

Justice in Katrina's Wake: Changing Course on Incarceration in New Orleans

NOVEMBER 2015

Judge Calvin Johnson (Ret.) • Mathilde Laisne • Jon Wool

ABOUT VERA NEW ORLEANS

In 1961, the Vera Institute of Justice embarked on its first project: reforming the bail system in New York City, which at the time granted liberty pretrial based primarily on ability to pay. Since then, Vera has served as an independent, nonpartisan, nonprofit center for justice policy and practice nationwide and has offices in four U.S. cities.

In 2006, Vera came to New Orleans at the request of then-New Orleans City Councilmember James Carter. At the time, Carter saw an opportunity for the city to change its approach to fostering public safety by reducing unnecessary detention. As a city in recovery, New Orleans could neither fiscally nor ethically afford its pre-Katrina level of jail incarceration.

Not unlike New York in the 1960s, virtually every person arrested in New Orleans was detained pretrial because they could not afford to pay a commercial bond. In partnership with government, community organizations, and business leaders, Vera New Orleans launched the city's first comprehensive pretrial services program in April 2012. The program utilizes an empirical risk assessment tool to help judges make objective and informed decisions about who should be released and who should be detained during the period between arrest and resolution of the case.

For nine years, Vera New Orleans has been a nexus for initiatives that advance forward-thinking criminal justice policies. Vera works with government, community members, and local organizations to build a local justice system that embodies equality, fairness, and effectiveness in the administration of justice. Using a data-driven, collaborative approach, Vera New Orleans provides the high-quality analysis and long-range planning capacity needed for the city to articulate and implement good government practices.

LETTER FROM THE PRESIDENT

Ten years ago, Hurricane Katrina exposed one of the nation's most challenged criminal justice systems, which held 6,000 people in its jail—more than any city in America per capita. Invited to work with city leaders and advocates to address this challenge, Vera began working in New Orleans in 2006 to improve the delivery of justice through data analysis and assistance on implementing evidence-based practice and policy. A decade after the floods, the city has reduced its jail population to fewer than 1,800—still double the national average per capita rate, but a marked difference that has positioned the city as a national exemplar in reducing over-incarceration.

I am grateful to our nonprofit partner, The Data Center, for its highly-respected “The New Orleans Index at Ten,” and for asking Vera’s New Orleans staff to author the section on criminal justice reform in the ten years since the terrible events following Katrina. This report was originally published as part of that series.

Even when accounting for the overall reduction in the city’s population, no other US city or county has achieved the level of jail population reduction that New Orleans has in such a short period of time. That this is happening in a city in America’s South is all the more significant. We are reprinting this material as a Vera report to highlight the accomplishments of civic and government leaders in New Orleans, as well as to focus attention on the work that is in progress and still to be done.



Nicholas Turner
President
Vera Institute of Justice

Contents

- 4 Introduction
- 5 The incarceration capital
- 9 Ten years of rethinking criminal justice
- 12 The culture change ahead
- 15 Conclusion
- 16 Endnotes

Introduction

Much has changed in New Orleans' criminal justice arena in the past 10 years: two consent decrees forcing reform in the police department and at the jail, a public defender office built on national models as part of a statewide system, an Inspector General's office with a focus on holding criminal justice officials accountable, the city's first Independent Police Monitor, and an active Criminal Justice Committee of the City Council exploring policy reforms. The most ambitious set of changes has addressed the city's dramatic overuse of incarceration in the local jail. Prior to Katrina, and for most of the last 10 years, New Orleans incarcerated residents in the jail at a much higher rate than any other city in the country. In a hopeful sign going forward, the city has reduced the number of people it incarcerates on any given day by more than two-thirds.

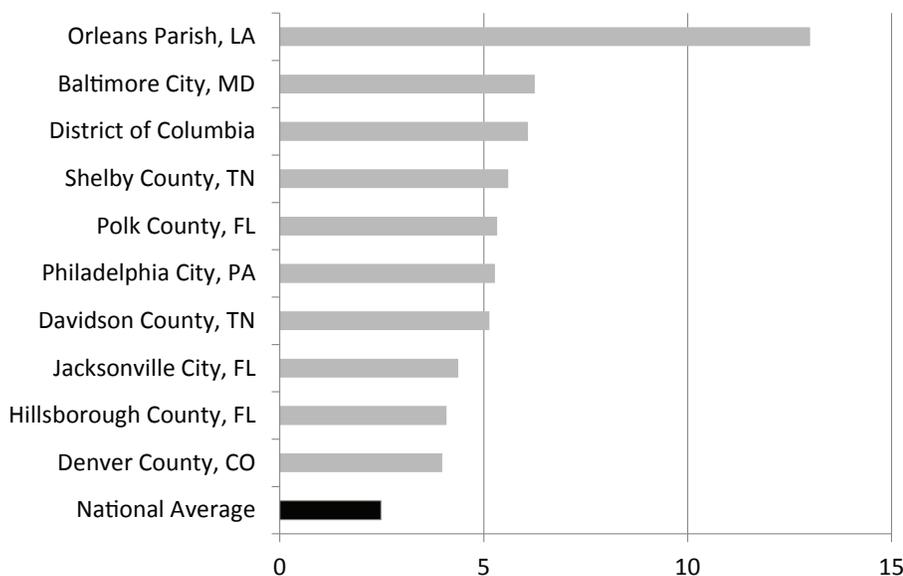
New Orleans is now at a pivotal moment. Incarceration is being challenged as the reflexive response to crime. As then-City Council President Arnie Fielkow summed up in 2011, "You cannot incarcerate yourselves into a safer city, and we have learned that over recent years."¹ But putting that lesson into practice in a fractured criminal justice system has been, and remains, an enormous challenge. Speaking earlier this year and looking to the future, First Deputy Mayor Andy Kopplin noted, "One of the biggest challenges going forward is maintaining the philosophical shift we have achieved—to reserve the jail principally for those who are arrested for violent felonies."²

This essay explores these dynamics, how the profound failings of the system were laid bare as the floodwaters receded, what city officials and community groups did to reverse course, and the culture change that remains to be fully embraced.

The incarceration capital

New Orleans' history of incarceration is in one sense typical and another unique. The city increased incarceration dramatically beginning in the 1980s, from just above 2,300 inmates in the local jail in 1981 to roughly 6,300 inmates on the eve of the storm.³ This was typical of a national trend, but New Orleans did it on a scale that was unique. New Orleans' local incarceration rate was more than five times the national average in 2005 (Figure 1).

Figure 1: Ten most incarcerated U.S. jurisdictions, 2005:
Jail incarceration rate per 1,000 residents



Source: BJS, *Jail Inmates at Midyear 2007*, U.S. Census Bureau

New Orleans' local jail—misnamed the “Orleans Parish Prison” or “OPP”—was not only widely used, it was widely misused. Jails are meant principally to house defendants awaiting trial who pose a significant risk to public safety or of flight, but OPP was used to detain thousands of pretrial defendants because they did not have the means to pay a financial bond. There was no mechanism to assess defendants' risk; judges set a bail amount based on the arrest charges and what was known of the criminal history and defendants either paid their way out or remained detained.⁴ In the regular court process, magistrates released virtually no defendants on their own recognizance or on an unsecured personal surety bond, that is, without an upfront, nonrefundable payment.⁵ In many other U.S. jurisdictions, it is common for nonfinancial release to be used for half or more defendants, especially those charged with nonviolent offenses.⁶ In New Orleans in 2003 and 2004, 86 percent of arrests were for nonvio-

WHAT IS ORLEANS PARISH?

Orleans Parish is the city of New Orleans. New Orleans and Orleans Parish are interchangeable. Their boundaries are the same and they contain the same population.

lent charges.⁷ The jail, which is not intended to provide services appropriate for long-term detention, also was used to incarcerate thousands of persons sentenced to multiple years in prison, a practice common across Louisiana but disfavored in other states.⁸

THE USES OF LOCATION INCARCERATION

Prisons are designed to be stable, long-term environments for persons sentenced to years of imprisonment for felony offenses and, ideally, to provide appropriate rehabilitative programming and services.

Jails are designed principally to house short-term detainees awaiting trial who may be released at any time. Jails generally do not offer programming, beyond meeting inmates' immediate health needs, because it is not known how long detainees will remain.

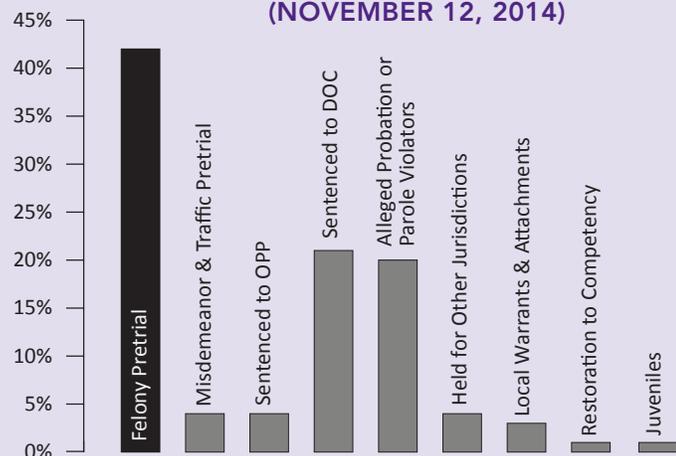
Core jail functions:

- House pretrial detainees awaiting trial
- House people sentenced to short-term (usually under a year) incarcerations for traffic, municipal, and state misdemeanor convictions
- House people awaiting probation revocation hearings
- House people awaiting extradition

OPP other uses:

- House people awaiting parole revocation hearings
- House state prisoners
- House people arrested on minor warrants from other jurisdictions and awaiting transfer
- House people found incompetent to stand trial

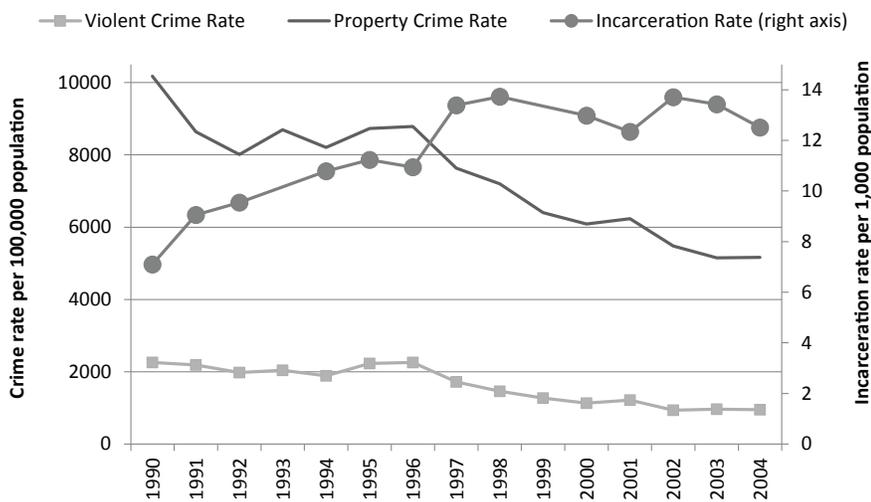
SHARE OF SUBPOPULATION OF INMATES AT OPP (NOVEMBER 12, 2014)



Source: Orleans Parish Sheriff's Office, Criminal District Court, Municipal Court, analysis by Vera Institute of Justice

The expansion of local incarceration did not improve public safety, whether it was intended to or not. Between 1990 and 2004, crime steadily declined, reducing the apparent need for jail. Yet over the same period, the number of people incarcerated in OPP continued to increase (Figure 2). In fact, there is no evidence that incarcerating more people leads to safer communities and jail incarceration specifically can have detrimental effects on public safety when overused.⁹ Notably, incarcerating low-risk defendants pretrial significantly increases their chances of recidivism.¹⁰ Most OPP prisoners are being held pretrial, before they are convicted of a crime and often before they are formally charged with a crime. Louisiana law allows 45 days' detention before deciding to charge a person for a misdemeanor (60 days for a felony) and Orleans prosecutors routinely used what they were allowed. Most held in pretrial detention were either not subsequently convicted or not sentenced to incarceration if convicted.¹¹

Figure 2: Crime and incarceration rates in New Orleans



Source: FBI, Uniform Crime Reports; BJS, Annual Survey of Jails; U.S. Census Bureau

Practically speaking, incarcerating people even if only for a few days (including those who are never convicted of a crime) causes them difficulties in almost every aspect of life for the foreseeable future.¹² Moreover, all New Orleanians were not equally impacted. In 2010, 85 percent of people detained at OPP were black, whereas blacks represented roughly 60 percent of city residents.¹³ In addition, black defendants stayed twice as long pretrial as their white counterparts when charged with the same offense.¹⁴ These practices contributed to tragically high unemployment rates among black men.¹⁵

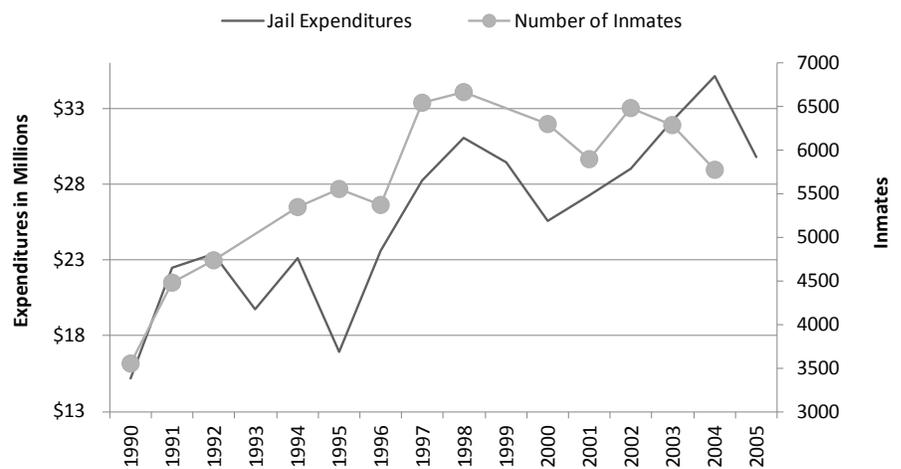
The city's incarceration practices also impacted the broader community financially, as taxpayers paid for jail operations through the city's general fund.

Indeed, the city paid the Sheriff a per diem for each inmate.¹⁶ By foregoing its budgeting authority for the jail, the city had relinquished all responsibility to the Sheriff and incentivized the Sheriff to house as many people as possible. The cost to the city of operating the jail more than doubled between 1990 and 2004, from \$15 to \$35 million annually (Figure 3). The increased number of inmates and ineffective management led to OPP becoming dangerous and unhealthy for inmates and staff alike.¹⁷

Beyond the jail, other criminal justice system actors came to rely on revenues linked to incarcerated individuals. The criminal courts collected fees from each commercial bond, incentivizing judges to impose financial bail that left many poor, low-risk people unnecessarily detained.¹⁸ And the big winners in the financial bail system, the commercial bondsmen, became enormously powerful local actors, using their profits to influence state and local policy in favor of the financial system that leads to overdeterrence and poor public safety outcomes. Judges also frequently incarcerated defendants for failure to pay conviction fees, a practice the U.S. Department of Justice recently decried in its report about Ferguson, Missouri, where it found, “... the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the city’s financial interests.” DOJ concluded that these practices “violate the 14th Amendment’s due process and equal protection requirements [,] ... impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety.”¹⁹

Note: The Sheriff’s expenditures represented four percent of the city’s overall expenditures in 1989, and reached seven percent in 2004. Figure 3 is based on actual expenditures and includes all sources of funding (general funds and grants). These figures likely underestimate the full cost of the jail as certain costs are paid indirectly by the city (such as pensions and benefits) and are not included in the Sheriff’s budget. The Office of the Inspector General found that the cost of operating the jail was at \$37,678,611 in 2011, or \$47.26 per inmate per day, more than twice the per diem.

Figure 3: City expenditures on jail and jail population



Source: City of New Orleans, Annual Budgets; BJS, Annual Survey of Jails

Prior to the storm, few New Orleanians were aware of the extraordinary perversity of the city’s incarceration practices. Hurricane Katrina exposed the damage caused by these practices and inspired an expanding group of leaders in community and government to confront them.

Ten years of rethinking criminal justice

Albeit slowly, the city is transforming the most significant feature of the post-Katrina criminal justice landscape, its over-reliance on local incarceration. Managing incarceration has come to be understood as instrumental in delivering effective justice and public safety, as has asserting control over the jail's size, conditions, and costs.

THE MOMENTUM FOR CHANGE

Katrina paralyzed the entire criminal justice system for months as employees were displaced, buildings flooded, and files destroyed.²⁰ The most disturbing criminal justice aspect of the Katrina aftermath was the plight of OPP inmates. Images of the Broad Street Overpass filled with inmates in orange jumpsuits in the broiling sun, stories of inmates held in makeshift cages behind the bus station, and the months-long search for inmates lost in jails and prisons across the state made New Orleans infamous throughout the world. Much more than a Katrina story, these images and stories revealed a criminal justice system that was neither effective nor just.²¹ At the same time, a national debate about incarceration was emerging, prompting states and municipalities to examine their incarceration practices.

In New Orleans, twin themes emerged in the first five years after the storm. First, the system was failing at addressing violent crime. And second, the system's focus on incarceration had devastating effects on communities.²² More than a wake-up call, Katrina provided a concrete opportunity: The need to rebuild the city's jail complex encouraged some to reimagine the role of incarceration in creating a safe and just community.

COMMITTING TO CHANGE

In one of the most important post-Katrina developments, community leaders, membership organizations, and nonprofits took the lead in guiding city leaders to regain control over the size of the jail. In 2010, the Sheriff's proposal to build a new 5,832-bed jail complex to replace the flood-damaged facilities was made public after the City Planning Commission recommended its approval.²³ Moreover, the plan required no city dollars as Federal Emergency Management Agency (FEMA) funds were available for construction costs.²⁴ The City Council was set to approve the plan as one of dozens of items on a routine zoning docket.²⁵ As soon as the plan was made public, however, a small group of informed community members convened and began speaking with Council members and senior staff in the Mayor's office.²⁶ That group merged into the then-dor-

mant Orleans Parish Prison Reform Coalition, which has been advocating for a smaller jail and better conditions for inmates ever since. Two other groups, the Workers Center for Racial Justice and the New Orleans Coalition on Open Governance, also were actively involved. These groups delivered a clear message: The city could not afford, either in fiscal or humanitarian terms, to incarcerate its residents at a rate five times the national average.

Councilmember Stacy Head, controlling the zoning item because the jail lay in her district, with support from Criminal Justice Committee Chair Susan Guidry, agreed to delay the vote on the new jail's conditional use permit, and Mayor Landrieu tasked First Deputy Mayor Kopplin with convening a Criminal Justice Working Group to fully review the proposal. City leaders were starting to understand that New Orleans could not afford present levels of incarceration and that an oversized jail is itself a major driver of overincarceration.

After discussion and input from criminal justice experts and community leaders, the Mayor's working group concluded that "if specific policy reforms are fully implemented, New Orleans would need approximately 1,485 beds to house local inmates by the year 2020."²⁷ The group recommended the Council authorize construction of only one of the housing units in the Sheriff's plan, designed for 1,438 beds.

On Feb. 3, 2011, the Council chambers were filled with residents brandishing signs that read "1,438 cap!" and "Decommission Now" and numerous public comments supported a smaller jail.²⁸ Following the recommendations of the working group, the Council enacted an ordinance allowing construction of the 1,438-bed facility, requiring that the new facility be equipped to house all types of inmates (except those with acute mental health needs) and mandating that all other housing units be decommissioned upon completion of the new facility.²⁹

This series of decisions was extraordinary. First, it was driven by the mobilization of residents on an issue that likely would not have made the news a few years prior. Second, it indicated an historic change from the city's laissez-faire approach to jail oversight. Third, it showed a strong commitment by city leaders to rethink incarceration practices, despite public concern with crime. But, with a jail population of roughly 3,400 inmates at the time, the 1,438-bed cap would have to be followed by equally extraordinary efforts to change practices that drive the overuse of local incarceration.

Two other developments, near in time to the jail-size debate, were key in framing a new post-Katrina criminal justice landscape. First, the city began partnering with the Vera Institute of Justice to recommend and implement reforms based on national good-practice models.³⁰ Under the umbrella of the Criminal Justice Leadership Alliance (CJLA), this partnership offered insight into ways other jurisdictions had improved practices and reduced jail incarceration while promoting safe communities, and it provided data analysis and implementation assistance for collaborative justice improvements. Second, following findings of widespread constitutional violations at OPP by the U.S. Department

of Justice, the Sheriff and City entered into a consent decree to improve the conditions of confinement.³¹ The litigation's focus on inmate care, staffing, and management soon gravitated to funding. It became clear that the per diem was not only a perverse way to fund, but insufficient in amount to allow for a constitutional jail. With a huge price tag looming, city leaders were incentivized to reduce the number of people in jail.

CHANGE THROUGH INNOVATION

Despite strong commitment from residents and city leaders, the task of reducing the jail population to levels that could be accommodated in a 1,438-bed facility was daunting. Indeed, changing incarceration practices meant fundamentally changing the way the criminal justice system and its actors—police, judges, prosecutors, defense lawyers—operated.

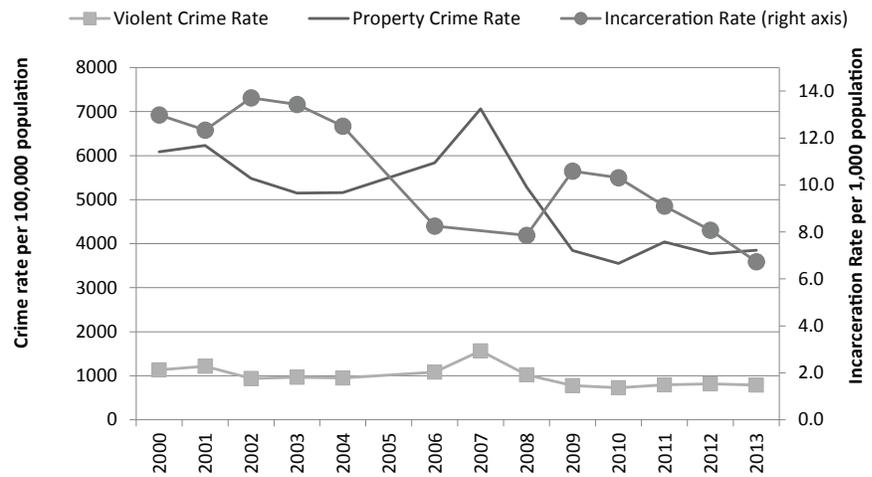
Prior to the jail-size decision, system actors within the CJLA undertook a number of innovative initiatives that had incarceration-reduction effects. For example, the City Council enacted a series of municipal ordinances in 2008 and 2010 to encourage NOPD officers to issue a summons—requiring a person to appear in court on their own—for most nonviolent municipal charges such as disturbing the peace or marijuana possession.³² Police officers had routinely booked defendants into the jail for minor charges. With support from a CJLA working group, NOPD rose to the challenge. Prior to this initiative, officers were arresting 70 percent of people charged with nonviolent municipal offenses. After the initiative, and consistently since then, the rates have reversed, with officers issuing summonses in 70 percent of those cases.³³

The most significant issue flagged in a 2007 report by the Vera Institute was the absence of a program to guide judges' decisions to release or detain arrestees before trial based on an assessment of their risk of flight or reoffending.³⁴ Such tools, administered by pretrial services programs across the nation, have been documented to safely reduce jail populations.³⁵ In New Orleans, the continued reliance on financial bail without consideration for risk was causing many defendants to remain in jail because they could not pay even a low bond. After over a year of planning through a CJLA working group, New Orleans Pretrial Services launched in early 2012. The program, initially funded by DOJ's Bureau of Justice Assistance, is now funded by the city and operated by the Vera Institute. As the first major step to reframe the pretrial incarceration system, the program has shown good if modest results. Today, nearly 10 percent of low- and low-moderate risk defendants are released through nonfinancial means in the regular court process, up from virtually zero prior to the storm, with the vast majority of defendants appearing for court dates and staying crime free during the pretrial period.³⁶

These initiatives had a strong impact on the jail population by reducing the number of people who were arrested and facilitating the release of many defendants who could safely await trial in the community. The average daily

jail population was reduced from 6,000 prior to the storm to 3,400 in 2010, and to less than 1,900 in April 2015, a 67 percent drop overall.³⁷ Moreover, the city's crime rate continued to decline along with the reduction in local incarceration (Figure 4).³⁸

Figure 4: Crime and incarceration rates in New Orleans



Source: FBI, Uniform Crime Reports; BJS, Annual Survey of Jails; U.S. Census Bureau

The Mayor and his senior staff have emerged as leaders in reducing the jail population. They ended the per diem funding system, committed publicly to holding the line on a 1,438-bed jail, and have taken the lead in changing practices that drive overincarceration. In February 2015 the Mayor created the Jail Population Management Subcommittee of the Criminal Justice Council, comprised of the system's leaders, to coordinate further reductions in the jail population. Community groups continue to play a role, notably the Micah Project, a collaboration of 14 congregations that has advocated for New Orleans Pretrial Services and reducing the use of incarceration to fit within a 1,438-bed jail.

New Orleans has come a long way since Katrina. To continue reducing the number of New Orleanians behind the walls of OPP, leaders and residents must now embrace a broader change in culture.

The culture change ahead

Changing government practice—and particularly criminal justice practice—is never easy. To sustain and capitalize on successes to date, city leaders and the broader community must tackle the systemic issues that drive our overuse of incarceration. Namely, the city must commit to a coordinated justice system

that is driven by positive goals and outcomes; that defers to other sectors to address the root causes of crime and the needs of those at risk; and that is rooted in deep concern for all residents' safety and dignity.

AN OUTCOME-DRIVEN AND COORDINATED SYSTEM

To be able to reduce the jail population in a safe and sustainable way, city leaders must invest in programs and tools that have measurable outcomes. This not only requires a commitment to good practices, it also requires a reinforced commitment to oversee and coordinate all criminal justice efforts to ensure they are consistent with system goals. The city must support programs that have specific and meaningful goals, track outcomes that relate to these goals, and realign strategies if the programs do not perform.³⁹

This has not been the norm in New Orleans where many initiatives have untraceable, perhaps counterproductive, results. For example, the drug courts, diversion, and electronic monitoring programs do not have articulated goals, do not report outcomes, and do not have transparent eligibility rules.⁴⁰ Program goals and outcome measures are necessary to ensure that resources are invested wisely in effective programs and to hold actors accountable to the public. In the New Orleans criminal justice system, where data are rarely used to examine practices, individual system actors have considerable autonomy, and potential revenues continue to influence policy, it is particularly critical to develop a core commitment to effective practices.

To orchestrate the shift toward outcome-driven practices and accountability, officials will need to demonstrate strong leadership in the years to come. The reinvigorated Criminal Justice Council could play an instrumental role in ensuring programs' reliance on data and proven practices, monitoring overall performance, and coordinating criminal justice actors.

To fully coordinate criminal justice efforts, city leaders will need to overcome a number of obstacles. Most challenging will be the ability of the Mayor and Council to retain control over the jail's budget, especially given the involvement of the federal court. The cost of operating the jail has increased by at least 40 percent since 2010, in part due to additional funding mandated by the court.⁴¹ Without budgetary control, the city will not be able to realize the savings accomplished through its jail population reduction efforts, even though these efforts directly contribute to improving conditions of confinement for OPP inmates. Indeed, fewer detainees require fewer staff, a smaller facility, and a decreased need for costly services, such as medical and mental health care. The challenge ahead is for consent decree actors to understand that jail population reduction is "not just good criminal justice policy but essential to bringing constitutional standards to OPP," summarized First Deputy Mayor Kopplin.⁴² These challenges will require continued engagement by the city to get the federal actors on board with their population-reduction efforts and allow it to reinvest the savings in community needs.

ADDRESSING PEOPLE'S UNDERLYING NEEDS

Effective criminal justice does not exist in a vacuum. The expansion of our criminal justice system, especially its use of incarceration, reflects the diminution of other systems that allow people to thrive. Most tragically perhaps, the jail has become New Orleans' de facto mental health treatment facility. After Katrina, the closure of Charity Hospital virtually eliminated inpatient mental health beds for the poor.⁴³ The lack of affordable treatment options, along with high numbers of uninsured residents and the state's rejection of Medicaid expansion, exacerbated the problem and resulted in the jailing of New Orleans residents in mental health crisis.⁴⁴ There is likely no less therapeutic setting for persons in mental health crisis than a jail.⁴⁵

Katrina increased the prevalence among New Orleanians of trauma and mental illness, making the need for community-based behavioral health care paramount.⁴⁶ Although the state controls many of the public health funds, the city would benefit from investing in adequate outpatient and inpatient behavioral health care. Not only would that allow residents with mental illness to live stable lives, it would also save money by reducing the number of people incarcerated. In the short term, the city could invest in alternatives to arrest and detention for people suffering mental health crises. San Antonio, for example, has made such a commitment. It built and operates a comprehensive center providing short-stay inpatient care, detoxification, long-term substance abuse treatment, and housing and job training services and is used by police as an alternative to the criminal justice process.⁴⁷

As long as gaps exist in community-based services, the criminal justice system will fill them, often inside the walls of the jail. To ensure that public resources are used wisely—in the community rather than in the jail whenever possible—decisionmakers should coordinate across fields when developing policy. In addition, savings from reductions in the use of incarceration should be used to fund programs and services to divert individuals from the criminal justice system into expanded community-based services.

RETHINKING PUBLIC SAFETY

Public safety is often reduced to the notion of crime and punishment. In the last four decades, jurisdictions began relying more and more on incarceration in a failed search for safety.⁴⁸ But, the research shows that incarceration, especially widespread use of jail, is not an effective tool for keeping the public safe. Incarcerating those who do not pose significant risk disrupts their ability to work and participate in family and community life, and makes it ultimately more likely they will commit crimes.⁴⁹

Moreover, our public safety narratives rarely reflect who is in fact unsafe. Racial and cultural biases pervade incarceration policies from state statutes to individual detention decisions. These policies perpetuate a narrative of mid-

dle-class whites as victims and poor blacks as criminals.⁵⁰ But residents of poor, mostly black communities are not only more likely to be targeted in policing and other responses to crime, they are also more likely to be the victims of crime.⁵¹ While changing, these narratives are still extremely strong nationwide and New Orleans is no exception, dampening the city's ability to achieve deep and lasting reforms to its overuse of incarceration.⁵²

In the next 10 years, New Orleans must tackle this issue if it wants to sustain reductions in incarceration rates and fundamentally address its crime problems. City leaders will need to show continued commitment, despite resistance from those who benefit from the old system, and the public will need to hold elected officials accountable for fairer and more effective approaches. For the city to move forward, leaders must focus particular attention on practices that divide the community along race and class lines, the uses of incarceration high among them. With these pieces in place, a more inclusive narrative of public safety will be able to emerge, one that respects the needs of all residents, regardless of their socioeconomic status or whether they are currently or have ever been incarcerated.

Conclusion

For the distance they have traveled in the 10 years since the levees failed, New Orleanians and their leaders have much to be proud of. The commitment of the Mayor and City Council to restrict the supply of jail beds to 1,438 was crucial and should help constrain demand by justice system actors. However, the opposing pressures that led to the hyperexpansion of local incarceration in the first place must be kept in check. For New Orleans to truly refocus this vast sector of government on good practices, with good public safety, justice, and health outcomes, will require a deep cultural shift.

It will not be enough for one Council and one Mayor to make one decision about the size of the jail, as immensely important as it is. It will not be enough to reduce incarceration solely to address the financial, but not the human, costs. It will require the community's resolve that government must implement policies grounded in the dignity and safety of all its residents. And it will require an appreciation that a city that turns first to incarceration to address its problems of crime, poverty, and mental illness is a city that forgot to care. New Orleans is well positioned to accomplish this historic shift.

ENDNOTES

- 1 See The Lens, "New jail building approved by City Council; sheriff must close others when it's built," 2011 (<http://thelensnola.org/2011/02/03/jail-ordinance-passe/>).
- 2 Personal communication from Andy Kopplin, Deputy Mayor, City of New Orleans, March 3, 2015.
- 3 For jail population in the early 1980's, see New Orleans Office of Criminal Justice Coordination, "A Systemic View of Jail Population Factors in Orleans Parish: An Initial Description," p.32, 1983. For 2005 jail population numbers, see Bureau of Justice Statistics, "Jail Inmates at Midyear 2007," 2008 (www.csdp.org/research/jim07.pdf). There were 6,295 inmates in OPP on June 30, 2005. The average daily population for the year ending June 30, 2005 was 5,919.
- 4 See Vera Institute of Justice, "Proposals for New Orleans' Criminal Justice System: Best Practices to Advance Public Safety and Justice," 2007 (www.vera.org/sites/default/files/resources/downloads/no_proposals.pdf).
- 5 Ibid. Roughly 21 percent of released defendants were released on their own recognizance outside of the regular court process, usually because a family member, lawyer, or influential connection negotiated release directly with a judge outside of open court and without the participation of the prosecutor. See Metropolitan Crime Commission, "An Analysis of Bail Bond Reductions in Orleans Criminal District Court," 2005 (<http://metrocrime.org/wp-content/uploads/2013/05/Bail-Bond-Reductions-in-Orleans-CDC-MAR-2005.pdf>).
- 6 See Vera Institute of Justice, "Incarceration's Front Door: The Misuse of Jails in America. Vera Institute of Justice," 2015 (www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf).
- 7 65 percent of arrests were for drug-related charges. See Metropolitan Crime Commission, "Performance of the New Orleans Criminal Justice System 2003-2004," 2005 (<http://metrocrime.org/wp-content/uploads/2013/10/Perf-of-the-NO-Criminal-Justice-System-2003-2004.pdf>).
- 8 Louisiana held 52 percent of state-sentenced prisoners in its local jails in 2013. The two states with the next highest rates of jail use for state prisoners, Kentucky and Mississippi, were at 39 and 29 percent, respectively, and the national average among states was 6.2 percent. See Bureau of Justice Statistics, "Prisoners in 2013," 2014 (www.bjs.gov/content/pub/pdf/p13.pdf).
- 9 High levels of jail incarceration provide diminishing or negative public safety outcomes. See Subramanian, R., Delaney, R., Roberts, S., Fishman, N., & McGarry, P. (2015).
- 10 Lowenkamp, C.T., VanNostrand, M., & Holsinger, A. "The Hidden Costs of Pretrial Detention," Laura and John Arnold Foundation, 2013 (<http://csgjusticecenter.org/wp-content/uploads/2013/12/The-Hidden-Costs-of-Pretrial-Detention.pdf>).
- 11 In the Orleans Criminal District Court in 2003-2004, 58 percent of arrests resulted in prosecution and seven percent of arrests led to a prison sentence. See Metropolitan Crime Commission, "Performance of the New Orleans Criminal Justice System 2003-2004," 2005 (<http://metrocrime.org/wp-content/uploads/2013/10/Perf-of-the-NO-Criminal-Justice-System-2003-2004.pdf>).
- 12 For an overview of collateral consequences, see Subramanian, R., Moreno, R., & Gebreselassie, S. "Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014," Vera Institute of Justice, 2014 (www.vera.org/pubs/states-rethink-collateral-consequences). For resources on existing collateral consequences, visit: <http://www.abacollateralconsequences.org>. For consequences of incarceration, see Subramanian, R., Delaney, R., Roberts, S., Fishman, N., & McGarry, P. (2015).
- 13 Pre-Katrina information on inmates' race is not publicly available but there is no indication that the trend shifted since the storm. For the racial breakdown of local inmates, see Austin, J., Ware, W., & Ocker, R., "Orleans Parish Prison Ten-Year Inmate Population Projection," The JFA Institute, 2010 (www.ncjrs.gov/pdffiles1/nij/grants/233722.pdf). For the racial breakdown of New Orleans, see U.S. Census Bureau, New Orleans City, Louisiana. "QuickFacts Beta," 2010 (www.census.gov/quickfacts/table/PST045214/2255000,00).
- 14 Austin, J., Ware, W., & Ocker, R. (2010).
- 15 In 2000, 46 percent of black working-age men in the New Orleans metropolitan area were not employed. See Plyer, A., Ortiz, E., Horwitz, B., & Hobor, G., The Data Center, "The New Orleans Index at Eight," 2013 (www.datacenterresearch.org/reports_analysis/the-new-orleans-index-at-eight/).
- 16 Appended to a 1969 lawsuit, the per diem was adjusted over the years, reaching \$22.39 per inmate per day in 2003. See Maldonado, C., The Lens, "Mayor, sheriff end much-criticized prisoner per diem method," November 2014 (www.louisianaweekly.com/mayor-sheriff-end-much-criticized-prisoner-per-diem-method/). In Louisiana, half of people sentenced to state prisons are housed in local jails, for which the state pays roughly \$24 dollars per inmate per day to the Sheriff. See Jindal, B., Leblanc, J. M., Briefing Book: Louisiana Department of Public Safety and Corrections. 2013 (www.doc.la.gov/quicklinks/statistics/statistics-briefing-book/).
- 17 The U.S. Department of Justice documented widespread constitutional violations at Orleans Parish Prison in a "findings" letter addressed to Sheriff Gusman on September 11, 2009, and an updated letter on April 23, 2012. King, L., Orleans Parish Prison System: New Orleans, Louisiana. U.S. Department of Justice, Civil Rights Division. September 2009 (www.justice.gov/crt/about/spl/documents/parish_findlet.pdf). Smith, J. (April 23, 2012). Update to Letter of Findings: United States' Civil Rights Investigation of the Orleans Parish Prison System. U.S. Department of Justice, Civil Rights Division. April 2012 (www.justice.gov/crt/about/spl/documents/parish_update_4-23-12.pdf).
- 18 Louisiana statutes provide for the imposition of fees on commercial bondsmen (which are passed on to defendants or their family members posting bond) and the distribution of some of those revenues among the Criminal District Court, Sheriff's Office, District Attorney's Office, and Orleans Public Defenders. See La. R.S. 22:822 and La. R.S. 13:1381.5.
- 19 See U.S. Department of Justice, Civil Rights Division, "Investigation of the Ferguson Police Department," 2013 (www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).
- 20 For an overview of the state of criminal justice in the aftermath of Katrina, see Van Dyke, N., Wool, J. & LeDoux, L., "Criminal Justice Reforms," Resilience and Opportunity, edited by A. Liu, R. Anglin, R. Mizelle, A. Plyer (Washington D.C.: Brookings Institution Press, 2011).
- 21 See American Civil Liberties Union, "Abandoned & Abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina," 2006 (www.aclu.org/report/abandoned-and-abused).
- 22 Van Dyke, N., Wool, J. & LeDoux, L. (2011).
- 23 Flowers, F. & Kray, J., Preliminary Staff Report: New Orleans City Planning Commission. April 2010 (http://cityofno.granicus.com/MetaViewer.php?view_id=2&clip_id=320&meta_id=66162). Sheriff Gusman explained soon after that the presentation to the Commission "mistakenly included" some beds and that his intention was to build a jail complex to house approximately 4,300 inmates. See Gusman M. (June 15, 2010). Letter from Sheriff Gusman to Mid-City Neighborhood Association. Document on file with authors.

- 24 Flowers, F. & Kray, J. (April 2010).
- 25 The city had a role in reviewing the plan only because two of the new jail buildings were to occupy different footprints from the buildings they were replacing and thus a conditional use permit was required.
- 26 Mayor Landrieu and the new chair of the Council's Criminal Justice Committee, Susan Guidry, took office between the Commission's preliminary report and the Council vote. Councilmember Guidry early on made jail population reduction efforts a key focus of the committee.
- 27 See Criminal Justice Working Group, Resolution on Executive Order 10-06. November 2010 (http://lensnola.wpengine.netdna-cdn.com/wp-content/uploads/2010/12/CJWG_RESOLUTION-1.doc). See also Davis, M., The Lens. "Despite recommendation by mayor's group, Gusman wants to double jail size to 3,200," December 2010 (<http://thelensnola.org/2010/12/09/gusman-flip-flop/>).
- 28 Davis, M. (February 2011).
- 29 See New Orleans City Council, Ordinance No 24282. (www.municode.com/library/la/new_orleans/munidocs/ordinance_documents?no-deld=O10242011_ORDINANCESHTML). The ordinance allowed for one facility, housing up to 400 inmates, to remain open for a transitional period of 18 months after completion of the 1,438-bed facility.
- 30 In 2006, the City Council commissioned Vera to study the local system and recommend reforms in a report. See Vera Institute of Justice, "Proposals for New Orleans' Criminal Justice System: Best Practices to Advance Public Safety and Justice," 2007 (www.vera.org/pubs/proposals-new-orleans-criminal-justice-system-best-practices-advance-public-safety-and-justice-0). The report led to the creation of the Criminal Justice Leadership Alliance (CJLA), which was conceived and funded by Baptist Community Ministries, a local foundation that has provided critical support for governmental reform in the city. Vera works with government and community partners to implement a range of national good practice-based criminal justice improvements through a New Orleans office opened in 2008.
- 31 King, L. (September 11, 2009). See also Jones, Et Al, and United States of America, v. Marlin Gusman Consent Judgment. U.S. District Court for the Eastern District of Louisiana. June 2013 (www.justice.gov/crt/about/spl/documents/opp_consentjudg_6-6-13.pdf). The jail consent decree also involved community action, in that DOJ did Criminal Justice Leadership Alliance, "Use of Summonses and Custodial Arrests for Municipal Offenses," 2009 (Document on file with the authors). Criminal Justice Leadership Alliance, "Data Analysis of All Arrests and Summonses in Orleans Parish from February 24, 2012, through March 15, 2012," 2012 (Document on file with the authors). not act on its findings of unconstitutional conditions until a local nonprofit law firm, the New Orleans office of the Southern Poverty Law Center, filed a class action lawsuit, which DOJ subsequently joined. Another local nonprofit law firm, the New Orleans office of the MacArthur Justice Center, took over as counsel for the plaintiff class in 2014. For post-judgment history, see http://www.laed.uscourts.gov/OPP_Consent/opp_consent.htm. Not long before the jail decree, the city entered into a consent decree to address unconstitutional police practices. United States of America v. City of New Orleans. Consent Decree Regarding the New Orleans Police Department. U.S. District Court for the Eastern District of Louisiana. (2013, January 11). Retrieved from http://www.justice.gov/crt/about/spl/documents/nopd_agreement_1-11-13.pdf.
- 32 Egger, B., The Times-Picayune, "New Orleans City Council reclassifies pot possession, prostitution to reduce criminal dockets," December 2010 (www.nola.com/politics/index.ssf/2010/12/new_orleans_city_council_recla.html).
- 33 Criminal Justice Leadership Alliance, "Use of Summonses and Custodial Arrests for Municipal Offenses," 2009 (Document on file with the authors). Criminal Justice Leadership Alliance, "Data Analysis of All Arrests and Summonses in Orleans Parish from February 24, 2012, through March 15, 2012," 2012 (Document on file with the authors).
- 34 Vera Institute of Justice. (2007).
- 35 For national examples of effects of pretrial services on jail populations and associated savings, see American Bar Association. (n.d.), "Frequently Asked Questions About Pretrial Release Decision Making," (http://apps.americanbar.org/dch/thedl.cfm?filename=/CR160000/otherlinks_files/FAQ_Pretrial_Justice.authcheckdam.pdf).
- 36 New Orleans Pretrial Services, "Quarterly Report: Third Quarter 2014," 2014 (Document on file with the authors).
- 37 Sabol, W.J., & Minton, T.D. (2008); Minton, T.D., Bureau of Justice Statistics, "Jail Inmates at Midyear 2010- Statistical Tables," 2011 (www.bjs.gov/content/pub/pdf/jim10st.pdf). Orleans Parish Sheriff's Office, "Daily Inmate Count," 2015 (Document on file with authors).
- 38 For post-Katrina crime rates, see Plyer, A., Ortiz, E., Horwitz, B., & Hobar, G. (2013). Based on data from the Bureau of Justice Statistics, the Sheriff's Office, and U.S. Census Bureau (ibid), New Orleans' incarceration rate was roughly six per 1,000 residents in 2013, less than half the 2005 rate reported in Figure 1.
- 39 See U.S. DOJ National Institute of Corrections, "Evidence-Based Practices in the Criminal Justice System: An Annotated Bibliography," 2013 (<http://nicic.gov/library/026917>).
- 40 Quatrevaux, E.R., Office of Inspector General, City of New Orleans, "Evaluation of the Electronic Monitoring Program Administered by the Orleans Parish Sheriff's Office Part 1: Budget and Billing," 2014 (www.nolaig.org/uploads/File/I&E/Inspections/OIG%20EMP%20Pt%201%20Final%20Report%20140402.pdf). Quatrevaux, E.R., Office of Inspector General, City of New Orleans, "Evaluation of the Electronic Monitoring Program Part 2: Implementation and Supervision." 2014 (www.nolaig.org/uploads/File/Public%20Letters/2014/OIG%20In%20Brief%20EMP%20Pt%202%20141204.pdf). On drug courts, see Louisiana Supreme Court, "Drug Court Program," 2014 (www.lasc.org/court_managed_prog/drug_court/SCDCO_BROCHURE_2014_FINALprf.pdf). No New Orleans-specific information was readily available.
- 41 See Chief Administrative Officer, "Adopted 1990 Operational Budget, City of New Orleans." 1990. Idem for 1991 through 2015. In addition, the federal court has required the city to pay significant additional amounts in the past and may do so again in 2015. See McClendon, R., The Times-Picayune, "Orleans Parish Sheriff's office runs a deficit as jail population declines," July 2014 (www.nola.com/politics/index.ssf/2014/07/orleans_parish_sheriffs_office_3.html).
- 42 Personal communication from Andy Kopplin, Deputy Mayor, City of New Orleans, March 3, 2015.
- 43 Maldonado, C., Gambit, "New Orleans' Mental Health Crisis," March 2012 (www.bestofneworleans.com/gambit/new-orleans-mental-health-crisis/Content?oid=1972425).
- 44 See New Orleans Health Department, "Behavioral Health in New Orleans: Recommendations for Systems Change," 2012 (www.nola.gov/nola/media/Health-Department/Publications/Behavioral-Health-in-New-Orleans-2012-final-draft.pdf).
- 45 Subramanian, R., Delaney, R., Roberts, S., Fishman, N., & McGarry, P. (2015).
- 46 Kessler, R.C., Galea, S., Jones, R.T., & Parker, H.A., World Health Organization, "Mental illness and suicidality after hurricane Katrina" 2006 (www.who.int/bulletin/volumes/84/10/06-033019.pdf).
- 47 Gold, J., National Public Radio, "Mental Health cops help reweave social safety net in San Antonio," August 2014 (www.npr.org/blogs/health/2014/08/19/338895262/mental-health-cops-help-reweave-social-safety-net-in-san-antonio).
- 48 Subramanian, R., Delaney, R., Roberts, S., Fishman, N., & McGarry, P. (2015).

- 49 Ibid. Also, see Lowenkamp, C.T., VanNostrand, M., & Holsinger, A. (2013).
- 50 See Muhammad, K.G., *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Harvard University Press, 2011). Muhammad traces the roots of this narrative to the late 19th century but notes that “[t]he link between race and crime is as enduring and influential in the twenty-first century as it has been in the past.” Ibid. at 1. See also Alexander, M., *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2011).
- 51 According to NOPD, 91.5 percent of murder victims in 2009-2010 were black. They were also overwhelmingly men and young. Wellford, C., Bond, B.J., & Goodison, S., “Crime in New Orleans: Analyzing Crime Trends and New Orleans’ Responses to Crime,” 2011 (http://media.nola.com/crime_impact/other/BJA%20Crime%20in%20New%20Orleans%20Report%20March%202011.pdf). For national data on this issue, see Sered, D., “Young Men of Color and the Other Side of Harm: Addressing Disparities in our Responses to Violence,” Vera Institute of Justice, Common Justice, 2014 (www.vera.org/pubs/men-of-color-as-victims-of-violence).
- 52 For example, one local nonprofit has called for continued high use of local incarceration based on the premise that it is an effective crime-reduction tool. See Metropolitan Crime Commission, “Orleans Parish Sheriff’s Office Inmate Population Analysis: January-June 2014,” 2014 (<http://metrocrime.org/wp-content/uploads/2014/08/OS-PO-Jan-Jun-2014-Inmate-Population-Analysis.pdf>).

Acknowledgments

The authors acknowledge and are grateful for all of the difficult work being done by community and government leaders to rethink and transform the culture of incarceration in New Orleans.

This essay originally appeared in The Data Center's collection, *The New Orleans Index at Ten*. We acknowledge The Data Center as a trusted resource for information about Greater New Orleans and Southeast Louisiana. In particular, the authors would like to thank Allison Plyer, Executive Director, and the whole Data Center team for their partnership with us and commitment to putting accurate data about critical issues such as local incarceration in the hands of the people. We also thank our colleagues Kayemba Mvula, Meghan Ragany, Rose Wilson, and Corinna Yazbek for their excellent data analysis and policy expertise.

© Vera Institute of Justice 2015. All rights reserved. An electronic version of this report is posted on Vera's website at www.vera.org/justice-in-katrinawas-wake.

The Vera Institute of Justice is an independent nonprofit organization that combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety. For more information, visit www.vera.org.

For more information about this report or Vera New Orleans, contact Director Jon Wool at jwool@vera.org.

Suggested Citation

Calvin Johnson, Mathilde Laisne, and Jon Wool. *Justice in Katrina's Wake: Changing Course on Incarceration in New Orleans*. New York, NY: Vera Institute of Justice, 2015.

Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Tel: (212) 334-1300
Fax: (212) 941-9407

Washington DC Office
1111 14th St. NW, Suite 900
Washington, DC 20005
Tel: (202) 465-8900
Fax: (202) 408-1972

New Orleans Office
546 Carondelet St.
New Orleans, LA 70130
Tel: (504) 593-0937
Fax: (212) 941-9407

Los Angeles Office
707 Wilshire Blvd., Suite 3850
Los Angeles, CA 90017
Tel: (213) 223-2442
Fax: (213) 955-9250

VERA
INSTITUTE OF JUSTICE