

# **Commutation Approvals in Oklahoma Plummet During the COVID-19 Pandemic**



# Background

Prior to 2019, Oklahoma's Pardon and Parole Board (PPB) rarely granted commutation applications for excessive sentences. In 2018, just 511 people applied for commutation and only 76 (15%) received approval from the Board. The year before, only 20 out of 458 (4%) applications were approved.

In 2019, with new Board members appointed by Governor Stitt, the PPB heard and approved more commutation applications than ever before. The PPB processed 1,830 commutation applications, 846 (46%) of which passed Stage I<sup>1</sup> (excluding retroactive House Bill 1269 cases).<sup>2</sup> This expanded use of clemency contributed to a reduction in Oklahoma's overcrowded prisons from 112% capacity at the beginning of 2019 to 106% capacity at the end of the year.<sup>3</sup> With one of the highest imprisonment rates in the nation, however, Oklahoma still had a long way to go.

Even as the COVID-19 pandemic put people in Oklahoma's prisons at risk, progress slowed significantly in 2020. The PPB dramatically curbed commutation approvals over the past year by reducing the number and rate at which reviewed applications were moved forward. The PPB also lowered its monthly commutation docket in September.<sup>4</sup> As COVID-19 continues to spread in Oklahoma's prisons, the PPB's slowdown is cause for serious concern.

## During COVID, the PPB has dramatically curbed commutation approvals.

Oklahoma's PPB significantly cut back the number and rate of approvals for commutation applications from January through November of 2020. According to public records, the PPB approved 33% fewer Stage I commutation applications compared to 2019, despite considering over 1,000 more applications (Fig 1). Stage I approval rates from the PPB have declined from 46% in 2019 to 19% in 2020 (Fig 2). Comparing only the first eight months of the COVID-19 pandemic with the eight months directly before shows a similar decline in commutation approvals during the pandemic, despite the known danger to individuals in prison at this time.

Figure 1

### COMMUTATION APPLICANTS AND APPROVALS

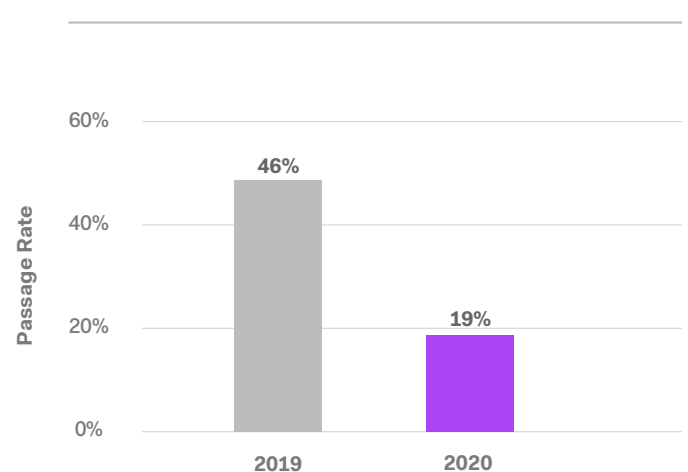
Does not include HB1269 Commutations. Stage I applications only.



Figure 2

### COMMUTATION PASSAGE RATES

Does not include HB1269 Commutations. Stage I applications only.



1 The PPB uses a two-stage process for commutations, the first of which serves as a "Qualification Review," in which the PPB determines if the application has merit and should be passed to Stage II for further consideration and an appearance with the PPB via video conferencing.

2 HB 1269 allowed people with offenses that were reclassified as misdemeanors, or to carry shorter prison sentences, to be retroactively resentenced under current law. Individuals eligible for commutation and early release through HB 1269 were heard through a simplified commutation process separate from other commutation applications.

3 Capacity information was analyzed using the Oklahoma Department of Corrections Weekly Count reports, <https://oklahoma.gov/doc/offender-info/weekly-count.html>.

4 Ben Felder, "Parole Board Decreases Commutation Reviews, Potentially Creating a Backlog," The Frontier, September 25, 2020, <https://www.readfrontier.org/stories/parole-board-decreases-commutation-reviews-potentially-creating-a-backlog/>.

# Regardless of offense type, prior imprisonment, time served, or sentence length, commutation applicants were denied at higher rates in 2020 than they were in 2019.

By matching PPB records to DOC records, FWD.us was able to analyze the characteristics of individual commutation applicants to understand if the reduction in approvals was caused by underlying differences in the types of applications the PPB received in 2020. This analysis showed that the drop in Stage I approvals from 2019 to 2020 were consistent across several key variables (Figs 3-7). Contrary to expectations, the PPB's significantly lower passage rate in 2020 is mostly driven by a steep decline in approvals for non-violent offenses. Stage I passage rates for people applying to commute non-violent sentences have declined from 74% to 35% (Fig 3). The same is true for the most common non-violent offenses (Fig 4). Passage rates also declined in 2020 for both applicants with no prior prison admittances and applicants with previous terms of incarceration (Fig 5).<sup>5</sup> Applicants who served more than three years in prison (Fig 7) and those with a sentence longer than 10 years (Fig 6) saw lower approval rates too.

Figure 3  
PASSAGE RATE FOR ALL NON-VIOLENT OFFENSES

Does not include HB1269 Commutations. Stage 1 applications only.

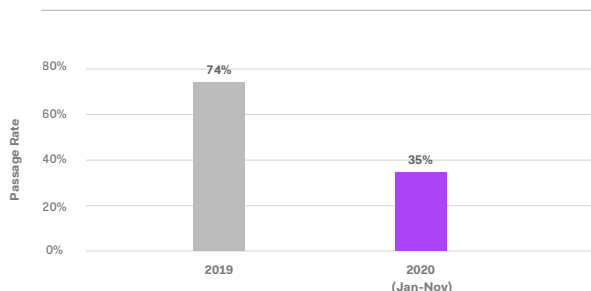


Figure 4  
PASSAGE RATE FOR THE MOST COMMON NON-VIOLENT OFFENSES

Does not include HB1269 Commutations. Stage 1 applications only.

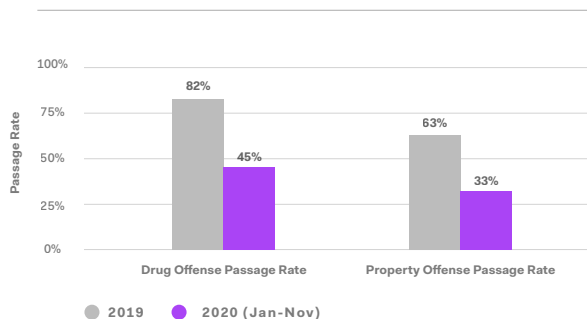


Figure 5  
PASSAGE RATE FOR APPLICANTS BY PRIOR PRISON ADMITTANCES

Does not include HB1269 Commutations. Stage 1 applications only.

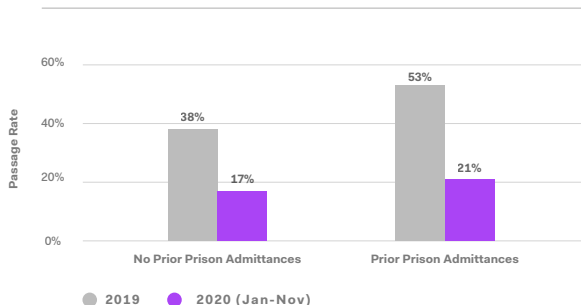


Figure 6  
PASSAGE RATE FOR APPLICANTS WITH SENTENCES LONGER THAN TEN YEARS

Does not include HB1269 Commutations. Stage 1 applications only.

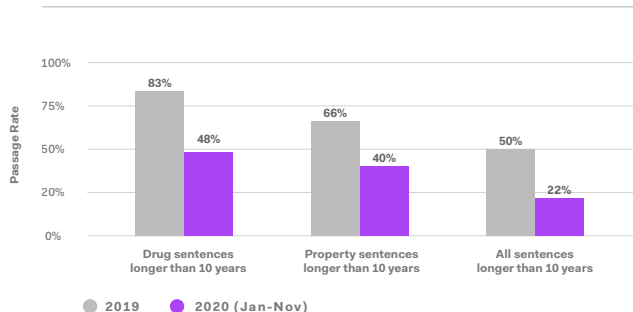
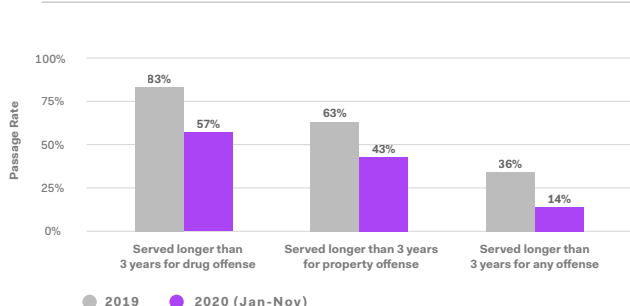


Figure 7  
PASSAGE RATE FOR APPLICANTS WHO SERVED LONGER THAN THREE YEARS BEHIND BARS

Does not include HB1269 Commutations. Stage 1 applications only.



<sup>5</sup> Passage rates for applicants with prior prison admittances are likely higher than those with zero prior prison admittances because they are more likely to be sentenced for a non-violent offense instead of a violent offense.

# Oklahoma can and should continue to use commutation as a tool to safely reduce its prison population.

Oklahoma, like many other states, has faced serious challenges controlling the spread of COVID-19 in jails and prisons where social distancing is nearly impossible. Several outbreaks have been reported in different facilities.<sup>6</sup> As of January 5, 2021, the test positivity rate in Oklahoma prisons is over 25% and more than 40 incarcerated people have died due to complications possibly related to the virus (including 10 in November alone).<sup>7</sup>

Experts have identified decarceration — the practice of lowering prison and jail populations — as a crucial strategy for reducing the spread of COVID-19.<sup>8</sup> At a time like this, when incarcerated people are at heightened risk of contracting the virus, and the PPB is receiving an unprecedented number of commutation applications, we should be seeing more people released.

## Methodology

The data used in this report was collected from the Oklahoma Pardon and Parole Board's public monthly commutation docket results for Stage I of the commutation process. These records were matched to Department of Corrections records for additional information on offense type. Cases that were struck from dockets due to ineligibility, error, or an earlier discharge were excluded from the analysis.

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6 Dillon Richards, "Oklahoma Corrections Department Fighting Multiple Outbreaks of COVID-19 Inside Prisons," KOCO News 5, September 15, 2020, <https://www.koco.com/article/oklahoma-corrections-department-fighting-multiple-outbreaks-of-covid-19-inside-prisons/34033152>.

7 COVID-19 Stats Report, Oklahoma Department of Corrections, January 5, 2020, <https://oklahoma.gov/doc/covid-19-stats.html>.

8 "Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety," National Academies of Science Engineering, & Medicine, October 2020, <https://www.nationalacademies.org/our-work/best-practices-for-implementing-decarceration-as-a-strategy-to-mitigate-the-spread-of-covid-19-in-correctional-facilities#sectionPublications>.