made by groups working in other states to protect the safety and rights of inmates there. OK CURE supports each of these organizations’ efforts and encourages state leaders to act upon them before it’s too late to minimize the virus’ impact on our prison populations.

We are all in this fight together. Remain safe and in good health.

OK CURE board member Sonya Pyles speaks at a rally held in Tulsa in February to promote the petition drive for State Question 805.

Voter drive seeks to end sentence enhancements

Oklahomans for Criminal Justice Reform is trying once again to reduce mass incarceration in our state by asking voters to lead the way.

Four years ago, Oklahoma voters passed State Questions 780 and 781 by a nearly two-thirds majority to reduce the penalties for first-time drug offenders and the theft of items valued at less than $1,000. The goal was to eliminate mandatory prison terms for those crimes and instead direct convicted individuals to get rehabilitative services such as addiction counseling.

This year, voters could be asked on the November ballot to end the practice of sentence enhancements based on a defendant’s past convictions. Under current state law, prosecutors have the sole discretion to increase the maximum sentence for nearly any offense if the person has ever been convicted of a crime in the past, even for minor drug or property crimes. State Question 805 would prohibit a convicted person’s former felony convictions from being used to “enhance the statutorily allowable base range of punishment, including but not limited to minimum and maximum terms.” The initiative pertains only to non-violent felonies, and it offers a provision for current inmates to have their sentences modified if they meet certain criteria.

In order for State Question 805 to appear on the November ballot, organizers have to get at least 177,958 registered voters in Oklahoma to sign their petition. They began collecting signatures Dec. 26, 2019, and had 90 days to complete their drive. However, the March 26 deadline fell soon after the governor declared a health emergency due to the coronavirus. That caused organizers to suspend their efforts. The Oklahoma Secretary of State, who oversees elections, has said the deadline can be extended once the governor lifts his health emergency. We won’t know until later if it makes it on the Nov. 3 ballot.
Council working on sentencing guidelines

Oklahoma lacks a uniform “sentencing matrix,” which would provide judges and juries with a more consistent approach to deciding the length of time a convicted individual is scheduled to serve for a particular crime – regardless of where in the state the crime occurred. As it stands now, a person convicted in an urban county in Oklahoma might receive a more lenient or a harsher sentence than someone else who committed that same type of crime in an urban county in another part of the state.

That’s why the state legislature in 2018 created the Oklahoma Criminal Justice Reclassification Coordination Council (Senate Bill 1098). The 22-member council, chaired by Attorney General Mike Hunter, was tasked with developing a plan to classify all felonies under Oklahoma law into appropriate categories; recommend appropriate sentence lengths for each class of felonies; recommend appropriate enhanced sentences for crimes committed after offenders have been convicted of other crimes; and recommend appropriate changes that will “improve the criminal justice system in Oklahoma and ensure the public safety of its citizens. The recommendations of the Council shall be intended to reduce or hold neutral the prison population.”

The council held eight public meetings in 2019 (plus committee meetings) and one public meeting in January of this year. The second meeting was scheduled in March but was canceled when the governor declared a health emergency due to the coronavirus. It is uncertain when the next meeting will be held.

The attorney general did, however, provide an overview of the council’s work in a Dec. 31, 2019, report to the governor and leaders of the legislature.

The 16-page report cites that the 10 states with the highest incarceration rates (based on 2017 data) are Louisiana, Oklahoma, Alabama, Arkansas, Mississippi, Arizona, Texas, Missouri, Georgia and Florida. “When examining these top 10 states for incarceration, the top two states, Louisiana and Oklahoma, do not follow a felony classification system. Louisiana did attempt to reclassify, but their legislature failed to adopt the measure.” The council decided to review the sentencing reclassification efforts from Arkansas, Colorado, Indiana, Kansas, Louisiana and Utah. “This research included looking at classes, specific sentence types, sentencing ranges, enhancements, fines, and parole credits. This information allowed the Council to use the previous trial and error of surrounding states to combine the successful methods of each system into a structure designed to fit the specific needs of Oklahoma.”

While developing an initial draft of a potential sentencing structure for Oklahoma, the council members “discussed lowering minimum sentences, modifying 85% crimes, implementing incremental sentencing guidelines for repeat offenders, and potential avenues for those with substance abuse disorders to exit the criminal justice system for more effective treatment. Under the current version, most of the minimum punishments have been removed. In order to provide certainty to defendants, victims, and society, we have suggested time served to range from 75% for the most serious crimes to 10% for the lesser crimes. We believe this strikes a balance between fairness and flexibility. The Council also believes recidivism is a major concern and a threat to public safety. Thus the current proposal for punishment after conviction of two or more felonies requires a defendant to serve 85% of the sentence before release. For lesser crimes, a defendant will be required to serve 20% of the sentence before release. The Council also plans to evaluate crimes for potential elimination or restructuring and address the categorization and penalty for drug crimes.”

This “working draft” is summarized in the chart on this page. It is important to keep in mind that this is not a final proposal. In addition, the council also submitted 11 other recommendations for improvements to the criminal justice system.

### DRAFT OF SENTENCES BEING CONSIDERED

- **Second Degree Murder:** 10 to 45 years (must serve 75 percent). Minimum would be 20 years if person has 1 or more prior non-violent felony convictions (must serve 85 percent if person has 2 or more priors).
- **First Degree Murder or Human Trafficking:** 5 to 40 years (must serve 75 percent). Minimum 10 years if 1 or more prior non-violent felony convictions (must serve 85 percent if 2 or more priors).
- **Child Exploitation or First Degree Arson or A&B w/Dangerous Weapon:** 0 to 40 years (must serve 75 percent). Minimum 5 to 40 years if 1 or more prior non-violent felony convictions (must serve 65 percent if 2 or more priors).
- **Consent to Child Pornography or DUI w/Bodily Injury:** 5 to 20 years (must serve 50 percent). Minimum 10 to 40 years if 1 or more prior non-violent felony convictions (must serve 65 percent if 2 or more priors).
- **Sodomy or Second Degree Rape:** 0 to 20 years (must serve 50 percent). Minimum 5 to 40 years if 1 or more prior non-violent felony convictions (must serve 65 percent if 2 or more priors).
- **Aggravated DUI or False Affidavits:** 0 to 20 years (must serve 50 percent). Minimum 5 to 40 years if 1 or more prior non-violent felony convictions (must serve 65 percent if 2 or more priors).
- **Domestic A&B w/Dangerous Weapon or Domestic Violence by Strangulation:** 0 to 10 years (must serve 50 percent). Minimum 5 to 20 years if 1 or more prior non-violent felony convictions (must serve 65 percent if 2 or more priors).
- **Second Degree Manslaughter:** 0 to 5 years (must serve 50 percent). Minimum 3 to 10 years if 1 or more prior non-violent felony convictions (must serve 65 percent if 2 or more priors).
- **Jury Tampering:** 0 to 10 years (must serve 25 percent). Minimum 5 to 20 years if 1 or more prior non-violent felony convictions (must serve 40 percent if 2 or more priors).
- **Fourth Degree Arson:** 0 to 7 years (must serve 25 percent). Minimum 3 to 15 years if 1 or more prior non-violent felony convictions (must serve 40 percent if 2 or more priors).
- **Home Repair Fraud:** 0 to 5 years (must serve 10 percent). Minimum 3 to 10 years if 1 or more prior non-violent felony convictions (must serve 20 percent if 2 or more priors).
- **Attempt to Escape:** 0 to 2 years (must serve 10 percent). Minimum 2 to 5 years if 1 or more prior non-violent felony convictions (must serve 20 percent if 2 or more priors).
- **Bribery or Grand Larceny:** 0 to 2 years (must serve 10 percent). Minimum 2 to 5 years if 1 or more prior non-violent felony convictions (must serve 20 percent if 2 or more priors).
Reform efforts continue into new decade

The Oklahoma Department of Corrections held its second annual Public Safety Forum on Jan. 23, bringing together about 300 criminal justice leaders from across the state.

Gov. Kevin Stitt and Attorney General Mike Hunter headlined 20 speakers at the event.

Criminal justice reform in Oklahoma started in 2011, according to Angie Woodrow, research director for the Oklahoma Bureau of Narcotics and Dangerous Drugs. That’s when a yearlong study led to passage of Oklahoma House Bill 3052 in May 2012 called the Justice Reinvestment Initiative. It was part of a national effort among many states to prioritize their prison space for people convicted of serious offenses and use the cost savings to invest in alternatives to incarceration for lower-level offenders and reduce recidivism through treatment programs.

While it’s too soon to know the real impact of reform efforts, Woodrow offered these statistics about Oklahoma:
- Violent crime rate decreased 2.5% from 2010 to 2018.
- Non-violent crime rate decreased 15.6% from 2010 to 2018.
- Arrest rate decreased 35% from 2010 to 2018.
- Criminal filings decreased 2.6% from fiscal year 2011 to 2018.
- Number of inmates decreased 5.3% from 2010 to 2020.

Efforts to reduce the state’s mass incarceration rate have accelerated in Oklahoma with voters passing State Questions 780 and 781 that reduced certain drug and property crimes from felonies to misdemeanors. House Bill 1269 passed last year to accelerate when an inmate is eligible for parole but it does speed inmates’ releases when they are granted parole because they do not have to have an investigation of their cases or wait for a report to be compiled. They cannot have a life without parole sentence, cannot be convicted of a violent crime or an 85 percent crime. They must be in substantial compliance with their case plans, have no victim protest and have no misconducts within up to two years depending on the severity.

The other significant change is the establishment of Aging Prisoners Parole, which is aimed at providing parole relief to nonviolent inmates 60 or older. In addition to the age requirement, they must have served 10 years or one-third of their sentences and pose minimal public safety risks. Sex offenders and those inmates convicted of violent crimes or 85 percent crimes are not eligible.

One of the panels at the forum focused on “Getting to Top 10 – the Future of Criminal Justice.”

The lack of attorneys available to both prosecute and defend people arrested of crimes was cited as one of the primary obstacles to improving the criminal justice system.

“There is a criminal justice crisis in Oklahoma,” said Tulsa County District Attorney Steve Kunzweiler. “We need to invest more dollars in our criminal justice system. … We are making $19,000 decisions every day.”

He was referring to the average annual cost of housing an inmate in Oklahoma. Kunzweiler said that most district attorney staffs outside of Oklahoma have 1 and a half to 2 times more staff to prosecute crime. That shortage is forcing prosecutors to rush through cases, which leads to poor decision making.

Bob Ravitz, chief public defender for Oklahoma County, said there’s also a shortage of public defenders and that’s why 97 percent of cases are handled through plea bargaining.

Keeping experienced lawyers on staff to represent defendants is his toughest obstacle, Ravitz said.

Paying for more staff, though, is difficult, added Sen. Roger Thompson, chairman of the Senate Appropriations Committee. He said the state’s oil and gas revenue was down 28.7 percent last fiscal year.

Comanche County District Judge Emmit Tayloe understands that staffing is a big part of the problem because he’s been on both sides of the courtroom – four years as a district attorney and 30 years as a defense attorney in private practice.

“I am sorry that defendants were just ‘manila folders’ to me,” he said about his time as a prosecutor. “We need more experienced prosecutors and more experienced defense attorneys to adjudicate cases.”

As a judge, Tayloe is big on rehabilitation efforts as an alternative to prison. He now presides over the county’s Community Sentencing program, which started in 2016.

LEGISLATION STALLS

Any plans to pass state legislation this year to further reform criminal justice in Oklahoma are on hold due to COVID-19 because lawmakers have been unable to meet.

The state legislature’s No. 1 priority at this point is putting together a budget for the fiscal year that runs from July 1, 2020, to June 30, 2021. All other efforts seem to be on hold.

TASK FORCE CONTINUES

Gov. Kevin Stitt’s Criminal Justice Reentry, Supervision, Treatment and Opportunity Reform Task Force (RESTORE) issued a report in January with some preliminary recommendations but asked that the 15-member panel be given one more year to complete their study on ways to reduce the state’s prison population.

The committees and subcommittees met more than 37 times last year and listened to more than 95 people.
• **ACLU of Oklahoma** (Smart Justice Campaign): 13000 Paseo, OKC, 73103; (405) 524-8511; acluok.org

• **Another Chance Justice Project** (investigates excessive sentences and wrongful convictions): anotherchancejp.org

• **Center for Employment Opportunities** (employment services for people leaving prison): 803 S. Peoria Ave., Tulsa, 74120; (918) 894-6551; or 501 N. Walker Ave., Suite 160, Oklahoma City, 73102; (405) 588-8200; ceoworks.org

• **Christian Helping Hands** (transitional housing and mentoring for women leaving prison): P.O. Box 536, Comanche, 73529; (580) 439-5712; chh-cares.com

• **Criminal Justice and Mercy Ministries of the United Methodist Church**: 1501 NW 24th St., OKC, 73106; (405) 530-2015; cjamm.org

• **Exodus House** (transitional housing and mentoring for people leaving prison): 2624 E. Newton St., Tulsa, 74110; (918) 382-0905

• **First Step Male Diversion Program** (alternative program to prison for males ages 18-25): 121 N. Greenwood Ave., Tulsa, 74120; (918) 794-2434; 1ststepmdp.com

• **Fwd.us** (advocates for criminal justice reform): fwd.us/criminal-justice/

• **His House Outreach Ministries** (transitional housing and mentoring for women leaving prison): P.O. Box 2040, Claremore, 74018; (918) 625-4031

• **Hope Is Alive** (mentoring program for drug addicts & alcoholics): 14401 N. May Ave., OKC, 73134; (844) 3-HOPE-NOW; hopeisalive.net

• **Mental Health Association Oklahoma**: 5330 E. 31st St., Suite 1000, Tulsa, 74135; (918) 585-1213; and 400 N. Walker, Suite 190, OKC, 73102; (405) 943-3700; mhaok.org

• **New Hope Oklahoma** (programs for children of prisoners): 501 S. Cincinnati Ave., Tulsa, 74103; (918) 359-9024; newhopeoklahoma.org

• **Oklahoma Center for Community & Justice** (helps re-store prisoners and their families): P.O. Box 713, OKC, 73101; (405) 530-2015; cjamm.org

• **Oklahomans for Criminal Justice Reform** (advocates for criminal justice reform): OKC; (405) 706-0084; okjusticereform.org

• **Oklahoma Conference of Churches** (advocates for prisoners and ending mass incarceration): 301 NW 36th St., OKC, 73118; (405) 525-2928; okchurches.org

• **Oklahoma Coalition to End the Death Penalty**: 16 E. 16th St., Tulsa, 74119; (918) 585-5551; okcadp.org

• **OK Messages Project** (connects prisoners with their children through videos): 11409 NW 150th St., Edmond, 73013; (405) 285-5955; okmessagesproject.org

• **Oklahoma Policy Institute** (policy think-tank that advocates for criminal justice reform): 907 S. Detroit Ave., Tulsa, 74120; (918) 794-3944; okpolicy.org

• **Oklahoma Right on Crime** (advocates for criminal justice reform): 901 Congress Ave., Austin, TX, 78701; (512) 472-2700; rightoncrime.com

• **Oklahoma Watch** (investigative news organization): 500 N. Broadway Ave., Suite LL10, OKC, 73102; (405) 594-2429; oklahomawatch.org

• **Oklahoma Women’s Coalition** (advocates for alternatives to incarcerating women): 720 W. Wilshire Blvd., OKC, 73116; (405) 286-0356; okwc.org

• **ReMerge** (alternative program to prison for women): 1140 N. Hudson Ave., OKC, 73103; (405) 208-7200; remergeok.org

• **She Brews Coffee House** (restaurant that employs women leaving prison): 414 W. Will Rogers Blvd. & 1301 W. Country Club Road, Claremore, 74017; (918) 923-6020; shebrewscoffeehouse.org

• **Stand in the Gap Ministries** (mentors women in prison and after their release): 3939 S. Harvard Ave., Tulsa, 74135; (918) 585-6112; standinthegap.org

• **Still She Rises** (legal /counseling services for women in North Tulsa facing charges): 567 E. 36th St. North, Tulsa, 74106; (918) 392-0867; stillsherises.org

• **The Education and Employment Ministry (TEEM)** (mentoring program for people leaving prison): 1501 N. Classen Blvd., OKC, 73106; (405) 235-5671; teem.org

• **The Frontier** (investigative news organization): 427 S. Boston Ave., Tulsa, 74103; (918) 931-9405; readfrontier.org

• **Vera Institute of Justice** (advocates for solutions to criminal justice problems): 233 Broadway, 12th Floor, New York, NY, 10279: (212) 334-1300; vera.org/oklahoma

• **Wings of Freedom Oklahoma** (transitional housing and mentoring for people leaving prison and/or addictions): 9897 E. 11th St., Tulsa, 74128; (918) 584-8879; wingsoffreedomok.com

• **Women in Recovery** (alternative program to prison for women): 1055 S. Houston Ave., Suite 200, Tulsa, 74127; (918) 947-4200, fcsok.org/services/wir/

• **Work Ready Oklahoma** (re-entry service for former inmates looking for jobs): 3 E. Main St., Oklahoma City, 73104; (405) 418-3923, workreadyoklahoma.com
The Pardon and Parole Board continues to lead the way in reducing mass incarceration in Oklahoma by granting commutations that shorten excessive sentences.

On Nov. 1, 2019, the board granted commutations to 527 inmates in what is believed to be the largest number of commutations ever granted in a single day in the United States. That action on a Friday led to 462 inmates walking out of prison the following Monday.

Shortening what a majority of the five-member panel deems to be an excessive sentence can mean an inmate's sentence is reduced to the time he or she already has served, leading to release. In other cases, a life without the possibility of parole sentence can be shortened to life, making the inmate eligible for parole hearings. Or a life sentence can be shortened to a fewer number of years, some of which the inmate must still serve.

Most of the commutations were granted to inmates serving time for drug charges or property crimes due to changes in the law that made many of those misdemeanors instead of felonies. Those changes in the law occurred after voters passed State Questions 780 and 781 in November 2016. House Bill 1269, which passed last spring, then made those changes retroactive, paving the way for many inmates being held on those charges to file for commutations.

All of this has sparked a backlog of commutation applications being filed and created a several months-long wait for the board to consider these requests at its monthly meetings.

In all of 2018, the board considered only 634 commutation requests and granted 145 of them. In 2019, the board voted on 3,332 commutation requests and granted 1,642 of them. That means the approval rate rose from 22 percent to 49 percent between 2018 and 2019.

And the board has not stopped in 2020. This month alone (April), the board was scheduled to review commutation requests from 500 inmates on a variety of charges – not just drugs and property crimes.

The board also decides each month on requests for pardon and parole, although commutations have far outpaced those more traditional options for being released from prison or having records cleared of past charges.