

## **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.

...OVER

## 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.

”

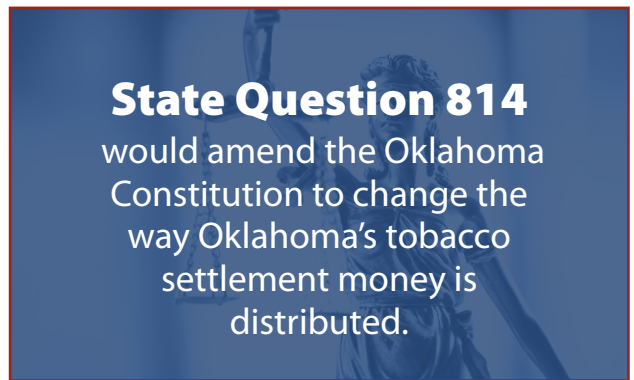
## **SQ 814: DECREASE TOBACCO SETTLEMENT ENDOWMENT TRUST FUND PAYMENTS AND FUND MEDICAID PROGRAM AMENDMENT**

### **THE GIST**

State Question 814 would amend the Oklahoma Constitution to change the way Oklahoma's tobacco settlement money is distributed.

Every year, Oklahoma receives a payout from the 1998 tobacco lawsuit settlement. Seventy-five percent of the funds are placed in the Tobacco Settlement Endowment Trust (TSET), and the other 25 percent is split between the Legislature and the Attorney General.

SQ 814 would switch the percentages, with 75 percent going to the Legislature and 25 percent going into the endowment fund. It would also mandate that the funds directed to the Legislature be used to help fund the state's Medicaid program. Funds going to the Attorney General would continue to come out of the Legislative portion.



### **BACKGROUND INFORMATION**

In 1998, Oklahoma and 45 other states were part of a lawsuit that ended with tobacco companies agreeing to make annual payments to states as long as tobacco is sold nationally. Voters in 2000 decided to constitutionally mandate that most of the annual payments go into a trust fund, and Oklahoma is the only state to handle the funds this way.

These annual payments are tens of millions of dollars, and the 75 percent that goes to TSET is invested. The interest is used to fund research and healthy living grants, tobacco cessation initiatives, and rural physician programs. Through these efforts, TSET says it has saved 42,000 lives and \$1.24 billion in health spending. The other 25 percent from the annual payment goes to the Legislature for appropriation and the Attorney General for enforcement of the settlement. If the measure passes and the percentages are switched, legislation passed in 2020 would ensure that the Attorney General receives roughly the same amount moving forward.

Medicaid expansion is projected to cost the state between \$123 and \$164 million annually. The Legislature is constitutionally mandated to find a way to fund the expansion.

In 2020, the Legislature voted to put SQ 814 to a vote of the people.

...OVER

## SUPPORTERS SAY...

---



This change could generate close to \$50 million annually, which could help fund Medicaid expansion without raising revenues.



The endowment fund currently has over \$1 billion dollars, so TSET should be able to continue funding research, prevention, and health initiatives in Oklahoma even if this change is implemented.



Using the settlement payments to help fund health care in Oklahoma could help keep the state from having to cut existing patient services or reduce the amount paid to health care providers.

## OPPONENTS SAY...

---



TSET is funding important health initiatives, and over time, this ability will diminish, as a smaller deposit to the trust fund will mean lower interest earnings in the future. Voter approval of Medicaid expansion shouldn't mean another public health measure loses funding, especially when strong health infrastructure is more important than ever.



The language does not specify that the funds must be used for Medicaid expansion, leading to concerns that the funds could be used to replace existing Medicaid funding and leave the state without a way to fund expansion.



There are other ways to fund expansion without a tax increase, including reductions in tax incentives, an increase on hospital fees, and retaining a fee on insurance plans.

## BALLOT LANGUAGE

---



This measure amends Section 40 of Article 10 of the Oklahoma Constitution. It modifies the amount of the annual tobacco settlement payments to the state to be deposited into the Tobacco Settlement Endowment Trust Fund. It modifies the amount of the annual tobacco settlement payments to the state to be deposited into the Tobacco Settlement Fund for appropriation by the Oklahoma Legislature. It specifies that deposits into the Tobacco Settlement Fund shall be appropriated and expended to draw down federal matching funds for the Medicaid program.

