

Steps Toward Justice: An Evaluation of Prosecution Reform in New Orleans, 2017 to 2022

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From the Director

Vera Louisiana, a place-based initiative of the Vera Institute of Justice (Vera), works to end mass incarceration by challenging jail expansion, promoting community-based care, advancing prosecution reform, and investing in community-driven visions of safety that prioritize justice over punishment.

District attorneys (DAs) wield enormous power in the criminal legal system. They decide the fate of people accused of crimes at every stage of a criminal case. They have tremendous sway over other system actors, including law enforcement officers. This report focuses on change at the Orleans Parish District Attorney's Office (OPDA) after former New Orleans Councilmember-at-Large Jason Williams won the DA election in 2020. His promised reforms created a prime opportunity for Vera and the OPDA to align efforts to expand diversion, reduce disparities in prosecution, and safely end mass incarceration in New Orleans.

At the beginning of DA Williams's administration, Vera and OPDA collaborated on policies to limit money bail, decline prosecution of offenses that do not threaten community safety, and expand diversion programs to address the root causes of crime. OPDA's request for recommendations on implementing these and other reforms signaled a commitment to reducing reliance on incarceration and addressing the system's disproportionate impact on Black and other communities of color, youth, marginalized groups, and people experiencing poverty. OPDA's willingness to share data with Vera to evaluate progress demonstrated a deeper commitment to transparency and accountability than past administrations.

This report details OPDA's progress toward prosecutorial reforms over 2021 and 2022, the first two years of DA Williams's administration, and provides recommendations for advancing equitable and transformational system change. But the years studied were turbulent. In DA Williams's first quarter, New Orleans was a COVID-19 epicenter. In 2021, following the lifting of stay-at-home mandates, New Orleans—and the rest of the country—experienced increases in violent crime, which some incorrectly blamed on criminal legal system reforms. These events resulted in the resurgence of “tough-on-crime” rhetoric and rollbacks of reforms once championed by the Louisiana legislature and governor.

While prosecutorial reforms are needed to advance equity and justice, prosecutors do not act in isolation. Their decisions shape and are shaped by law enforcement, the judiciary, correctional institutions, and social services. Although policy changes at various points in the system are necessary, they are not sufficient to dismantle deep-rooted structural inequities. True justice demands unwavering commitment to equity and a concerted effort by all stakeholders.

Vera remains steadfast in its commitment to transform the criminal legal system and build safe, thriving communities across the state of Louisiana. We will continue to hold lawmakers and elected officials accountable, push for bold policy changes, and advocate for alternatives to incarceration that deliver justice, promote public safety, and uplift the dignity of all.

Sarah Omojola
Director, Vera Louisiana

Introduction

Louisiana has consistently had one of the highest incarceration rates in the country, and New Orleans has historically relied on mass incarceration as its primary response to public safety concerns.¹ Jails statewide are often overpopulated with large shares of people in pretrial detention: those who have been charged with crimes but are not yet convicted.² If incarceration created safety, Louisiana would be one of the safest states. Instead, mass incarceration destabilizes lives, families, and communities.³ True public safety in Louisiana demands reducing incarceration by tackling its root causes, like systemic failures and inequitable social conditions, while reforming the decisions of system actors who influence how and why people cycle through the criminal legal system.⁴ Arguably, the most powerful and influential actor in the criminal legal system is the elected prosecutor for a community, commonly called the district attorney (DA).

After an arrest, the DA can recommend bail for pretrial release; pursue prosecution, further involving the arrested person in the criminal legal system; propose diversion (if eligibility criteria are met) as an alternative to prosecution or conviction; or end the case entirely by declining to prosecute or later dismissing it. The DA's choice determines whether someone is incarcerated—or if they can return home, receive treatment, and keep their job.

Ahead of the 2020 Orleans Parish District Attorney election, the Vera Institute of Justice's Louisiana office (Vera Louisiana) launched a public education campaign to inform voters about DAs' power, the importance of making informed voting decisions, and the opportunities for criminal justice reform a new elected DA could bring.⁵ The 2020 DA election marked an opportunity for change, as outgoing DA Leon Cannizzaro's two-term, 12-year administration (2008–2020) was characterized by “egregious abuse of power” and misconduct, mass criminalization of adults and youth, and overuse of “habitual offender” statutes to seek higher penalties than standard sentencing guidelines permit for a single conviction.⁶

In January 2021, former criminal defense attorney and city Councilmember-at-Large Jason Williams took office after winning the 2020 DA election on a platform of prosecution reform.⁷ He pledged to reduce harm and address racial disparities, end the prosecution of cases that posed no threat to public safety, stop charging minors as adults, and forgo use of the “habitual offender” statute. In his first quarter in office, Vera Louisiana made policy recommendations to the Orleans Parish District Attorney's Office (OPDA) regarding bail, charging, and diversion. OPDA agreed to share data with Vera Louisiana to assess its progress on DA Williams's early-administration promises and Vera's recommendations. This report details Vera Louisiana's findings and offers further recommendations for prosecutorial reform.

Methodology

Data and sampling

Vera Louisiana entered into a data-sharing agreement with OPDA to produce an analysis of its prosecution practices under DA Williams's administration and provide internal policy recommendations in alignment with his goals to increase opportunities for diversion and reform money bail.⁸ In March 2023, OPDA provided Vera researchers with tab-delineated files of adult and youth charges from January 1, 2017, to December 31, 2022, that were, at the time of receipt, at various stages of case processing. Vera requested data from this date range so that researchers could analyze two full years of data from DA Cannizzaro's administration preceding the 2019 cyberattack on New Orleans's governmental systems and the COVID-19 pandemic in 2020—both of which affected all parts of the criminal legal system—through the first two years of DA Williams's administration.⁹ These files included

case identifiers, demographics of people referred (arrested), charge status, criminal code statutes, charge descriptions, and disposition (charge outcome) information. The data was exported from the Prosecutor by Karpel (PbK) case management system used by OPDA, cleaned, and de-identified before being transferred to Vera as an anonymized dataset. In total, Vera researchers conducted analysis on 136,077 adult charges—including charges of minors under the age of 18 who were referred to adult court—and 15,391 youth charges (minors under the age of 18) referred to and screened by OPDA from 2017 to 2022.

Research design and key measures

Research Design

Vera researchers conducted a descriptive quantitative analysis of OPDA's referral and case processing data. Both Vera and OPDA were interested in the degree to which progress has been made on DA Williams's early-administration promises to reform prosecution in New Orleans. Specifically, researchers investigated disparate outcomes in how the New Orleans Police Department (NOPD) referred charges, how OPDA screened those charges, and how case outcomes aligned with DA Williams's early-administration promises and reforms recommended by Vera.

Estimating Cases

OPDA shared charge-level data for youth and adults with Vera for analysis. However, analyzing the data to understand the characteristics of people represented among the charges is key to understanding the implications of criminal legal system involvement for various groups. Commonly, multiple charges can be linked to a single person in a single incident, and people can be linked to multiple incidents within the same year and/or across multiple years. Although the youth dataset included a unique identifier (that is, an identifier assigned to a case at initial arrest that remains the same even if the same young person is booked for multiple incidents), the unique identifier in the adult dataset—case number—could not be used because of data quality issues. Case numbers were missing for 15 percent of charges, and, for an additional 11 percent of charges, case numbers were in fact Magistrate Court identifiers because of a clerical error when data was being transferred from OPDA's former Criminal Research Information Management and Evaluation System (CRIMES) to the current PbK system.¹⁰

To estimate cases, Vera researchers constructed an identifier by combining each adult's date of birth, race, sex, and arrest date. This approach assumes that no two people with the same date of birth, race, and sex were arrested on the same day. This constructed identifier assigned a case (person) to each incident, resulting in a "case-person" unit of analysis. It should be noted, however, that this unit of analysis inflates the true number of system-involved people because a person is counted more than once if they are associated with more than one incident. For the youth dataset, the case-person unit of analysis was constructed for comparability with the adult dataset by combining the unique identifier and case file number.¹¹ Moving forward in this report, researchers simply use "cases" when describing individual incidents of adults and youth being charged with crimes.

Measuring Racial Disparity

Substantial research shows that Black people—particularly those who are young and male—are subject to unequal justice: they are more likely than similarly situated white people to be detained in jail prior to adjudication and sentenced to prison and to receive longer sentences.¹² As such, Vera assessed the data for racial disparities in NOPD's case referrals and OPDA's case acceptance. Vera researchers approached measurement of racial disparity by creating a relative rate index (RRI), which compares an occurrence in one group of people against the same occurrence among another group of people.¹³

Racial disparities in this analysis reflect rates at which Black people, relative to white people, are represented in cases referred by NOPD and in cases accepted by OPDA (that is, Black–white racial disparities). Other racial and ethnic identities are represented in the adult and youth charge data, but collectively, they account for less than 2 percent of the overall sample. This factor limited researchers’ ability to derive adequate measures of disparity across these underrepresented identities. To calculate the RRI for both case referrals and case acceptances, Vera referenced Orleans parish-level population estimates from the United States Census Bureau’s American Community Survey (ACS) 2016–2020 five-year dataset for estimates of racial groups by age (for example, Black adults).¹⁴

As noted, Vera was not able to identify unique individuals within OPDA data. This means that if a cohort of people in one racial category were disproportionately targeted for repeated arrest, referral, or acceptance within a given year, the RRI will be skewed as a result. The skewed measure may inflate the degree of disparity, but it does not itself create disparity, as it reflects existing, underlying inequities.

Assessing DA Screening Outcomes and Case Dispositions

OPDA has the discretion to refuse charges, accept charges as referred, or to upgrade or downgrade charges based on evidence and other information pertaining to the charges or the case overall. OPDA’s Screening Division reviews charges referred by the NOPD and other local arresting agencies, along with any associated evidence, to determine if the charges warrant moving forward.¹⁵ Even if the OPDA accepts charges, it may decide not to move forward with prosecution by dismissing charges filed against a person or recommending that the accused person complete a diversion program to avoid conviction.¹⁶ As OPDA screens charges and cases reach a disposition (final outcome), OPDA records screening and disposition codes and descriptions. Using the data provided, Vera researchers grouped these screening and disposition codes to summarize charge- and case-level screening decisions and dispositions. Vera organized charge-level decisions/dispositions as follows:

- **Refused:** OPDA declined the referred charge.
- **Accepted:** OPDA accepted the referred charge—either maintaining the charge as referred or upgrading or downgrading the charge based on evidence and/or other available information regarding the charge/case. Once OPDA accepts the charge, it makes the decision to dismiss, divert, or initiate legal proceedings against the accused. The following are charge outcomes once OPDA accepts charges:
 - **Dismissed:** OPDA decided not to prosecute the charge.
 - **Not guilty:** The accused person was found not guilty of the charge following trial.
 - **Guilty:** The accused person pled guilty or was found guilty of the charge following trial.
 - **Diverted:** If a person was eligible, OPDA recommended they complete a diversion program in lieu of prosecution or receiving a conviction had the charge been prosecuted. Diversion could be recommended before or after a trial.
 - **Open:** No disposition (outcome) for the charge was reached by December 31, 2022, the last date of inclusion of the adult and youth charge data. An open case may result in any of the four outcomes named above.
 - **Other:** The charge may have been transferred to another jurisdiction, there may have been a hung jury, or there was some other circumstance affecting the case.
- **No decision:** There was no screening decision documented for the charge as of December 31, 2022. This could be because the charge was within the screening and filing period during which OPDA decides whether to move the charge to prosecution or because no screening decision or subsequent case outcome was recorded (because of either missing data or the charge filing period expiring).

Vera constructed case-level decisions/dispositions like those at the charge level:

- Refused cases were those in which OPDA accepted none of the charges associated with a case, and the case was not prosecuted.
- Dismissed cases had all charges dropped after OPDA accepted charges.
- Cases had at least one accepted charge open, dismissed, diverted, or prosecuted.
- Any cases with no decision could be pending screening, outside of the statute of limitations for filing, or missing data.

Charge Categories and Charge Severity

As is typical with charge-level criminal legal system data, the charges in both the adult and youth datasets OPDA provided are labeled with criminal code statutes and descriptions, which allow them to be categorized because the charges and their associated penalties vary widely. Both the adult and youth datasets contain codes and descriptions for the charges NOPD referred and OPDA screened, which can be maintained from NOPD's referral or upgraded or downgraded by OPDA. For analysis, Vera researchers categorized the criminal code statutes so that related charges could be organized and analyzed as broad groups, including violent offenses (e.g., assault, murder), property crimes (e.g., burglary, theft), drug offenses (e.g., possession, trafficking), sex offenses (e.g., rape, indecent exposure), weapons violations (e.g., illegal possession, use of a firearm), traffic violations (e.g., driving while intoxicated, reckless driving), attachments (e.g., for failure to appear), and other miscellaneous offenses. Researchers also categorized charges by severity to distinguish offenses as a felony (a more severe offense, usually with a higher penalty); a misdemeanor (a less serious crime, usually with a less severe penalty); or other, which includes infractions, violations, and petty offenses. (See Appendix A.)

Findings

Cases NOPD referred to OPDA disproportionately involved Black adults and youth, particularly men and boys

From January 1, 2017, through December 31, 2022, NOPD referred 54,156 cases to OPDA—46,631 adults (including 258 minors under the age of 18 charged as adults and who appear within the adult charge data) and 7,525 youth (minors under the age of 18). (See Table 1.) Eighty-six percent of cases referred were adults, and youth accounted for 14 percent.

Table 1. Cases referred by NOPD to OPDA, by age group, race, sex, and year (N=54,156)

	2017		2018		2019		2020		2021		2022	
ADULTS (n=46,631)	n	%*	n	%*	n	%*	n	%*	n	%*	n	%*
Black	7,999	69%	7,967	70%	7,278	69%	4,905	72%	4,958	71%	4,968	73%
Male	6,227	54%	6,145	54%	5,650	53%	3,843	57%	3,841	55%	3,938	58%
Female	1,770	15%	1,822	16%	1,628	15%	1,060	16%	1,117	16%	1,028	15%
Transgender	2	<1%	0	0%	0	0%	1	<1%	0	0%	0	0%
Sex not recorded	0	0%	0	0%	0	0%	1	<1%	0	0%	2	<1%
White	1,907	17%	1,575	14%	1,547	15%	987	15%	952	14%	857	13%
Male	1,462	13%	1,178	10%	1,214	11%	763	11%	710	10%	658	10%
Female	445	4%	397	3%	333	3%	224	3%	242	3%	199	3%
Hispanic	71	1%	59	1%	108	1%	78	1%	91	1%	86	1%
Male	62	1%	46	<1%	87	1%	63	1%	80	1%	72	1%
Female	9	<1%	13	<1%	21	<1%	15	<1%	11	<1%	14	<1%

Other Race**	49	<1%	32	<1%	38	<1%	33	<1%	55	1%	31	<1%
Male	36	<1%	25	<1%	27	<1%	24	<1%	33	<1%	20	<1%
Female	11	<1%	7	<1%	10	<1%	9	<1%	17	<1%	11	<1%
Sex not reported	2	<1%	0	0%	1	<1%	0	0%	5	<1%	0	0%
YOUTH (n=7,525)	n	%*	n	%*	n	%*	n	%*	n	%*	n	%*
Black	1,382	12%	1,720	15%	1,513	14%	755	11%	922	13%	840	12%
Male	1,058	9%	1,366	12%	1,276	12%	636	9%	770	11%	680	10%
Female	312	3%	351	3%	236	2%	113	2%	146	2%	158	2%
Sex not reported	12	<1%	3	<1%	1	<1%	6	<1%	6	<1%	2	<1%
White	61	1%	39	<1%	47	<1%	20	<1%	18	<1%	21	<1%
Male	53	<1%	20	<1%	32	<1%	9	<1%	11	<1%	20	<1%
Female	8	<1%	19	<1%	15	<1%	11	<1%	7	<1%	1	<1%
Hispanic	13	<1%	21	<1%	16	<1%	4	<1%	5	<1%	16	<1%
Male	7	<1%	13	<1%	12	<1%	4	<1%	5	<1%	15	<1%
Female	6	<1%	8	<1%	4	<1%	0	<1%	0	<1%	1	<1%
Other Race**	47	<1%	52	<1%	41	<1%	13	<1%	16	<1%	18	<1%
Male	10	<1%	8	<1%	8	<1%	2	<1%	2	<1%	1	<1%
Female	2	<1%	0	0%	2	<1%	1	<1%	0	<1%	1	<1%
Sex not reported	22	<1%	23	<1%	15	<1%	6	<1%	9	<1%	0	0%
	11,516		11,444		10,572		6,791		7,012		6,821	

NOTES:

For the purpose of describing the population of people referred for charges from 2017 to 2022 and making comparisons across demographic characteristics, researchers relied on the race and sex categorizations as recorded in the administrative data analyzed. Law enforcement in New Orleans and the Orleans Parish District Attorney's Office do not routinely document self-reported racial, ethnic, or gender identities for people who become involved in the criminal legal system. This means that the counts presented here might not accurately represent the identities of the people described.

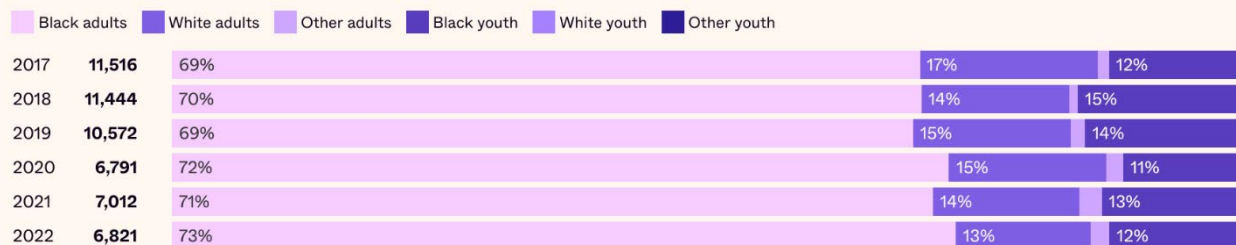
* All proportions use the annual referral total as the denominator.

** "Other Race" combines specified and unspecified racial categorizations.

Figure 1

Cases NOPD referred for crimes by year

N=54,156



Cases involving Black people, adults and youth, were consistently and substantially overrepresented among NOPD referrals—collectively making up 81 to 85 percent of referrals annually despite an overall 41 percent decline in referrals from 2017 to 2022. (Figure 1.)

Black adults made up 82 percent of adult referrals, yet they constitute just 58 percent of the adult population in New Orleans. Comparatively, white adults made up 17 percent of adult referrals and are 33 percent of the city’s adult population.¹⁷ Cases involving **Black men constituted 78 percent of all Black adult referrals, 64 percent of all adult referrals, and 54 percent all referrals.**

Of youth referred to OPDA, 95 percent were Black, despite Black youth making up 65 percent of the youth population in New Orleans.¹⁸ Three percent of youth referred were white, even though white youth make up 22 percent of the city’s youth population.¹⁹ Cases involving **Black boys made up 81 percent of Black youth referrals, 77 percent of all youth referrals, and 10 percent of referrals overall.**

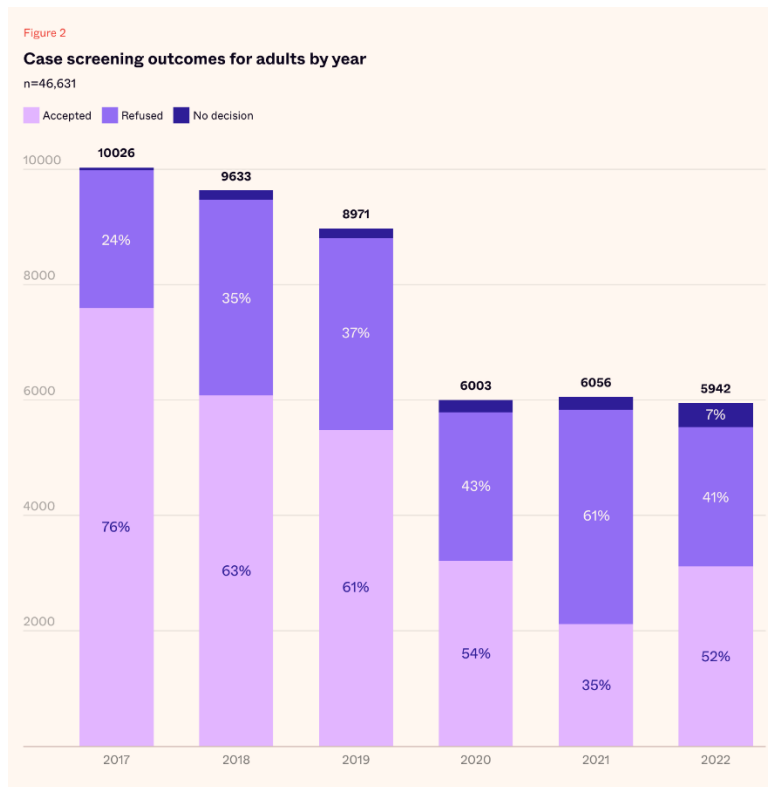
Racial disparities persist in OPDA’s screening of cases across administrations

During his campaign, DA Williams set out to “confront the sins of the past” by reevaluating the decisions and practices of DA Cannizzaro and other former prosecutors and acknowledging “the pain and havoc our criminal legal system has wrought in our poor and Black communities.”²⁰ With racial disparities evident in NOPD referrals, Vera researchers assessed OPDA’s screening decisions for racial disparities and looked for any notable shifts likely attributable to differences in the office’s policy priorities across DA administrations.

Adults

Despite DA Williams’s commitment to addressing racial inequities in prosecution and a substantial decrease in case referrals to OPDA following the onset of the COVID-19 pandemic, racial disparities trended upward—as did OPDA’s acceptance of adult cases—over Williams’s first two years in office.

The proportion of cases OPDA accepted for prosecution increased nearly 20 percentage points over the first two years of DA Williams’s administration—from 35 percent in 2021 back up to more than 50 percent the next year. (See Figure 2.)



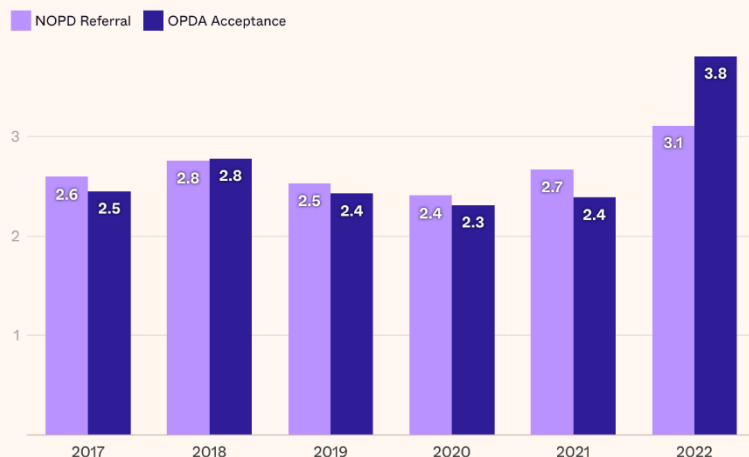
Figures 3 and 4 depict racial disparities in adult cases referred to and accepted by OPDA.²¹ The bars show the proportional rates at which Black people—relative to white people—in New Orleans are represented in cases referred by NOPD and in cases accepted for prosecution by OPDA. If Black and white people were implicated equally, the rates would be one. Instead, each bar depicts a rate greater than one, demonstrating the disproportionate share of Black people among cases.

From 2017 to 2022, Black adults in New Orleans were, on average, referred to and accepted by OPDA for misdemeanor cases at 2.7 times the rate of white adults. (Figure 3.) Each year up through 2021 (when the Williams administration began), there were only marginal differences in the racial disparity between case referrals and accepted cases. However, in 2022, the disparity in accepted cases was considerably worse than in referrals.

Figure 3

Racial disparities in adult misdemeanor case referral and acceptance by year

Rates at which cases of Black adults were referred and accepted relative to white adults



NOTE:

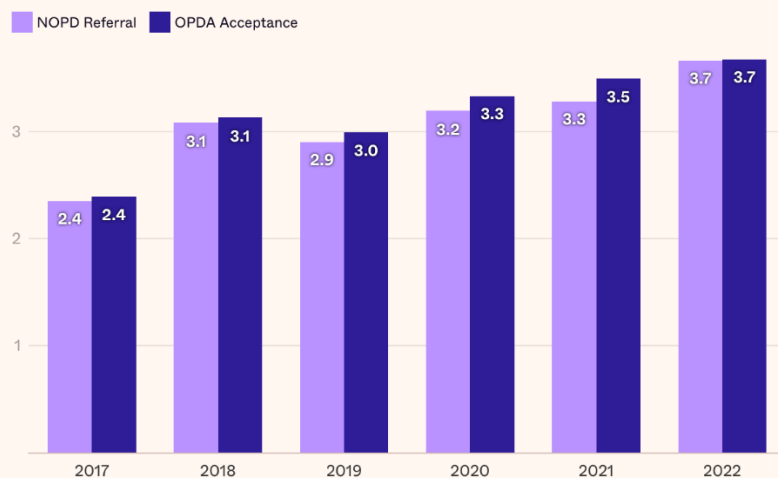
Rates were rounded to the nearest tenths place digit, which resulted in slightly unequal heights of bars that appear to display the same rate.

Black adults in New Orleans were, on average, referred for felony cases at 3.1 times—and were accepted for prosecution at 3.2 times—the rate of white adults. Each year, the magnitude of racial disparities in accepted cases tracked with that of referred cases. The disparities in both referred and accepted cases trend upward across both DA administrations, reaching their peak over 2021 and 2022 (Williams). During these years, Black people in New Orleans were referred and accepted for prosecution at nearly four times the rate of white people. (Figure 4.)

Figure 4

Racial disparities in adult felony case referral and acceptance by year

Rates at which cases of Black adults were referred and accepted relative to white adults



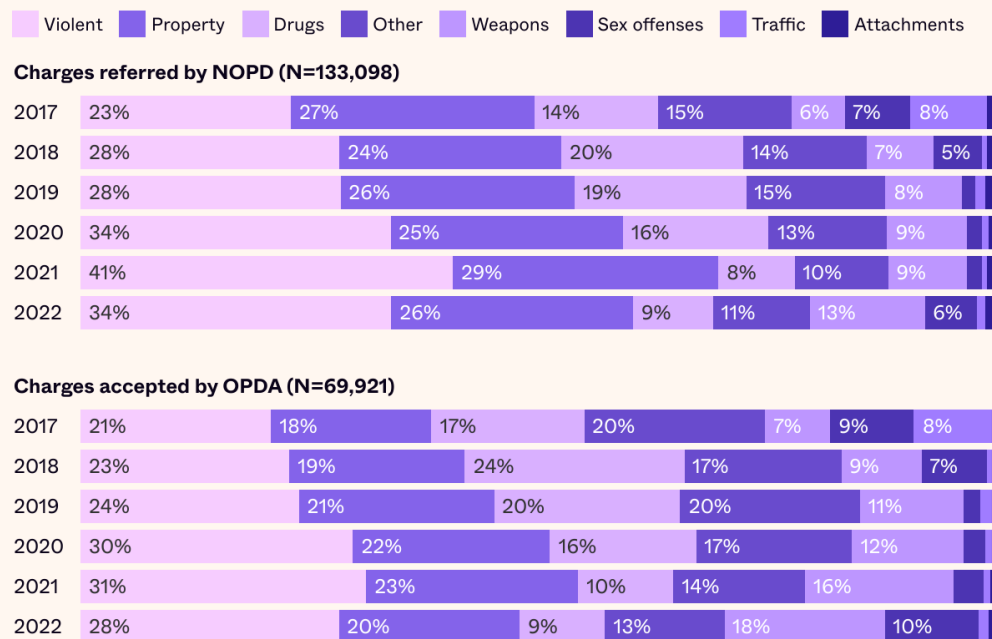
NOTE:

Rates were rounded to the nearest tenths-place digit, which resulted in slightly unequal heights of bars that appear to display the same rate.

Comparing trends in the distribution of charge types among adult charges accepted by OPDA to those NOPD referred from 2017 to 2022 (Figure 5), violent and property charges collectively accounted for 50 to 70 percent of charges referred and roughly 40 to 55 percent of charges accepted. Although there was a sharp decline in charges referred after 2019, largely due to the COVID-19 pandemic, referrals for violent and property charges increased. However, OPDA accepted smaller shares of these charges while larger shares of drug, other (miscellaneous charges), weapons, and sex offenses were accepted. Within DA Williams’s administration specifically, drug charges were accepted at the same frequency as they were referred, and the proportions of weapons, “other,” and sex offenses among adult charges accepted were greater.

Figure 5

Adult charges referred and accepted by year



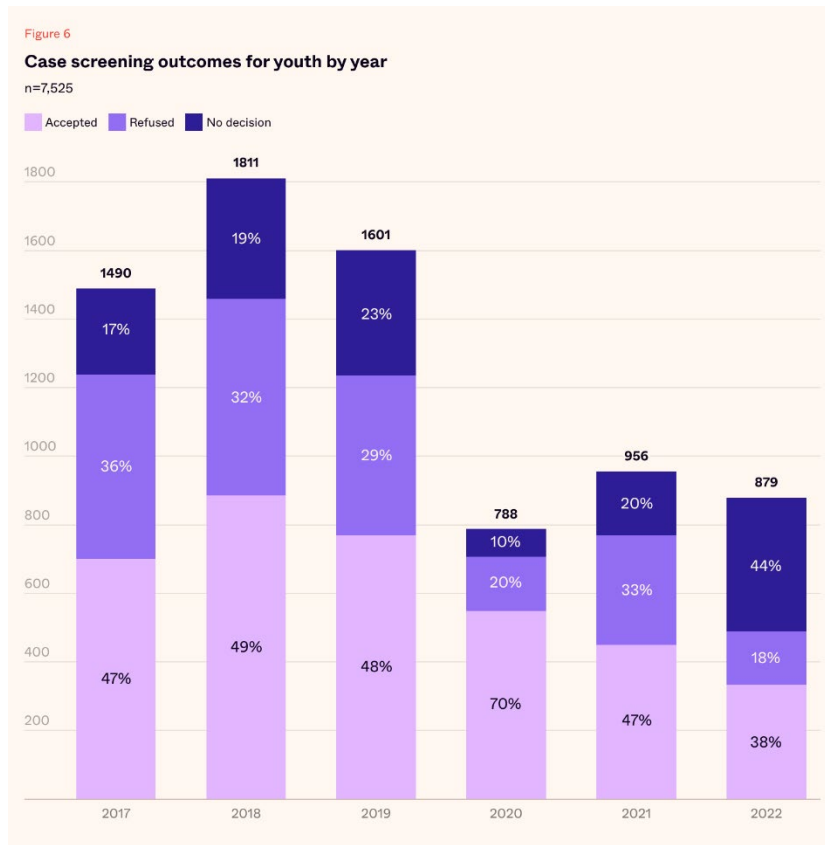
NOTES:

Proportions <5% are not visible in the graph above.

Among charges referred, sex offenses in years 2019 through 2021 were <2%, and traffic offenses in years 2018 through 2022 were <1%. Among charges accepted, sex offenses in years 2019 through 2021 were <4% of charges, and traffic offenses in years 2018 through 2022 were <2% of charges. Attachments were up to 1% of charges referred and accepted annually.

Youth

OPDA’s acceptance of youth cases appears to trend downward over DA Williams’s administration; however, when OPDA provided data to Vera, there were no screening decisions for 20 percent of cases referred in 2021 and 44 percent of cases referred in 2022. (Figure 6.) **Although OPDA accepted about half of the cases referred in 2021 for prosecution and a little more than one-third of those referred in 2022, the racial disparities were even more staggering than those found in the processing of adult cases.**

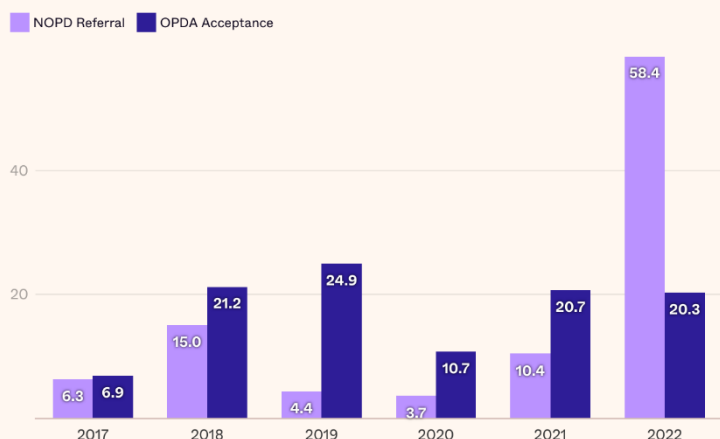


Each year from 2017 through the first year of DA Williams’s administration, youth misdemeanor cases accepted by OPDA consistently reflected even worse racial disparities than observed in referrals. (Figure 7.) The most extreme instance of this occurred in 2019, when Black people in New Orleans were nearly 25 times more likely to have accepted youth misdemeanor cases than white people, even though Black youth were referred at just more than four times the rate of white youth. Although the disparity in accepted misdemeanor cases was substantially lower in 2022 than that of cases referred—Black youth misdemeanor cases were referred to OPDA at 58.4 times the rate of white youth—Black youth were still accepted for misdemeanors at more than 20 times the rate of white youth.

Figure 7

Racial disparities in youth misdemeanor case referral and acceptance by year

Rates at which cases of Black youth were referred and accepted relative to white youth

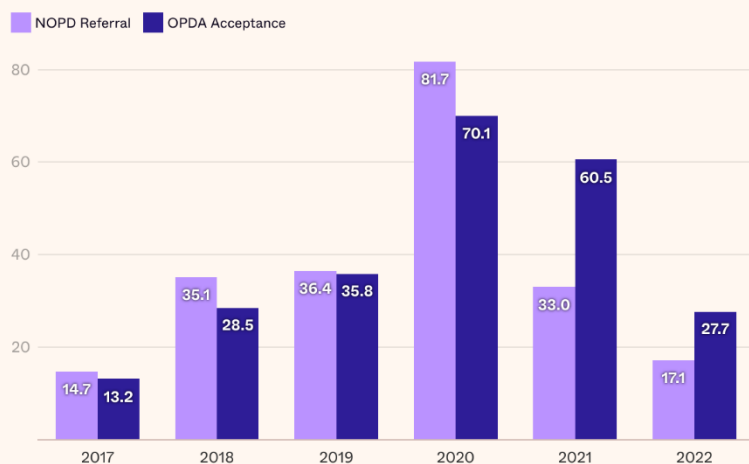


In 2020, Black youth were referred for felonies at more than 80 times the rate of white youth, and had accepted cases at more than 70 times the rate of white youth. **Racial disparities in referred and accepted youth felony cases trended downward over 2021 and 2022; however, the degree of disparity in accepted Black youth felonies over these first two years of DA Williams’s administration were even worse than the rates of disparity among referred cases.** (Figure 8.)

Figure 8

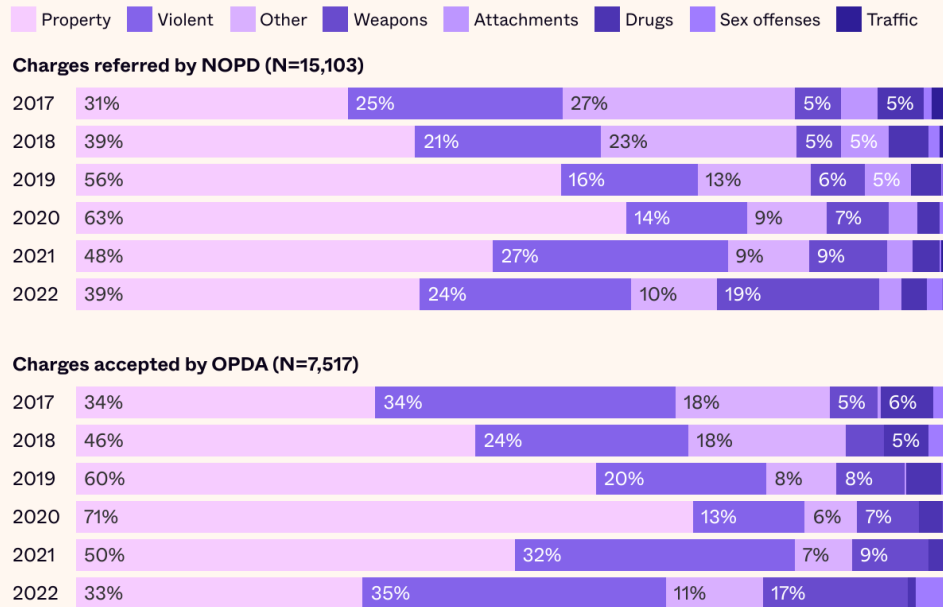
Racial disparities in felony case referral and case acceptance

Rates at which cases of Black youth were referred and accepted relative to white youth



Comparing youth charges accepted by OPDA with charge referrals from 2017 to 2022, property offenses consistently account for a substantial proportion of charges, peaking in 2020 and declining in the years following. DA Williams’s administration accepted noticeably greater proportions of violent charges among youth than referred.

Figure 9

Youth charges referred and accepted by year**NOTES:**

Proportions <5% are not visible in the graphs above.

Among charges referred, attachments were 5% of charges or less; drug offenses in years 2018 through 2022 were <5%; sex offenses were up to 2% of charges across all years; and traffic offenses were <2%. Among charges accepted, drug offenses from 2019 through 2022 were 4% or less; sex offenses across all years were <4% of charges; and attachments and traffic offenses were each <0.5% of charges.

Adult and youth case refusals increased under the Williams administration

As part of his campaign platform, DA Williams vowed to “stop wasting resources on prosecuting insufficient or insignificant cases.”²² Within DA Williams’s first quarter in office in 2021, Vera recommended that OPDA consider several charges for refusal at the onset of its screening process. (See Appendix B.) These included low-severity and nonviolent charges related to poverty and housing insecurity, sex work, controlled substances, and quality-of-life offenses like loitering and disorderly disturbances that pose no threat to public safety and would best be addressed outside of the criminal legal system.

Declining to prosecute cases, especially those made up of charges that pose no threat to public safety, is the most direct and effective way prosecutors can lessen the impacts of criminal legal system involvement. Prosecutors can refuse cases upfront, which diminishes system involvement for people accused of crimes—especially those jailed following arrest—or dismiss cases after charges are filed. In Louisiana, people accused of felonies who are denied bail or unable to pay it may spend up to 60 days in pretrial detention before the DA decides whether to file charges.²³ This time spent incarcerated may jeopardize a person’s housing, employment, custody of their children, or other aspects of their livelihood.²⁴ If charges are filed, these disruptions are often compounded as people await arraignment and later stages of the criminal legal process. Even for those not incarcerated during legal proceedings, a conviction—or simply the stigma of system involvement—can have health implications and life-altering consequences.²⁵

Adults

OPDA's refusal of adult cases steadily increased from 24 percent to 43 percent over DA Cannizzaro's administration, reaching a peak of 61 percent in DA Williams's first year in office. (Figure 2.) Because DA Williams's administration began directing more people away from the criminal legal system by refusing to accept and file charges, case dismissal (the decision to not prosecute a case after charges had been filed) drastically declined in 2021. By the next year of DA Williams's administration, however, adult case refusals had decreased 20 percentage points to 41 percent because of increased case acceptance.

Considering Vera's recommendations regarding what constitutes eligibility of refusal, across the entire study period, 29 percent of all adult charges were low-severity, nonviolent charges eligible for refusal, and 12 percent of cases were composed of entirely refusal-eligible charges. Nearly two-thirds (61 percent) of adult charges eligible for refusal were not prosecuted; these were either refused at screening (46 percent) or dismissed sometime after charges were filed (15 percent). More than half (54 percent) of cases made up entirely of low-severity, nonviolent charges were not prosecuted; nearly 40 percent were refused; and 17 percent were dismissed.

Youth

OPDA's refusal of youth cases declined from 36 percent to 20 percent over DA Cannizzaro's administration but spiked to 33 percent in 2021 (Williams). (Figure 6.) It is unclear if this trend continued in DA Williams's second year, as youth case acceptance, refusal, and dismissals were much lower than the prior years because 44 percent of cases were still pending screening and had no decision.

As to Vera's refusal recommendations, across the entire study period, around one quarter (26 percent) of youth charges and nearly 10 percent of youth cases were eligible for refusal. Half of youth charges eligible for refusal were not prosecuted (44 percent were refused, and 6 percent were dismissed). The majority (69 percent) of cases made up entirely of refusal-eligible charges were not prosecuted (65 percent were refused, and 4 percent were dismissed).

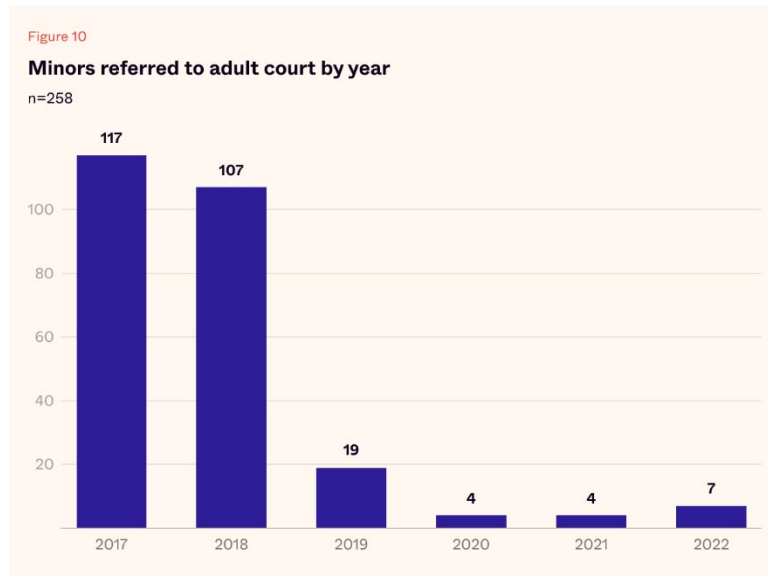
Prosecution of minors as adults continued in smaller numbers in the Williams administration

Of adult cases referred to OPDA from 2017 to 2022, 258 (less than 1 percent) involved minors who were arrested and referred to adult court. In the majority (93 percent) of referred cases involving minors, the young people involved in the cases were 17 years old at arrest, although some were as young as 13; in 97 percent of cases they were Black; and in 84 percent they were boys. Eleven (4 percent) of the minors were referred within DA Williams's administration.

Despite DA Williams's early-administration promise to not prosecute minors as adults, OPDA did so within five months of Williams taking office.²⁶ OPDA accepted nine of the 11 referred cases and refused one, and the remaining case had no screening decision at the time OPDA shared data with Vera. None of the accepted cases had a recorded disposition; they appeared as open cases.

Prior to March 1, 2019, when the first phase of the Raise the Age Louisiana Act of 2016 legislation took effect in Louisiana, 17-year-olds were treated as adults in the criminal legal system, irrespective of offense.²⁷ Once the law took effect, 17-year-olds accused of nonviolent offenses could be referred to the juvenile system. The second phase of the law took effect on July 1, 2020, whereby all 17-year-olds, including those accused of violent offenses, could be included in the juvenile system.²⁸ The law did not,

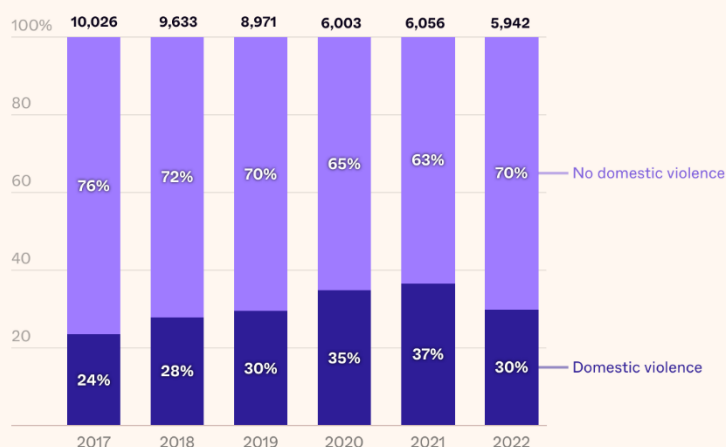
however, preclude prosecutors from trying children 17 years old or younger as adults for certain serious offenses.²⁹ The data shared with Vera reflects a sharp decline in youth cases referred to adult court—from 117 in 2017, to 107 in 2018, to 19 in 2019, and four to seven annually from 2020 to 2022. (Figure 10.)



Domestic violence was a leading driver of criminal legal system involvement for adults

In New Orleans from 2017 to 2022, 15 percent of all charges—and nearly one in three cases—referred against adults involved domestic violence (DV). Recognized as a global “shadow pandemic,” DV cases accounted for a growing proportion of cases in New Orleans courts during the COVID-19 pandemic.³⁰ In 2017, about one in four adult cases involved a DV charge, and by the end of 2021, this proportion rose to nearly 40 percent. (Figure 11.) Eighty-three percent of DV cases were referred against Black people compared to 15 percent referred against white people. Although the highest proportion of DV cases (78 percent) was refused in 2021, cases involving Black men still made up 88 percent of cases accepted by OPDA.

Figure 11

Adult case referrals involving domestic violence (DV) by year**NOTES:**

Annual totals of adult cases appear above each bar. The percentages within each bar represent the distribution of cases that involved domestic violence and those that did not.

The most abundant charge type among DV charges was “domestic abuse battery” at 54 percent (10,754) of all DV charges, followed by “battery of a dating partner” (9 percent; 1,823). However, given how closely related many of the charge categories are for DV and the high likelihood of error introduced in police officers’ classification of charges, it was not possible for researchers to distinguish among different forms of DV charges with certainty. Seven percent of DV cases also had a gun charge, and OPDA accepted 87 percent of DV cases with a gun charge compared to 44 percent of DV cases overall.

Williams’s refusal policy led to a significant spike in case dispositions in 2021

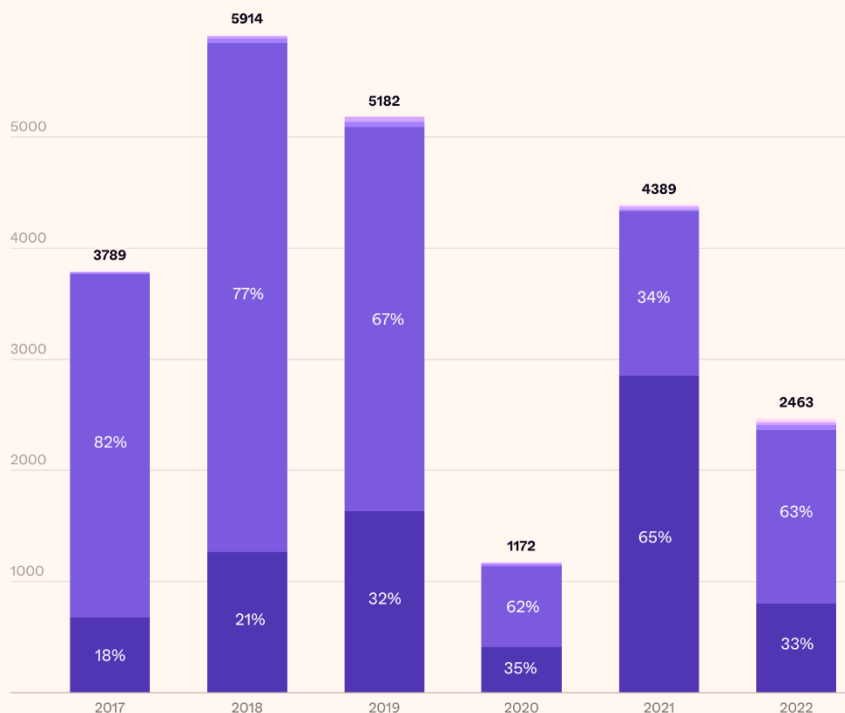
Quite often, eventual case dispositions (outcomes) are not determined within the same year cases are referred or screened. Therefore, Vera researchers examined closed cohorts—annual cohorts of only disposed cases that OPDA accepted that were either dismissed, diverted, deemed guilty either by plea or trial, or had some other outcome. From 2017 to 2022, 22,909 adult cases were disposed, with the fewest disposed (5 percent) in 2020, attributable to delays in case processing due to the COVID-19 pandemic. (Figure 12.) Despite these delays and a six-month period in 2021 when jury trials were suspended, **nearly four times as many cases were disposed of within the first year of Williams’s administration as in the previous year.** In contrast to the other years analyzed—in which nearly two-thirds or more of disposed cases were prosecuted—OPDA dismissed 65 percent of cases and prosecuted only 35 percent. The first year of DA Williams’s administration also brought about the highest dismissals of both misdemeanor and felony cases—OPDA dismissed 83 percent of misdemeanor cases and 59 percent of felony cases versus 17–67 percent of misdemeanor cases and 15–25 percent of felony cases over the prior administration.

Figure 12

Case outcomes for disposed adult cases by year

N=22,909

Dismissed Prosecuted, plead or found guilty Prosecuted, found not guilty Prosecuted, other outcome Diverted

**NOTE:**

Proportions 2% or less are not labeled in the graph above.

Cases prosecuted and found not guilty make up 2% or less of cases disposed annually.

Cases that were prosecuted and received some other outcome (for example, a hung jury) and cases recommended for diversion each make up 1% or less of cases disposed annually.

Disparities in case outcomes were also evident. Over DA Cannizzaro's administration, OPDA dismissed 23 percent of Black men's cases compared to 31 percent of white men's cases. Among cases prosecuted, 75 percent of Black men pled or were found guilty compared to 68 percent of white men. In 2021 (Williams), although OPDA dismissed most cases, 61 percent of Black men's cases were dismissed versus 60 percent of white men's. Additionally, OPDA prosecuted 38 percent of Black men's cases compared to 30 percent of white men's.

Irrespective of year or DA administration, OPDA diverted only up to 1 percent of youth and adult cases. Even with case dispositions for low-severity, nonviolent cases, the same held true.

Discussion

DA Williams's administration has made progress toward prosecution reform in New Orleans

DA Williams ran and won his 2020 campaign on a platform of progressive reforms. However, Vera's evaluation of OPDA's screening decisions and case outcomes found only modest progress toward these proposed reforms. Racial disparities persisted during the early years of Williams's administration despite his will to address them and his fulfillment of the promise to establish a Civil Rights Division

within OPDA.³¹ Additionally, Williams reversed his stance on refusing to prosecute youth as adults by doing so, albeit in substantially smaller numbers. Williams's administration did, however, refuse to prosecute a higher proportion of cases than the former administration, which is a key factor in preventing people from being more involved in the criminal legal system. DA Williams also reportedly dismissed approximately 400 cases inherited from the Cannizzaro administration that were made up of nonviolent offenses and/or had not reached a disposition in more than two years.³² In contrast to the prior DA administration's egregious use of the habitual offender (multi-bill) statute to influence sentencing, the Williams administration ceased filing charges under this statute over its first two years.

Limitations

Vera derived its findings from the data OPDA provided, analyzed in accordance with the methodology described. However, several factors affect trends in case referral, screening, and processing:

- Violent crime in New Orleans was trending downward over the first three years included in this analysis, with 2018 registering the lowest number of homicides in 47 years and 2019 registering even fewer homicides.³³
- In December 2019, New Orleans experienced a cyberattack on city servers, compromising all hardware and software used by the municipal government. The cyberattack likely contributed to improper or incomplete recording of arrests until the city restored system functioning.
- In March 2020, the COVID-19 pandemic brought about mandated social distancing and shelter-in-place orders, which also contributed to a decline in crime and therefore decreased referrals around this time. Rising incidence in COVID-19 cases, along with increased city-imposed precautions over 2020 and 2021, likely contributed to slower screening and disposal of cases, leaving many cases referred and accepted near the end of DA Cannizzaro's administration to be disposed of in the first months of DA Williams's administration in 2021.
- From April to October of 2021 and again from January to March of 2022, civil and criminal jury trials were suspended as an additional precautionary measure against surges in COVID-19 cases.
- During the 2021 suspension of jury trials, New Orleans also experienced a prolonged recovery period in the aftermath of Hurricane Ida, a Category 4 storm that made landfall in southeast Louisiana on August 29.

Demographic Characteristics Are Not Self-Reported

An array of racial, ethnic, sex, and gender identities beyond binary classifications of Black and white race, Hispanic and non-Hispanic ethnicity, and male/man and female/woman sex/gender are represented among the cases (people) underlying the arrest and charging data analyzed, yet they are not accurately represented. As a result of classification error (that is, social assignment versus self-reported identification) and inconsistencies with reporting, certain racial, ethnic, sex, and gender minority groups are consistently and grossly underrepresented in criminal legal system data, making it difficult for researchers, advocates, and policymakers to have sufficient data to measure and fully describe the implications of criminal legal system involvement for certain groups of people.³⁴

Insufficient Data to Assess Progress Along Additional Reforms

DA Williams made additional early-administration promises and adopted policy recommendations from Vera that Vera did not assess for progress because of insufficient data. DA Williams vowed to address the lengthy case screening times of his predecessor, but screening dates for cases processed during DA Cannizzaro's administration were not migrated accurately when OPDA moved from the CRIMES to the PbK data system. In addition to policy recommendations for charge refusal and diversion, Vera also proposed a bail reform policy to eliminate wealth-based detention in Orleans Parish, as the money bail

system has been shown to exacerbate mass incarceration, especially pretrial detention, by jailing those unable to afford bail. (See Appendix B.) Because OPDA did not include bail information (that is, bail status, amounts, etc.) in the data shared with Vera, researchers did not have complete information to assess and understand the impact of any efforts implemented to reform bail policies.

Recommendations

Based on the findings summarized in this report, Vera reinforces its recommendation that OPDA implement policy changes to ensure racial equity in case screening and prosecution, mitigate harms associated with criminal legal system involvement, and, when possible, direct people away from the system:

- OPDA should participate in facilitated racial equity workshops to shift office culture and operationalize policy and practice that address biases against Black people in the criminal legal system.
- OPDA should increase upfront refusals of nonviolent offenses that do not directly threaten public safety, as overreliance on incarceration can have devastating consequences for people and communities.
- Given the underuse of diversion, OPDA should partner with community-based service providers to pilot and expand pre-charge and pretrial treatment and diversion programs that promote community safety, center racial equity, and ultimately direct people away from the criminal legal system.³⁵
 - Notably, the Williams administration did apply to work with Vera's Reshaping Prosecution initiative's Motion for Justice (MFJ) campaign, indicating a desire to embrace this recommendation. The MFJ campaign brings together prosecutor's offices and system-impacted communities to pilot and expand community-centered diversion programs that promote community safety by centering racial equity.³⁶ Unfortunately, given the number of applicants, the administration was unable to participate, but we recommend the administration continue to seek guidance and engagement from Vera.
 - Domestic violence and behaviors stemming from mental/behavioral health issues, like substance use, are often criminalized and result in incarceration, even though these issues are best addressed with appropriate treatment and/or family support services in conjunction with diversion opportunities.³⁷
- Youth should be held accountable for allegations against them with age-appropriate alternatives to incarceration and, especially, without funneling them through the adult corrections system. Research demonstrates that the human brain is not fully developed until the age of 25, and decision-making before this age is largely emotional rather than logical.³⁸ Incarceration is far more traumatic than it is rehabilitative because of long periods of confinement, rampant violence, and poor environmental conditions, which are of no benefit to anyone of any age but can especially impede the long-term development of children and adolescents.³⁹
 - Alternatives to incarceration can and should include age-appropriate diversion, mentorship, and workforce development programs; restorative justice; and mental and behavioral health treatment.

Elected officials and community members should advocate for criminal legal system improvements as well as efforts that prevent and address root causes of crime and violence—like behavioral health and family supports; community violence intervention and prevention programs; and wraparound, reentry, and rehabilitation services.

Conclusion

Crime and NOPD referrals to OPDA trended downward from 2017 to 2022, yet New Orleanians—especially Black men and boys—continue to experience disproportionate contact with the criminal legal system. During his campaign, DA Williams promised several prosecution reforms and embraced additional recommendations early in his administration to address inequities in OPDA’s case screening and processing. Racial disparities in OPDA’s screening and case processing persisted from those found in case referrals from NOPD, underscoring the complexity of reforming inequity inherited from other segments of the criminal legal system. Though DA Williams has worked to reduce system involvement by increasing refusals of low-severity and nonviolent charges, more work remains, including recommending treatment, diversion, and restorative justice programs for offenses better suited to alternatives to incarceration.

Prosecution reform in New Orleans and across Louisiana faces significant challenges from the state’s Republican governor, Jeff Landry, and a conservative supermajority in the state legislature. Landry, known for his “tough-on-crime” rhetoric, convened a special legislative session on crime in February 2024. In just nine days, several bills became law, including imposing stricter parole rules, expanding the death penalty, increasing sentences for certain offenses, and prosecuting and incarcerating 17-year-olds as adults for any offense. These new laws will undoubtedly lead to more incarceration.

DA Williams, now in his fifth year, continues to advocate for reform but faces pressure from the governor’s administration. A new agreement between Williams’s administration and Attorney General (AG) Liz Murrill grants the AG’s office authority to prosecute cases in Orleans Parish arising from Louisiana State Police arrests, shifting prosecutorial power and potentially conflicting with Williams’s reform priorities. This cooperation, coupled with the recent appointment of former DA Cannizzaro to head the AG’s criminal division, signals a shift toward a tougher stance on crime and sentencing.

Appendix A. Most Common Adult and Youth Charges Accepted by OPDA by Charge Category

The following tables provide estimations of the most common charges accepted by the Orleans Parish District Attorney's Office from 2017 to 2021—the last four years of Cannizzaro's and the first two years of Williams's administration. Because of the complex and varied nature of charge classifications within a given jurisdiction's criminal code and documentation of charges across criminal legal system actors, it is not always possible to accurately summarize charge information. As a result, users should approach these estimations with caution.

Violent

Top five adult violent charges accepted by OPDA (N=16,432)

Charge	Severity	n	%
Domestic abuse, battery	MISDEMEANOR	3301	20.1
Simple battery	MISDEMEANOR	2364	14.3
Aggravated assault	FELONY	1009	6.1
Simple assault	MISDEMEANOR	823	5.0
Aggravated battery	FELONY	664	4.0

Top five youth violent charges accepted by OPDA (N=1,864)

Charge	Severity	n	%
Simple battery	MISDEMEANOR	447	24.0
Armed robbery	FELONY	290	15.6
Simple battery, domestic	MISDEMEANOR	163	8.7
Aggravated assault with a firearm	FELONY	125	6.7
Aggravated battery	FELONY	89	4.8

Property

Top five adult property charges accepted by OPDA (N=13,242)

Charge	Severity	n	%
Simple burglary	FELONY	2601	19.6
Simple criminal damage of stolen property	MISDEMEANOR	1768	13.4
Theft less than \$1,000	MISDEMEANOR	1446	10.9
Criminal trespassing	MISDEMEANOR	911	6.9
Illegal possession of stolen firearms	FELONY	627	4.7

Top five youth property charges accepted by OPDA (N=3,857)

Charge	Severity	n	%
Simple burglary	FELONY	1712	44.4
Unauthorized use of a motor vehicle	FELONY	963	25.0
Simple criminal damage of stolen property	MISDEMEANOR	313	8.1
Theft [unspecified value]	UNKNOWN	146	3.8
Illegal possession of stolen things	FELONY	133	3.4

Weapons

Top five adult weapon charges accepted by OPDA (N=7,253)

Charge	Severity	n	%
Possession of a firearm or weapon by a felon	FELONY	2960	40.6
Illegal carrying of weapons—1 st offense	MISDEMEANOR	1395	19.2
Possession of firearm with narcotic	FELONY	797	11.0
Illegal use/discharge of weapon	FELONY	777	10.7
Possession of firearm with obliterated serial number	FELONY	112	1.5

Top five youth weapon charges accepted by OPDA (N=583)

Charge	Severity	n	%
Possession of a handgun	MISDEMEANOR	435	74.6
Illegal use/discharge of a weapon	FELONY	63	10.8
Illegal carrying of weapons—1 st offense	MISDEMEANOR	27	4.6
Illegal carrying of a weapon on school grounds	FELONY	19	3.3
Possession of firearm with narcotic	FELONY	10	1.7

Drug

Top five adult drug charges accepted by OPDA (N=11,734)

Charge	Severity	n	%
Possession of marijuana—1 st offense, 2 nd offense, less than 14 grams	MISDEMEANOR	2032	17.3
Prohibited drug paraphernalia	MISDEMEANOR	1935	16.5
Possession of cocaine	FELONY	755	6.4
Possession of heroin	FELONY	593	5.1
Possession of crack	FELONY	467	4.0

Top five youth drug charges accepted by OPDA (N=272)

Charge	Severity	n	%
Possession of marijuana—1 st offense, 2 nd offense, less than 14 grams	MISDEMEANOR	78	28.7
Possession of schedule 1 narcotic	FELONY	76	27.9
Controlled dangerous substance within 1,000 feet of a school	FELONY	34	12.5
Possession of drug paraphernalia	MISDEMEANOR	13	4.8
Prohibited acts—schedule 2	FELONY	8	2.9

Sex

Top five adult sex charges accepted by OPDA (N=4,115)

Charge	Severity	n	%
Pornography involving juveniles	FELONY	3456	84.0
Rape	FELONY	200	4.9
Sexual battery	FELONY	142	3.5
Indecent behavior with a juvenile	FELONY	116	2.8
Sexual battery	MISDEMEANOR	101	2.5

Top five youth sex charges accepted by OPDA (N=95)

Charge	Severity	n	%
Pornography involving juveniles	FELONY	30	31.6
Rape	FELONY	29	30.5
Sexual battery	FELONY	28	29.5
Attempted aggravated rape	FELONY	5	5.3
Indecent behavior with a juvenile	FELONY	2	2.1

Traffic**Top five adult traffic charges accepted by OPDA (N=2,010)**

Charge	Severity	n	%
Driving while intoxicated—1 st offense	MISDEMEANOR	635	31.4
Reckless operation of a vehicle	MISDEMEANOR	380	18.8
Careless operation of a vehicle	VIOLATION	198	9.8
Driver not licensed	VIOLATION	102	5.0
Driving license suspended	VIOLATION	102	5.0

Top youth traffic charges accepted by OPDA (N=7)

Charge	Severity	n	%
Reckless operation of a vehicle	MISDEMEANOR	6	85.7
Aggravated obstruction of a highway	FELONY	1	14.3

Other**Top five adult “other” charges accepted by OPDA (N=11,840)**

Charge	Severity	n	%
“Habitual offender,” multiple bill ⁱ	FELONY	3722	31.4
Resisting an officer	MISDEMEANOR	1621	13.7
Disturbing the peace	MISDEMEANOR	1122	9.5
Violation of a protective order	MISDEMEANOR	235	2.0
Obstruction of justice	FELONY	502	4.2

Top five youth “other” charges accepted by OPDA (N=831)

Charge	Severity	n	%
Resisting an officer	MISDEMEANOR	311	37.4
Child in need of care	N/A	169	20.8
Family in need of services	N/A	107	13.2
Flight from an officer	FELONY	64	7.9
Terrorizing, menacing	FELONY	20	2.4

ⁱ OPDA accepted all “Habitual offender, multiple bill” charges during the Cannizzaro administration.

Attachments

Top adult attachments accepted by OPDA (N=295)

Charge	Severity	n	%
Out of state warrant	N/A	263	89.2
Warrant	N/A	25	8.5
Fugitive	N/A	6	2.0
No description	N/A	1	<1%

Top youth attachments accepted by OPDA (N=8)

Charge	Severity	n	%
Fugitive	N/A	8	100.0

Appendix B. Charge Refusal and Diversion Policy Recommendations to Reshape Prosecution

To: District Attorney Jason Williams, Orleans Parish District Attorney's Office

From: Sarah Omojola, Michaela O'Connor Bono, and Joshua Pichon
Vera Institute of Justice, Reshaping Prosecution, New Orleans

Date: March 4, 2021

Re: Charge Refusal and Diversion Policy Recommendations to Reshape Prosecution

This memorandum is intended to provide recommendations regarding charge refusal and diversion for District Attorney Jason Williams' new administration. This policy is meant to serve as a starting point for further discussion.

Background

The policies proposed in this memorandum are related to efforts the Orleans District Attorney's Office (OPDA) is making to end mass incarceration and use the power of decisions as prosecutors to promote fairness, justice, and safety in New Orleans. These proposed policies seek to establish greater clarity and consistency in decision-making across the office in an effort to ensure that all individuals who have contact with the justice system (whether as an individual accused of a crime, a survivor of crime, or a witness) are treated fairly and that OPDA staff are working toward a shared vision of safety and justice.

Charge refusal overview

During his campaign for District Attorney, Jason Williams promised to stop wasting resources on prosecuting insufficient and insignificant cases and treat addiction as a health problem. Subsequently, DA Williams signed on to the entire policy platform of the People's DA Coalition. One of these policies envisions a District Attorney's office which would "decline quality of life offenses that do not genuinely threaten our communities and which encourage racial profiling and the criminalization of the homeless."^a Several other progressive District Attorneys, including Chesa Boudin, Kim Foxx, Larry Krasner, Rachel Rollins, and Dan Satterberg have adopted similar policies to align with these goals.

In Philadelphia, Larry Krasner refuses prosecutions of the drug buprenorphine, a drug prescribed in treatment for opioid addiction^b, and prostitution cases where the accused has fewer than three prior convictions for prostitution.^c In San Francisco, Chesa Boudin

^a The People's DA Coalition Platform (2020), <https://web.archive.org/web/20221206150311/https://nolapeoplesda.org/needs-and-wants/#seek-care-over-cages>.

^b Aubrey Whelan, "Philly DA Larry Krasner Will No Longer Prosecute People for Possession of an Addiction Treatment Drug," The Philadelphia Inquirer, January 29, 2020, <https://www.inquirer.com/health/opioid-addiction/buprenorphine-krasner-district-attorney-philadelphia-decriminalization-20200129.html>.

^c Tulsa Attorney Blog, "Defense Lawyer Elected as Philadelphia DA Sets New Standard for Criminal Justice," <https://perma.cc/VTE4-NMUK>.

refuses to prosecute any contraband charges based on pretextual stops and consent only searches because “of the long standing and documented racial and ethnic disparities in law enforcement requests for consent to search infraction related stops where no other articulable suspicion of criminal activity (exists).”^d

Cook County State Attorney Kim Foxx recently said her office is taking steps to “create systemic change where those who need critical connection to treatment and services receive intervention—not incarceration.”^e King County Prosecuting Attorney Dan Satterberg, a thirty year veteran prosecutor, first began charging hard drug possession as a misdemeanor in 2007.^f He took these reforms a step further in 2019 by refusing to prosecute any drug possession case under a gram, unless the accused person poses a specific danger.^g Suffolk County District Attorney Rachel Rollins presumptively declines to prosecute fifteen crimes including the following: trespassing, shoplifting, misdemeanor theft, disorderly conduct, disturbing the peace, breaking and entering when the property is vacant, criminal damage, drug possession, drug possession with intent to distribute, and resisting arrest.^h

Vera Institute of Justice recommends similar refusal policies to those articulated above. These recommendations reflect the values of ending mass incarceration and rebuilding trust in marginalized and oppressed communities by refusing to prosecute crimes based on the systemic use of racial profiling by law enforcement. We specifically target crimes that historically have been administered with racial bias, crimes related to poverty and housing insecurity, crimes related to sex work, crimes related to addiction, and minor crimes which slow the administration of justice and, in some cases, are more appropriately handled in civil or municipal court.

Intake and charging

Discretion at charging provides a significant opportunity to promote fairness, justice, and safety in our city. Traditionally, charging decisions have focused on whether there was probable cause to prosecute an offense, without serious consideration of the impact or effectiveness of a criminal prosecution. This traditional approach has led to an overreliance on incarceration and further deepened division between law enforcement and the New Orleans community. Understanding the lasting physiological, psychological,

^d Chesa Boudin, “Policy Directive, San Francisco District Attorney’s Office, Declination of Contraband Charges Based on Pretextual Stops,” <https://perma.cc/8YAN-9PFH>.

^e University of Chicago Crime Lab, “Cook County State’s Attorney Kimberly Foxx, University of Chicago Crime Lab Host Seattle Chief Prosecutor Dan Satterberg to Discuss Criminal Justice Reform for Low-Level Drug Offenses,” <https://web.archive.org/web/20200419103048/https://www.cookcountystatesattorney.org/news/cook-county-state-s-attorney-kimberly-foxx-university-chicago-crime-lab-host-seattle-chief>.

^f Justin Jouvenal, “No Charges for Personal Drug Possession: Seattle’s Bold Gamble to Bring ‘Peace’ After the War on Drugs,” The Washington Post, https://www.washingtonpost.com/local/public-safety/no-charges-for-personal-drug-possession-seattles-bold-gamble-to-bring-peace-after-the-war-on-drugs/2019/06/11/69a7bb46-7285-11e9-9f06-5fc2ee80027a_story.html.

^g Ibid.

^h Suffolk County District Attorney, Rachael Rollins, “Charges to be Declined,” <https://web.archive.org/web/20210604061942/https://rollins4da.com/policy/charges-to-be-declined/>.

economic, community, and other collateral consequences of involvement with the criminal legal system, no intervention is better than system involvement for many people as formerly incarcerated people are often worse off than when they entered prison.ⁱ

The charging policies detailed here provide a more effective response to criminalized behavior. These policies seek to preserve limited resources for viable cases that pose a threat to public safety. These policies also prioritize treatment, not incarceration, for people struggling with substance use or mental health issues who have committed offenses.

These policies are presumptive; however, if an Assistant District Attorney or screener believes the circumstances of a case suggest an exception may be appropriate, the ADA or screener must:

1. Seek approval from their supervisor/team leader or the chief of screening.
 2. Record the date of approval/disapproval and by whom in the paper casefile and database.
- Approvals and disapprovals may be communicated verbally or via email.

ADAs should interpret this policy to provide the least punitive response necessary to protect the community.

Charges to prioritize

Crimes enumerated in La. Rev. Stat. § 14:2(B) pose a threat to public safety.^j

-solicitation for murder

-first degree murder

ⁱ See Brennan Center for Justice, Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality, <https://web.archive.org/web/20250612170203/https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>; Verywell Mind, “The Mental Health Effects of Being in Prison,” <https://perma.cc/UR8N-36RE>; and Prison Policy Initiative, “Incarceration shortens life expectancy,” “The Steep Cost of Medical Co-pays in Prison Puts Health at Risk,” and “Life-Threatening Reality of Short Jail Stays.”

^j District Attorney Williams has pledged to hold listening sessions in the numerous communities throughout New Orleans during his tenure in OPDA. A policy such as this one may be controversial, and DA Williams should solicit input from community members about the crimes that they are hoping that OPDA will prioritize and will refuse. Please note that not all the charges included in R.S. 14:2(B) are listed in this policy, i.e., intentional exposure to AIDS virus, purse snatching, and aggravated flight from an officer. Questions to consider asking community members: What behavior poses a threat to your safety or the safety of your children in your neighborhood? What behaviors do not pose a threat to your safety or the safety of your children that you do not want the DA to prosecute or charge?

- second degree murder
- manslaughter
- aggravated battery
- second degree battery
- aggravated assault
- aggravated or first degree rape
- forcible or second degree rape
- sexual battery
- second degree sexual battery
- aggravated kidnapping
- second degree kidnapping
- simple kidnapping
- aggravated arson
- aggravated criminal damage to property
- aggravated burglary
- armed robbery
- first degree robbery
- simple robbery
- assault by drive-by shooting
- aggravated crime against nature
- carjacking
- terrorism
- aggravated second degree battery
- aggravated assault upon a peace officer
- aggravated assault with a firearm
- armed robbery; use of a firearm (additional penalty)
- second degree robbery
- disarming of a peace officer

- stalking
- second degree cruelty to juveniles
- battery of a police officer
- trafficking of children for sexual purposes
- human trafficking
- home invasion
- domestic abuse aggravated assault
- vehicular homicide, when the operator's blood alcohol concentration exceeds .20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood
- aggravated assault upon a dating partner
- domestic abuse battery punishable under R.S. 14:35.3(L), (M)(2), (N), (O), or (P)
- battery of a dating partner punishable under R.S. 14:34.9(L), (M)(2), (N), (O), or (P)
- violation of a protective order if the violation involves a battery or any crime of violence as defined by this Subsection against the person for whose benefit the protective order is in effect

Charges to refuse

Misdemeanor Charges^k

All misdemeanor charges without an identifiable victim.

Crimes related to poverty and housing insecurity are best addressed through social services and support. Incarceration often exacerbates any underlying issues that led people to have contact with the criminal legal system initially.

- aiding and abetting others to enter or remain on premises where forbidden, La. Rev. Stat. § 14:63.4
- criminal mischief, La. Rev. Stat. § 14:59
- criminal neglect of family, La. Rev. Stat. § 14.74
- disturbing the peace, La. Rev. Stat. § 14:103

^k This includes misdemeanor charges brought in tandem with felony offenses. This does not include misdemeanor charges that are included in La. Rev. Stat. § 14:2(B).

- failure to pay child support obligation, La. Rev. Stat. § 14:75 (this matter should be handled in civil court)
- illegal possession of stolen things, La. Rev. Stat. § 14: 69
- improper supervision of a minor by a parent or legal custodian, La. Rev. Stat. § 14:92.2
- issuing worthless checks, La. Rev. Stat. § 14:71 (this matter should be handled in civil court)
- looting, La. Rev. Stat. § 14:62.5
- obstructing public passages, La. Rev. Stat. § 14:100.1
- remaining in places, La. Rev. Stat. § 14:63
- theft under \$1,000, La. Rev. Stat. § 14:67
- unauthorized removal of shopping cart, basket, or dairy case, La. Rev. Stat. § 14:68.1
- unauthorized use of SNAP benefits, La. Rev. Stat. § 14:68.2
- vagrancy, La. Rev. Stat. § 14:107

Crimes related to sex work that occur between consenting adults should not be handled by the criminal legal system as the system should not intervene in the sexual activities of private individuals.

- crime against nature by solicitation, La. Rev. Stat. § 14:89.2
- crime against nature, La. Rev. Stat. § 14:89¹
- inciting for prostitution, La. Rev. Stat. § 14:83.1
- letting premises for prostitution, La. Rev. Stat. § § 14:85
- massage, sexual conduct prohibited, La. Rev. Stat. § 14:83.4
- operation of places of prostitution prohibited, La. Rev. Stat. § 14:282
- pandering, La. Rev. Stat. § 14:84
- promoting prostitution, La. Rev. Stat. § 14:83.3
- prostitution by massage, La. Rev. Stat. § 14:83.3
- prostitution, La. Rev. Stat. § 14:82

¹ Although this law does not include transactional sex work, it has been deemed unconstitutional and is included in the Unconstitutional Statutes Biennial Report to the Louisiana Legislature, March 14, 2016. See La. Rev. Stat. 14:89, <https://perma.cc/Y6GE-DWCV>.

- purchase of commercial sexual activity; penalties, La. Rev. Stat. § 14:82.2
- soliciting for prostitutes, La. Rev. Stat. § 14:83

Crimes related to controlled substances are best addressed through the public health, healthcare, and substance use treatment systems. Incarceration is a poor setting to receive the health treatment needed for any substance use disorders those arrested for controlled substances may have.

- possession of 12 grams or more of phenylpropanolamine, ephedrine, or pseudoephedrine, La. Rev. Stat. § 40:962.1.1
- possession of schedule 1 drug, La. Rev. Stat. § 40:966(C)
- possession of schedule 2 drug, La. Rev. Stat. § 40:967(C)
- possession of schedule 3 drug, La. Rev. Stat. § 40:968(C)
- possession of schedule 4 drug, La. Rev. Stat. § 40:969(C)
- possession of schedule 5 drug, La. Rev. Stat. § 40:970(C)
- possession with intent to distribute narcotic drugs listed in schedule I, possession of marijuana, synthetic cannabinoids, and heroin, La. Rev. Stat. § 40:966
- prohibited acts, La. Rev. Stat. § 40:1023

Crimes related to quality of life do not affect public safety.

- amplified devices in public places, La. Rev. Stat. § 14:103.2
- emanation of excessive sound or noise, La. Rev. Stat. § 14:103.1
- gambling, La. Rev. Stat. § 14:90
- gaming in public, La. Rev. Stat. § 14:90.2
- keeping a disorderly place, La. Rev. Stat. § 14:104
- letting a disorderly place, La. Rev. Stat. § 14:105

Other

- felon with a firearm, La. Rev. Stat. § 14:95.1
- obscenity, La. Rev. Stat. § 14:106
- resisting an officer, La. Rev. Stat. § 14:108

- unlawful posting of criminal activity for notoriety and publicity, La. Rev. Stat. § 14:107.4
- unlawful use or possession of body armor, La. Rev. Stat. § 14:95.3
- illegal carrying of weapons, La. Rev. Stat. § 14:95^m

Standard of proof

ADAs should only issue charges when there is a good-faith belief that there is adequate evidence known at the time of charging to prove the case beyond a reasonable doubt to a New Orleans jury.ⁿ In making this assessment, ADAs should consider the credibility of all witnesses and rely only on the admissible evidence.

ADAs should also consider whether the case involves a pretextual stop influenced by implicit racial bias.^o ADAs should not consider any evidence obtained as a result of such stops in their assessment of whether to issue charges.

ADAs should refuse a case if there is insufficient evidence to prove the case beyond a reasonable doubt. If the case impacts public safety, however, the ADA may instruct the presenting officer to conduct additional investigation for further consideration of the charges. If the ADA directs the officer to conduct further investigation, the case should still be refused and not taken under advisement.^p ADAs should not refer declined cases to Municipal Court.^q

Diversion overview

The use of pretrial diversion can be one tool to decrease mass incarceration. Diversion programs have been growing throughout the country to decrease the costs of incarceration and the criminal legal system, to reduce recidivism and link people with resources to address underlying needs. However, all diversion programs are not created equal. Some may even widen the net of those entering the system and exacerbate racial

^m See New Orleans City Council Crime Dashboard, <https://council.nola.gov/committees/criminal-justice-committee/#crime-dashboard>.

ⁿ Much of this section was adapted from policies adopted in the Circuit Attorney's office in St. Louis, MO. Consideration to discuss: How is this standard met while maintaining consistency with DA William's intended screening period of five days?

^o Considerations to discuss: Which searches arising out of traffic offenses or pedestrian infractions will OPDA treat as 4th Amendment violations and, therefore, decline to consider any evidence recovered during a subsequent search? Vera has produced a report making recommendations about actions to take to combat non-traffic-safety stops or pretextual stops as they drive racial disparities, do not make communities safer, harm the community, and reduce trust in law enforcement. See Seleeke Flingai, Mona Sahaf, Nicole Battle, and Savannah Castaneda, *An Analysis of Racial Disparities in Police Traffic Stops in Suffolk County, Massachusetts, from 2010 to 2019* (New York: Vera Institute of Justice, 2022), <https://www.vera.org/publications/analysis-of-racial-disparities-police-traffic-stops-suffolk-county-ma>.

^p Related consideration to discuss: What will be OPDA's policy and practice related to "bad" officers, i.e., those with validated complaints related to constitutional policing, investigation, use of force, etc.?

^q Considerations to discuss: How does OPDA plan to engage the City Attorney? How will NOPD's behavior change when officers learn that certain charges are refused by OPDA and not referred to municipal court?

inequalities. Careful attention should be paid to the quality of the diversion program interventions, its referral processes, and metrics of success.

One overarching purpose of pretrial diversion is to redirect people out of the criminal legal system and provide support in their communities. Additionally, diversion prioritizes treatment over carceral solutions to improve public health and safety. The policy outlined here recognizes the negative impacts that a criminal charge has on an individual and seeks to preserve limited resources for cases that pose a genuine threat to public safety.

Cases should only be considered for diversion if there is evidence to prove the case beyond a reasonable doubt. For those cases, assistant district attorneys (ADAs) should take a broad approach to diversion and err on the side of inclusion. All diversion should be pretrial or pre-plea. Moreover, ADAs should consider drug diversion first for drug offenses as one must plead guilty to participate in drug court.

Goals for diversion in Orleans Parish

- Increase the number of individuals diverted who would have gone through formal processing and expand eligibility beyond nonviolent offenses and beyond 1st offenses only
- Reduce racial disparities
- Create appropriate meaningful interventions in accordance with needs
- Expand use of community-based programs in lieu of DA in-house diversion
- Shorten length of stay in diversion
- Reduce barriers to successful completion
- Restructure in-house diversion program

Screening and eligibility

With these goals in mind, felonies must be considered for diversion. The designated screening team will include screeners and diversion coordinators and the size of this team will be dependent on the number of cases. Screening decisions will be made on a case-by-case basis. Each case will be considered based on evidence, the path best suited for the incident and, if known, the needs of both the responsible party and harmed party.

Defense attorneys will be consulted to discuss their clients' needs and make recommendations. Any OPDA staff member who speaks with the survivors/victims regarding diversion must be trained in restorative justice and trauma-informed care. The screening criteria should be carefully developed to balance the needs of involved parties, the commitment to reduce racial disparities and reduce mass incarceration.^r

^r Considerations to discuss: Needs-based assessments, defining risk, how to best serve those who have a long history of system involvement, and results of noncompliance.

Referrals to community-based organizations

Most diversion cases should be referred to community-based programs.^s Through an RFP process and/or targeted contracts, the office will choose service providers for each diversion path. Each service provider will work with the diversion coordinator to establish referral processes and set expectations for interventions. Vera can assist with establishment of these protocols. More paths can be added if there is a service provider that specifically works with certain behaviors or provides specific resources.^t

Program structure

The following is a proposed draft diversion policy establishing four possible paths to address various types of offenses and the needs of the individuals and/or survivors:

1. Refer and Dismiss

- a. Suitable for any case. Example charges: theft over \$1,000 (non-individual victim), property damage (non-individual victim), etc.^u
- b. Individuals are assessed by licensed community service providers for mental health, housing, job training, or other needs. Upon completion of the assessment, charges are dismissed. There is no requirement to complete the services when recommended for first or second offenses of the same charge.
- c. DA's office refers the individual to services provided by outside organizations.

2. Restorative Justice/Community Conferencing

- a. Suitable for cases where there is an identified victim/survivor. Cases that are best suited for restorative processes are ones where there is harm to be repaired between people. Example charges: theft over \$1000 (from individual victim) assault, battery, home invasion, robbery, etc.
- b. All parties voluntarily agree to come together in a facilitated meeting to discuss the incident, develop a plan to repair the harm and execute such plan.
- c. OPDA refers the case to restorative justice organization and charges are dismissed when the organization reports that the plan's agreements have been fulfilled. If a case is referred to restorative justice conferencing but does not result in a conference due to survivor's wishes, the accused individual is eligible for another diversion path.

^s Fair and Just Prosecution recommends that diversion programs avoid further contact with the criminal legal system. Placing diversion programs outside of OPDA can help achieve this. Fair and Just Prosecution, "Promising Practices in Prosecutor-Led Diversion," <https://perma.cc/5U8A-JQ96>.

^t Consideration to discuss: Which service providers are ready to receive referrals and which need to build up their systems? How many cases can service providers and community-based organizations handle?

^u After further discussion with DA Williams and appropriate OPDA staff, eligibility parameters and charges will be finalized.

3. Substance Use Diversion

- a. Suitable only for cases where people are arrested for drug-related charges or if the person has a need for substance treatment. If a person is charged with possession with intent to distribute but does not have a substance use issue, this person may be referred to 'refer and dismiss' or 'multi-support diversion'.
- b. Individuals are assessed by a licensed professional to determine treatment approach.
- c. OPDA refers to outside organization and charge is dismissed upon referral.

4. Multi-Support Diversion

- a. Suitable for cases with multiple needs to address across different community-based supports. Cases that are eligible for community conferencing but do not make it through the process due to the wishes of the crime survivor may be included here as well as other charges that are a third or fourth instance of the same charge.
- b. 3 to 6-month program with case management or referrals to community-based supports.
- c. DA's office can either refer the case to appropriate community-based support or provide in-house case management.

Success metrics, barriers to participation, and length of stay

It is essential that criteria for successful completion are clear to the service providers and to the individual going through the program.^v For optimal buy-in, each participant must fully understand and co-create their diversion plan with their service provider.

Because of the collateral consequences of system involvement, length of stay in diversion should be tailored to an individual's needs but not exceed 6 months.^w If due to unforeseen or extreme circumstances it must be extended, no diversion program should last longer than the probation or incarceration sentence for the alleged crime.

^v Lack of clarity about diversion criteria was a major problem in the previous OPDA diversion program. In 2019, the Center for Court Innovations performed an assessment of the OPDA Diversion Program. The results showed several key areas where improvement is needed. The report states: "Eligibility requirements, the definition of completion and noncompliance, and the sanctions and rewards used within the program all seem to be unclear to stakeholders. This lack of communication and transparency has appeared to exacerbate frustration between the stakeholders and has caused diminished buy-in."

^w In 2009, the Administrative Office of the Courts, an agency of the U.S. Federal Courts, conducted an initial study of the impact of early termination of supervision among federal probationers. This study demonstrated that such practice, when limited to appropriate cases, did not adversely affect public safety. The Annie E. Casey Foundation reports that probation length of stay should be no longer than 6-9 months. While there is little research on best practices for length of stay in diversion programs, the principle of capping participation time can be analogized to diversion. Given that probation is reserved for more serious interventions, less than 6 months for diversion may be best. National Institute of Corrections, "Dosage Probation: Rethinking the Structure of Probation Sentences,"

<https://web.archive.org/web/20230602071348/https://s3.amazonaws.com/static.nicic.gov/Library/027940.pdf>.

Participation should be free of cost.^x Considerations in need of further discussion: the DA's office's definition of success and public safety.

Data

A reliable case management system must be used to track diversion cases.^y It should be able to track participant-level information, including race, sex, date of birth, arrest date, arrest number, release date, program enrollment date, program to which the participant was enrolled, program end date, reason for termination (if the participant did not complete the program), and case status.

^x Fair and Just Prosecution recommends that diversion programs avoid charging participants for the cost of participation. If charging is necessary, there should be an evaluation for ability to pay and there should be a waiver for participants who are indigent. Fair and Just Prosecution, "Promising Practices in Prosecutor-Led Diversion," <https://perma.cc/5U8A-JQ96>. ^y Fair and Just Prosecution recommends that diversion programs rigorously track data. Ibid.

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Endnotes

¹ Vera Institute of Justice, “Louisiana Locked Up: A Problem in Every Parish,” <https://www.vera.org/louisiana-locked-up/>; and Vera Institute of Justice, “New Orleans: Who’s in Jail and Why?,” <https://www.vera.org/publications/new-orleans-jail-population-quarterly-report>.

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⁹ See also the “Limitations” section on page 20.

¹⁰ OPDA does not attest to the veracity of data predating the Williams administration.

¹¹ Constructing the case-person unit of analysis for the youth dataset resulted in 7,525 case-people compared to 2,989 unique youth. Thirty-seven percent of youth were associated with two or more cases from 2017 to 2022.

¹² Cassia Spohn, “Racial Disparities in Prosecution, Sentencing, and Punishment,” in *The Oxford Handbook of Ethnicity, Crime, and Immigration*, edited by Sandra M. Bucerias and Michael Tonry (Online edition: Oxford Academic, 2014), 166–193.

¹³ Vera applied the following formulas to calculate relative rate indexes (RRI):

$$\text{Referral RRI} = \frac{\frac{\# \text{ of Black referrals}}{\# \text{ of Black adults}}}{\frac{\# \text{ of white referrals}}{\# \text{ of white adults}}} \quad \text{Acceptance RRI} = \frac{\frac{\# \text{ of Black acceptances}}{\# \text{ of Black adults}}}{\frac{\# \text{ of white acceptances}}{\# \text{ of white adults}}}$$

¹⁴ U.S. Census Bureau, “2016–2020 ACS 5-Year Estimates,” revised March 31, 2022, <https://perma.cc/H75M-PF7F>. Vera focuses on systemic issues, rather than the potential biases of individual actors, when addressing racial disparities. As such, instead of analyzing whether similarly situated people received different treatment based on their race, Vera highlights broader trends by analyzing which communities the criminal legal system impacts most and in what ways. Measuring racial disparities in cases accepted for prosecution against the general population, rather than against the population of referred cases, provides a clearer indication of the impacts of these decisions more broadly within a community.

¹⁵ Orleans Parish District Attorney, “Screening,” 2022, <https://orleansda.com/screening/>.

¹⁶ Diversion programs offer a wide range of alternatives to traditional prosecution. They are an off-ramp from the criminal legal system to community services, conflict resolution, and treatment of underlying issues. Diversion can be available for people charged with a variety of offenses. Diversion programs can be run by a DA’s office or the court system, or a DA’s office can refer diversion cases to community-based organizations.

¹⁷ U.S. Census Bureau, “2016–2020 ACS 5-Year Estimates,” 2022.

¹⁸ Ibid.

¹⁹ Ibid.

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