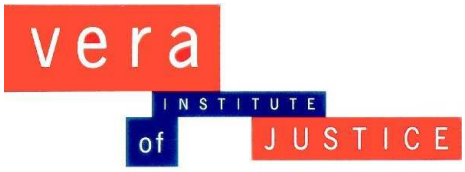

PROPOSALS FOR NEW ORLEANS' CRIMINAL JUSTICE SYSTEM:

Best Practices to Advance Public Safety and Justice

A Report Submitted to the Criminal Justice Committee of the New Orleans City Council

by The Vera Institute of Justice

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EXECUTIVE SUMMARY

Hurricane Katrina ravaged New Orleans, destroying not only the city's infrastructure and the lives of many of its residents, but also its justice system. Police stations, courts, and jails were ruined; essential information and files were lost or waterlogged; and the people who make up the system—from police officers and prosecutors to judges, probation officers, and community-based service providers—were traumatized and displaced. These people have made heroic efforts to get the justice system up and running again. Nonetheless, 18 months after the storm, problems remain. The city is plagued by violent crime, residents who will never be charged with a crime spend weeks in jail, and some serious offenders are released with no charges.

What practical steps can New Orleans take to make its criminal justice system more reliable, effective, and just? To answer this question, the Vera Institute of Justice interviewed key stakeholders—including justice system leaders, representatives of nonprofit research and advocacy groups, and several members of the city council—and reviewed data on how the system has been operating after flooding devastated the city. Since that tragedy, government officials and other leaders have demonstrated a clear commitment to restoring the city's justice system and investing in the implementation of fair and efficient practices. This dedication provides a window of opportunity in which New Orleans can begin rebuilding a justice system that is indeed both effective and just.

Specifically, our investigation indicates that New Orleans can improve public safety by pursuing the following new policies or programs:

- Early triage of cases and routine communication between police and prosecutors,
- A wider range of pretrial release options,
- Community-service sentencing and greater use of alternatives to prison, and
- More appropriate and cost-effective sanctions for municipal offenses.

For each of these policy areas, this report identifies specific areas of need and proposes solutions that are based on effective practices used in other jurisdictions. Moreover, it focuses on practical steps that over the next six to 12 months promise the "biggest bang for the buck."

To implement these improvements, leaders in New Orleans' justice system—who have been briefed on these ideas and are generally supportive—would have to work together, buttressed by technical assistance and staff support from New Orleans-based organizations, the Vera Institute of Justice, and other institutions with specialized expertise. With a high level of cooperation, within a year, New Orleans' justice system could implement innovations that would allow the city to allocate more resources toward protecting public safety, improving public trust and confidence, and rebuilding the city. Some investment from government and philanthropic partners will be necessary to get these initiatives underway, but they will ultimately be sustained through reallocation of local justice system resources.

Early Case Assessment and Triage

District attorneys in New Orleans often use the full statutory time limit to decide whether or not to press charges against an arrested individual. We were able trace this phenomenon to two related causes: a lack of communication between prosecutors and police and the absence of a triage point shortly after the arrest at which prosecutors may resolve weak or less serious cases. These two conditions result in the release of many arrestees who face serious charges, while others who pose little risk—and are ultimately released—spend long and expensive stays in jail.

Around the nation, "best practice" in this area of justice administration includes a system in which police and prosecutors communicate about cases within 24 hours of an arrest to determine whether additional information is needed (and setting out to collect it, if necessary) or to spot potential weaknesses in the case. This allows prosecutors to quickly weed out low-priority or weak cases, reducing costs to jails, courts, police, and prosecutors. It also enables police and prosecutors to garner sufficient evidence in stronger cases and those that pose the greatest threat to public safety, reducing unnecessary releases and declinations of prosecution.

New Orleans should adopt a system where prosecutors and arresting officers discuss cases within the first 24 hours after arrest. In addition, the courts, the public defender, and the district attorney should have a court appearance in every case within six days after arrest–by which time initial triage decisions should be made. As first steps toward these goals, in the next six to 12 months, we propose that New Orleans:

- Support Superintendent Warren Riley's and District Attorney Eddie Jordan's existing initiative to improve communication between police and prosecutors by documenting new procedures in writing, collecting information about how the new procedures are working, and using this information to assess and revise procedures.
- Implement routine case conferences/triage decisions six days after arrest. This requires planning, piloting, analyzing, and adjusting procedures as necessary.

Pretrial Release Options

Virtually every person who is arrested in New Orleans is assigned a money bond while his or her case is pending. As a result, many poor people who do not threaten public safety remain in jail, at high cost to the city, while those who pose a threat but can afford to post a bond go free. The city does not keep track of whether released arrestees appear in court or re-offend while their cases are pending.

When someone is arrested, a judge decides whether he or she will remain free or what conditions will be imposed while the case is pending. Using the least restrictive conditions possible can conserve resources and avoid unnecessary infringement on the liberty of people who have not yet been convicted of a crime. Nationally, a significant proportion of people arrested for felonies and the vast majority of misdemeanants are released without bond. Many jurisdictions have developed risk assessment instruments to

predict those who are at risk of fleeing or threatening public safety while their cases are pending. Also, many jurisdictions have "pretrial services" offices that gather and verify information about defendants to help courts make release decisions. In some cases, these offices supervise defendants who present too much risk to be released on their own recognizance.

New Orleans should create a system in which pretrial release or detention decisions are based on an evidence-based risk assessment instrument, there is a process for collecting and verifying information relevant to risk, there is a range of options from release on recognizance to detention, and defendants are placed in the least restrictive option possible. As first steps, we propose that, over the next six to 12 months, New Orleans:

- Analyze data on a cohort of people arrested from January 1, 2006 to June 30, 2007, with a view toward developing a local risk assessment tool,
- Develop a plan to release low-risk offenders on their own recognizance and to increase use of electronic monitoring,
- Determine whether additional pretrial release options should be created and, if so, develop a plan and a budget to pilot them, and
- Determine the feasibility and cost of creating a separate pretrial services agency and alternative ways of performing a pretrial services agency's functions.

Alternative Sentencing Options

Louisiana has embraced "problem-solving courts" that handle specialized caseloads. New Orleans has very active drug courts and a mental health court which judges and others have worked hard to reopen after Katrina. However, these courts see relatively few offenders. In addition, outside of the problem-solving courts and a small number of offenders sentenced to community service within the courthouse, the city does not make significant use of alternative sentencing programs or sanctions.

Alternative sentencing options provide judges with sentencing choices that maintain community safety, hold offenders accountable, and address factors that underlie criminal behavior. Community service sentences in particular can serve as punishment and rehabilitation simultaneously—while also avoiding the costs associated with incarceration. And in New Orleans, they may also create a labor force that can be used for disaster relief. Yet another alternative justice process, restorative justice, which allows some victims to have a say in how harm is redressed by bringing them together in mediation with their perpetrators, has been shown to be effective in many cases with identifiable victims.

To benefit from these alternatives, over the next six to 12 months, we propose that New Orleans:

- Prepare to implement a substantial community service sentencing program, by planning a model program to be launched in a year,
- Analyze and expand the use of drug and mental health courts and drug treatment alternatives to prison, and

- Engage in a planning process to determine the most effective ways of using restorative justice methods.

Municipal Offenses

Most offenses in New Orleans' municipal court are "quality-of-life offenses": criminal mischief, public drunkenness, prostitution, etc. Although New Orleans police may either arrest or issue a summons to a municipal offender, most of the time they make an arrest. Unfortunately, the process of arresting, processing, and temporarily detaining offenders uses up valuable jail and police resources. Moreover, with few exceptions, the dispositions used for municipal offenses are fines and incarceration. In some cases, people who are fined but cannot afford to pay end up in jail anyway.

Community courts are an increasingly recognized way of responding to quality-of-life offenses. They impose immediate and meaningful sanctions on offenders, engage the community, and target the underlying causes of crime. Most focus on minor misdemeanors or violations and offer some combination of closely monitored community service and treatment options in place of jail or fines. In addition, they specifically emphasize helping individual offenders while also improving community safety. Some jurisdictions have also implemented "day fines," which take into account a person's income when calculating an appropriate fine. This practice makes fines more equitable, increases collection rates, and decreases the chances that people will spend time in jail simply because they are too poor to pay their fines.

New Orleans should develop a range of sanctions for municipal offenses other than jail or fines. These should include community service, as described above. To do so, over the next six to 12 months, New Orleans should:

- Prepare to launch a community court, with assistance from the Center for Court Innovation, which pioneered the community court model,
- Explore implementing a day fines program, by determining the extent to which indigence is an obstacle to paying fines in New Orleans, developing protocols for a day fines program, and preparing a pilot program, and
- Reduce the use of police and jail resources for municipal offenses by, among other measures, developing a new legal instrument to increase municipal court appearances by people with municipal attachments.

At Vera, we know that changing a justice system almost always requires a long-term commitment. With more than 45 years of experience in justice system reform, we also know that such change almost always is accompanied by challenges and obstacles. Nevertheless, based on our preliminary research and interviews with New Orleans officials, we believe that it is possible for the City of New Orleans, within a year, to take significant steps. By implementing new initiatives outlined above, New Orleans can begin to rebuild and improve upon its criminal justice system, leading to improvements in public safety for its residents and visitors.

INTRODUCTION

Over the past six months, at the request of and with support from the New Orleans City Council, staff from the Vera Institute of Justice have made three trips to New Orleans to examine issues facing the criminal justice system and to determine ways of changing the system to increase public safety and justice. Hurricane Katrina devastated the city. As it rebuilds its infrastructure, New Orleans also has an opportunity to restructure its justice system, using national best practices.

The Vera team participated in the Crime Summit convened by City Council member James Carter in September, 2006, and has met with key stakeholders including Police Superintendent Warren Riley, Criminal Sheriff Marlin Gusman, District Attorney Eddie Jordan, representatives of the Orleans Public Defender, leaders in the judiciary, representatives of nonprofit research and advocacy groups, and several members of the city council. We have been able to identify critical issues based on conversations with key players and observations of court proceedings. We have also analyzed data from Sheriff Gusman, and the findings from that analysis have helped to inform our suggestions of practical ideas for moving forward.

The devastation and trauma caused by Hurricane Katrina are evident throughout the city and also throughout the justice system. The New Orleans Police Department, the Orleans Parish Criminal Sheriff's Office, the Orleans Parish District Attorney's Office, and the New Orleans Municipal Court, among many other agencies, are still operating out of temporary facilities, causing logistical problems and creating operational difficulties. Many key stakeholders and their staff members were displaced from their homes and still have not returned. The storm's damage led to City and County budget cuts, and a number of government employees have been laid off or transferred to other departments.

In spite of the destruction, however, there remains a fierce and dedicated core of officials and staff members who have continued to fight back, and we have been overwhelmingly impressed with the determination and resolve that permeates the city. This dedication has been apparent throughout the last 18 months, beginning with heroic efforts by government officials right after the storm, such as retrieving files from flooded buildings and operating the court out of the train station. These endeavors have been undertaken by players in all parts of the justice system, and their persistence must not be overlooked in future efforts to advance reform.

Our efforts in New Orleans to date have made clear that rebuilding the city's infrastructure is crucial. We know that the city government has already taken many steps toward this goal, but there remains a clear sentiment that the lack of infrastructure remains a considerable obstacle in ensuring high-quality job performance. From our meetings with key stakeholders, we also learned of the challenges of maintaining high morale in the face of the devastation. Rebuilding infrastructure can go a long way towards improving a sense of purpose and meaning for City employees and agencies. It will also help restore trust between communities and government agencies, which is particularly pertinent to the functioning of the justice system. Increased trust among

community members, police, and the district attorney, for example, will make it easier to protect public safety and ensure that violent offenders are not on the streets. Renovation of the city's infrastructure will help set the stage for criminal justice reform and should be a top priority.

This memo details our observations and suggestions for moving forward. We focus on four areas: early case assessment, pretrial release options, alternative sentencing, and municipal offenses. In each area, we suggest ways that New Orleans can rebuild its justice system to promote safety, justice, and efficiency. We also lay out steps that could be taken in the next six months to one year that would put the city in the position to implement the new initiatives. We did not examine policing strategies or programming for people returning from jail or prison and thus do not discuss those areas.

The four areas we focus on in this report come from our meetings with justice system stakeholders as well as our knowledge of policies and programs that have been shown to be effective in other jurisdictions. We chose areas that people we met with identified as areas of need and where there are policies or programs that have been shown to address those needs in other jurisdictions. These are areas where we thought the city could get the biggest "bang for its buck" —meaning achieve meaningful results in public safety, justice, and government efficiency—with a reasonable investment. We then reviewed our proposals in each of the four areas with the key justice system stakeholders. There was agreement in principle with all of the ideas.

In presenting examples of "best practices," we often include examples from New York because these are programs that Vera has helped to implement or evaluate, or is very familiar with. New Orleans is unlike any other city in the country and there are certainly important differences between it and New York. Nonetheless, we hope that these examples from our experience will be useful.

In general, the action plans for the next six to 12 months will require resources for meetings, research, data analysis, technical assistance, drafting detailed plans, and perhaps site visits. During that initial planning period, a price tag will be put on the first two to three years of implementing new initiatives. The detailed plans and projected outcomes should provide a strong basis for securing a combination of local and outside funding for those initial years. After that, the new initiatives should be sustainable through government funding sources.

Vera may be helpful in advancing some of these reforms, and other organizations, such as the Center for Court Innovation, might usefully assist with others. A large law firm may be able to provide some assistance *pro bono*. Where possible, New Orleans-based organizations, such as the Police and Justice Foundation, should play significant roles. But the will and the leadership will have to come from the residents of New Orleans and the people entrusted with changing the justice system.

I. EARLY CASE ASSESSMENT AND TRIAGE

A. NEW ORLEANS: CURRENT STATUS

Under Louisiana law, the district attorney's office has 60 days in a felony case and 45 days in a misdemeanor case to determine what charges, if any, it will lodge against an arrestee who is in custody.[1] If the district attorney fails to file formal charges within the statutory time frame the alleged offenders are released from custody or bond obligations under what is informally known as a "*701-release*," a reference to the statute that sets these conditions.

Determining what charges to bring involves assessing the circumstances of the arrest and the strength of the potential evidence in the case. It is common in justice systems around the country for district attorneys to decline to prosecute a substantial proportion—even up to half—of the cases that come in, for a variety of reasons. In New Orleans in recent years, it has taken until close to the statutory 45- or 60-day limit to make the charging decision. At that point, since Katrina, a significant number of people charged with serious crimes are released pursuant to Section 701: roughly 3000 in 2006, and 580 in January 2007 alone, according to the *Times-Picayune.*[2]

Part of the reason for these problems has been that, in New Orleans, the process for compiling and assessing the evidence has been sequential—that is, the police gather and package the evidence and then the district attorney's office examines it and makes a decision—and there has not been systematic communication between police and prosecutors during this process.[3] Thus, prosecutors have not been able to give police feedback on what evidence would be helpful to support a charge and what form it should take and the police have not been able to provide information about the circumstances of the arrest that might not appear in a formal police report but that might be helpful in assessing the case.

In addition, there is no consistent opportunity, short of the court appearance around the 45- or 60-day deadline after all of the evidence is compiled, for the DA to make a triage decision or the parties to resolve the case. In many other jurisdictions, there is a court appearance—either the arraignment within the first 24 hours or several days after that—at which the DA dismisses or reduces the charges or otherwise resolves weaker or less serious cases, but there is no such triage point in the current New Orleans system.[4]

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[1] La. Code of Criminal Procedure art. 701(B)(1).

[2] Gwen Filosa. Crime Thrives under 60-Day Rule. *Times-Picayune*, p. 1 (February 12, 2007).

[3] The Metropolitan Crime Commission analyzed the time each of these steps took pre-Katrina. Metropolitan Crime Commission. *Analysis of the Processing of State Felony and Misdemeanor Charges in New Orleans: Arrest Through Billing Decision*. New Orleans: MCC, 2002.

[4] We understand that preliminary hearings or case conferences are often scheduled in cases where the accused has a private attorney, but they are not routine in those cases and they rarely happen in cases with indigent defendants.

The impact of the lack of communication and the absence of an opportunity for triage is that people spend time in jail—at significant cost to themselves and expense to taxpayers—but are not formally charged with a crime. Also, people accused of violent or serious crimes are released because there is insufficient evidence to charge them, threatening public safety.

Police Superintendent Warren Riley and District Attorney Eddie Jordan are taking important steps to speed the completion of police reports and institute greater communication between police and DAs in serious cases. On March 15, 2007, they announced a plan to establish systematic contact between police officers and prosecutors, including requiring police officers to submit reports within five days of the crime and mandating that police officers meet with prosecutors for trial preparation at least 72 hours before court. In addition, Superintendent Riley and District Attorney Jordan announced their intention to reduce the number of defendants who are automatically released from jail after 45 or 60 days under Section 701. Training of police officers and prosecutors is beginning immediately and should be completed by June 2007. The Police and Justice Foundation has been supporting these important efforts. Moreover, both continue to explore other ways of improving interagency communication through electronic means, such as video conferencing. This effort should allow the DA to make a charging decision earlier and should reduce the number of cases where prosecution is declined or suspects are released for lack of evidence, because the police and prosecutors will work together to gather the evidence needed for prosecution.

B. BEST PRACTICES

Early Case Assessment Bureaus (ECAB)

Early post-arrest investigation and case preparation require a strong working relationship between police officers and assistant district attorneys. The goal of Early Case Assessment Bureaus (ECAB) is to strengthen and speed to court those cases for which a conviction can be obtained and reduce the charges or decline prosecution of those cases that do not have sufficient evidence or seriousness to sustain a charge.[5] Prosecutors assigned to ECAB units review arrest charges within hours of the arrest, during pre-arrest investigations, and sometimes go to crime scenes. Additionally, intake prosecutors gather information from law enforcement officials, victims, witnesses, and in some instances even the arrestee, to launch any additional investigation necessary to build a strong case and to determine whether prosecution should proceed on the original charge, proceed on a reduced charge, or be declined.[6] In order to accomplish these tasks, arresting officers and intake attorneys must communicate early and often.

Early post-arrest case conferencing between police officers and assistant district attorneys leads to increased conviction rates in cases where evidence can be gathered to prove the

[5] Early Case Assessment: An Evaluation, Vera Institute of Justice, 1977.
[6] A Second Look at Alleviating Jail Crowding: A Systems Perspective, U.S. Dept. of Justice, Bureau of Justice Assistance (October 2000).

offense beyond a reasonable doubt.[7] For example, during these early conferences the attorney can note the prevalence of hearsay accounts in the police narrative and the need for reliable eyewitness statements in order to sustain a conviction at trial. Similarly, the attorney can also point out the evidence necessary to support all elements of the charges or suggest ways to correct deficiencies related to poorly written statements. The police officers, in turn, can advise the attorney on the likelihood of gathering the necessary evidence and how much time the additional investigation will take. The police officer can also comment of the strength of a witness's credibility or challenges that will have to be overcome at trial. Together, the prosecutor and the police officer can build the necessary evidence to support charges, increasing convictions for cases where the evidence is strong.

Inevitably, some cases are lower priority in terms of protecting public safety or have weaker evidence. Quickly weeding out these cases is important. Dismissing or settling weak and low priority cases early leads to significant savings in pretrial detention costs, court administration expenses, and police and prosecution resources. As a result, police and prosecutors can focus their efforts on the zealous prosecution of the individuals and cases that pose the greatest threat to public safety.

Key Elements

Although ECAB units vary by jurisdiction, effective ECAB units have the following key elements:

- Assigned attorneys are required to assess arrest charges within *hours*, usually 24 to 48 hours, of the arrest;
- A communication method has been established between law enforcement and the DA's intake unit to facilitate early case conferencing between the arresting officer and the screening prosecutor;
- The units are supervised and staffed by experienced attorneys who can guide police officers in preparing and developing cases and can determine the appropriate charges; and
- A case tracking system exists to identify cases that should be prosecuted, disposed of through plea agreements, dismissed, or supplemented with additional investigation.

***Examples of ECAB units*:**

New York

The Vera Institute of Justice helped New York City pilot the ECAB system in 1975.[8] To improve the screening of felony cases, senior assistant district attorneys were assigned to the "Complaint Room." Only ADAs with at least two

[7] Early Case Assessment: An Evaluation, Vera Institute of Justice, 1977.
[8] Ibid.

years of experience were assigned to the ECAB team and the bureau chief was required to have a minimum of six years' experience. ECAB ADAs were expected to identify those felony cases that should be dismissed in the complaint room, prosecuted as misdemeanors, or sent without delay to the grand jury for felony prosecution. The goal was to increase the percentages of felony convictions and the severity of the sentences in cases that could be proven.

The ECAB team assessed the charges within hours of an arrest. Thus, ADAs and paralegals were expected to interview crime victims, witnesses and police officers to determine the appropriate charges and gather additional evidence necessary for the successful prosecution of the case. Under the supervision of experienced ADAs, the team then prepared the accusatory instrument to be filed in court and referred for arraignment.

In the initial ECAB design, there were five case tracking categories, A–E, to correspond with the seriousness and the viability of the case. Cases placed in track A, for example, were serious cases in which all elements necessary for a successful felony prosecution were present (for example, ballistics reports, reliable witnesses, a victim willing to testify). The paperwork and individuals were often taken directly from the complaint room to the grand jury for indictment. On the other hand, the cases in track E were those in which prosecution was declined because the complaining witness was uncooperative or the evidence was legally insufficient. The majority of the cases, however, fell into the B, C, or D track as cases that needed further evaluation before a charging decision could be made.[9]

Today ECAB is an integral part of each of New York City's five district attorney's offices (New York City is made up of five counties, each with its own elected district attorney). Each office has tailored the bureau to meet its specific county goals and has improved the initial system. In Queens County, for example, the DA's Intake Bureau, which assesses approximately 70,000 arrests annually, has emphasized the use of technology as a means of creating an efficient early case-management system. Towards this end, the office implemented its arrest-to-arraignment computer system, which allows the bureau to take a proactive role in investigating crimes soon after an arrest. Additionally, there is a complaint system that electronically links the arresting officer and the assigned ADA allowing the office to work with the police department in preparing the accusatory instrument and crime report to ensure their accuracy and thoroughness before they are sent to court. Last, the DA introduced a vertical prosecution system in which the ADA assigned at intake continues to prosecute the case in criminal court. The vertical method minimizes inconvenience to victims and witnesses who are interviewed at the outset. As a result of these initiatives, in 2006 the Queens DA's average time to have a complaint sworn was eight hours and 47 minutes and the average arrestee was arraigned in just 20 hours, making it the most efficient office in New

[9] Ibid.

York City both in the time taken to file an appropriate accusatory instrument and in arraigning defendants in a fair and timely manner.[10]

Wisconsin [11]

In Milwaukee County, Wisconsin, the prosecutor, working with the arresting officer, screens the cases of all incarcerated defendants within one working day of the arrest to determine the appropriate charges. The process usually consists of the prosecutor conferencing with the arresting officer and examining police reports and any other information about the alleged crime. Moreover, the prosecutor often meets with the complainant and the arrestee and then decides whether to file charges within 24 hours after an arrest on a weekday and within 36 hours on a weekend.

Ohio[12]

In Lucas County, Ohio, a special prosecution unit screens all warrantless arrests (approximately 50 percent of all felony charges) by telephone with the arresting officer and decides immediately whether to file a case. According to the Lucas County prosecutor, this screening process has resulted in reduced jail admissions and shorter periods of confinement for offenders whose felony charges are reduced.

Oregon[13]

In Multnomah County, Oregon, the prosecutor's office screens cases within one day of arrest and provides discovery information to the defense counsel at the initial arraignment to help speed case processing, followed by an early case conference. Although the prosecutor has five judicial days to make a charging decision for incarcerated defendants, an attempt is made to have the lower-level felony and misdemeanor cases disposed of in two to three days.

C. PROPOSALS FOR NEW ORLEANS

Improve Communication Between Police and District Attorneys and Create an Early Triage Point

Superintendent Riley and District Attorney Jordan are already improving communication between police and district attorneys and speeding charging decisions.[14] This is a

[10] Queens District Attorney's Office, Intake Bureau 2006. All numbers were supplied by the NYPD – Criminal Justice Bureau, http://www.queensda.org.
[11] A Second Look at Alleviating Jail Crowding: A Systems Perspective, U.S. Dept. of Justice, Bureau of Justice Assistance (October 2000). This applies to following sections on Wisconsin, Ohio, and Oregon.
[12] Ibid.
[13] Ibid.

significant step toward a more efficient system. It should result in stronger evidence and more convictions and reduce 701 releases for serious crimes. To be consistent with good practices in case processing, New Orleans should move toward a system where DAs and arresting officers discuss a case within the first 24 hours after arrest. In this new system, the district attorney makes a charging decision within a few days, filing charges where there is strong evidence in hand, declining to prosecute cases in which sufficient evidence cannot reasonably be obtained or the circumstances do not warrant going forward, and reducing charges when warranted.

Conferencing each case within 24 hours will be logistically challenging. The city might identify an office for district attorneys at the Orleans Parish Prison so the case conference can take place when the police officer brings the suspect to jail intake, avoiding the need for a separate trip to the DA's office.[15] Other options are to use videoconferencing so that the police can conference cases from their districts, or even to use teleconferencing in nonviolent, non-serious cases. The goal is to avoid taking police officers off the streets for significant amounts of time to conference minor offenses. Nonetheless, it is important that the minor cases be conferenced.

In addition, the courts, the public defender, and the district attorney should create a court appearance that occurs in every case within six days after arrest, which would be the time by which initial triage decisions are made.

These initiatives (including the one already being undertaken by the DA and the superintendent) would have several positive effects:

- More of the serious cases would be charged and would result in convictions because police and prosecutors would be working together to develop evidence that could stand up in court.
- People against whom there is not sufficient evidence to be charged with a crime would spend less time in jail, saving money currently spent on jail beds and avoiding depriving people who will not be charged of their liberty.
- All of the players in the system—district attorneys, police, courts, public defenders, the sheriff—would be able to spend less time on cases that would ultimately be dismissed or reduced and instead focus their resources on serious and violent cases.

Action Plan for the Next Six to Twelve Months

Implement Mr. Jordan's and Chief Riley's new initiative. The first priority is to effectively implement the important initiative that was recently announced. The City Council, other government agencies, organizations, and the public must support the police superintendent and the district attorney. This new initiative changes routines in the criminal justice system and requires numerous people working within that system to

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[14] Riley, Jordan unveil new agency policies, Changes should foster cooperation on fighting crime, The Times-Picayune, March 16, 2007.

[15] We recognize that the Sheriff is operating out of temporary space and there may not be additional room for DA's.

perform new functions or to do their work differently, so implementation will not be easy. To make success more likely, we suggest the following steps:

- Document new procedures in writing. Procedures will not work perfectly at first and will have to be revised, but they will be more likely to succeed if everybody is clear on what they are. Written procedures should include:
    - what the police report will consist of and when it will be completed,
    - which cases will have a conference between a police officer with knowledge of the circumstances of arrest and the DA,
    - who from the DA's office will conduct these conferences and how much experience that person will have,
    - what format the conference will take (for example, what questions will the DA ask, what issues will be discussed, what feedback will be given on investigation); there should be a standard format for these conferences that police and DA's agree on and expect,
    - how the conference will be followed up; in cases in which further investigation is necessary, what the process for sharing the progress and results will be, and
    - where case conferences will take place and within what time frame; which cases can be conferenced by video or telephone.
- Systematically collect information about how the new procedures are working. This may involve having an impartial researcher observe a sample of conferences and track their results as well as analysis of data on all cases, including on when charging decisions are made. It may also involve interviewing police officers and DA's to get their feedback on how the procedures can be improved.
- Convene regular meetings between district attorney staff and police officials to review how the procedures are working and address glitches.
- After four to six months, review information collected and revise operating procedures with input from all parties involved.

Begin routine case conferences/triage decisions six days after arrest. The new procedures for speeding case processing and improving communication between police and DA's should increase the number of cases that are charged and convicted. However, without a routine case conference within six days, the police and district attorneys will devote their resources to cases that will ultimately be dismissed, rather than to stronger or more serious cases. Accordingly, we suggest taking steps in the next six months to plan and implement regular case conferences within six days after arrest. This process would involve the following steps:

- Convene a working group to oversee the effort. The working group should involve representatives from the courts, the public defender, and the D.A.'s office, and perhaps others. These parties would all be essential to developing and implementing new procedures. They should meet regularly during the planning period and during the pilot.

- Draft procedures for early court appearances. They should include how the cases to be conferenced will be flagged, what will occur at the conferences, etc.

- Determine what resources are required for routine case conferences. They will include any additional staff, data systems, etc. This analysis will form the basis for securing funding for broader implementation.

- Begin case conferences for a subset of cases.

- Analyze the experience, adjust procedures, and make a plan for wider implementation.

II. PRETRIAL RELEASE OPTIONS

A. NEW ORLEANS: CURRENT STATUS

In New Orleans, if a person is arrested without a warrant, the arresting officer must "promptly" complete an affidavit of probable cause and submit it to the magistrate for a probable cause determination.[16] People who are arrested on state charges must appear before a magistrate or commissioner within 48 hours of being arrested for a custody determination.[17] Due to current infrastructure conditions, which make transporting offenders safely to the courtroom difficult, the majority of the first appearances take place via video conferencing. Rebuilding the infrastructure so arrestees can be safely taken to the courtroom for in-person arraignments will improve the quality of those hearings.

Under Louisiana law, magistrates are to set bail to "insure the presence of the defendant, as required, and the safety of any other person and the community."[18] Magistrates and commissioners consider the alleged charges, the defendant's prior criminal history, including whether there are any outstanding warrants, and any information the public defender provides about the defendant's ties to the community (such as employment or residence), making a determination based on their experience and common sense. The public defender is able to provide only limited information, and only for a very small proportion of the defendants. For most defendants, the magistrate or commissioner does not get information on factors relevant to risk of flight such as residence, whether the accused has family in New Orleans, whether the accused is employed, and whether the accused has failed to appear in past proceedings, and thus cannot systematically consider this information in decision making. There is no system for verifying such information as the defendant's address, or for notifying relatives to appear in court for the custody determination.

The system does not have a mechanism for tracking and analyzing whether those who are not detained appear in court or reoffend while their cases are pending, or for testing whether people with certain characteristics can be safely released on their own recognizance or with supervision.

We do not have data on custody determinations, but according to our limited observations, all defendants are assigned a bond at the initial appearance.[19] For a relatively small proportion, who were being extradited to other states, bond was suspended (i.e., they were not able to be released from detention). Another small proportion was assigned to drug court with electronic monitoring.[20] It appears that no defendants are released on their own recognizance. An analysis of pretrial release in

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16 Louisiana Code of Criminal Procedure, Art. 230.2.
17 There is one Magistrate, who is elected, and four appointed Commissioners**.**
18 Louisiana Code of Criminal Procedure, Art. 334.
19 Vera staff observed first appearances on February 5, 2007.
20 There are currently two electronic monitoring programs that are funded by the city to supervise people awaiting trial. It is our understanding that they are currently operating below capacity.

1999-2000 by the Metropolitan Crime Commission of New Orleans and the national Pretrial Services Resource Center indicated that almost 20 percent of defendants were released on their own recognizance (most two or more days after arrest) but it is unclear to what extent this practice continues today.[21] There is no pretrial *supervision* option other than electronic monitoring.

Some low-level offenders are released on their own recognizance through the Criminal Sheriff's CINTAP (Central Intake for Alternative Programs) program. Staff members review the criminal history of a new arrestee and, if possible, look at other factors such as living arrangements and employment. Arrestees deemed to be a low risk for failing to appear in court or reoffending pending trial are released on recognizance pending resolution of their cases.

Once billing charges are filed, the case is randomly assigned to one of the 12 sections of the court for continued prosecution. The Louisiana Code of Criminal Procedure Article 342 permits the court with jurisdiction over the case to increase or reduce the amount of bail assigned by the magistrate. Because at least one judge abused this process, the Metropolitan Crime Commission recommended that judges modify bail bonds only following contradictory hearings, as required by statute in Orleans Parish.[22] As a result of the judge's abuse of the process, people who were threats to public safety were released and committed new offenses. The judge was suspended from the bench by the state Supreme Court last October.[23]

The typical result of a system where virtually everyone is bonded is that whether people are held in jail depends on whether they or their family have the money to post bond. Some poor people who would appear for court and not threaten public safety remain in jail even on low bonds, while others who may pose a threat to the public but who have the means to post a high bond can go free. Moreover, jail beds may be taken up by people who do not need to be detained.

B. BEST PRACTICES

Risk Assessment Instruments

Judges, prosecutors, and defense lawyers each have their own ideas, based on their experience, about which people are likely to flee or pose a danger to the community. These perceptions may or may not be accurate. But it is possible to analyze data on people who are not detained while their cases are pending to determine which characteristics are statistically correlated with flight or reoffense in a particular

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[21] Report of Metropolitan Crime Commission and Pretrial Services Resource Center, 2002, p. 3-4.

[22] Metropolitan Crime Commission. Research in Brief: An Analysis of Bail Bond Reductions in Orleans Criminal District Court. New Orleans: MCC, March 2005 < http://www.metropolitancrimecommission.org/Bail_Bond_Analysis_March_2005_-_final.pdf> (27 March 2007).

[23] Maggi, Laura. Elloie Suspended by La. High Court. *Times-Picayune,* 13 October 2006, p. 1.

jurisdiction. This analysis can then form the basis of a risk assessment instrument, which produces a recommendation based on empirically determined risk. The variables are often given weighted values (points). A RAI's recommendations generally are not binding on the judge, but provide a strong, objective basis for determining which defendants can be safely released to the community pending trial.[24] A well-designed RAI can make release recommendations more objective and consistent and improve the accuracy of decision making.[25] As a result, people who are a threat to public safety are kept in detention and those who can be released, with our without conditions, without threatening public safety, do not crowd the jails.

Using the least restrictive conditions possible for people whose cases are pending.

Whether or not a risk assessment instrument is used, placing people who have been arrested under the least restrictive conditions possible while their cases are pending avoids unnecessary use of resources that could instead be used to protect public safety and also avoids unnecessary infringement on the liberty of people who have not yet been convicted of a crime. People who are a threat to public safety need to be detained. But most jurisdictions release a significant percentage of people arrested on their own recognizance, with no bond, without compromising public safety. Nationally, a significant percentage of defendants charged with felony offenses are released on recognizance or nonfinancial obligation pending trial. According to the U.S Bureau of Justice Statistics, in 2002, in the 75 most populous jurisdictions in the United States, felony defendants were released on recognizance in 23 percent of cases.[26] In 2004, in federal prosecutions, 25 percent of all defendants released following the initial court appearance were released on recognizance or an unsecured bond.[27] In 2005, in New York City, release on recognizance was granted in 25 percent of cases in which defendants were charged with a class A or B felony.[28]

In general, people accused of crimes for which the maximum punishment is a fine or a short time in jail are not held in jail while their cases are pending. In New York City, for example, in 2005, release on recognizance was granted in 70 percent of the cases where the defendant was charged with an A misdemeanor and 80 percent of the cases with a top charge less severe than a class A misdemeanor.[29]

For some people who cannot reasonably be expected to appear in court and not threaten public safety if released on their own recognizance, courts use release on nonfinancial conditions, such as unsecured or personal bond (in which the defendant does not pay any

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[24] *Controlling the Front Gates,* Pathways to Juvenile Detention Reform (A project of the Annie E. Casey Foundation) 1999.
[25] *Pretrial Services Programming at the Start of the 21st Century*, A Survey of Pretrial Services Programs, Washington, DC: US Dept. of Justice, Bureau of Justice Programs, 2003.
[26] *Felony defendants in Large Urban Counties*, 2002, Washington, DC: US Dept. of Justice, Bureau of Justice Statistics, 2006.
[27] Compendium of Federal Justice Statistics, Washington, DC: US Dept. of Justice, Bureau of Justice Statistics, 2005.
[28] NYC Criminal Justice Agency, 2005 Annual Report, at pg. 18.
[29] Ibid.

money to the court, but is liable for the full amount of bail if there is a failure to appear); or conditional release (in which defendants are released under conditions that might include supervision or curfew monitoring or electronic monitoring).

Pretrial Services Programs

Pretrial services agencies have been operating in the United States for over 45 years. As of 2004, all 94 districts in the federal court system and more than 300 localities operated a pretrial services program ranging in size from a single staff person in some rural areas to more than 200 staff persons in some large urban jurisdictions.[30] These agencies or programs perform key functions that enable decisions concerning release or detention to be fairer and more effective.

In general, prior to the first court appearance, pretrial services staff collect, verify, and document information about the defendant's background and current circumstances that is pertinent to the court's decision concerning the release or detention of the offender while the case is pending. Pretrial services staff also present information relating to the risks of failing to appear or reoffending and recommend conditions that could be imposed to respond to risk. Pretrial services agencies also develop supervision strategies that respond to the risks posed by the released defendants.[31]

Many jurisdictions release defendants before trial and supervise their release using electronic monitoring. In 2003, for example, 54 percent of pretrial programs around the country used at least one form of electronic monitoring for a subset of defendants they supervised.[32] Electronic monitoring is usually used in combination with house arrest, curfews, or other restrictions on defendants' movements to help ensure that defendants will appear for trial and will not re-offend while trial is pending. Pretrial release under electronic monitoring supervision can be effective for defendants who would otherwise be detained while awaiting trial.[33]

To avoid releasing defendants under electronic monitoring supervision who might otherwise be released on recognizance, and to ensure that appropriate candidates are released under electronic monitoring, pretrial release programs assess a variety of factors. These include: the nature and circumstances of the offense, history of criminality and violence, prior performance on other forms of community supervision, and whether the

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[30] *Pretrial Services Programs: Responsibilities and Potential*, National Institute of Justice: Issues and Practices in Criminal Justice, March 2001.

[31] *Standards on Pretrial Release* 3rd Edition, National Association of Pretrial Services Agencies, October 2004.

[32] *Pretrial Services Programming at the Start of the 21st Century: a Survey of Pretrial Services Programs.* Washington, DC: US Department of Justice, Bureau of Justice Assistance, July 2003; Cooprider, Keith W., and Kerby, Judith. A Practical Application of Electronic Monitoring at Pretrial Stage. *Federal Probation* 54(1): 28-33 (March 1990); Cadigan, Timothy P. Electronic Monitoring in Federal Pretrial Release. *Federal Probation* 55(1): 26-32 (March 1991); Padgett, Kathy G., Bales, William D., and Blomberg, Thomas G. Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring. *Criminology & Public Policy* 5(1): 61-91 (February 2006).

[33] Cooprider and Kerby, note above.

defendant was detained at initial appearance. Federal and state pretrial services programs for electronic monitoring supervision target offenders who are riskier than offenders released without electronic monitoring; that is, defendants under electronic monitoring are charged with more serious crimes, have a history of failing to appear, are substance-dependent, and so on. Because release under electronic monitoring supervision is more expensive to administer than ROR, and to avoid imposing unnecessary infringements on the liberty of defendants who would comply without extra monitoring, it is good practice for electronic monitoring supervision to be used only for more serious offenders.[34]

Examples of Pretrial Services Programs

New York, New York

The New York City Criminal Justice Agency, Inc. (CJA), which provides pretrial services in New York City's criminal courts, is a not-for-profit corporation serving the city's criminal justice system under contract with the Mayor's Office of the Coordinator for Criminal Justice.[35] CJA aims to decrease the number of days spent in detention by defendants who could be safely released to the community while awaiting trial; to reduce the rate of nonappearance in court by defendants released pretrial; and to provide information and research to criminal justice policy makers and the public.

To achieve its goals, CJA interviews all newly arrested persons between their arrest and first court appearance and makes custody recommendations to the judicial officer. It mails or calls all released defendants to remind them of their scheduled court dates. The agency also stores data on all arrests in the City and produces reports on criminal justice system performance. By providing information on a defendant's likelihood of returning to court, CJA helps arraignment judges make more informed release decisions and fosters the use of release on recognizance. Additionally, CJA has helped the courts to refine their risk assessment instrument by periodically analyzing data to make sure the instrument is measuring factors that are currently associated with risk. CJA's contributions in the early stages of prosecution have been essential in saving New York City jail resources and in reducing the rate of failure to appear in court.[36]

Harris County, Texas

Pretrial Services is a department that is overseen by the Harris County Commissioners Court.[37] The department investigates and compiles information

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[34] Cadigan, note above.
[35] New York City Criminal Justice Agency, Factors Influencing Release and Bail Decisions in New York City, Part 3: A Cross-Borough Analysis, by Mary T. Phillips, Ph.D, (July 2004).
[36] Siddiqi, Qudia. *An Evaluation of CJA's New Release-Recommendation System: Research Brief no. 13.* New York: New York City Criminal Justice Agency, January 2007.
[37] http://www.co.harris.tx.us/pretrial.

on people who are charged by Harris County with a felony or a class A or B misdemeanor offense after arrest and before the initial appearance.

Department personnel talk to family members and friends of the defendant to collect information regarding his or her eligibility for release. The department also incorporates information received from complaining witnesses, when available. Moreover, interested parties are informed of upcoming court dates for defendants under supervision. Staff also prepare a written report to guide the decision on which defendants can be released on personal bond. Under the Texas Code of Criminal Procedure, a personal bond requires the defendant to take an oath to appear in court, and no money is required for his release. A defendant released on personal bond, however, is liable for the amount of the bond in the event that he or she fails to appear for a scheduled court date.

If the court releases the defendant on personal bond or on other conditions of release, staff monitor and enforce compliance and report noncompliance to the court. The department structures all activities to assure appearance in court and to minimize danger to the community. People who cannot comply with the conditions are redetained.

Kentucky

The Kentucky State Legislature established the Pretrial Services and Court Security Agency in 1976 to replace the commercial bail bonding system.[38] The agency has 220 staff members located in 60 offices, serving a population of approximately four million. They conduct interviews around the clock in Louisville, Lexington, and the Kentucky sector of the Cincinnati metropolitan area. Interviewers are on duty 16 to 20 hours per day in smaller cities and on call at all other times. The pretrial services agency reviews its risk assessment point-scoring system every two years.

Monroe County, Florida

Pretrial operations began in Monroe County in 1988 in response to rising caseloads and overcrowding in jails.[39] Monroe County includes the Florida Keys plus a portion of the mainland located within the Everglades National Park. It has a population of only 78,000, but receives more than four million visitors each year. The pretrial services program has nine staff members who are assigned to the main office in Key West, the detention center in Key West, and several satellite locations. Staff use a risk assessment instrument to develop a recommendation concerning release on recognizance or supervised release. No recommendation is made concerning release on money bond. Additionally, staff update interviews and verify information on defendants who have been unable to

[38] Pretrial Services Programs: Responsibilities and Potential, U.S. Dept. of Justice, National Institute of Justice (March 2001), pg 11.
[39] Ibid, at 15.

make bond and make written recommendations for any defendant deemed eligible for supervised release.

C. PROPOSALS FOR NEW ORLEANS

New Orleans should create a system in which pretrial release or detention decisions are based on an evidence-based risk assessment instrument, there is a process for collecting and verifying information relevant to risk, there is a range of release options from release on recognizance to detention (including pretrial supervision without electronic monitoring, electronic monitoring, and day reporting) that are used at the initial appearance, and defendants are placed in the least restrictive option possible.

Such a system would have several positive effects:

- People who pose a risk to public safety will be detained and there will be an objective risk assessment that will have to be taken into account if bond reduction is considered.
- People who are not high risks of flight or reoffense and who do not have enough money to post bond will not be detained simply because they are poor.
- People will not be unnecessarily detained after arrest. This change will build trust and faith in the justice system and will enable some people to maintain jobs and provide financial and emotional support to their families while their cases are pending
- The city will be able to devote more resources to protecting public safety and preventing and fighting violent crime.

Action Plan for the Next 6 to 12 Months

Given resource constraints and the areas of greatest need, reform in this area will be a longer-term undertaking than some of the other areas this report discusses. We propose starting with the steps outlined below. Two of these which can be implemented relatively quickly and are likely to have a significant impact are: taking greater advantage of release on recognizance and expanding the use of electronic monitoring.

- Analyze data on a cohort of people arrested from January 1, 2006 to June 30, 2007. This would involve obtaining electronic data files from several criminal justice agencies. The analysis would allow the city to better understand to what extent people are remaining in detention because they cannot afford relatively low bonds, whether there is a subset of the population that does not pose a threat to public safety that is being detained, and whether people who do potentially pose a threat are being released, either on bond or pursuant to section 701. A recidivism analysis would identify characteristics of repeat offenders and help to determine more effective sanctions.

- Learn more about the CINTAP program implemented by the sheriff and the Court Intervention Services (CIS) program. It appears that the CINTAP program is currently performing the functions of gathering and verifying information related to risk and recommending release for those who can safely be released. The city could examine the scope of this program and determine whether it could form the basis for further work in this area. In addition, in the past, the CIS program has conducted some pretrial services functions; the history and status of this program should be explored.

- Identify a subpopulation that could potentially be safely released on its own recognizance. This would come out of the data analysis and further examination of research in the field. Initial analysis of the New Orleans jail population on December 12, 2006 indicated that up to 41 percent of the jail population meets release criteria commonly used in other jurisdictions (see Appendix A). This inquiry should identify whether people are being released on their own recognizance two or more days after arrest (as they were in 1999-2000), and, if so, determine whether they can be released at the initial appearance.

- Assess the current electronic monitoring program and determine whether it can be made more effective and encompass more people. This would involve understanding how and for whom electronic monitoring is currently used, assessing whether the two existing electronic monitoring programs can be improved, and determining whether there are more people who might be safely released to electronic monitoring.

- Develop an initial set of criteria for release specific to New Orleans that can be tested. Traditionally, risk assessments and release determinations consider things like the length of time a person has lived at his or her address. Given the large-scale displacement in New Orleans, this is not likely to be appropriate. The city could explore other factors that might be associated with people's likelihood to appear in court and not reoffend. It would also be useful to determine how these criteria might be verified in a cost-effective way. This would likely involve collecting relevant data on a sample of arrestees and attempting to verify it.

- Develop a plan to release low-risk offenders on their own recognizance and to increase the use of electronic monitoring. Plans would be based on the initial steps described above.

- Determine whether additional pretrial release options (for example, personal recognizance bonds, a pretrial supervision program without electronic monitoring, or other programs to notify people of court dates and encourage appearance) should be created and, if so, develop a plan and a budget to pilot them.

- Determine the feasibility and cost of creating a separate pretrial services agency and alternative ways of performing a pretrial services agency's functions.

III. ALTERNATIVE SENTENCING OPTIONS

A. NEW ORLEANS: CURRENT STATUS

We did not do a thorough review of sentencing options in New Orleans or an empirical analysis of what sentences are actually imposed. However, from our discussions and observations, it appears that for state offenses, New Orleans does not currently have substantial alternative sentencing programs and does not make significant use of sanctions other than prison or probation. We understand that a small number of offenders are sentenced to community service, which generally involves cleaning and maintenance tasks in the courthouse under the supervision of court staff. Our discussions indicate that the court and the parties would consider alternative ways of achieving the justice system's goals for those who have been convicted, but that there are not many options available that effectively serve the criminal justice system's goals.

Louisiana makes good use of problem-solving courts. New Orleans has a significant drug court and, for four years, has operated a mental health court. Seven of the 12 criminal court judges have drug court caseloads. Despite limited treatment options, these drug courts have gotten back up and running post-Katrina, although they are operating at approximately 25 percent of pre-Katrina levels. Defendants must plead guilty, accept treatment, and agree to follow a strict program for several months that includes weekly drug tests, regular treatment sessions, and a curfew. If defendants successfully complete drug treatment, their jail sentences are set aside.

The mental health court, presided over by Judge Calvin Johnson, hears cases for defendants with mental illness and developmental disabilities. The court has a partnership with the mental health department, and has set up a clinic across the street staffed by a pharmacist, a nurse, and a psychiatric social worker. The court handles approximately 55 individuals at a time. It is our understanding that defendants do not appear in the drug court or mental health court until after they are formally charged, which is often six to eight weeks after they are arrested.

Sheriff Marlon Gusman currently administers a community service program for people serving jail sentences in which inmates help maintain parks and assist with community events. Although this is not an alternative sentence, it is indicative of the feasibility of implementing a community service program. The demand for assistance on projects such as rebuilding and maintaining parks is great. He also administers a work release program, where people at the end of their state prison sentences work at various sites dressed in civilian clothes.

B. BEST PRACTICE

A Range of Sanctions or Sentences for People Convicted of Crimes

In general, under an alternative sanction program, offenders avoid incarceration if they satisfy certain conditions, such as performing community service, participating in residential and nonresidential programs, or participating in a victim-offender reconciliation program. The goal of alternative sentencing is to provide the judicial officer with sentencing options that maintain community safety, make the offender "pay back" the community, and address factors that underlie the criminal behavior, such as educational deficiencies, lack of employment skills, and substance abuse.

Community Service

Community service can function as an alternative to incarceration, particularly for low-level offenses, that benefits the community in many ways. From a fiscal perspective, community service sentences reduce or eliminate the substantial costs of incarcerating offenders. From a punitive perspective, community service can amount to "just desserts," particularly when the penalty is matched to the offense (e.g., when a drunk driver is assigned to work in a hospital emergency room). From a retributive perspective, unpaid community-service labor is a responsibility which demands more of an offender than a fine. From a rehabilitation perspective, completing community service provides a fulfilling opportunity for offenders to give back to the community.[40]

In Minnesota, which has had a sentencing-to-service program since 1986, the state Department of Corrections reported a steady increase in the number of jail days saved and the number of hours of labor completed by offenders in the program. In fiscal year 2002, the state invested just over $3 million in the program. The department report concluded: "When you consider the estimated market value of the projects completed ($8,161,785) added to the estimated value of jail days saved ($1,994,748), the benefit to cost ratio exceeds 3:1."[41]

Perhaps most importantly for New Orleans, service programs create a critical labor force that can be mobilized to build new structures, paint houses, maintain public spaces, and perform other aspects of disaster relief. In the wake of Katrina, this type of service could play a vital role in addressing the devastation and restoring the infrastructure of the city.

In the best community service programs:

- A community service assignment corresponds to the nature of the offense.

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[40] Michael Tonry. *Intermediate Sanctions in Sentencing Guidelines.* U.S. Department of Justice, National Institute of Justice, 1997, p.11, available at https://www.abtassociates.com/reports/intermediate.pdf.

[41] Minnesota Department of Corrections. *Sentencing to Service Program Review/Assessment Report.* St. Paul: DOC, 2003, p.9, available at http://www.doc.state.mn.us/publications/pdf/stsreviewassessment2003.pdf (27 March 2007).

- Community service is combined with educational or skill-building opportunities.
- A work placement is matched to the offender's skills, which requires a broad spectrum of community service opportunities to exist.
- The work meets clearly defined community need, which is made clear to the offender.
- Offenders work alongside conventional adult volunteers when providing community service.
- The community service work is located in the offender's neighborhood, when possible; offenders are involved in planning and executing projects: the program provides a sense of accomplishment and community recognition.[42]

Example of a Community Service Alternative Sentence Program

In 1990, Connecticut responded to burgeoning prison populations and massive expenses for new prison and jail construction by enacting legislation to create a statewide Office of Alternative Sanctions (OAS) and to empower judges to sentence offenders directly to intermediate sanctions programs. The OAS was charged with developing alternatives to incarceration for low-risk pretrial and post-adjudication offenders. The OAS is organized within the Court Services Support Division of the Connecticut Judiciary; the Office of Adult Probation and Bail Commission are among other services in that division. The OAS established 17 Alternative to Incarceration Centers around the state (one for each state trial court) that are operated by private nonprofit agencies. The Centers provide supervision, substance abuse treatment, educational and vocational assistance, counseling, and community service opportunities."[43]

Connecticut has developed alternative sanction programming for virtually every offender who does not have to be incarcerated, including the Alternative to Incarceration Centers, day incarceration, and inpatient treatment.[44] The OAS operates three community service programs including community service through the Alternative to Incarceration Centers, the Community Service Labor program, and Project Green.

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[42] These practices are distilled from several sources. See Bouffard, Jeffrey A., and Lisa R. Muftic. Program completion and recidivism outcomes among adult offenders ordered to complete a community service sentence. *Journal of Offender Rehabilitation* 43(2): 1-33 (2006); Oregon Department of Corrections. *The Effectiveness of Community-Based Sanctions in Reducing Recidivism*. (Salem, Ore.: Oregon DOC, 2002); Harris, Robert J., and T. Wing Lo. Community service: its use in criminal justice. *International Journal of Offender Therapy* 46(4): 427-444 (2002); Tonry, Michael. *Intermediate Sanctions in Sentencing Guidelines.* U.S. Department of Justice, National Institue of Justice, 1997.

[43] Coleman, Patrick J., Jeffrey Felten-Green, and Geroma Oliver. Connecticut's alternative sanctions program. *BJA Practitioner Perspectives* (October 1998), p. 2.

[44] Connecticut General Assembly. Legislative Program Review & Investigations Committee. *Pretrial Diversion & Alternative Sanctions: Staff Briefing*. Hartford: Committee, 2004.

The Community Service Labor program is for minor drug offenders. First-time offenders must complete 14 days of community service and a drug education program. In exchange, offenders receive a deferred prosecution or a suspended sentence. Recidivists are permitted to participate under more stringent terms, including 30 days of community service. Offenders pay their own program fees, but no one is excluded for inability to pay. This program is operated by nonprofit agencies.

Project Green combines community service in state parks with substance abuse treatment. A small residential program (49 beds), the program offers offenders employment readiness, case management, team-building, and life skills training. Both accused and sentenced individuals are eligible, and the program focuses on those who have not succeeded in other, more traditional substance-abuse programs. The community service component is coordinated by the Department of Environmental Protection and the nonprofit agencies.[45]

Drug Treatment Programs

Drug treatment alternative sentencing programs have been implemented to divert prison-bound felony offenders to residential drug treatment. The underlying premise is that defendants will return to society better equipped to resist drugs and crime after a treatment program than if they spend comparable time in prison at nearly twice the cost.

Drug courts combine treatment with judicial monitoring. Drug court participation has been found to lower participants' prospects of re-arrest and to increase the likelihood of program completion. More broadly, drug courts have been shown to generate cost savings from reduced incarceration rates and to bridge the gap between the courts and the treatment/public health systems.[46] The drug court model for delivering judicially-monitored treatment to drug-dependent offenders is already in place in New Orleans.

For drug courts to succeed they must ensure that offenders are enrolled in treatment programs that offer the most effective treatment strategies for criminal offenders, not just the drug-treatment programs that are readily available in the community.[47] Well-conceived treatment combined with the full weight of enhanced judicial monitoring and supervision offers the promise of breaking cycles of drug dependence and criminality.

Example of a Residential Drug Treatment Alternative Sentence Program

In 1990, the Kings County district attorney in Brooklyn, New York, initiated the Drug Treatment Alternative to Prison (DTAP) as the first prosecution-run

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[45] Ibid.

[46] Belenko, Steve. Research on Drug Courts: A Critical Review. *National Drug Court Institute Review* 1(1): 1-42 (Summer 1998); Goldkamp, John S., Michael D. White, and Jennifer B. Robinson. Do Drug Courts Work? Getting Inside the Drug Court Black Box. *Journal of Drug Issues* 31(1): 27-72 (Winter 2001).

[47] Taxman, Faye S. Unraveling "What Works" for Offenders in Substance Abuse Treatment Services. *National Drug Court Institute Review* 2(1): 91-132 (Winter 1999).

program in the country to divert prison-bound felony offenders to residential drug treatment. The program targets drug-addicted defendants arrested for nonviolent felony offenses who have previously been convicted of one or more nonviolent felonies.

Qualified defendants enter a felony guilty plea and receive a deferred sentence that allows them to participate in a residential therapeutic community drug treatment program for a period of 18 to 24 months. Those who successfully complete the program have their charges dismissed; those who fail are sentenced to prison. Additionally, to prevent relapse and reduce recidivism, the DA's Office has formed a Business Advisory Council to identify and develop employment opportunities. DTAP also employs a job developer to assist program graduates in finding and maintaining employment.

A five-year National Center on Addiction and Substance Abuse evaluation of DTAP found that participants who completed the program and graduated were 33 percent less likely to be rearrested, 45 percent less likely to be reconvicted, and 87 percent less likely to return to prison than the comparable prison group.[48] Additionally, the evaluation revealed that DTAP graduates were three and a half times more likely to be employed after graduation than before their arrest.[49] Moreover, these results were achieved at half the cost of incarceration.[50]

Restorative Justice

Restorative justice is an alternative to the regular criminal process that aims to bring together those most affected by a harm to arrive at a resolution that promotes accountability, safety, healing, and repair for all parties and the community. Jurisdictions around the country are increasingly employing restorative justice strategies.

Restorative justice has several key features. First, it is based on the belief that those impacted by harm should have a say in how that harm is addressed. It aims to repair harm, emphasizing accountability over punishment and healing over retribution. It also emphasizes community—both by regarding individuals as members of communities and by seeking to restore offenders and victims alike into whole, contributing members of society. Finally, restorative justice is a process. It does not dictate outcomes, but instead provides processes to determine outcomes that promote public safety and healing.

The most common restorative justice procedure is victim-offender mediation, which involves the two directly impacted parties and a neutral mediator. Two other restorative justice procedures are conferences, which are facilitated by a mediator and include not only the two primary parties, but other individuals who are close to them or have been affected by the harm; and circles, which typically involve many more participants or

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[48] Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program, National Center on Addiction and Substance Abuse (CASA), March 2003.
[49] Ibid.
[50] Ibid.

stakeholders than these other types, including interested community members, elders, and what might be regarded as more peripherally affected parties. These processes, always conducted with the consent of both victim and offender, typically result in an array of agreed upon outcomes, including, for example, letters of apology, engagement in drug treatment, financial compensation, and community service. The most successful restorative justice programming involves accountability measures to ensure that offenders complete their end of the agreements, as well as referrals for victims to appropriate services. Diversions to restorative justice processes can take place without a case ever being referred to court, alongside or in place of court process, or as part of sentencing.

Although there is a limited amount of research on restorative justice programs, the research that has been conducted has shown them to be successful at achieving criminal justice goals. Restorative justice programs lead to high satisfaction with the justice system. Expression of satisfaction with victim-offender mediation is consistently high for both victims and offenders across sites, cultures, and seriousness of offense: typically, eight or nine out of ten participants report being satisfied with the process and with the resulting agreement.[51] These rates are more than double the satisfaction rates with traditional criminal justice procedures, increasing confidence in the criminal justice system.[52] In addition, restorative justice processes can reduce recidivism. First, many studies show lower recidivism rates overall,[53] and at least two showed that individuals who did reoffend tended to incur less serious charges than did their counterparts in the control groups.[54] The range of impact varies, though the more sophisticated studies measuring the efficacy of established programs often yield results in the 30 to 35 percent range for reducing recidivism.[55]

Restorative justice is most effective in situations in which there is an identifiable victim who has been harmed by the criminal action. The method is therefore not applicable to many quality-of-life crimes. It can, however, be very effectively used to address property crimes such as theft, fraud, burglary, and looting, as well as violent crimes.

C. PROPOSALS FOR NEW ORLEANS

The Vera Institute proposes that New Orleans create a substantial community service alternative sentencing program. New Orleans should also expand use of its drug and mental health courts. For crimes in which the victim is an individual or a business, New Orleans should explore creating a restorative justice program. The community service

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[51] Davis, 1980; Coates and Gehm, 1985; Perry, Lajeunesse, and Woods 1987; Marshall, 1990; Umbreit 1994, 1995, 1998, 2001, 2005; Umbreit, Vos, Coates & Lightfoot, 2005.

[52] Mark S. Umbreit, Betty Vos, Robert B. Coates, and Elizabeth Lightfoot, "Symposium: Restorative Justice In Action: Restorative Justice in the Twenty-First Century," *Marquette Law Review* 89, no. 2 (Winter 2005): 278.

[53] Schneider 1986; Nugent & Paddock 1995; Nugent, Umbreit, Wiinamaki & Paddock 2001; Umbreit 1994, 1995, 1998, 2001, 2005; Umbreit and Coates, 1993; Umbreit, Vos, Coates & Lightfoot 2005; several show no or negligible impact, including Roy 1993.

[54] Umbreit, Vos, Coates & Lightfoot 2005; Evje & Cushman; Umbreit & Coates; Nugent & Paddock.

[55] Nugent, Umbreit, Wiinamaki and Paddock 2001.

program should be the top priority, since it has numerous benefits for the city and its residents and can reasonably be implemented within a year. Expanding the use of drug and mental health courts may also be readily achievable in the short term, depending on capacity.

In addition, New Orleans should create a mechanism for disposing of cases within days after a person is arrested if the person is detained, as discussed in the section on early case assessment. While protections would have to be put in place to ensure that defendants have time to consult with counsel and are fully informed of the risks and benefits of a plea, such an early disposition option allows the parties to avoid a defendant spending time in jail while the case is resolved and then is being sentenced to community service, effectively serving two sentences, which is both unjust and eliminates the cost savings to the city that an alternative sanction provides.

Action Plan for the Next 6 to 12 Months

Prepare to Implement a Substantial Community Service Sentencing Program

Launching a substantial community service program requires careful planning. There are numerous issues to be addressed. In the next 12 months, we suggest that New Orleans plan a model community service program, which can then be launched at the end of the year. Some of the activities that would take place during the next year are listed below:

- Create a working group to oversee the planning. The working group should involve representatives from the courts, the public defender, the DA's office, the Criminal Sheriff, probation, and perhaps others. These parties should meet regularly during the planning period.

- Study and visit successful community service programs in other jurisdictions.

- Conduct research into existing local community service projects or programs to partner with.
    - Are there local organizations with community service components that can be expanded or adapted to include offenders?
    - Identify local projects that would be appropriate for an alternative to incarceration community service program, especially projects that contribute to rebuilding New Orleans.

- Identify an institution to administer the community service program. We have identified the sheriff's department as a possible location, since the Sheriff is already operating community service programs. However, this program would have to be different from inmate labor programs and would require additional resources. Alternatively, the program could be administered by another government agency or a not-for-profit organization contracting with the city.

- Determine criteria for identifying cases appropriate for community service sentences.
    - Research best practices in other jurisdictions to pinpoint types of offenders for whom community service sentences are most effective.
    - Develop agreed-upon criteria for good community service candidates in New Orleans.

- Determine the legal and procedural framework for the community service sentence.
    - Determine whether it will be an alternative sentence, or a condition of a probation sentence, or both.[56]
    - Determine the procedures for judges to impose community service sanctions and the penalties for failure to comply with the community service program's requirements.
    - Determine a mechanism for monitoring compliance.

- Analyze data to produce a projection of the number of cases the program will handle.

- Develop a program model, including an educational component, and put it in writing. Incorporate input from stakeholders and experts.

- Establish criteria to measure the program's success and a plan for tracking and analyzing data. The criteria for success should be explicit. A plan should be developed to monitor the impact. Additional information might have to be collected; there should be tools for collecting that information, either on paper or in a database.

- Determine resources required to launch the program and operate it for the first three years. This will include staff, equipment, etc.

Expand Use of Drug and Mental Health Courts and Drug Treatment Alternatives to Prison

- Examine the city's current efforts to divert offenders into drug and mental health treatment through the drug and mental health courts.
    - For how many people with what characteristics are the drug and mental health courts currently used? What treatment are they provided?
    - What is the capacity of drug and mental health courts and treatment programs currently?

[56] Louisiana law currently allows for community service as a sentence in limited circumstances. La. Code of Criminal Procedure Art. 893.5.

    - How soon after arrest are defendants transferred to drug and mental health court? Do they spend time in jail first?

- Determine whether more people could be effectively served by the drug court or the mental health court without sacrificing public safety.
    - Examine research and best practices nationally on target populations for drug courts/drug treatment alternatives.
    - Analyze data on the characteristics of people arrested in New Orleans, the number and characteristics of those being referred to drug court, and results for those referred.
    - Develop a projection of the increased capacity required.

- Develop a plan and budget for expanding treatment and drug and mental health court capacity as necessary.

- Develop criteria for who should be referred to drug and mental health court/drug treatment and procedures for identifying those people.
    - Have referrals take place shortly after arrest rather than after the defendant has spent weeks in jail.

- Develop a system for tracking who meets the criteria and referrals to drug and mental health courts.

- Implement the plan for as many people as resources allow; expand as capacity increases.

Explore Ways to Promote Restorative Justice

New Orleans could engage in a planning process to determine the most effective ways of using restorative justice methods to promote public safety, healing, and confidence in the justice system. The planning process would entail the following steps.

- Identify types of cases and the population to be served. Restorative justice projects can be designed to handle a variety of case types and populations. The first step in planning a restorative justice program is to determine which population in New Orleans would benefit most from this intervention based on best practices, the areas of greatest need in the current system, and the willingness of government partners.

- Identify existing community service, alternative to incarceration, or other agencies equipped to offer or supervise sanctions and assess capacity to accommodate referrals.
    - What programs are already available in New Orleans? Do they have the capacity to take on an increased caseload?

    - Can programs currently being designed be expanded to accommodate the needs of a restorative justice component?

- Identify victim services agencies and assess their capacity to accommodate referrals.
    - What programs are already available in New Orleans? Do they have the capacity to take on an increased caseload?

- Determine the diversion mechanism and engage appropriate partners.
    - When in the court process should cases be diverted to restorative justice? Whose involvement is necessary to accomplish this?
    - Prepare guidelines and research for conversations with necessary partners.

- Design the intervention model.
    - Select the mediation model and adapt it to specific criteria and capacity.
    - Develop a preparatory component and protocols for following up with both offenders and victims.
    - Develop staff training.

- Develop a plan to pilot a restorative justice program for appropriate cases in New Orleans. The plan would include:
    - Operating procedures for the pilot
    - Length of pilot and systems for measuring success
    - Staffing and budget for pilot

IV. MUNICIPAL OFFENSES

A. NEW ORLEANS: CURRENT STATUS

The New Orleans Municipal Code outlaws a range of conduct, including property damage, assault and battery, prostitution, public disorder offenses, and domestic violence.[57] The police make arrests for municipal offenses, which are prosecuted by the city attorney in the New Orleans Municipal Court. The bulk of offenses the municipal court handles are "quality-of-life offenses," such as criminal mischief, tampering, trespass, public drunkenness, and prostitution. The municipal court also handles domestic violence offenses. In 2006, the municipal court handled 64,058 cases, including 6,530 domestic violence offenses.[58]

The police can either arrest or issue a summons to a municipal offender. Those who are arrested are brought to the jail. According to a municipal court judge, trial dates are usually set for 21 days after the initial appearance, with no more than one continuance issued to each side. Judge Calvin Johnson's ruling in May 2006, a response to the overcrowding of the jail post-Katrina, mandates that all municipal offenders who are not arrested on charges of violence or weapon possession or within the French Quarter or Central Business District be released after booking.[59] Individuals issued summonses by the police, on the other hand, are not booked or detained, but are required to appear in court on a specified date.

The majority of municipal offenders are arrested instead of given summonses by the police. For example, in January, 2007, the police issued 1,043 summonses and arrested 3,972 people on municipal charges—almost four times as many arrests as summonses.[60] Even though, under the Johnson ruling, the majority of the 3,972 offenders will not even be formally admitted into the jail, the process of arresting, processing, and temporarily detaining offenders uses valuable jail, police, and court resources. In addition, as the jail is rebuilt and more beds are available, it is possible that the Johnson ruling will be repealed and municipal offenders will return to serving days or weeks in jail, before their cases are resolved, for minor offenses.

We were not able to determine what proportion of those who are arrested on municipal offenses are arrested because they have attachments (warrants) for failing to appear on a municipal court summons or for failing to pay a fine. However, it is common for the police, in stopping people for traffic or other violations, to find that they have a municipal attachment. In those cases, the police have been taking the person to the jail for booking. The police superintendent is interested in developing new ways of ensuring compliance

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[57] New Orleans Municipal Criminal Code, articles III – VIII.
[58] Data provided by Mayor's Office, February 2007.
[59] Gwen Filosa, "Inmates ordered freed at prison; nonviolent suspects clog Orleans jail." *Times-Picayune*, May 25, 2006, p. 1.
[60] Data provided by Municipal Court, February 2007.

with municipal court orders while reducing unnecessary trips to the jail for police officers and detention for nonviolent individuals.

The number of municipal offenses prosecuted compared to New Orleans's population is large. In 2006 there was one municipal offense prosecuted for every three to four residents. We have not analyzed what proportion of municipal offenders are repeat offenders and how many times repeat offenders are arrested on municipal offenses, but we suspect that there are many repeat offenders and that some of them are arrested for municipal offenses several times. If this is the case, it is worth examining whether there might be more effective ways of addressing the behavior that leads to these arrests.

With few exceptions, the only dispositions used for municipal offenses are fines and incarceration.[61] Some people who are sentenced to a fine do not have the financial resources to pay and end up serving time in jail. The court grants extensions to people who cannot pay their fines, but if they still cannot pay, or if they fail to appear in court on the date the fine is due, they can be incarcerated. Although we have not analyzed longitudinal jail data, we suspect that there are a number of individuals arrested for quality-of-life crimes who serve time because they are unable to pay their fines.

The municipal law allows for community service in some cases, but these are not routinely used. Picking up trash is the community-service assignment most often provided in the municipal code.[62] For most municipal offenses, though, the kind of community service is not described, nor is the length of the sentence to community service prescribed.[63] Community service also is an available sentence for certain hate crimes and vandalism.[64]

Recently, Police Superintendent Warren Riley announced that the police department would be employing a new strategy with low-level offenders in hopes of focusing resources on more violent crimes. Instead of arresting or issuing summonses for minor violations, the police will give warnings to offenders without prior criminal histories and not pursue any additional penalties.[65]

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[61] Before Katrina, Judge Sens was in the process of developing a capacity to use community service as an alterative to incarceration in the municipal court.

[62] See, e.g., sections 66-282 (littering and dumping), 162-1017 (noncompliance with tow-truck regulations), and 54-251 (prostitution).

[63] See, e.g., sections 18-18 (animal cruelty), 27-3 and 27-8 (alarm system violations), 54-411 (begging), and 54-527 (domestic violence).

[64] Sections 54-377, 54-378, 54-379, and 54-151.

[65] "Police Focus on Hard-Core Criminals," New Orleans Times-Picayune, March 13, 2007.

B. BEST PRACTICES

Community Courts

In the last decade, community courts have been implemented around the country as a new approach to handling low-level and quality-of-life crimes. Community courts integrate local residents, businesses, and service organizations into a collaborative effort to fight crime. By imposing immediate and meaningful sanctions on offenders, engaging the community, and targeting the underlying causes of crime, community courts have met with success in many jurisdictions.[66] Although practices vary among courts, most feature several key components, including a focus on minor misdemeanors or violations, community service and treatment options in place of jail sentences and fines, close monitoring of offender compliance with sentence conditions, and a dual interest in helping individual offenders while also improving the safety of the community. Evaluations of many community courts are still in their early stages, but preliminary results have shown that this approach can lead to increased offender compliance, decreased low-level crime, and improved quality of life in the community.[67]

One trademark of community courts, as well as many traditional courts that handle low-level offenses, is early disposition of cases, usually at the first appearance.[68] Considering the merits of a case at the first appearance enables jurisdictions to save resources on court, prosecution, defense, and incarceration and provide opportunities for offenders to be held immediately accountable for their actions. In addition, there is always a chance that people will not show up for future court dates, and dispositions at the first appearance ensure that this population is sentenced. Low-level cases can be resolved at the first appearance using a variety of strategies, which may include dismissal of a case, adjournment in contemplation of dismissal, a plea to a lower charge, or a guilty plea. However, it is important that defendants have meaningful representation before resolving cases in ways that create a criminal record or may result in jail or other significant penalties.

Community service sanctions, as discussed in the section on alternative sentencing, can be effective for quality-of-life offenses. The number of days of community service required is fewer than for more serious offenses and the penalties for failing to complete community service do not involve a significant amount of jail time, or else a relatively small proportion of violators can eliminate the savings such alternative sentences bring. As with community service programs in general, it is best if the sentence is related to the offense that was committed, allowing the offender to repay the community.

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[66] Lee, Eric. Community Courts: An Evolving Model. *Community Justice Series*, No. 2 (2000). U.S. Department of Justice, Center for Court Innovation. <http://www.ncjrs.gov/pdffiles1/bja/183452.pdf.>

[67] Ostram, Brian, Rottman, David, and Sviridoff, Michelle. Dispensing Justice Locally: The Implementation and Effects of the Midtown Community Court. Routledge, 2000. <http://www.ncsconline.org/WC/Publications/Res_CtComm_MidtownExecSumPub.pdf>

[68] Berman, Greg, and Feinblatt, John. Good Courts: The Case for Problem-Solving Justice. The New Press, 2005.

***Examples of Community Courts for Low-Level Offenders*[69]**

New York, New York

The Midtown Community Court was started in 1993 in response to rampant quality-of-life crime in the area around Times Square in New York City. Instead of sentencing low-level offenders to a few days or weeks in jail, judges sentence offenders to community service that starts immediately after sentencing. Offenders are also given the opportunity to participate in service programs targeting problems that often lead to criminal activity. These include drug treatment, mental health counseling, and job training programs. The court has partnered with local businesses, residents, service providers, and government agencies to ensure that community service projects are carefully selected to have the greatest impact on community development and restoration. Since the implementation of the court, there has been a substantial reduction in low-level crimes in the Times Square area. In addition, offenders who go through the Midtown Community Court provide over $175,000 in labor to the community each year. Community courts based on this model have since been adopted in over 20 jurisdictions.

Atlanta, Georgia

The Atlanta Community Court was initially created by the city's Criminal Justice Coordinating Council and Central Atlanta Progress, the downtown improvement district, in response to a concern that quality of life crimes were discouraging shopping and tourism. The Community Court, housed within the Municipal Court, handles selected misdemeanors and violations. After arrest or summons, the corrections department assesses the social service needs of each defendant and makes sentencing recommendations to the judge. The judge uses community service sentences as a tool to help connect defendants with their neighborhoods and encourages community involvement in the selection of service projects. Defendants with substance abuse needs are often sentenced to long-term drug treatment.

Minneapolis, Minnesota

The Hennepin County Court, serving two dozen communities and 100,000 residents, provides a wide range of community service and social service options for offenders. The Court handles a variety of misdemeanor and felony cases but most frequently deals with quality-of-life crime including drug sales, prostitution, gang-related offenses, and civil nuisance actions. Judges employ both traditional sanctions and alternative sanctions, primarily community service and mediation with community members. Resource coordinators make sentence

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69 The examples in this section come from: Lee, Eric. Community Courts: An Evolving Model. *Community Justice Series*, No. 2 (2000). U.S. Department of Justice, Center for Court Innovation. <http://www.ncjrs.gov/pdffiles1/bja/183452.pdf.>

recommendations to the judges based on the best interests of the community and the circumstances of each defendant, and offender compliance is closely monitored throughout the court process.

Day Fines

As an alternative to the traditional mechanism of fines based on charges, some jurisdictions have implemented day fines programs. Day fines are based on the premise that a defendant who cannot afford a fine should not serve more time in jail than a defendant arrested on the same charge who does have access to financial resources. Day fines allow for a more equitable punishment, ensuring that sanctions for the same crime have an equally punitive effect on all offenders.

Day fines are calculated using the following formula.[70] First, the court sentences the offender to a certain number of day fine units based on the severity of the offense (for example, an arrest for possession of a small amount of marijuana may equal five units). This first step is completed without considering the offender's income. Then the court calculates the defendant's daily net income, a percentage of the offender's income that represents the person's approximate net income for a single day. This calculation accounts for a variety of factors, such as dependence of family members and government benefits, and varies by jurisdiction (for the above example, we will assume that the defendant's daily net income is $55).[71] The final day fine amount is calculated by multiplying the offender's net daily income by the number of day fine units assigned to the offense (in this example, the court would multiply the number of day fine units the defendant was sentenced to (5) by his daily net income ($55) for a total fine of $275). Jurisdictions handle defendants with no reported income in a variety of ways, such as estimating an individual's earning potential or, more often, calculating the daily rate based on the income of a general assistance or welfare recipient. In one jurisdiction that utilized the latter method, cases were adjourned for 30 days to allow offenders to apply for general assistance.[72]

Day fines have been used for a variety of crimes, ranging from violations to more serious misdemeanors and low-level felonies. The mechanism for selecting appropriate cases varies across jurisdictions, and a number of parties may be responsible for this identification process. After a case is identified as appropriate for the day fines program, pre-sentence investigators or day fines officers interview the defendant and compile information on his income and ability to pay. Collection schedules also vary between

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[70] Greene, Judith, *The Staten Island Day Fine Experiment.* Vera Institute of Justice, August 1990.

[71] The exact calculation of net daily income varies by jurisdiction. For example, in the Staten Island Day Fine experiment, net monthly income was adjusted downward by 15% for the offender's self-support, again for the needs of a spouse, 15% for the first child, 10% for each of the next two children, and 5% for each additional child. There was an automatic fifty percent discount if the offender's income fell below U.S. Department of Health and Human Service poverty income guidelines. For cases of unemployed adults living within families or other households, the day fine unit was based upon an estimation of the individual's earning potential. See Greene, Judith, *The Staten Island Day Fine Experiment.* Vera Institute of Justice, August 1990.

[72] Turner, Susan, and Joan Petersilia, *Day Fines in Four U.S. Jurisdictions.* RAND, March 1996.

jurisdictions, but all make an effort to create payment plans that are feasible for each defendant.

Evaluations of day fines programs have shown that the percentage of defendants able to pay at least a portion of their fines is often substantially greater than before a day fines system is put into place.[73] In addition, although most fines are lower than before implementation of the day fines program, some jurisdictions have actually seen an increase in the total amount collected since the percentage of defendants who pay is greater.[74]

C. PROPOSALS FOR NEW ORLEANS

New Orleans should move to a system for handling municipal offenses where:

- Police and jail resources are used only when offenders pose a significant risk to public safety, increasing their availability to deal with more serious threats to public safety;
- Cases are resolved quickly, reducing the resources focused on simply getting people to appear in court; and
- Penalties for municipal offenses help restore and rebuild the community and aim to prevent repeat offending.

New Orleans should increase the use of summonses and reduce the use of arrest and booking for municipal offenses. Superintendent Riley is already moving to reallocate police resources, reducing time spent on municipal offenses and increasing resources devoted to serious and violent crime. He also has ideas for ensuring compliance with municipal court orders, which we support. Specifically, the city could create a new legal document that provides people who have municipal attachments clear instructions to appear in court on a specified day and a clear warning of serious consequences of failure to appear, as well as an explanation of potential benefits of appearing as required.

To achieve the other goals, New Orleans should develop a range of sanctions for municipal offenses other than jail and fines, including community service, as described in the previous section. It should design these sanctions, and the penalties for noncompliance, carefully, so they protect public safety, are related to the offense, contribute to the rebuilding and revitalization of New Orleans, and are achievable for offenders. The city should also consider implementing a day fines program, to make fines more equitable and increase compliance rates, reducing resources spent on those who cannot pay.

Creating a community court to handle municipal offenses would be an effective way to implement all of these best practices. With support from the pioneers of community

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[73] Ibid.
[74] Ibid.

courts, preparations to launch a community court could be completed in approximately a year.

Action Plan for the Next 6 to 12 Months

Prepare to Launch a Community Court

- Develop a working group including representatives from the city attorney's office, the public defender's office, the municipal court, and the police department. This group should meet regularly to oversee and contribute to plans to create a community court.

- Develop a detailed plan to implement a community court. The Center for Court Innovation in New York could provide substantial assistance in developing this plan. The center pioneered the community court model and has helped jurisdictions around the United States and in other countries plan and launch community courts. The planning process would involve answering question such as:
    - What sanctions and services should be available for municipal offenders? Which exist and which need to be developed?
    - How can a community service sentencing program created for criminal court be used for municipal offenders?
    - Does the municipal code need to be amended?
    - What will the penalties be for failure to comply with the sanction?
    - What resources (including staff) will be required to operate a community court?
    - Where will the court be located?

- Prepare to launch the community court. This will include developing operating procedures, developing a staffing plan, determining what additional resources will be necessary and securing those resources.

Explore Implementing a Day Fines Program

For cases in which a monetary penalty is most appropriate, New Orleans could explore implementing a day fines program. Specific steps include:

- Determine the extent to which indigence is an obstacle to paying fines in New Orleans. If the number of people spending time in jail because they are unable to pay their fines is significant, it may be beneficial to explore a mechanism for collecting fines that does not discriminate against offenders based on their ability to pay.
    - How many people per year are incarcerated because they are unable to pay their fines? How many people require extensions before they are able to pay?

- Is there a particular profile of people who are unable to pay their fines, other than being impoverished? Are they arrested on similar charges? Are they being incarcerated for the first time or have they served many sentences in the past?

- Develop protocols for a day fines program to address the problem revealed by the empirical analysis. This will include:
  - Analyzing best practices in day fines programs around the country and perhaps visiting one of the more successful programs.
  - Determining how to calculate the day fines and the schedule for fines.
  - Determining the process for imposing and collecting the fines, and consequences if they are not paid.

- Prepare a plan to pilot the day fines program.

Reduce the Use of Police and Jail Resources for Municipal Offenses

New Orleans should develop ways to reduce the time that police spend taking municipal offenders to the jail and the time that sheriff's deputies spend processing them so that they can increase the time spent on protecting public safety and addressing violent crime.

- Analyze data to determine the scope and nature of the failure-to-appear problem for cases where summonses are issued for municipal offenses.

- Review police protocols and practices for issuing summonses for municipal offenses. Determine whether protocols should be changed or police should receive further training in order to increase the use of summonses for municipal offenses.

- Develop new legal instrument to increase municipal court appearances by people with municipal attachments. This document should detail the options that might be available for people who cannot pay a fine if they appear as required. Developing the instrument will involve:
  - Determining penalties for failure to appear as well as benefits of appearance.
  - Drafting the instrument and having it reviewed by lawyers, as well as people who have been arrested for municipal offenses, to make sure they understand it and that it will have the desired effect. Individuals who have been stopped may have to sign the document to acknowledge that they understand they are being given a second chance and must appear or face consequences.
  - Clarifying circumstances in which the new legal document will be issued.
  - Training police on using the instrument.

- Develop other measures, if necessary, based on best practices nationally, to encourage offenders to appear in court.

Analyze Data on Municipal Offenses

Analysis of data related to municipal offenses would inform the initiatives suggested above and perhaps provide additional insights. The analysis might look at the following areas:

- Failure-to-appear rates for people with summonses and arrests
- Length of time from arrest to disposition
- Bond amounts set and whether they were posted
- Sentence types and length

V. A NOTE ABOUT JAIL RESOURCES

We have made several suggestions in this report that would reduce the number of people who go to jail for minor offenses or the length of stay for those who do go. Other people—particularly those who pose a threat to public safety—will spend a longer time in jail. Together, these measures could reduce the jail population and save resources. However, it is important to note that there is not a direct, linear relationship between the number of reduced bed-days in jails and the resources saved. As the size of the system gets smaller, the cost per inmate increases. This is because there are fixed costs associated with running a jail system, and operating effective programs (including health care and reentry programming) requires resources. As jail systems contract marginally, the savings realized are also marginal. For instance, if a jail administrator is able to close a housing area in a jail (as opposed to the entire jail), the savings realized consist of the staff that would have worked in that area and perhaps some small amount of non-personnel costs. But it would not capture any part of the large fixed costs of operating the institution, such as the management, administrative and support staff, heat, light, and power. Additionally, to the extent that there are other costs associated with lowering the jail population—such as administering a community service program—some of the savings will have to be used to fund those new costs.

CONCLUSION

Changing justice systems is not an easy or tidy process; it is a long-term commitment. Yet we believe that within a year, New Orleans can begin to implement new initiatives in each of the four areas discussed in this report. Once they are implemented, it may take several years to test, adjust, and institutionalize these new approaches. And even once new approaches are institutionalized, they must be evaluated and modified periodically. If the city is to move forward on the initiatives proposed in this report or on other criminal justice improvement efforts, it needs an entity to coordinate planning, implementation and problem solving on criminal justice issues. The Southeast Louisiana Criminal Justice Recovery Task Force convened by Justice Catherine Kimball has been identifying and developing solutions to problems in the justice system, drawing on the expertise of members from multiple agencies. This coordinating function needs to be institutionalized and staffed in the New Orleans.

One of the first steps the city should take is to determine, for the initiatives it wants to pursue, which government agencies or nongovernmental organizations will undertake the work that needs to be done in the next six to 12 months and what resources they will require. The initial steps will cost some money, and the new initiatives themselves will also require resources. But with support from key players in the system, specific plans for how to proceed, and clear goals the city hopes to achieve, these initiatives should interest funders who want to see New Orleans rebuild successfully. After all, they are good investments that will pay dividends in both cost savings and public safety.

APPENDIX A

This appendix presents a brief analysis of jail inmate records from the Orleans Parish Prison (OPP) – the New Orleans' city jail. The Orleans Parish Criminal Sheriff provided paper copies of jail records based on a report generated at 1:30pm on December 12, 2007.[75] To the best of our knowledge, these records include all inmates held at OPP at this time. Our analysis does not include an unspecified number of those arrested in New Orleans and held elsewhere in the State.

These analyses are based on a cross-sectional 'snap shot' of OPP housing data and we are unable to provide accurate information on length of stay in the jail, or the rate of jail processing (how regularly the population turns over). We are also unable to project the number of individuals held in the jail over time or the likely effect of policy changes which reduce average sentences or periods of detention. We can say with some confidence that this analysis will over-represent long stayers (those held on more serious offenses and sentenced inmates) and we have tried to control for this bias, where possible.

Inmate Demographics

We first looked at selected demographics: gender, race, and age. The average age of OPP inmates on 12/12/07 was 34 and the majority of those in the jail (91.2%) were men (Table 1.1). Most of those held in the jails were Black (80%), nineteen percent were white and only one percent 'Hispanic.'

Table 1.1 OPP inmate demographics (N=2774)

Mean Age	34 years
Male	91.2%
Race	
-Black	79.7%
-Hispanic	.9%
-White	19.0%
-Other	.4%

What charges were OPP inmates held on?

The Orleans Parish Criminal Sheriff's Office records top charge and jurisdiction code (traffic, municipal or state) for 2,372 inmates, or 86% of all those in the jail.[76]

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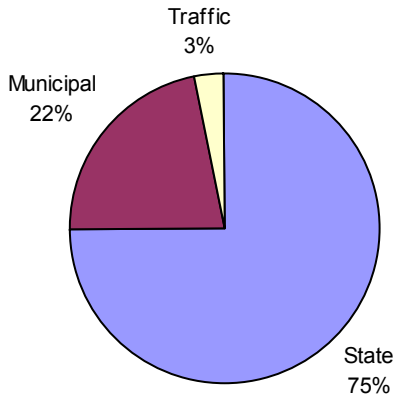
[75] The size and composition of the jail population will change by the hour, depending on the daily schedule of discharge, intake, removals to court, etc. We do not have enough information to tell what effect the timing of the data download has on these data, apart from that the data probably undercounts those detained or sentenced for short periods.

[76] Of the 402 inmates without full charge information: 233 were held on open warrants without details of the original charge; 37 on municipal attachment, without charge information; 58 probation or parole violators; 47 on hold for other jurisdictions; 20 state detainees and 7 sentenced municipal inmates.

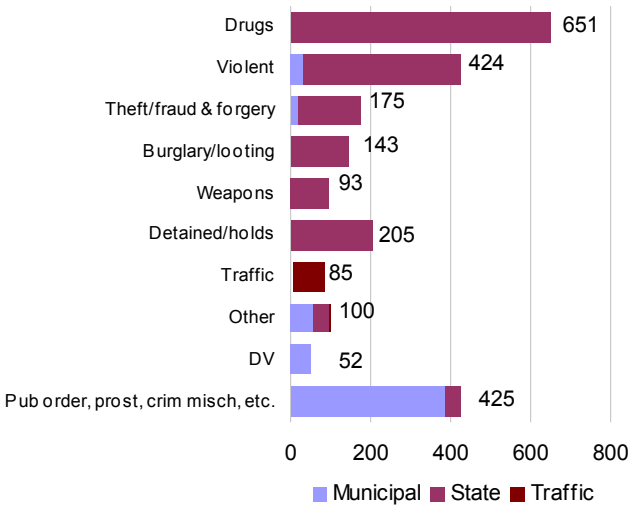
Figure 1.1 Highest charge severity (N=2,372)



Three quarters of OPP inmates with this information were held following arrest on state charges, twenty two percent on municipal charges and a handful (3%) on traffic offenses (Figure 1.1.).[77] Most inmates were charged with more than one offense (1,405) however, due to time and resource constraints, we coded and analyzed the first three only.

Figure 1.2 provides a breakdown of charge category. The numbers at the end of each bar represent the total number of OPP inmates held on each type of charge. The darker portion of each bar represents those arrested and held under the Louisiana state criminal code, the lighter portion those held on New Orleans Municipal charges. For example 651 OPP inmates were held on drug charges following arrest for state offenses, whereas 424 were held on violent charges mostly following state arrest but including a small number of municipal offenders. The dark red bar represents the small proportion of inmates held on traffic offenses.

Figure 1.2 Top-charge categories by jursidiction (N=2372)



The majority of municipal inmates were held on public order, prostitution and criminal mischief charges. We further disaggregated municipal charges into criminal damage, criminal mischief, tampering or trespass (24%), public drunkenness and alcohol related (23%), domestic violence (9%), contempt of court (9%), assault (5%), and prostitution (4%). By far the largest category of state charge was drug possession (31% of all state charges), followed by murder/manslaughter (9%), and burglary and looting (8.2%).[78]

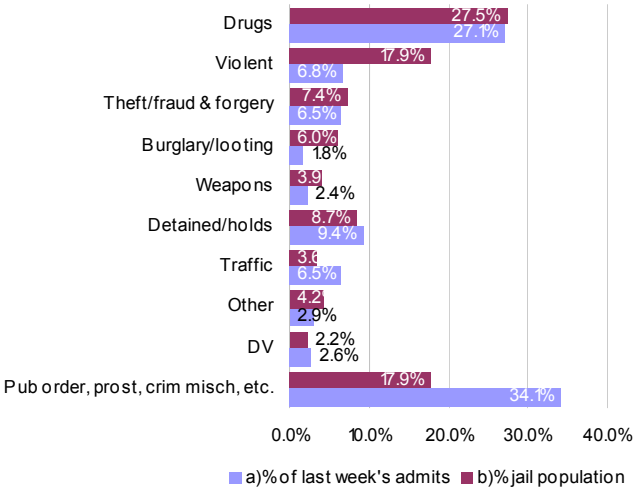
[77] We have used the jurisdiction of the charge (state, municipal or traffic) as a rough proxy for 'severity'. In the majority of cases the most serious offense relates to the Top Charge (the charge that appears first in the record). In 39 cases (2%) the inmate had a state offense as the second or third charge, following a top municipal or traffic charge.

[78] While the number held on murder/manslaughter charges is notably high, these arrestees tended to be held for longer during trial and this extended period of detention tended to over-estimate the prevalence of these offenders as a proportion of all intakes (see Figure 1.3 for details).

How does standing jail population compare to intake?

The jail cross-section over-represents those who are in custody for longer as these inmates have greater opportunity to be selected. Figure 1.3 controls for this effect by comparing the full jail population with those admitted during the week prior to the data request (12/05/2006 - 12/11/2006). We selected a one-week-cohort to control for daily variations (in most jurisdictions arrest rates peak in the middle of the week). This method still under-represents very short stayers, but provides a more accurate picture of the breakdown of jail intakes – rather than the standing population.

Figure 1.3 Long vs. short stayers: Top charge a) for all inmates on 12/12/06 and b) for those booked in previous week (N=2372)



This analysis shows that public order charges are under-represented by the cross-section; more than a third of the weekly jail admits (the lighter colored bars) were arrested on public order charges compared to18% of the standing jail population (the darker bars). The converse is true for violent offenses (6.8% of the weekly intake and 17.9% of jail population) and burglary/looting (1.8% of weekly admits and 6% of population). This method of analysis more accurately reflects the numbers passing through the jail over time and shows that interventions at the point of intake could usefully target the high volume of public order offenses passing through the jail, and staying for relatively short periods.

How many inmates were detained, sentenced or on other types of hold?

Table 1.2 describes data on detainees, [79] sentenced inmates and those on other types of hold, based on information on top charge. Most of those in the jail were detainees (67.6%), held either on state (60.2%) or municipal charges (7.4%). Without police arrest data it is impossible to tell if the proportion of state to municipal detainees reflects differences in the numbers arrested and charged. It is likely that state detainees are over represented as municipal arrestees are more likely to be released pending trial and so will not appear in the detained population. The fact that relatively few state sentenced inmates are held at the jail is unsurprising; most of these inmates will be serving sentences in state facilities. We know that the OPP does house some sentenced Louisiana state offenders

[79] Throughout this memo, 'detainees' refers to both inmates held awaiting DA decision to file charges, and those held during trial. 'Sentenced' includes those serving city jail terms and a small number of state prisoners serving their sentence at OPP. Others held in the jail include those who are detained or on-hold and awaiting transfer to other jurisdictions, or the federal system (N=120) and those held on commitment (N=18).

serving sentences of more than one-year, but we do not have accurate information on how many of our cohort were held under this arrangement.

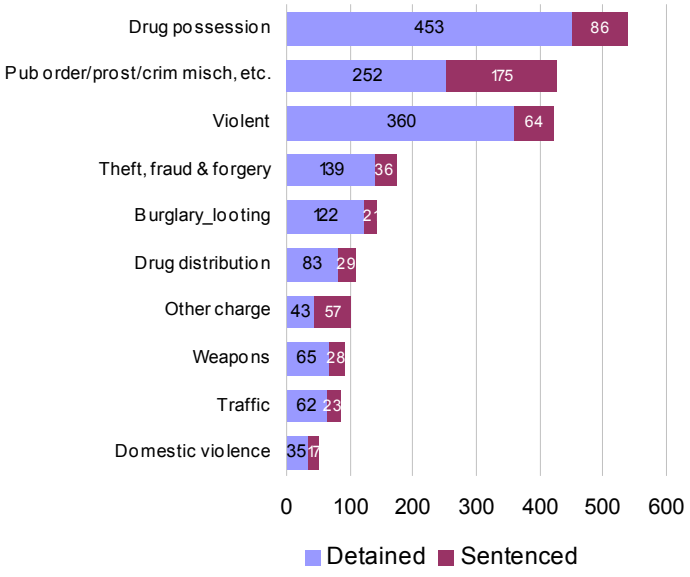
Table 1.2 Type of hold (N=2774)

	Number	*% of total*
State charges		
Sentenced	104	3.7
Unsentenced	1670	60.2
Municipal charges		
Sentenced	243	8.8
Unsentenced	205	7.4
Traffic unsentenced	24	0.9
Other		
Probation violaters	133	4.8
Parole violaters	207	7.5
On hold*	188	6.8

What charges were detainees facing?

Figure 1.4 compares the number of OPP inmates serving sentences in the jail, with those detained prior to charges being filed or held pre-adjudication (detained).[80] The darker portion of the bars represents the number sentenced on each charge. The lighter portion represents detainees, again with the number held on each charge. For example, 86 inmates were sentenced for drug possession offenses compared to 453 detained on these charges.

Figure 1.4 Top charge summary category by sentencing status (N=2166)



Almost one-third of all sentenced inmates were arrested with top charges relating to public order, prostitution, criminal mischief or similar offenses, the second bar from the top of the chart (175 out of 536 detainees), followed by drug possession charges (86/536, 16%) and violent offenses (64/536, 12%). Proportionately fewer inmates were serving sentences following arrest on more serious charges, such as violent crimes.

[80] Figure 1.4 includes all cases with information on top charge, excluding DOC and Federal holds

What proportion of OPP detainees were offered bond? What are the average bond amounts for different offense types?
Table 1.3 summarizes OPP records on bond setting for detainees at the jail on December 12, 2006. This table includes a) the number of detainees by top charge; b) the proportion offered bond; c, e) the range (25th and 75th percentiles);[81] and d, f) the average (median and mean) bond amounts. We have included the bond amount for top charges only and in many cases (57%) where bond was set on a top charge, this is accompanied by additional bond amounts related to other charges. By ignoring additional, and potentially aggravating, charges our analysis undercounts actual bond amount in most cases. Furthermore, our analysis only represents those in custody and, for offenses with consistently low bond amounts, most arrestees will make bond-skewing our view of bond setting. This effect probably inflates the average bond amount and may explain the seemingly low rates of bond setting on traffic and public order offenses. However, we can say that just over three-quarters (76%) of those detained at OPP were unable, or unwilling, to make bond.

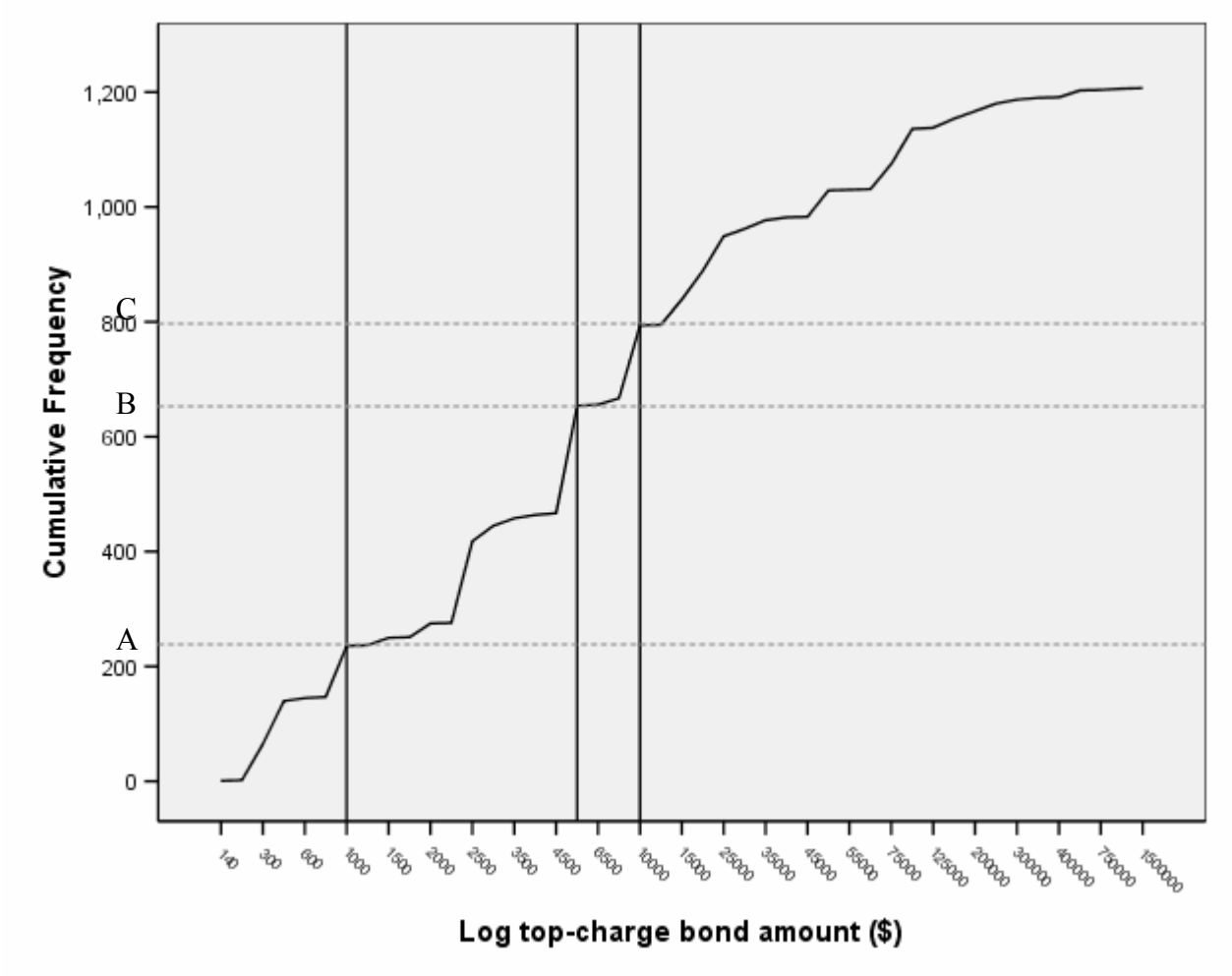
Table 1.3 Bond setting for OPP detainees, disaggregated by top charge category (N=1598)

			Bond amount (top charge only)			
Selected top charges	*a) Count*	*b) % offered bond*	*c) 25th percentile*	*d) Median*	*e) 75th percentile*	*f) Mean*
Traffic offenses	62	61%	$500	$500	$500	$1,056
Drunkenness/open container	76	75%	$300	$300	$2,500	$1,115
Public order/obstruction/resist arrest	63	60%	$300	$400	$2,500	$1,642
Criminal damage/criminal mischief/tampering/trespass	80	70%	$350	$1,000	$2,500	$1,780
Prostitution	33	76%	$1,000	$2,000	$2,500	$2,152
Domestic violence	35	94%	$2,500	$2,500	$10,000	$5,303
Fraud & forgery	56	75%	$3,500	$5,000	$8,125	$6,107
Theft/POSG/unauthorized use	83	81%	$3,000	$5,000	$10,000	$9,575
Drug possession	453	80%	$1,500	$5,000	$7,500	$10,275
Assault/battery	77	91%	$5,000	$10,000	$25,000	$19,141
Weapons	65	78%	$10,000	$20,000	$35,000	$27,894
Drug distribution/manufacture	83	72%	$15,000	$25,000	$50,000	$35,883
Burglary, break & enter, looting	122	89%	$15,000	$25,000	$50,000	$39,731
Robbery	115	78%	$50,000	$75,000	$100,000	$81,000
Sex offenses	30	77%	$75,000	$150,000	$200,000	$219,783
Murder/manslaughter	138	38%	$100,000	$250,000	$350,000	$273,585
Other	36	75%	$2,500	$3,000	$5,000	$6,463
All state charges	1314	74%	$3,000	$10,000	$35,000	$42,073
All municipal charges	284	69%	$300	$2,000	$2,500	$2,418
All charges	1598	76%	$2,500	$5,000	$25,000	$34,374

[81] This refers to the number of people whose bond amount falls at the 25th percentile or below, or the 75% percentile or below, respectively.

Figure 1.5 displays top charge bond amount for all detainees. Based on these data (and again excluding additional bond amounts for accompanying charges), 236 OPP detainees were held after failing to make bond of $1,000 (point A on the table), 654 had bond amounts of $5,000 or less (B) and 794 had $10,000 or less (C).

Figure 1.5 Top charge bond amount for OPP detainees (N=1207)

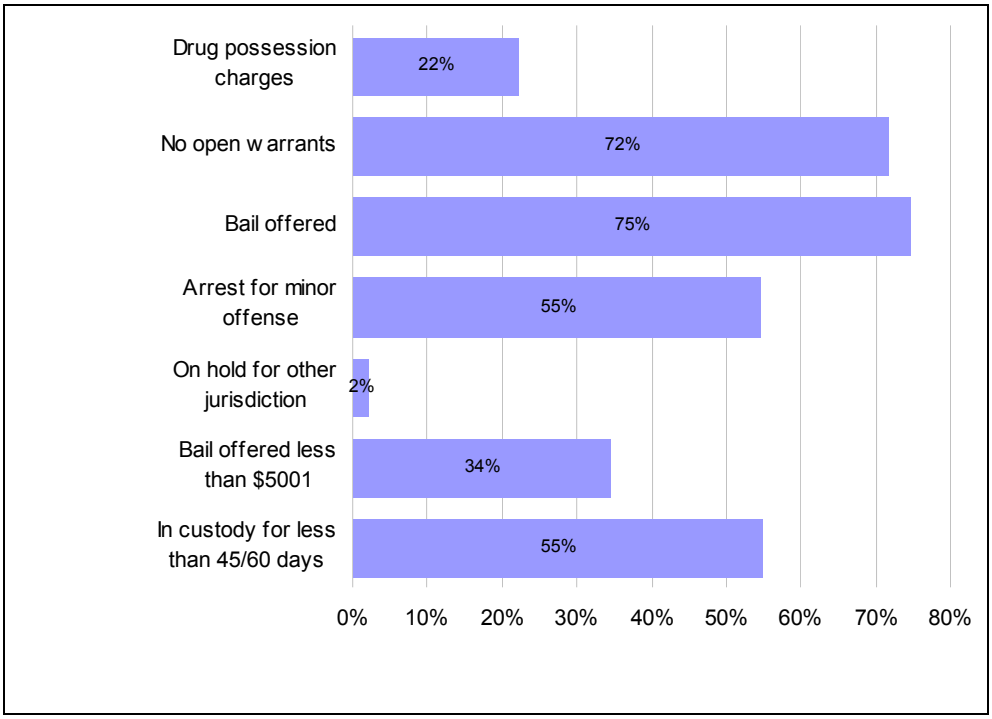


Is there a subset of the population that could potentially be released on their own recognizance?

In this last set of analyses, we apply some of the criteria used in other jurisdictions to make decisions to release arrestees pending trial without bond, commonly known as Release on Recognizance (ROR).

Figure 1.6 displays information on the proportion of OPP inmates who meet a variety of commonly used ROR criteria, including arrest for a minor non-violent offense,[82] having no open warrants (a common predictor of risk of flight), arrest for drug possession, being offered bond at the point of arraignment, having bond set for less than $5,001, without open arrest warrants and being held in custody for short periods.

Figure 1.6 Prevalence of commonly used ROR criteria, in the OPP detained population (N=1899)[83]



[82] Our definition of minor offending is entirely subjective and excludes violent, weapons and drug distribution offenses – mostly drug possession (453), theft (83), public drunkenness (76), other public order offenses (63) and fraud or forgery (56).

[83] Includes all unsentenced inmates, including some with incomplete charge information in the OPP record.

Table 1.4 combines this information to predict the proportion of a) the OPP jail population and b) the number of new intakes who meet multiple ROR criteria. For example 36% of detainees in the jail were held on minor charges, after being offered bond and without an outstanding warrant (N=681). We estimate that 41% of those *entering the jail* as detainees meet these criteria.

Table 1.4 Cumulative proportions meeting commonly adopted ROR criteria, jail population and estimated jail entrants (N=2774)

	Population	& unsentenced	& no open warrants	& bond offered	& 'minor' top charge offense*	& bond less than $5001**	& less than 45/60 days***
a) Cumulative N (jail population)	2774	1899	1361	1080	681	419	373
% of total pop	100%	68%	49%	39%	25%	15%	13%
% of unsentenced pop	-	100%	72%	57%	36%	22%	20%
b) Estimated cumulative N (jail entrants)	442	325	234	182	134	98	98
% of total pop	100%	74%	53%	41%	30%	22%	n/a
% of unsentenced pop	-	100%	72%	56%	41%	30%	30%

This analysis shows that, using commonly applied criteria, many of those who are currently held in the jail awaiting trial may be released to the community. Of course, any method for deciding on release criteria should be informed by a more detailed assessment of risk, but this basis analysis of inmate characteristics at least indicates that significant costs savings may be realized by releasing non-violent, low risk detainees.