

Top Oklahoma Legal Voices Clarify Misinformation about State Question 805, Express Support for the Measure

We, the undersigned current and former Oklahoma law deans and professors, prosecutors and judges, and practicing attorneys, write in support of State Question 805 and to clarify that it does not affect the ability of a prosecutor, judge, or jury to consider an individual's criminal history when sentencing convicted criminals. This reform simply clarifies that a person should not receive a sentence beyond the maximum already provided in law for a crime classified as nonviolent in Oklahoma law.¹

Opposition to State Question 805 campaigns on the false premise that criminal history cannot be considered in sentencing. As students, interpreters and shapers of the law we believe that voters should have accurate information on what this sentencing reform will and will not do.

Under Oklahoma's criminal justice system, a defendant's past criminal offenses, or lack thereof, has been one of many factors that may be considered by prosecutors, judges and juries in deciding what punishment is appropriate upon the defendant's conviction.

Upon passage, State Question 805 allows Oklahoma law to distinguish between types of criminal history in determining the appropriate sentence range. An individual with a prior violent offense will still face an "enhanced" sentence range regardless of that individual's current crime. An individual with no prior violent offenses will face the sentence range laid out by the legislature for the crime that individual committed. In either case, judges and juries will be able to hear evidence of and take into account that individual's history in accordance with the applicable evidentiary rules when deciding the appropriate sentence within the allowable sentence range.

The relatively recent introduction of "enhanced" sentencing in Oklahoma did not alter the longstanding authority of prosecutors, judges and juries to consider a person's history, including past criminal offenses, when deciding on a proportionate and just sentence. However, enhanced sentencing policies significantly lengthened the upper range of prison time that could be imposed (in many cases life in prison).

There is no ambiguity on the matter of the application of past bad acts in the text of State Question 805. Some sitting District Attorneys have urged that State Question 805 would completely "preclude past bad acts of defendants from being considered in sentencing."² This assertion is unsupported and erroneous.

Oklahoma voters deserve a fair and accurate discussion about the merits of State Question 805. Patently false claims that State Question 805 will preclude prior criminal offenses from being considered in sentencing, or similarly, that a "career criminal" will automatically be treated like a "first time offender," are a misrepresentation of the plain text of State Question 805.

The facts must prevail. State Question 805 simplifies sentencing and ensures that sentencing is uniform among all counties in accordance with Oklahoma law.

¹ State Question 805 provides in relevant part, "...a former conviction for one or more felonies shall not be used to enhance the statutorily allowable base range of punishment..."

² EDITORIAL: Consider Brinlee before voting on S.Q. 805

Tahlequah Daily Press, Oct. 8, 2005) (https://www.tahlequahdailypress.com/opinion/editorials/editorial-consider-brinlee-before-voting-on-s-q-805/article_607710ee-7eed-517f-8410-830dcb707b5a.html?fbclid=IwAR0BQdrEoliD4EYVIDAZG3EsglSVeRz_Si1GJVvH1qgN8tjajohIjllWH74)

Respectfully Submitted,

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