



## **CRIMINAL JUSTICE RECLASSIFICATION COORDINATION COUNCIL**

### **CHAIRMAN'S REPORT\***

**ATTORNEY GENERAL MIKE HUNTER  
CHAIRMAN**

**DECEMBER 31, 2020**

\*Due to health concerns as a result of the COVID-19 pandemic and due to the expiration of the amendments to the Oklahoma Open Meeting Act which allowed virtual meetings, the Council was unable to assemble a quorum to meet in-person in December 2020 to conduct business. As a result, the Chairman submits this report only to document the meetings of the Council for 2020. This report will be presented to the members in 2021 for approval and possible amendment. An adopted final report will be supplied as soon as the group is able to safely conduct business.

## **Oklahoma Criminal Justice Reclassification Coordination Council**

The Oklahoma Criminal Justice Reclassification Coordination Council was created by Senate Bill 1098 in 2018 to undertake a comprehensive review of the felony classification system in Oklahoma. The 22-member council, chaired by Attorney General Mike Hunter, consists of members from law enforcement, the legal system, mental health, the private sector, and Oklahoma state agencies. A complete list of the members of the Council is attached as Appendix "A." In order to comply with the Open Meeting Act, 25 O.S., §§ 301 *et seq.*, my office has filed a notice of meetings for 2021 with the Oklahoma Secretary of State. A list of those meeting dates is attached as Appendix "B."

Due to health concerns created by the COVID-19 pandemic and the expiration of the amendments to the Open Meeting Act which allowed virtual meetings, the Council was unable to convene a quorum of members in December in order to adopt a final report. As a result, I am submitting this document to report on the work of the Council for 2020. It is my sincere hope that the Council can meet in early 2021 to discuss and adopt this report and offer recommendations regarding the proposed classification system and legislation. Until then, this remains only a Chairman's Report.

### **Overview**

The Council held two public meetings in 2020. The Council further developed the Felony Classification System, a multi-year project which places felony crimes into appropriate categories, including considerations for appropriate sentence lengths, appropriate enhancements, and other factors affecting the modern criminal justice system. Members heard from private as well as public organizations, judicial representatives, law enforcement personnel, state agencies, and Oklahoma citizens in order to better understand issues in our current criminal justice system from different perspectives. The following is a brief summary of meetings of the Oklahoma Criminal Justice Reclassification Coordination Council in 2020.

### **First Meeting**

The first meeting of the Council took place on January 22, 2020 at 9:00am at the Office of the Chief Medical Examiner. This meeting largely focused on the impacts of SQ780, which became effective on July 1, 2017 and made possession of controlled dangerous substances a misdemeanor, raised the felony larceny threshold from \$500 to \$1,000, and made other similar crimes misdemeanors. The companion state question, SQ781 (which passed simultaneously with SQ780), created the County Community Safety Investment Fund, which is intended to hold costs savings created by reclassifying as misdemeanors certain property crimes and drug possession. These monies are then to be distributed to counties for the purpose of funding rehabilitation programs. At this meeting, members heard numerous presentations regarding the consequences of the passage of these state questions including the fact that these cost savings have never been realized.

The first portion of the meeting addressed the impacts of SQ780 on retail theft and other larceny crimes. Derek Colwell, General Manager of Sooner Fashion Mall in Norman, explained that since the passage of SQ780, he has seen an increase in shoplifting crimes and an increased financial burden on retailers at the mall. He told the group that the average theft amount was \$600, and the

trend is groups of three or four shoplifters working together, not individuals working alone to steal merchandise. He explained that most retail corporations utilize a hands-off security approach that is designed to deter, not to engage shoplifters. As a result, security is not permitted to run after shoplifters and can only detain the shoplifter if he or she engages in violent physical activity.

Following this presentation, the Council heard from Norm Smaligo, President of the Oklahoma Retail Crime Association. Mr. Smaligo presented data showing shoplifting cases jumped 11% in the last year while total dollars lost has increased by 37%.<sup>1</sup> He explained to the group that SQ780 and SQ781 have emboldened shoplifters, thus leading to an increase in average case amounts by 36%. He told the group that other states that raised felony larceny thresholds also passed corresponding retail protections. In order to address the problems Oklahoma retailers are facing, Mr. Smaligo proposed legislation to protect retailers including: 1) creating a felony criminal offense for violence against retail personnel; 2) creating a felony offense for using a fire escape or similar means as a method of fleeing while shoplifting; and 3) allowing prosecution for the loss of anti-theft devices.

The last speaker addressing larceny was Sargent Paul Harmon from the Oklahoma County Sheriff's Office. Sargent Harmon informed the group that the unincorporated portion of Oklahoma County has seen an increase in property crimes, such as theft of personal and construction equipment. Discussion among investigators of similar problems around the state has led to the creation of a task force comprised of five counties and eight municipalities to compare and connect property crimes. The group has connected numerous crime rings, often related to gang or mob activity and affiliations.

Another prominent focus of this meeting was mental health and substance abuse issues. Tulsa County Sheriff Vic Regalado shared with the Council that he is seeing an increase in the number of inmates in county jails who are suffering with mental health and substance abuse issues, and that he often sees people get out of county jail without getting the needed help or treatment. He explained that he would like to see law enforcement have an option for additional diversion programs.

Nisha Wilson, Department of Mental Health and Substance Abuse Services Director of Criminal Justice Services, gave a presentation to the group about misdemeanor diversion programs, which operate with the goal of a swift linkage to and engagement in treatment services. Currently, 10 counties have misdemeanor diversion programs serving over 950 participants.

Oklahoma County District Judge Kenneth Stoner explained the brain science behind addiction and shared his experiences about presiding over drug court and the triumphs of such programs using evidence-based approaches for high-risk, high-need persons. His presentation emphasized the importance of looking at addiction as a disease, not a choice. He highlighted the "Four C's" of addiction: compulsive use, loss of control, continued use despite harm, and cravings. All of these are best solved by compassionate treatment.

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<sup>1</sup>This graph is found in Appendix "C."

Nicole McAfee, American Civil Liberties Union Smart Justice Campaign Manager, spoke to the group about alternatives to incarceration, expanded treatment opportunities, judicial and prosecutorial discretion, and sentencing reform. Ryan Gentzler from the Oklahoma Policy Institute highlighted the importance of better funding needed for diversion before criminal justice involvement and focus on treatment and rehabilitation. Additional funding needed for diversion was a key focus of the presentations and discussions of the Council, with all parties agreeing that the funding from SQ781 has not yet materialized.

## **Second Meeting**

The second meeting took place on October 13 at 1:30pm via the WebEx virtual platform. An updated version of the Felony Classification System was presented, but a primary focus was the impending vote on SQ805, which would have limited sentencing enhancements for repeat non-violent offenses. As discussed by multiple members of the council, the proposed Felony Classification System and other works of the council would be limited by SQ805 if it were to pass. Further action on the Felony Classification System was tabled until a meeting following the vote on SQ805 to allow subcommittee members to continue working on the document and to see if the System needed to be reworked if SQ805 were to pass. As the meeting concluded, the group discussed the need for a thoughtful demarcation between violent and non-violent offenses.

At this second meeting, the Council also heard from additional speakers. The first presenter was Master Patrol Officer Ricky Ford of the Durant Police Department. Master Officer Ford shared the tragic story of losing his 14-year old son and three other local boys at the hands of a drunk driver. The driver was going over twice the speed limit and had 31 outstanding warrants and numerous felony convictions spanning back to the 1990s, including four DUI convictions. Officer Ford expressed that his son's death was avoidable, and the driver should have been incarcerated. The moving and heartbreaking testimony highlighted the need to appropriately empower law enforcement and judges to make individualized decisions.

The final speaker was Norm Smaligo, President of the Oklahoma Retail Crime Association. Mr. Smaligo presented updated crime data from the 2019 Uniform Crime Report. Mr. Smaligo explained that 80% of property crimes are concentrated within the Oklahoma City or Tulsa metro area, with only 7% occurring in rural portions of the state. He shared examples of repeat theft offenders, including one offender who acquired over \$60,000 in Home Depot merchandise which he sold on Facebook for \$40,000 in cash before fleeing to Mexico. Another serial shoplifter was arrested and released the next day only to be re-arrested that same day on another shoplifting charge.

## **Conclusion**

While the Oklahoma Criminal Justice Reclassification Coordination Council was impacted by the COVID-19 pandemic and was thus unable to meet regularly as in past years, subcommittee members continued to refine the proposed Felony Classification System. As the chairman, I look forward to finalizing our work in 2021 and making legislative recommendations that will create a safer and more efficient criminal justice system for Oklahoma.

Mike Hunter  
Attorney General of Oklahoma

## **Appendix A: Members**

Chairman Mike Hunter, Oklahoma Attorney General  
Vice-Chairman Steve Kunzweiler, District Attorney, District 14  
Mike Fields, District Attorney, District 4  
Wendell Franklin, Chief, Tulsa Police Department  
Donald Cluck, Chief, Tuttle Police Department  
Vic Regalado, Tulsa County Sheriff  
Clay Sander, Dewey County Sheriff  
Scott Crow, Director, Department of Corrections  
Robert Ravitz, Chief Public Defender, Oklahoma County  
Cindy Danner, General Appeals Division Chief, Oklahoma Indigent Defense System, Designee  
For Craig Sutter, Executive Director, Oklahoma Indigent Defense System  
Nisha Wilson, Director of Criminal Justice Services, Department of Mental Health and Substance  
Abuse Services, Designee for Carrie Slatton-Hodges, Commissioner, Department of Mental  
Health and Substance Abuse Services  
Ricky Adams, Director, Oklahoma State Bureau of Investigation  
Donnie Anderson, Director, Oklahoma Bureau of Narcotics and Dangerous Drugs  
Jari Askins, Administrative Director of the Courts  
Tom Bates, Executive Director, Pardon and Parole Board  
Candida A. Manion, Executive Director, Oklahoma Coalition Against Domestic Violence and  
Sexual Assault  
Emily Crouch, Senior Vice President, Oklahoma State Chamber of Commerce, Designee for Chad  
Warmington, President, Oklahoma State Chamber of Commerce  
Tim Tardibono, Executive Director, OK County Criminal Justice Advisory Council, Designee  
For Roy Williams, President, Oklahoma City Chamber of Commerce  
Jessica Cleveland, Deputy Secretary of State, Designee for Governor Kevin Stitt  
The Honorable Wayne Shaw, Oklahoma Senate, District 3  
The Honorable Ross Ford, Oklahoma House of Representatives, District 76  
Kenneth Watson, Oklahoma County District Judge, Retired

## **Appendix B: 2021 Meeting Dates**

The Commission is scheduled meet on the following dates and times. All meetings will be held in compliance with the Open Meetings Act and published on the Secretary of State's website.

1. Thursday, January 21, 2021 at 1:30pm at Oklahoma Office of Attorney General
2. Thursday, March 18, 2021 at 1:30pm at Oklahoma Office of Attorney General
3. Thursday, May 20, 2021 at 1:30pm at Oklahoma Office of Attorney General
4. Thursday, July 22, 2021 at 1:30pm at Oklahoma Office of Attorney General
5. Thursday, September 23, 2021 at 1:30pm at Oklahoma Office of Attorney General
6. Thursday, November 18, 2021 at 1:30pm at Oklahoma Office of Attorney General

## Appendix C: Norm Smaligo Retail Theft Presentation Data



Source: OSBI UCR reports and OSBI

**REPORTED SHOPLIFTING CASES JUMPED 11% LAST YEAR**  
**SINCE 2016: TOTAL DOLLARS LOST JUMPED 37%**  
**AVERAGE CASE AMOUNT JUMPED 36%**

Year	Shoplifting	% Chg vs prev	Amount	% Chg vs prev	Average	% Chg vs prev
2018	16885	13.6	\$4,817,793	-8.3%	\$284.77	10.3%
2017	15826	(9.1)	\$4,412,964	27.6%	\$279.52	31.2%
2016	16529	(8.6)	\$3,226,178	-7.0%	\$195.38	1.1%
2015	17991	8.6	\$3,489,819	-5.3%	\$199.89	4.8%
2014	17819	8.9	\$3,389,415	-5.8%	\$184.59	-1.0%
2013	16313	5.7	\$3,188,515	-5.2%	\$195.42	-6.4%
2012	15413	6.3	\$2,951,419	36.2%	\$186.68	30.1%
2011	14497	2.4	\$2,135,402	-5.8%	\$149.44	3.1%
2010	14192	(9.1)	\$2,032,422	-2.9%	\$139.34	1.0%
2009	15628	28.2	\$2,196,454	-2.9%	\$137.66	-22.0%
2008	13315	18.8	\$2,286,103	37.2%	\$175.67	15.0%
2007	10958	9.7	\$1,666,207	25.8%	\$152.05	3.6%
2006	9991	(16.4)	\$1,338,646	-1.3%	\$138.87	21.4%
2005	11856	(11.4)	\$1,417,479	-7.2%	\$128.55	4.0%
2004	13474	(1.3)	\$1,528,352	-4.7%	\$114.43	6.1%
2003	13800	9.8	\$1,493,524	34.3%	\$108.51	4.3%
2002	12448	10.5	\$1,175,010	8.9%	\$93.49	-8.7%
2001	11259	(6.6)	\$1,264,415		\$112.23	
Average	14377	2.74	\$1,421,464	8.6%	\$93.83	6.3%