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Use of Alternative Sentencing and Diversion Programs in Oklahoma

Key Points

- Alternative sentencing and diversion programs are in a perfect position to be improved upon in Oklahoma. It's time for solutions based on data that favor taxpayers, preserve public safety, provide tangible outcomes, and improve communities.
- Oklahoma lacks proper data and oversight to ensure the success of alternative sentencing and diversion programs.
- The "tough on crime" policies that Oklahoma adopted in the past failed to make our state safer or reduce spending on corrections. Our state needs to focus on programs that make citizens safer and reform offenders so they don't victimize other citizens.

Introduction

Oklahoma's past relationship with the "tough-on-crime" mentality has failed to make its citizens safer and has caused Oklahoma to have one of the highest incarceration rates in the country ([The Sentencing Project, n.d.](#)). It has resulted in an overburdened court system, crowded jails and prisons, and strained budgets that rely on fines and fees ([Gentzler, 2017](#)).

How does a state address its incarceration problem while carrying out justice and maintaining public safety? Numerous states have asked this question, and many have developed programs to hold individuals accountable for their actions that do not use prison as the default solution. Alternative sentencing and diversion programs were created in the 1940s and have seen both success and failure. However, the more modern methods have proven to be cost-effective and benefit the participants and their communities ([Council of Economic Advisers, 2018](#)).

Statutory policies and procedures that direct these programs are in the perfect position to be reformed. Recent studies on the effectiveness of science-based treatment for drug use intervention and recovery, the negative impact of over-incarceration, and the success and budget savings associated with these methods are changing the public's sentiment toward sentencing alternatives and diversion. A one-size-fits-all approach to addressing criminal activity has not made our communities safer. Instead, states should focus on programs that address the cause of criminal behavior to turn individuals who commit crimes into productive members of society.

Right On Crime believes individuals who commit crimes should face the appropriate consequences. However, Oklahoma's justice system prioritizes consequences that include punishment through incarceration, while ignoring the opportunity for correction and rehabilitation outside of the prison system. Using incarceration purely as a form of retribution does not achieve the goal of reducing crime ([National Institute of Justice, 2016](#)). When you house violent offenders with those who committed non-violent crimes, it hinders the latter from successfully reintegrating, increasing their risk of recidivism and hampering rehabilitation ([Couloute & Kopf, 2018](#); [Pressley, 2022, pp. 2-3](#)).

Offenders who are not a threat to public safety but are nonetheless incarcerated become tax burdens rather than taxpayers. Current costs to incarcerate an inmate in Oklahoma, based on FY 2022 actuals, ranges from \$60.96 to \$113.66 per day, depending on the security level of the facility ([Oklahoma Department of Corrections, 2023](#)). If no alternatives outside of incarceration with the Oklahoma Department of Corrections exist for non-violent offenders, judges have no choice

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but to sentence them to a costly prison bed. Using alternative sentencing programs that impart a punishment in their community for committing a crime and doing so with minimal disruption to their daily lives enables offenders to earn a living, provide for their families, pay restitution to their victims, and become productive members of society.

Alternative Sentencing Versus Diversion Programs

Alternative sentencing and diversion programs have the same goals and structure but target offenders at different stages in their interactions with the legal system. Diversion is used as a broad term to refer to programs that suspend the prosecution of individuals with the goal of preventing a criminal conviction. Diversion programs are voluntary and assign certain conditions and requirements that the individual must meet. These could be education, community service, employment, treatment for drugs or mental illness, or restitution. Once they successfully meet those conditions, the court drops the charges against them and expunges their record. If they fail to meet the requirements, the prosecutor can move forward with prosecuting them, meaning the defendant could be found guilty and face jail time.

Alternative sentencing programs are offered once someone is found guilty. Many alternative sentencing programs focus on the perceived cause of an individual's criminogenic behavior and address these needs in the community using evidence-based treatment, court monitoring, education, and specialty services.

Alternative sentencing and diversion programs are often more effective in helping non-violent offenders become productive members of their community ([Council of Economic Advisers, 2018](#)). These programs require buy-in from the participant and only work when they are actively accountable. Active accountability requires the individual to be engaged in the program they have been sentenced to and take responsibility for their actions. Substituting incarceration with diversion programs or sentencing alternatives that require active accountability places individuals on a path focused on rehabilitation and restoration, which in turn can help reduce recidivism and save taxpayer dollars.

The Texas Public Policy Foundation achieved these goals in Texas in 2005, when it worked with advocates, legislators, and the governor to educate them on the value of alternatives to incarceration in the criminal justice system of the Lone Star State. As a result, Texas shifted its focus from building prisons to increasing the number of alternatives to incarcerations for non-violent offenders. The state's incarceration rate fell by 25%, its prison population dropped to

its lowest level since 1968, and taxpayers saved \$2 billion ([Levin, 2011, p. 1](#)).

The push to reduce prison populations through evidence-based alternative sentencing and diversion programs started decades ago. In 1965, President Johnson created the President's Commission on Law Enforcement and Administration of Justice ([National Archives Catalog, n.d.](#)). The commission was charged with the ambitious task of constructing a national strategy to eliminate crime. In its first report, the commission recommended diversionary programs as a possible policy solution. In 1968, the U.S. Department of Labor funded pilot programs in New York and Washington, D.C.—which were deemed successful and began to be used as models for the rest of the country. In 1979, there were 127 pretrial diversion programs ([Center for Health & Justice, 2013](#)). As of 2017, 48 states and the District of Columbia had some form of population-specific diversion program for felony defendants, and 37 states had authorized diversion programs that are not population specific. The participation requirements for the program are not listed in statute; instead they are set by the administrator of each program ([National Conference of State Legislatures, 2017](#)).

The provisions for population-specific alternative sentencing and diversion programs vary in each state and program. Generally, participation is voluntary, and the defendant can consult with their legal counsel before deciding to participate. In each case, assignment to a program comes before being found guilty, with some requiring a guilty plea to participate ([National Conference of State Legislatures, 2017](#)).

Punishments for criminal actions that do not involve time in prison or jail are sometimes referred to as “soft on crime.” This belief is inaccurate. Alternative sentencing and diversion programs place serious demands and time constraints on offenders and involve intensive supervision by the court. The consequences of failing a sentencing alternative or diversion program are significant, in some cases, resulting in the offender receiving a harsher punishment than someone who doesn't go through the program.

Current Programs in Oklahoma

Alternative sentencing and diversion programs were initially created to address the growing prison population and provide services to individuals who would not get them inside a prison or jail. Oklahoma has been successful in implementing and expanding these programs. The most frequently used programs are drug and mental health courts, which the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) manages.

Almost half of the individuals who interact with the criminal justice system suffer from drug and mental health challenges. One study found that inmates in state prisons report high rates of mental health problems—with 43% having a diagnosed mental disorder and 14% experiencing serious psychological distress within the past 30 days ([Wang, 2022](#)). Similarly, in local jails, nearly half of the inmates (44%) have a diagnosed mental disorder and more than a quarter (26%) have reported experiencing serious psychological distress ([Bronson & Berzofsky, 2017](#)). Our prison systems were originally designed to house offenders, not treat them. While efforts have been made to improve treatment options for inmates, 74% of inmates in state prisons never receive professional mental health treatment while incarcerated ([Wang, 2022](#)).

These statistics highlight the importance of offering alternative placement options for offenders that can treat the issues leading them to commit crimes. Some of the most common alternative sentencing and diversion programs in Oklahoma are described below.

Community Sentencing

In 1999, Oklahoma passed the Community Sentencing Act, allowing court-ordered alternatives to prison for those defendants with prior or multiple felony convictions. The act was designed to provide convicted individuals with supervision, treatment services, personal development, and employment assistance ([Oklahoma Department of Corrections, 2022](#)). A report released in 2014, with the latest publicly available data, shows that from the time the Community Sentencing Act was enacted through 2014, more than 22,000 people were sentenced to the program. Of that group, 88% did not return to prison ([Community Sentencing Staff, 2014](#)). For individuals who are incarcerated in Oklahoma's prison, only 15.3% recidivate ([Governor's Dashboard of Metrics, n.d.](#)).

To participate in community sentencing, the individual must be given a deferred or suspended sentence and plead guilty to their charges. Community sentencing programs place restrictions on who can participate based on the type of felony they commit (for example, no sex offenses, no domestic violence offenses, and no violent offenses) and who qualifies for each program.

Once a participant is accepted into the program, coordinators rely on supervision and intervention reports, referred to as the Level of Services Inventory (LSI), to create a customized plan for each participant. The LSI assists professionals in predicting how successful a person will be under supervision, in community treatment, and their likelihood of reoffending ([22 O.S. § 988.2](#)). Participation

requires them to report to a probation officer or the courts in a periodic manner. If an offender successfully completes the program, they can avoid a prison sentence; however, his conviction remains on his record until he meets the requirements for an expungement.

Regimented Inmate Discipline Program

The regimented inmate discipline (RID) program serves as a boot camp-style program that uses physical training along with cognitive behavior treatment and teaches self-discipline skills to reverse criminal thinking and behavior. Participants are housed within the Oklahoma Department of Corrections, and must be a first-time offender between the age of 18 and 25 ([Oklahoma Department of Corrections, n.d.](#)). The RID program lasts between 180 days and one year, and includes intense structured discipline, education, and treatment for mental health or addiction issues ([22 O.S. § 996.3](#)). The RID program is unique because it is considered a diversionary program, meaning participants do not have to be found guilty of a crime yet; however, individuals are housed at the Oklahoma Department of Corrections instead of in the community. Assignment to the RID program is not a formal sentence for a felony conviction. Once an individual successfully completes the program, they go before the court for formal sentencing. At that time the judge can impose a deferred sentence, a suspended sentence, or dismiss the charges completely. The RID program is a chance for young offenders to prove that they deserve a second chance and can be productive members of society ([Oklahoma Department of Corrections, 2021](#)).

Specialty Courts

Specialty courts, also referred to as “Problem Solving Courts,” remove individuals from the traditional legal process and place them into a structured court-administered program. This program is designed for individuals suffering from certain risk factors, such as substance abuse or mental illness, and utilizes a rigorous treatment system.

Drug Courts

At least 73 of the 77 counties in Oklahoma offer drug court diversion programs with an estimated cost of \$5,000 per participant compared to the estimated \$19,000 a year to incarcerate someone at DOC ([ODMHSAS, 2022](#)). Drug courts expanded substantially after 1994 when Congress authorized the Violent Crime Control and Enforcement Act, approving federal funding for the development of drug courts across the country ([U.S. Department of Justice, 1994](#)). Individuals are not forced to participate in drug courts—it is voluntary. Once agreed to by the defendant and the judge, it becomes a condition of community supervision and allows the participant to avoid incarceration. The drug

court program includes regular drug testing, frequent appearances before the court, a treatment program tailored specifically for those with drug addictions, and counseling. The participant is also required to be employed or actively looking for employment. Funding for drug courts comes from state appropriations and fees paid by the participants. Oklahoma drug courts have shown promising outcomes; one study found that drug court participants had a 3-year recidivism rate of 7.9%, compared to a 23.4% recidivism rate among the general population of DOC offenders ([ODMHSAS, 2022](#)).

Mental Health Courts

Thirty-seven counties out of 77 in Oklahoma operate mental health courts ([ODMHSAS, n.d.-b](#)). Mental health courts are a diversion program based on the drug court model: They mandate treatment, counseling, employment (unless the individual is receiving disability services), and court appearances. If a participant successfully graduates from the program, they are eligible to have their case dismissed. If they do not complete the program, they can face jail or a prison sentence. The court team consists of judges, assistant district attorneys, attorneys from the Oklahoma Indigent Defense Services, licensed behavioral health professionals, psychiatrists, case managers, recovery support specialists, and law enforcement personnel. Referrals to the mental health court program come from a variety of sources, including self-referral. Following a referral, an individual must be interviewed and screened before the team determines whether the individual qualifies for participation. In Oklahoma, participation in a mental health court has been found to reduce the time an individual spends in jail by 89% on average ([Mental Health Courts in Oklahoma, n.d.](#)). Graduates of mental health courts are 14 times less likely to be incarcerated than inmates who served time in state custody and were diagnosed with a serious mental illness but did not participate in mental health court ([ODMHSAS, n.d.-b](#)).

Veterans Courts

Veterans make up 8% of the jail and prison population at both the state level and federally ([Bronson et al., 2015](#)). Veterans courts are modeled after drug and mental health courts and specialize in working with individuals experiencing Post Traumatic Stress Disorder (PTSD), other military trauma, including traumatic brain injuries. The programs work closely with veterans affairs organizations at the federal and state levels to provide the best outcomes for participants. They do this by connecting participants with social services and restoring benefits that they may have earned during their service. The program assists with housing placement and pairs veterans

who are going through the program with other veterans in their community who support them during treatment and court proceedings.

The first major study of these court programs ([Tsai et al., 2018](#)) found that participants saw noteworthy improvements with depression, PTSD, and substance use. They also saw improvements for participants in terms of housing, emotional health, social connections, and overall functioning and well-being.

Family Treatment Courts

Nationwide, more than half (58%) of women and 46% of men in state prison are parents. It is estimated that 19% of children with incarcerated parents are under the age of 4 ([U.S. Department of Justice, 2021](#)). Family treatment courts are the least common specialty court run by the Oklahoma Department of Mental Health and Substance Abuse Services, operating in only 6 of Oklahoma's 77 counties ([ODMHSAS, n.d.-a](#)). These courts are designed to address the needs of families in which the parent is dealing with substance abuse by using a holistic, family-centered treatment approach delivered by a multidisciplinary team. The team includes substance use and mental health treatment providers, child welfare service specialists, and other individuals or agencies that may be of service to the family. Family treatment courts have been shown to lead to higher court participation, better adherence to treatment plans, higher rates of reunification of families, and a decrease in the time children spend in foster care ([ODMHSAS, n.d.-c](#)). According to the ODMHSAS, families who participate in this specialty court "have experienced a 125 percent reduction in out-of-home placement days and a 58 percent reduction in unemployment" ([ODMHSAS, n.d.-a, "At Disposition" section](#)).

Results and Benefits

Alternative sentencing and diversion programs have been shown to produce better outcomes than traditional incarceration ([Allen, 2022](#)). In Oklahoma, these approaches not only reduce the number of individuals inside state prisons, they help alleviate Oklahoma's jail population. A recent analysis of jail data from Tulsa and Oklahoma County, Oklahoma's two largest counties that account for half of prison admissions, found that bookings declined 40% in these two counties between 2017 and 2022. This can be attributed to justice system reforms and the increased use of alternative programs ([FWD.us, 2022](#)).

Alternative sentencing and diversion programs save lives and change families. However, more work remains to be done to gain acceptance from prosecutors and judges and

Table 1

Summary of Oklahoma Specialty Courts

Program	Criteria	Guilty plea required?	Action after completion	Program characteristics
Regimented inmate discipline (RID) program	First time offender, non-violent offenses, between ages 18-25 (22 O.S. § 996.1)	Yes (22 O.S. § 996.3)	If successful, their case can be dismissed, and all charges removed from their record.	Treatment is a boot camp-style program that is housed within the Oklahoma Department of Corrections.
Drug court (22 O.S. § 471.2)	Non-violent offenses, except violations of the Trafficking in Illegal Drugs Act. Violent offenses can be considered if the offense isn't direct violence against an individual, but it varies by county.	No	Varies by county. Charges may be dismissed, or records sealed.	Focus is on treatment, counseling, and employment.
Mental health court	Non-violent offenses	Must enter into a plea agreement. If the individual does not successfully complete the program, they are sentenced according to this agreement.	If participant is successful, their charges can be dismissed and their record sealed.	Modeled off drug courts.
Veterans court	Accepts both violent and non-violent offenses	No	If participant is successful, their record can be dismissed or sealed.	Only available to current or former U.S. military members. Specializes in treating PTSD and traumatic brain injuries.
Family treatment court (Oklahoma Department of Mental Health and Substance Abuse)	Non-violent offenses	No	If successful, their record can be dismissed or sealed.	Focuses on offenders who have children in the home.

Note: Drug court requirements are found in the Oklahoma Drug Court Act in Title 22 Section 471. Mental health court, veterans court, and family treatment courts all fall under the Community Sentencing Act in Title 22, Section 988 of Oklahoma Statutes.

convince the public that these programs are a good option for reducing criminal justice costs and recidivism.

Access to sentencing alternatives and diversion programs gives judges and prosecutors more sentencing options. No individual or their crime is the same. Judges should be allowed to look at the facts and apply the appropriate punishment based on the unique circumstances of each case.

These approaches save taxpayer dollars while addressing prison and jail overcrowding. Incarcerating someone in the

Oklahoma Department of Corrections can cost approximately \$20,000 to \$40,000 annually ([Oklahoma Department of Corrections, 2023](#)) while not providing appropriate resources to address their criminal behavior.

Alternatives to incarceration and diversion keep individuals with their families, jobs, and communities. The less disruption in the individual's personal life, the more successful they are in the programs and with rehabilitation.

Conclusion

Alternative sentencing and diversion programs and their structure at the local and state levels will continue to evolve as new data, expertise, and results from partnerships emerge. Oklahoma should continue focusing on the underlying needs of those involved with the criminal justice

system and increase support for programs focused on improving both the crime rate and recidivism. Those running the justice program need to understand that resolution means more than just a judge disposing of a case. Failure to address the underlying issues will result in that person recidivating, thus continuing the cycle. ★

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Marilyn Davidson is the Oklahoma state director for Right on Crime. While a student at the University of Central Oklahoma Marilyn accepted a job at the Oklahoma House of Representatives, then moved into an internship in the Lt. Governor's office. This jump started a more than 17-year career working in politics in Oklahoma. Marilyn Davidson serves as President of Davidson Consulting. A public affairs and lobbying firm headquartered in Oklahoma City.

Her unique background has taken her from working at the local level with private companies in a variety of fields, to the state legislature, to Capitol Hill in Washington D.C., and the U.S. Supreme Court. Early in her career she did fundraising and executed grassroots strategies for political campaigns. It was this experience that ignited her passion for the community and her desire to work in the advocacy field. Her next step led to the Oklahoma State Senate working as a legislative aide. A job that grew her curiosity and fascination with policy and the political process.

The American Heart Association hired Marilyn as Government Relations Director where she was given the responsibility of performing the organization's media outreach, grassroots strategy development and deployment, volunteer recruitment and management, and government affairs operations to advance the policy goals set forth by the national board of directors. From there the communications firm Saxum recruited her for their public affairs division. This job afforded her the ability to work in many different industries and with a variety of individuals. From 2014-2018 she worked on criminal justice reform and further corrections issues with the Oklahoma Department of Corrections as their legislative liaison.

About Right On Crime

Right On Crime is a national initiative of the Texas Public Policy Foundation supporting conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs.

About Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

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