



**ALL  
EYES  
ON**

**JUSTICE.**

**2020  
ANNUAL  
REPORT**

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COURT WATCH NOLA'S 2020

**COURTS IN REVIEW**

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# A NOTE FROM THE **EXECUTIVE DIRECTOR**

2020 profoundly impacted our community, challenging each of us uniquely. For the first time in over a century, our country struggled to contain a deadly pandemic, and many of us lost loved ones. In a city known for coming together, we had to stay apart to keep each other safe. Within weeks of our city's largest celebration, many of our neighbors fell ill with the novel coronavirus. An early hotspot for the COVID-19 pandemic, New Orleans reached 2,270 diagnosed cases of COVID-19 by May 1st. By the end of 2020, that number climbed to 20,146 cases with 637 deaths.

As New Orleanians, we're not strangers to adversity. 2020 marked fifteen years since Hurricane Katrina made landfall, dispersing the city and exposing fault lines, fractured systems, and the resilience of our community. A decade and a half later, our city was threatened again. In the face of novel challenges, New Orleanians bound together once again, finding new ways to come together while staying apart. Through activism for Black lives, mutual aid groups, and virtual convenings, New Orleanians committed to caring for one another in an isolating year.

At Court Watch NOLA, we saw this through the dedication of our volunteers and community partners, who worked quickly to adjust to Zoom court, ensuring that New Orleans was not left without a comprehensive review of the courts during this unprecedented year.

In 2020, the city held elections for new criminal justice leaders at all levels of government. There were more seats contested for criminal court officials than in any time in New Orleans' recent history. With this healthy push for contested electoral seats came a robust debate over which best practices should be instituted in New Orleans' criminal courts.

Also in 2020, the city held elections for new criminal justice leaders at all levels of government. There were more seats contested for criminal court officials than in any time in New Orleans' recent history. With this healthy competition for contested electoral seats, an even more robust debate took place over practices that candidates argued should or should not be instituted in New Orleans' criminal courts. In 2020, the People's District Attorney's Coalition, a coalition of crime survivors, the wrongfully incarcerated and the formerly incarcerated, co-founded by Court Watch NOLA, the Promise of Justice Initiative (PJI), and Voice of the Experienced (VOTE), hosted two separate district attorney forums in which the candidates hotly debated the concepts in the coalition's platform. A total of over 1000 viewers watched the two debates online. Additionally, Court Watch NOLA ensured that best practices were debated by judicial candidates through the creation of a coalition that hosted debates for judicial candidates running for seats at all levels of criminal court. As non-partisan coalitions, all community education was done without endorsing specific candidates.

The below report endeavors to explain how our criminal courts functioned during a chaotic year and how we as a community monitored it.



## II. EXECUTIVE SUMMARY

Court Watch NOLA is a nonprofit organization whose mission is to promote reform in the Orleans Parish criminal court system through civic engagement and courtroom observation. This report encompasses the data collected and the observations made by Court Watch NOLA volunteers from January 1, 2020, to December 31, 2020, in the Orleans Parish Criminal District Court, Orleans Parish Magistrate Court, and New Orleans Municipal Court. Court Watch NOLA volunteers made a total of 716 court session observations in the three courts. This report explores the history, accessibility, and efficiency of the criminal courts during the COVID-19 pandemic, as well as victim rights and public safety in 2020.

### ACCESSIBILITY AND TRANSPARENCY

#### CRIMINAL DISTRICT & MAGISTRATE COURTS

Due to the COVID pandemic, Orleans Parish Criminal District Court closed to the public for in-court appearances between March 16, 2020 and June 1, 2020.<sup>4</sup> Orleans Parish Magistrate Court conducted first appearances where bail and pretrial release were determined over Zoom, beginning March 16, 2020.<sup>5</sup> However, both courts denied effective public access to court proceedings by Zoom for a month.<sup>6</sup> After successfully gaining public access to Orleans Parish Criminal and Magistrate Courts, Court Watch NOLA helped other community groups around the country to do the same.<sup>7</sup>

#### Recommendation 1

Orleans Parish Criminal District and Magistrate Courts should include a detailed plan for public access to court proceedings in the courts' written Emergency Preparedness Plan. If the Orleans Parish Criminal District Court intends to continue to use its "Criminal District Court Disaster Recovery and Coop Plan," the plan should be streamlined and updated to add Criminal District Court's hard-won experience gained through the COVID pandemic.

#### Commendation 1

Court Watch NOLA commends Judicial Administrator Robert Kazik and Deputy Judicial Administrator Shannon Sims for their tireless work in ensuring the effective function of Orleans Parish Criminal District and Magistrate Courts and facilitating public access to these courts.

After gaining general permission for the public to watch court proceedings over Zoom, court watchers had problems gaining access, either because the Zoom link did not work or because court watchers were refused access to individual Criminal District courtrooms a total of 43% of the time and to Magistrate courtrooms 4% of the time. Court watchers had problems with both hearing and seeing the parties engaged in Criminal District Court proceedings conducted by Zoom 24% of the time. Despite accessibility problems, providing virtual access to observe courts is a welcome accountability mechanism that allows members of the public, crime survivors, and loved ones of both defendants and crime survivors to be able to observe court proceedings.<sup>8</sup>

### Recommendation 2

Orleans Parish Criminal District and Magistrate Courts should continue to allow virtual public access to their courts and access to individual courtrooms should not be based on who you are or your relationship with a judge. The courts should make it a priority to update their video systems so those attending court proceedings can properly see all people who are a part of the proceedings. Magistrate Court should ensure the publicly available Zoom link listed on its website is functional.

## NEW ORLEANS MUNICIPAL COURT

New Orleans Municipal Court stopped having public proceedings on March 16, 2020.<sup>9</sup> However, from March 16, 2020, until March 20, 2020, a week where there were no mask requirements in court,<sup>10</sup> court staff were expected to attend court to handle cases of those who were incarcerated,<sup>11</sup> including a Deputy Constable who later died of COVID-19 complications. Starting on March 30, 2020, bail hearings in Municipal Court took place virtually by Zoom, and Court Watch NOLA was given permission by Chief Judge Sean Early to access first appearances the same day.<sup>12</sup> However, this Zoom link was never shared publicly by the court on its website or elsewhere, so no one in the public except Court Watch NOLA had access to Municipal court bail hearings. The New Orleans Municipal Court opened for in-person appearances on June 1, 2020.<sup>13</sup> Unlike Criminal District Court, New Orleans Municipal Court did not allow defendants to appear by Zoom, except for incarcerated defendants who were required to appear by Zoom. The New Orleans Municipal Court does not have an Emergency Plan of its own, but instead relies on the Emergency Plan created by the Orleans Parish Criminal District Court.<sup>14</sup>

### Recommendation 3

New Orleans Municipal Court should not rely on Orleans Parish Criminal District Court's outdated Emergency Preparedness Plan. Any new plan adopted should include a system by which public access to court proceedings is prioritized, along with the health and safety of court users and personnel.

Orleans Public Defender Supervising Attorney Lauren Anderson allowed New Orleans Municipal Court to use her personal Zoom account to have pre-trial release hearings for those incarcerated and awaiting a bail hearing on their municipal charges.<sup>15</sup> Ms. Anderson also continued to work in-person in New Orleans Municipal Court during the pandemic, even when other attorneys may have wanted to refuse for health reasons to do the same.<sup>16</sup> As a result of her hard work, Ms. Anderson had a caseload of over 3,000 municipal cases by December 2020.<sup>17</sup>

### Commendation 2

Court Watch NOLA commends Orleans Public Defender Supervising Attorney Lauren Anderson for her work ethic, dedication, and ingenuity, ensuring every single person who was arrested on municipal charges was able to effectively and efficiently have their day in court. Ms. Anderson always ensured Court Watch NOLA was both included in first appearances and was provided the first appearance docket.

## DOCKETS

A court docket lists the defendant's name, case number, section of court and the purpose of the adjournment. Best practice dictates that dockets must be made publicly available upon request.<sup>18</sup> Although New Orleans criminal court do not, many courts in the state of Louisiana and across the country make dockets publicly available on their websites.<sup>19</sup> Arthur Morrell's Clerk of Court's office emailed Court Watch NOLA the Criminal District Court dockets in 78% of cases. Magistrate Commissioners and their staff provided Magistrate Court first appearance dockets to Court Watch NOLA 96% of the time. Although it is Municipal Court's duty to provide Municipal Court dockets to Court Watch NOLA and the public at large, Municipal Court first appearance dockets were emailed to Court Watch NOLA by the Orleans Public Defenders, and not the Municipal Court 93% of the time.

### Recommendation 4

The Orleans Parish Clerk of Court and the New Orleans Municipal Clerk of Court should make all court dockets available online. Both clerk of court offices depend entirely on public taxpayer's money and dockets in all New Orleans criminal courts should be publicly available as they are in other courts across the state and the country.

## ATTORNEY-CLIENT CONFIDENTIAL COMMUNICATION

The Orleans Parish Sheriff's Office's website states that it allows non-recorded calls to attorneys' landlines only upon an attorney's filing of a sworn affidavit.<sup>20</sup> The affidavit prohibits any third parties from taking part in any such confidential calls,<sup>21</sup> although third party investigators and paralegals are legally allowed to do so.<sup>22</sup> With the onset of the COVID pandemic, the Orleans Parish Sheriff's Office has allowed attorneys from the Orleans Public Defenders to have unrecorded and often free calls with their incarcerated clients on the attorney's cellular phones.<sup>23</sup> However, many private defense attorneys have waited to receive the same right, sometimes for over a year.<sup>24</sup> In 2021, the Orleans Parish Sheriff's Office allowed the Orleans Public Defenders to have non-recorded Zoom calls with their incarcerated clients, extending the same offer, via their website, to private attorneys.<sup>25</sup> This is a commendable step for the Orleans Parish Sheriff's Office but it is insufficient to offer video conversations when private defense attorneys are still waiting for the right to have unrecorded phone calls with their clients. All recorded attorney-client calls, along with all other calls inmates makes from the jail, are turned over to the Orleans Parish District Attorney's Office.<sup>26</sup>

### Recommendation 5

The Orleans Parish Clerk of Court and the New Orleans Municipal Clerk of Court should make all court dockets available online. Both clerk of court offices depend entirely on public taxpayer's money and dockets in all New Orleans criminal courts should be publicly available as they are in other courts across the state and the country.

The Orleans Parish Sheriff's Office has become part of the Securus THREADS program which allows all inmate calls, including some attorney-client calls, to become part of an enormous database of recorded prison calls, phone records, and billing names and addresses of those people who an inmate calls.<sup>27</sup> Orleans Parish Sheriff's Office became part of the Threads program through its contract with giant prison telecom company Securus, the latter which provides inmate phone services in the Orleans Justice Center. The data in this database is shared with the thousands of correctional facilities where Securus operates as well as

with any law enforcement agency that is willing to pay to gain access to the database.<sup>28</sup> Call recordings are kept indefinitely by Securus.<sup>29</sup> Securus has been sued several times for the attorney-client phone calls it has recorded,<sup>30</sup> as well as being previously hacked with at least 14,000 attorney-client calls publicly released.<sup>31</sup> In its contract with the Orleans Parish Sheriff's Office, Securus placed the liability for recording attorney-client confidential calls or anything else under the Threads program, on the Orleans Parish Sheriff's Office and not on Securus, with the Orleans Parish Sheriff's Office agreeing to hold Securus liable for only up to \$100.00 in the event that the Orleans Parish Sheriff's Office is sued.<sup>32</sup>

### Recommendation 6

All attorney-client calls made from the jail should be unrecorded. The process by which attorneys are able to receive phone calls from their clients should be simple, clear, and streamlined; a notarized affidavit should not be required. The Orleans Parish Sheriff's Office should not take part in the Securus THREADS program unless it can ensure confidential attorney-client phone calls are not part of such a database and financial liability does not rest upon the people of Orleans Parish.

## EFFICIENCY

### CONTINUANCES & PLEAS

Due to the prohibition on jury trials in 2020, criminal defendants could: 1) request that a judge preside over their trial; 2) take a plea to whatever punishment the prosecutor or judge offered them; or 3) delay the case with continuances until the court allowed for jury trials. The proportion of case continuances increased by 20 percentage points during the pandemic as compared to 2019. However, the number of guilty pleas court watchers observed decreased from 474 pleas in 2019 to 92 in 2020. District Attorney Cannizzaro offered very few plea bargains between March and December 2020,<sup>33</sup> leading to a greater backlog of cases. Where plea offers did exist, defendants often refused to plead guilty likely because they were waiting to see what plea offers a new district attorney taking office in 2021 would make.<sup>34</sup>

### FAILURES TO APPEAR

If a defendant fails to appear in court, the court may issue an arrest warrant and the defendant may then be jailed, costing taxpayers \$169 a day.<sup>35</sup> It is problematic that New Orleans criminal court judges issued failure to appear warrants in 2020 since the COVID pandemic made it difficult to serve defendants with subpoenas for upcoming court dates<sup>36</sup> and on-again-off-again court closures left defendants incredibly confused.<sup>37</sup> Orleans Parish Criminal District Court issued 60 failure to appear warrants, Orleans Parish Magistrate Court issued 2 failure to appear warrants, and New Orleans Municipal Court issued 314 failure to appear warrants. In addition, the program launched in 2019 by the Mayor's Office of Criminal Justice Coordination that sent criminal defendants cell phone text reminders for upcoming court dates,<sup>38</sup> was non-functional due to the cyber-attack on the city servers. It remained disabled until August 2020<sup>39</sup> a time period in which New Orleans criminal courts could have communicated with defendants about court closures and reappearances.<sup>40</sup> The texting program remains non-functional for defendants appearing in the New Orleans Municipal Court.<sup>41</sup>



### Recommendation 7

The Mayor's Office of Criminal Justice Coordination's program that provides text reminders to appear in court is commendable. Service of this critical program should be restored for New Orleans Municipal Court. This text messaging program should also be extended to criminal defendants charged with felonies who are represented by private attorneys. Judges should be hesitant to issue warrants during a pandemic especially if there is no evidence that a defendant was personally served with a subpoena. This is especially true since the SMS texting program was inoperative, and courts were closed during the pandemic.

## SUMMONS FOR STATE MISDEMEANORS & LOW-LEVEL FELONIES

Even before the COVID pandemic, a criminal summons in lieu of an arrest for misdemeanors and low-level felonies has been cited as a best practice by the International Association of Chiefs of Police, the University of Cincinnati Center for Police Research and Policy,<sup>42</sup> and the American Bar Association.<sup>43</sup> Social distancing is almost impossible for officers when making an arrest. Thus, arresting defendants instead of offering a summons during the COVID pandemic caused unnecessary and dangerous health risks.<sup>44</sup> Although the New Orleans Police Department leadership refused to change internal policy to give officers the discretion to offer a summons or make an arrest on state charges,<sup>45</sup> the New Orleans City Council stepped in to change the law to require in most circumstances that a summons ticket be offered to a defendant accused of committing a state misdemeanor.<sup>46</sup> The New Orleans Police Department policy has still not changed to allow officers to issue summons for low-level felony offenses.

### Recommendation 8

The New Orleans Police Department should allow police officers the discretion to issue summons in lieu of arrests for all felony non-violent, non-domestic, and non-sex offenses. New Orleans Police Department officers should be trusted to determine when to issue a summons in lieu of an arrest for these felony offenses. The taxpayers of New Orleans should not be forced to expend resources when an arrest is not warranted.

## VICTIM RIGHTS AND PUBLIC SAFETY

### DEFENDANTS AS CRIME SURVIVORS

Crime victims with untreated trauma may show aggressive, retaliatory behaviors and/or engage in substance abuse, all leading to increased rates of arrest.<sup>47</sup> Often the behavior that leads crime survivors to be arrested emanates from a criminal legal system that failed to protect them and failed to provide the resources to heal their trauma.<sup>48</sup> Of the 84 times court watchers observed defendants in Magistrate Court who maintained they were crime survivors, 66% claimed self-defense, 18% had been injured, and 5% were victims in another case. Government money is rarely invested in community-based treatment for crime survivors. This is a serious gap in services at a time when fatal gun violence in New Orleans increased 44% and non-fatal gun violence rose 65% from 2019 to 2020.<sup>49</sup>

### Recommendation 9

The Mayor and City Council should invest the money it deducts from law enforcement and consent decree budgets into community-based alternatives; especially now that the New Orleans Police Department's consent decree is coming to an end. Specifically, the City of New Orleans should invest in a trauma recovery center for gun violence victims so the latter can finally receive the trauma services they need.

## GUN POSSESSION AND INTIMATE PARTNER VIOLENCE

In 2018, a state law went into effect requiring people with active domestic violence protective orders against them to transfer their firearms to the local sheriff's office or another third party.<sup>50</sup> In 2019, the Orleans Parish Sheriff's Office received 16 firearms (15 from civil cases, 1 from criminal cases).<sup>51</sup> In 2020, the Orleans Parish received 10 firearms (7 from civil cases, 3 from criminal cases) and from January 1, 2021 to April 26, 2021, the Orleans Parish Sheriff's Office received 13 firearms (10 from civil cases and 3 from criminal cases).<sup>52</sup>

### Commendation 3

Court Watch NOLA commends New Orleans Police Department Sergeant Richard Pari as well as Nelle Noble and Jocelyn Pinkerton of the City of New Orleans Health Department for ensuring that New Orleans Police Department officers uniformly ask domestic violence survivors about their aggressors' access to guns. This information is placed in the court file and allows judges to get guns out of the possession of domestic violence assailants.

New Orleans Police Department officers are required to ask domestic violence victims at the crime scene specific questions that relate to risk.<sup>53</sup> The answers are placed in the court file which the Magistrate and Commissioners receive before determining whether to set bail or release the defendant.<sup>54</sup> However, the Magistrate and Commissioners failed to ask whether the defendant owned or had access to guns in at least 40% of the court watch observations of domestic violence bail hearings. Magistrate and Commissioners failed to mention in court the victim's responses to the risk questions in at least 90% percent of observed domestic violence bail hearings.

### Recommendation 10

The Orleans Parish Magistrate and Commissioners should ask every defendant subject to a pertinent domestic violence stay-away order whether they possess a firearm and the location of the firearm. The Orleans Parish Magistrate and Commissioners should also inform every defendant subject to a pertinent domestic violence stay-away order that they must transfer their firearms to the sheriff or a third party. The Orleans Parish Magistrate and Commissioners should mention answers to domestic violence risk questions, so they are made part of the court record.

Individuals from the defense bar have expressed a constitutional concern with the firearm transfer law.<sup>55</sup> The concern centers around whether it is a Fifth Amendment violation of the defendant's right against self-incrimination to be compelled to answer a question related to firearm possession.<sup>56</sup> While firearm

possession is not unlawful for most people in Louisiana,<sup>57</sup> it is unlawful for people who have been convicted of certain felony offenses including most of all the drug possession offenses.<sup>58</sup>

#### Recommendation 11

The District Attorney should implement a use immunity provision that will allow defendants to follow the law and transfer their guns to a third party without being prosecuted for an additional crime based solely on their gun possession admission. This practice will keep domestic violence survivors safer without violating the defendant's constitutional rights.

### VICTIM DEMOGRAPHICS AND HATE CRIMES

The year 2020 marked a national surge in hate crimes against Asian Americans<sup>59</sup> and represented the deadliest year on record nationally for transgender Americans--particularly transgender people of color.<sup>60</sup> Through the Federal Bureau of Investigation's Uniform Crime Reporting Program, New Orleans has reported an annual increase in incidents of bias-motivated crime since 2017.<sup>61</sup> However, the numbers reported by the New Orleans Police Department to the Federal Bureau of Investigation are low and likely do not represent the full picture of bias-motivated crime in New Orleans. Underreporting is often a result of distrust between law enforcement and marginalized groups,<sup>62</sup> fear of retribution, fear of deportation,<sup>63</sup> or fear of being outed as a member of a certain group.<sup>64</sup>

#### Recommendation 12

Where there is an indication that a crime was bias-motivated or is a hate crime, the New Orleans Police Department should make the documented motivation of such crimes available to the public through anonymized data. Providing that data to New Orleanians and those in impacted communities in New Orleans will allow for a more complete picture of how bias-motivated crime affects our community. Local officials and law enforcement should partner with impacted communities to ensure that all bias-motivated crimes in Orleans Parish are properly recorded.

### VICTIM-CENTERED JUSTICE

Victim or Survivor-centered justice is defined as the systematic focus on the needs and concerns of the crime survivor and the placement of these needs and concerns at the forefront of all system players' responses.<sup>65</sup> In 62% of cases observed by court watchers, neither the judge nor the prosecutor mentioned the victim during a court proceeding at all, although 71% of arrests were victim crimes.<sup>66</sup>

#### Recommendation 13

Orleans Parish Criminal District Court judges and the Orleans Parish District Attorney's Office must focus more resources and attention on survivors, so they receive the healing and empowerment they deserve and do not fall through the cracks. Prosecutors must adopt a crime survivor-centered approach to prosecution, ensuring to the best of their ability that court proceedings occur when a survivor can be present and providing assistance with employers and childcare in order to make a court appearance possible for a crime survivor.

## THE ORLEANS REENTRY COURT PROGRAM

The Orleans Reentry Court Program allows male and female defendants to be mentored by reform “lifers” who help the defendant obtain training, education, mentoring, socialization, job experience, and a minimum of two nationally recognized certifications within the walls of the Louisiana State Penitentiary.<sup>67</sup> To be eligible, a defendant cannot be convicted of a crime of violence<sup>68</sup> or a sex offense; cannot have a prior conviction for a sex offense;<sup>69</sup> cannot be sentenced as a multiple offender (largely defined as having a prior felony conviction in the last ten years);<sup>70</sup> and cannot be sentenced to a term of incarceration which exceeds ten years.<sup>71</sup> The Reentry Court Program’s recidivism rate is 3%.<sup>72</sup>

### Recommendation 14

Orleans Parish Criminal District Court judges and the Orleans Parish District Attorney’s Office must focus more resources and attention on survivors, so they receive the healing and empowerment they deserve and do not fall through the cracks. Prosecutors must adopt a crime survivor-centered approach to prosecution, ensuring to the best of their ability that court proceedings occur when a survivor can be present and providing assistance with employers and childcare in order to make a court appearance possible for a crime survivor.



**WE PROMOTE REFORM IN  
THE ORLEANS PARISH CRIMINAL  
COURT SYSTEM THROUGH  
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COURTROOM OBSERVATION.**

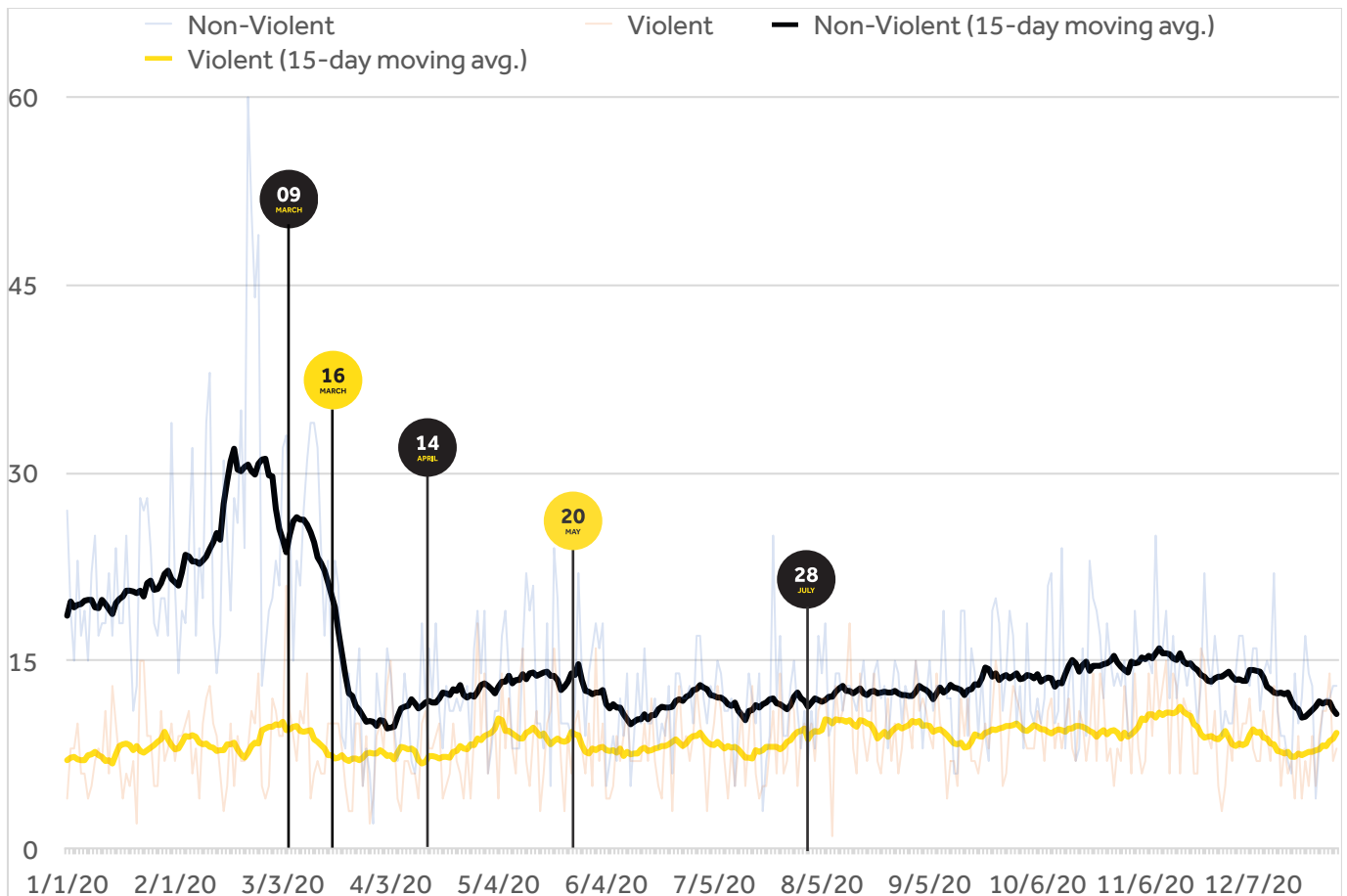
# A TIMELINE FOR THE YEAR

## COVID-19, Arrest Rates, and the Criminal Courts

The COVID-19 pandemic hit New Orleans hard and early, upending life for all New Orleanians – especially incarcerated New Orleanians and their loved ones. Social distancing is impossible in jail, increasing the risk of COVID exposure for those incarcerated, law enforcement, and the community at large. In response to this, Court Watch NOLA reviewed information on who was incarcerated, and for what, during the COVID-19 pandemic. The line graph below reflects arrest rates, but does not reflect the rate of crime during 2020.

### Arrests Per Day During the COVID-19 Pandemic

Source: Orleans Parish Sheriff's Office. Analysis by William Faulkner.



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<p>COVID-19 is discovered in New Orleans.</p>	<p>Orleans Parish Criminal Courts close to the public and jury trials are suspended.</p>	<p>Deadliest day of the pandemic in Louisiana – 129 Louisianans die in one day.</p>	<p>New Orleans jail sees COVID spike. 94 inmates infected.</p>	<p>Louisiana leads the nation in COVID-19 deaths per capita.</p>

### III. YEAR IN REVIEW

#### 2020 CIVIL RIGHTS LITIGATION, CONSENT DECREES, DISCIPLINARY CASES, AND RELATED ACTIONS INVOLVING SYSTEM PLAYERS

##### ORLEANS PARISH DISTRICT ATTORNEY'S OFFICE

- **Singleton v. Cannizzaro**<sup>73</sup> was originally filed in 2017 against District Attorney Cannizzaro for serving fraudulent subpoenas upon victims and witnesses.<sup>74</sup> In 2019, District Attorney Cannizzaro appealed the lower federal court decision against him claiming he had absolute immunity for his actions.<sup>75</sup> The Fifth Circuit Court of Appeals denied Cannizzaro's appeal in 2020.<sup>76</sup> Three plaintiffs settled against the Orleans Parish District Attorney's Office in October 2020.<sup>77</sup> The case is still pending.<sup>78</sup>
- **Washington v. Cannizzaro**<sup>79</sup> was originally filed in 2017 against District Attorney Cannizzaro for non-compliance with a public records request relating to subpoenas.<sup>80</sup> In August 2020, an Orleans Parish Civil District Court judge issued a \$51,000 judgment against District Attorney Leon Cannizzaro.<sup>81</sup>
- **Jones v. Cannizzaro et al**<sup>82</sup> is a wrongful conviction case originally filed in 2018 for suppression of evidence.<sup>83</sup> In 2020, the federal court denied District Attorney Cannizzaro's motion (for summary judgement) to dismiss the case. The case is pending.<sup>84</sup>
- **Floyd v. Dillmann, London, Cannizzaro and Doe**<sup>85</sup> was filed in 2019 on behalf of John Floyd to demand damages for his wrongful conviction that occurred under District Attorney Harry Connick Senior's administration.<sup>86</sup> A 2019 motion to dismiss filed by District Attorney Cannizzaro is undecided at the date of this report.<sup>87</sup>
- **Morgan v. Connick, Cannizzaro, and Tamborella**<sup>88</sup> is a wrongful conviction suit filed in 2017. In 2018, District Attorney Cannizzaro's motion to dismiss was denied.<sup>89</sup> The case is pending.<sup>90</sup>
- **In Re: Eusi Phillips**: in 2019, the Office of Disciplinary Counsel brought formal ethics charges against then Orleans Parish assistant district attorney Eusi Phillips for failing to disclose incentives allegedly offered to a testifying witness. On Feb 19th, 2020, the Louisiana Supreme Court dismissed the charges against Phillips despite a strongly worded dissenting opinion from Chief Justice Bernette Johnson.<sup>91</sup>

##### CRIMINAL AND MAGISTRATE COURT JUDGES

- **Caliste v. Cantrell**<sup>92</sup> was a civil rights lawsuit filed against Orleans Parish Magistrate Harry Cantrell in 2017 for unconstitutional bail and bond practices.<sup>93</sup> In 2019, Magistrate Cantrell appealed the federal court's decision against him but lost the appeal,<sup>94</sup> as well as a rehearing of his case.<sup>95</sup> In 2020, the federal court denied the plaintiff's attempt to hold Cantrell in contempt.<sup>96</sup>
- **Moran v. Keva Landrum-Johnson** was a civil rights suit filed against the Orleans Parish Criminal District Court judges in 2019 for unconstitutional bail and bond practices.<sup>97</sup> In 2020, the federal court denied both the Orleans Parish Criminal Court's motion to dismiss as well as the plaintiff's class certification motion. Also in 2020, the federal court granted the plaintiff's discovery motion.<sup>98</sup>
- **Cain v. the City of New Orleans**<sup>99</sup> was filed in 2016 for the unconstitutional imprisonment of indigent defendants for nonpayment of court fines and fees.<sup>100</sup> By 2019, the only defendants left in

the suit were the Orleans Parish Criminal District Court judges and the Orleans Parish Criminal District Court Judicial Administrator. In 2020, a declaratory judgement against the judges and the judicial administrator was granted by the lower federal court, and both the Fifth Circuit Court of Appeals and the United States Supreme Court denied the judges' appeals.<sup>101</sup>

- ***In re: Magistrate Judge Harry E. Cantrell, Jr.:*** The Louisiana Judiciary Commission charged Cantrell with willful misconduct, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and egregious legal error. The aforementioned charges largely emanated from Cantrell's bail-setting policies, but also included the illegal short-term rental of his former law office.<sup>102</sup> At the end of 2020, Magistrate Cantrell resigned from office, thus facing no public disciplinary hearing, disciplinary convictions, or ramifications.<sup>103</sup>
- In July 2020, the state of Louisiana paid \$52,500 to settle the sexual harassment lawsuit brought against Orleans Parish Criminal Court Judge Byron Williams. However, Williams refused to personally pay any of the settlement money and continued to maintain his innocence.<sup>104</sup> Williams submitted his resignation on February 12, 2020, a year and a half after his suspension from the bench.<sup>105</sup>
- ***Judge Janice Clark et al v. State of Louisiana:*** On April 16, 2020, Magistrate Cantrell filed a lawsuit in Orleans Parish Civil District Court to declare null and void the state constitutional provision that would force him to retire due to his age.<sup>106</sup> On July 21, 2020, the Louisiana Supreme Court dismissed Cantrell's lawsuit with prejudice, ruling that only a state referendum could change the judicial age restriction.<sup>107</sup>

## DEFENSE BAR

- ***Allen v. John Bel Edwards*** was filed in 2017, alleging that the Louisiana Governor and the Louisiana Public Defender Board had failed to establish an effective statewide public defense system and that the current system denied due process, equal protection of the law, and the right to counsel. The suit requested a monitor be appointed to supervise the public defense system until a statewide reform solved these constitutional failures.<sup>108</sup> In March 2021, the appeals court reversed the plaintiff's class certification, and the plaintiffs appealed that decision to the Louisiana Supreme Court.<sup>109</sup>
- ***In Re: Ike Spears:*** On March 9, 2020, the Louisiana Supreme Court formally reprimanded Ike Spears for an "inappropriate and unprofessional verbal exchange" between him and Assistant District Attorney Ian Dover in Judge Robin Pittman's Orleans Parish Criminal District courtroom. Spears is "a political consultant, criminal defense attorney, and longtime ally of former U.S. Representative Cedric Richmond."<sup>110</sup> The Supreme Court's ruling drew a dissent from Chief Justice Bernette Johnson. Spears has filed a defamation lawsuit against Assistant District Attorney Ian Dover<sup>111</sup>

## ORLEANS PARISH SHERIFF'S OFFICE

- ***Ashawn Jones, et. al. and the United States of America v. Marlin Gusman*** was filed against the Orleans Parish Sheriff's Office in 2012,<sup>112</sup> resulting in a consent decree that in 2020 was in its seventh year.<sup>113</sup> On August 5th, 2020 the federal judge approved Sheriff Marlin Gusman's request to retake control of the jail from a court-approved compliance director who controlled most functions of the jail.<sup>114</sup> The federal court however informed Sheriff Gusman that "the time isn't ripe for the end of the 'consent decree,'" and that violence remained frequent, staffing shortages were still a concern, suicide precautions were lacking<sup>115</sup> and a narcotics contraband problem continued.<sup>116</sup> According to the Federal Monitor's report, "Ratings improved on eleven (11) provisions, but regressed on nineteen (19) provisions."<sup>117</sup>

## NEW ORLEANS POLICE DEPARTMENT

- ***United States of America v. City of New Orleans***<sup>118</sup> was first filed against the New Orleans Police Department in 2012 and became the largest consent decree ever filed in the United States.<sup>119</sup> In 2020, the New Orleans Police Department was in its eighth year of the consent decree.<sup>120</sup> A June 2020 federal monitor report accused New Orleans Police Department's task forces, units designed to proactively deter crime, of rolling over residents' rights.<sup>121</sup>

## BAIL BOND COMPANIES

- ***Egana et al v. Blair's Bail Bonds, Inc. et al***: In 2017, a federal lawsuit was filed against Blair's Bail Bonds for allegedly violating numerous laws, including the Truth in Lending Act and federal and state racketeering laws, based on claims of kidnapping, extortion and false imprisonment. On January 21, 2020, Blair's Bail Bonds settled the civil lawsuit, effectively ending the civil action.<sup>122</sup>

## NOTABLE CRIMINAL CASES IN 2020

- ***People v. Michael Willis***: On January 30, 2020, a jury refused to convict Michael Willis on a murder charge but did convict him of heroin distribution, possession with intent to distribute heroin, conspiracy to distribute heroin, and money laundering after he gave drugs to a man who died of an overdose. Prosecutors across the country are using drug-induced homicide statutes; Louisiana is one of seven states in which a conviction of a drug-induced homicide can lead to life imprisonment.<sup>123</sup>
- ***People v. Robert Dees Jr.***: On February 3, Judge Robin Pittman found New Orleans Police Officer Robert Dees not guilty of striking his girlfriend and slamming her head against his police cruiser.<sup>124</sup>
- ***People v. Henry Dolliole***: On February 16, 2020, Henry Dolliole pled guilty in front of Judge Laurie White to manslaughter for killing Lauren Tanski and received a 35-year sentence. The case raised questions about the New Orleans Police Department's handling of domestic violence cases in the early 2010s because the police failed to arrest Dolliole for an earlier domestic violence incident involving the murdered victim's roommate.<sup>125</sup>
- ***People v. Tashonty Toney***: On February 28, 2020, Judge White rejected Tashonty Toney's request for a reduction of his 90-year sentence for crashing into nine bicyclists on Esplanade Avenue, killing two of them, while he was intoxicated. Four victims supported a reduction in sentence, but relatives of the man and woman Toney killed in the crash after the 2019 Endymion parade did not support it.<sup>126</sup>
- ***People v Cardell Hayes***: In March 2020, the Louisiana Supreme Court denied an appeal from Cardell Hayes, who was serving a 25-year sentence for killing Saints player Will Smith. He was tried by a jury in front of Judge Camille Buras. Hayes had asked the Louisiana Supreme Court to reconsider a ruling requesting a new trial or a reduced sentence.<sup>127</sup> In 2021, the United States Supreme Court overturned Hayes' conviction because it was rendered by a non-unanimous verdict, and Hayes was released on bond.<sup>128</sup>
- ***People v. Jontell Robinson, People v. Edwin Cottrell***: On March 2, 2020, in front of Judge Benedict Willard, Jontell Robinson and Edwin Cottrell took pleas to 30 years and 14 years respectively for running over and killing Pastor Jeannot Plessy and severely injuring her daughter with Plessy's car that Robinson and Cottrell were stealing. Plessy was a pastor known for handing out red beans and rice to homeless people in Washington Square Park.<sup>129</sup>



- **People v. David Perry:** On March 9th, David Perry pleaded guilty in Judge Laurie White's court to charges of trafficking a child and of rape, receiving 30 years in jail. The 16-year-old female victim was a runaway who was drugged, beaten, and raped over the course of eight days. There are three other co-defendants in the case.<sup>130</sup>
- **People v. Stafford Starks, People v. LaBryson Polidore:** On April 17, 2020, Stafford Starks and LaBryson Polidore were arraigned in front of Judge Daryl Derbigny for a Canal Street shootout that took place after crowds celebrated the Bayou Classic. Twelve people were injured. Both defendants were charged with attempted murder.<sup>131</sup>
- **People v. Darrill Henry:** On July 22, 2020, the Louisiana Fourth Circuit of Appeal reversed Criminal District Court Ad hoc Judge Dennis Waldron's decision to overturn Henry's murder conviction on the basis of newly analyzed DNA evidence, saying that the judge must review anew the evidence against Henry.<sup>132</sup> Henry spent nearly a decade in prison before Judge Waldron vacated his life sentence.<sup>133</sup>
- **People v. Jared Brossett:** On August 10, 2020, in New Orleans Municipal Court, New Orleans Councilmember Jared Brossett pled not guilty to operating while intoxicated, reckless operation, and leaving a roadway laned for traffic.<sup>134</sup> In December 2020, Brossett enrolled in a diversion program<sup>135</sup> and in April 2021 set up a payment plan to pay the City of New Orleans \$45,175 for the city take-home vehicle he crashed during the incident.<sup>136</sup>
- **People v. Kaleigh Smith:** On November 23, 2020, in front of Judge Robin Pittman, the Innocence Project of New Orleans filed a motion for post-relief, requesting a new trial due to the prosecution's failure to reveal that the victim was both threatened with imprisonment and provided with victim assistance before she testified.<sup>137</sup> Smith had been convicted of murder in 2010 by a split jury decision and received a life sentence.<sup>138</sup>
- **People v. Ronjae Steadman, People v. Ronald Steadmen:** On October 22, 2020 both men were arraigned in front of Judge Willard<sup>139</sup> for the May 11th murder of Isaha Adams, age 3, and James Estem, age 23, in Algiers.<sup>140</sup> During the shooting, the mother of both deceased victims was also hit and injured as she attempted to protect her three-year-old son.<sup>141</sup>
- **People v. Caleb Wassell and People v Michela Davis:** On October 22, 2020, Wassell and Davis were arraigned in front of Judge Buras<sup>142</sup> for removing a statue of slaveholder and educational philanthropist John McDonogh from its pedestal and dropping it into the Mississippi River.<sup>143</sup> Wassell was arraigned on a felony count of theft of city property valued between \$5,000 and \$25,000 and Davis was arraigned on marijuana possession and resisting arrest.<sup>144</sup> In 2021, District Attorney Jason Williams allowed both defendants to be placed in pretrial diversion.<sup>145</sup>

## NATIONAL AND LOCAL EVENTS AND TRENDS THAT HAD AN EFFECT ON NEW ORLEANS CRIMINAL COURTS

- On January 4, 2020, Criminal Clerk of Court Arthur Morrell rescinded a threat to furlough nearly his entire staff in response to reduced budgets and a seven-year long budget battle with the city of New Orleans. On January 28, 2021, the Clerk signed an agreement with the city increasing Morrell's yearly funding from \$4 million to \$4.6 million in exchange for Morrell dismissing six pending lawsuits against the city.<sup>146</sup> In May 2020, the Orleans Parish District Attorney Leon Cannizzaro furloughed 56 employees, including investigators and victim counselors, attributing the furloughs on the impact of the coronavirus pandemic.<sup>147</sup> In April 2020, the Orleans Public Defenders announced staff and leadership furloughs to make up for a projected \$800,000 in shortfall.<sup>148</sup>

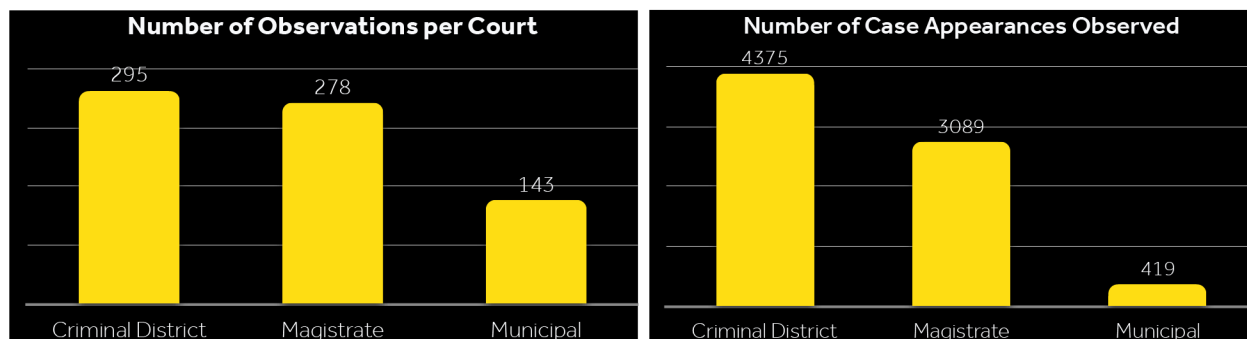
- In March 2020, Tulane University Law School launched a legal clinic designed to help Louisiana survivors of domestic violence win new trials or sentence commutations. The clinic aims to change laws and policies to ensure more domestic violence survivors are not incarcerated for crimes connected to their abuse.<sup>149</sup>
- In April 2020, the United State Supreme Court invalidated split jury verdicts which were in use only in Louisiana and Oregon.<sup>150</sup> In May 2021, the United States Supreme Court determined that its 2020 ruling would not apply to past convictions obtained by a split-verdict.<sup>151</sup> In 2021, newly elected District Attorney Jason Williams announced he would vacate the convictions of 22 people who had been found guilty by split verdicts from 1974 to 2014, with the majority of those defendants agreeing to plead guilty to reduced sentences.<sup>152</sup>
- Since the May 25, 2020 killing of George Floyd under a policeman's knee in Minneapolis, protesters have filled the streets in cities across the world. In New Orleans, Take 'em Down NOLA, a group dedicated to removing confederate monuments, organized protests in which thousands of people participated.<sup>153</sup>
- In June 2020, Governor John Bel Edwards signed a law aimed at eliminating the Orleans Parish Criminal District Court's financial conflict of interest, directing fine and fee collections that previously went to the court's bank account into the city's account instead. The law was meant to address a conflict of interest identified in two civil rights lawsuits filed against criminal court judges in Orleans Parish. Advocates and the plaintiff lawyers in both the civil rights lawsuits objected to the new law saying it did not go far enough.<sup>154</sup>
- In November 2020, Kimya Holmes, Rhonda Goode Douglass, Nandi Campbell, and Angel Harris won judicial seats in Orleans Parish Criminal District Court, the latter beating long-term incumbent Franz Zibilich. Also in November 2020, incumbent Municipal Court Judge Paul Sens won his judicial seat in a contested election and Juana Lombard won as Magistrate.<sup>155</sup> After a run-off election in December 2020, Marcus DeLarge won an Orleans Criminal District Court judicial seat and Jason Williams won as the Orleans Parish District Attorney.<sup>156</sup>
- Marijuana Legalization: By the time this report is published, 36 states (including Louisiana) have legalized medical marijuana, and 15 states, 2 territories, and the District of Columbia have legalized recreational marijuana.<sup>157</sup>
- Drug Overdoses: Between June 2019 and May 2020, there were an estimated 81,230 drug overdose deaths in the United States, an 18% increase from a year before.<sup>158</sup> Nationally, death from opioids particularly fentanyl, increased by over 10,000 deaths.<sup>159</sup> Deaths from cocaine and psychostimulants like methamphetamine have also increased, while deaths from heroin have plateaued.<sup>160</sup> Louisiana was one of the states with the largest increase in overdose deaths, a 47.6% increase from 1,245 cases in October 2019 to 1,837 cases in October 2020.<sup>161</sup>
- Sexual Assault: The Department of Justice reported that in 2019, the most recently reported year, 459,310 people had been victims of threatened, attempted, or completed rape (a 0.50% decrease from the year before), and that reports to the police of rape and sexual assault increased from about 25% in 2018 to about 34% in 2019.<sup>162</sup>
- Violent Crime: In 2020, according to the Federal Bureau of Investigations, violent crime (homicide, rape, robbery, and aggravated assault) increased by 3.3%. While some categories of violent crime offenses decreased (robbery fell by 10.4% and rape fell by 14.2%), other categories of violent crime offenses increased (murder rose by 24.7%, and aggravated assault rose by 10.5%).<sup>163</sup>

## IV. METHODOLOGY

In 2020, Court Watch NOLA collected the observations of 161 volunteers in three different Orleans Parish criminal courts: Criminal District, Magistrate, and Municipal. All observers participated in a three-hour training (abridged due to the COVID pandemic) before they began independent observations. Court Watch NOLA volunteers used four physical data collection tools that were used to guide their observations and record the data in the courtrooms: one for each court, plus an additional data collection tool for Municipal Court first appearances. These data collection tools covered a wide variety of information, drawing primarily from Court Watch NOLA volunteers' in-court observations and information from individual courts' case dockets. Volunteers entered the data they recorded in the courtroom on the data collection tools, which was then entered into an online database using Survey Monkey, a cloud-based survey development software. Data was exported to SPSS (Statistical Package for the Social Sciences, V20) for data cleaning and analysis. Data was collected from January 1, 2020 to December 31, 2020.

In 2020, volunteers observed court fewer times than in 2019 (716 court observations in 2020 compared to 987 court observations). However, more court appearances were captured in 2020 compared to what occurred in 2019. For example, volunteers observed a total of 3,508 arrestees' first appearance bail hearings in Magistrate Court and Municipal Court in 2020, compared to 2019, when volunteers observed a total of 1,591 arrestees' first appearance bail hearings.<sup>164</sup> Court Watch NOLA strives to present data as accurately as possible; as such, whereas some data are presented per judge, some data are presented per courthouse to ensure that the sample sizes upon which Court Watch NOLA draws its conclusions are sufficiently representative of court proceedings. The data presented in this report and collected by the Court Watch NOLA volunteers is both quantitative and qualitative in nature. Because Court Watch NOLA volunteers are not able to be present for all sessions in all courtrooms, it is important to note that Court Watch NOLA's data typically captures an underestimate of the number of occurrences of any one examined issue. The data presented in this report, therefore, represents a sample or a minimum number of incidents.

Below, the chart to the left shows the number of court session observations (hereafter referred to as "observations") conducted in 2020 in each of the three courts, and the chart to the right illustrates the number of times that court watchers observed attorneys appear on cases. Hereafter, "all courts" refers to all criminal courts that Court Watch NOLA currently monitors, namely Orleans Parish Criminal District Court, Orleans Parish Magistrate Court, and New Orleans Municipal Court.



Whistleblowers aided Court Watch NOLA in compiling the information in this report. In these cases, Court Watch NOLA complied with whistleblowers' wishes not to reveal their identities. Court Watch NOLA also often agreed not to reveal, (in the case of a defense attorney) the identity of their clients, (in the case of a prosecutor) the cases they prosecuted, or (in the case of victims) the cases in which they were victimized. Court Watch NOLA volunteers have observed Orleans Parish Criminal District Court for 14 years, Orleans Parish Magistrate Court for five years, and New Orleans Municipal Court for four years.

## II. ACCESSIBILITY AND TRANSPARENCY

### A. PUBLIC ACCESSIBILITY IN CRIMINAL DISTRICT AND MAGISTRATE COURTS

The public right to access criminal court has long been established in the United States. In the words of the United States Supreme Court,

"To work effectively, it is important that society's criminal process "satisfy the appearance of justice," *Offutt v. United States*, 348 U. S. 11, 348 U. S. 14, which can best be provided by allowing people to observe such process. From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, it must be concluded that a presumption of openness inheres in the very nature of a criminal trial under this Nation's system of justice."<sup>165</sup>

The United States Supreme Court extended this right to pre-trial proceedings in *Press-Enterprise Co. v. Superior Court of California for Riverside County*, stating it is "implicit in the guarantees of the First Amendment" for the public to attend such proceedings.<sup>166</sup> While certain confidential information such as crime victim testimony or the defendant's medical status can be kept confidential from the public, whole court proceedings, let alone days of numerous and distinct case proceedings cannot and should not be shielded from the public.<sup>167</sup>

The American Bar Association, whose mission "as the national representative of the legal profession" is to "defend liberty and deliver justice,"<sup>168</sup> has written, "a transparent and open criminal justice system is of critical importance in our democracy"<sup>169</sup> To guide the practices of courts, the American Bar Association has set the following guideline:

"A court may issue a closure order to deny access to the public to specified portions of a judicial proceeding or to a related document or exhibit only after: (i) conducting a hearing after reasonable notice and an opportunity to be heard on the proposed order has been provided to the parties and the public; and (ii) setting forth specific written findings on the record that:

- (A) public access would create a substantial probability of harm to the fairness of the trial or other overriding interest which substantially outweighs the defendant's or the public's interest in public access.
- (B) the proposed closure order will effectively prevent or substantially lessen the potential harm; and
- (C) there is no less restrictive alternative reasonably available to prevent that harm, including any of the measures listed in Standard 8- 5.3 or permitting access to one or more representatives of the public."<sup>170</sup>

Despite both the highest court and the foremost legal association of the country underlining the importance of public access to court appearances, Court Watch NOLA had a surprisingly difficult time ensuring public access to court proceedings in Orleans Parish Criminal District and Magistrate Courts during the first month of the COVID pandemic.

On March 16, 2020, Orleans Parish Magistrate Court began first appearances by Zoom.<sup>171</sup> First appearances are the process by which the defendant is first seen by a judge within forty-eight hours of being arrested in Orleans Parish on state misdemeanor or state felony charges and bail or pretrial release are determined.<sup>172</sup>

Also on March 16, 2020, Court Watch NOLA approached Acting Chief Judge Robin Pittman for permission to publicly access virtual first appearances conducted by Zoom.<sup>173</sup> As spokesperson for the court, Judge

Pittman denied access to Court Watch NOLA to observe the Zoom proceedings for first appearances and failed to provide reasons for denying access.<sup>174</sup> Instead, on March 17, 2020, Judge Pittman allowed Court Watch NOLA to join first appearances by conference call.<sup>175</sup> However, since the prosecution, incarcerated defendant and defense attorneys were participating in the court appearance remotely by Zoom and were not in the same physical space as the judge, court watchers were unable to hear or see other participants in the first appearances when observing by phone call. After Court Watch NOLA informed Judge Pittman of these problems,<sup>176</sup> the judge, as spokesperson for the court, continued to refuse access to the first appearances being conducted by Zoom, to both Court Watch NOLA and the media.<sup>177</sup> During the week of March 16, 2020,<sup>178</sup> Orleans Parish Criminal District Court has a meeting of judges that “collectively voted on the access issue.”<sup>179</sup> Court Watch NOLA was never informed of the full decision of this meeting nor in what way each judge voted, despite request for such information.<sup>180</sup> On March 23, 2020, Court Watch NOLA’s Board of Directors wrote all elected judges sitting in Orleans Parish Criminal District and Magistrate Courts a letter underlining the importance of public access to the courts in Orleans Parish.<sup>181</sup> In response to Court Watch NOLA’s Board of Directors’ letter, Judge Pittman explicitly informed Court Watch NOLA that the court would continue to deny Zoom court access to both Court Watch NOLA and journalists.<sup>182</sup> However, Orleans Parish Criminal District Court judges who were sympathetic to the public’s fundamental right to access criminal court proceedings began to reach out to Court Watch NOLA to express their support.<sup>183</sup>

In early April 2020, Chief Judge Karen Herman returned to Orleans Parish Criminal District Court after a leave of absence, effectively replacing Judge Pittman as the Chief Judge.<sup>184</sup> On April 20, 2020, a reporter from the Marshall Project, who was reporting on Criminal District and Magistrate court’s denial of public access, informed Court Watch NOLA that the Marshall Project had been granted public access to the Zoom proceedings occurring in Magistrate Court by Judge Keva Landrum.<sup>185</sup> Court Watch NOLA was informed on April 21, 2020 that the public would finally be allowed access to court proceedings.<sup>186</sup> But for the first month of the COVID pandemic, Court Watch NOLA and journalists had been refused the fundamental right of public access to Criminal District and Magistrate Court without explanation.<sup>187</sup>

After succeeding in opening the Orleans Parish Criminal District and Magistrate Courts to the public, Court Watch NOLA sent its research to community groups around the country fighting for public court access during the COVID pandemic.<sup>188</sup>

To understand the court’s approach and plan relating to emergencies, Court Watch NOLA asked the Orleans Parish Criminal District Court for the Court’s preparedness plan, and the court provided Court Watch NOLA with “the Criminal District Court Disaster Recovery and Coop Plan,” an amalgam of documents, many of them compiled during the days preceding Hurricane Katrina, consolidated to form one document.<sup>189</sup> This document contained no provisions relating to public access to the courts.<sup>190</sup>

### **Recommendation 1**

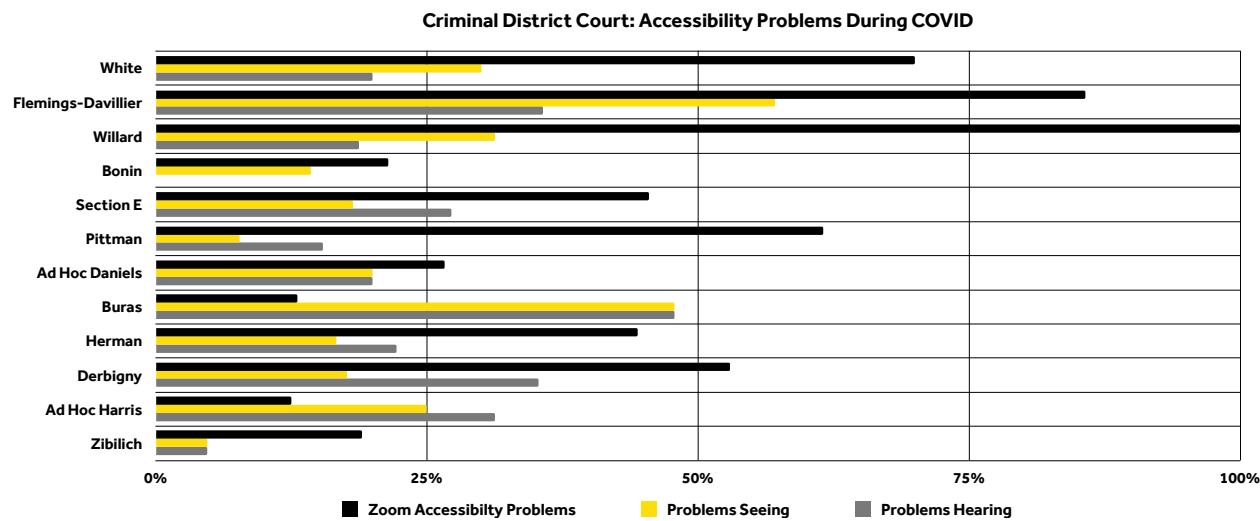
Orleans Parish Criminal District and Magistrate Courts should include a detailed plan for public access to court proceedings in the courts’ written Emergency Preparedness Plan. If the Orleans Parish Criminal District Court intends to continue to use its “Criminal District Court Disaster Recovery and Coop Plan,” the plan should be streamlined and updated to add Criminal District Court’s hard-won experience gained through the COVID pandemic.

Many court employees have done heroic work in reopening the courts during the COVID pandemic. However, two individuals have worked tirelessly to ensure that Criminal District Court and Magistrate Courts functioned as well as they could under the circumstances. Although as employees of the court, they could not allow Court Watch NOLA access to the court without judicial permission, once judicial permission was granted, Orleans Parish Criminal District Court Judicial Administrator Rob Kazik and Deputy Judicial Administrator Shannon Sims have done their very best to make sure court watchers had dockets and were allowed Zoom access to individual courtrooms.<sup>191</sup> Rob Kazik and Shannon Sims have worked as the Judicial Administrator and Deputy Judicial Administrator respectively, in Orleans Criminal District and Magistrate Court for 16 years.<sup>192</sup> They have seen the courts through Hurricane Katrina, countless other storms and emergencies, and now the COVID pandemic. Rob Kazik and Shannon Simms met weekly for months with Court Watch NOLA staff to help its volunteers receive dockets, up to date information and individual courtroom access.<sup>193</sup>

**Commendation 1**

Court Watch NOLA commends Judicial Administrator Robert Kazik and Deputy Judicial Administrator Shannon Sims for their tireless work in ensuring the effective function of Orleans Parish Criminal District and Magistrate Courts and facilitating public access to these courts.

Court watchers continued to have problems accessing individual courtrooms during COVID. Often, they were unable to hear or see those in court properly or sometimes at all. Court watchers also had problems accessing individual courtrooms via Zoom, usually because they were not allowed into the court by the Judge or judicial clerk or because the Zoom link provided to the public did not function. For example, Court Watch NOLA staff often had to inform Judge Willard daily to allow court watchers to access his courtroom. When court watchers had problems accessing courts or problems seeing or hearing proceedings, Court Watch NOLA brought these concerns directly to the court administration.<sup>194</sup> Court Watch NOLA is happy to report that after hearing Court Watch NOLA's complaints starting in October 2020,<sup>195</sup> the court upgraded their audio equipment in February 2021,<sup>196</sup> after which the audibility of court proceedings greatly improved. Below find a chart related to the problems court watchers reported having in individual courtrooms in both Criminal District Court and Magistrate Court. Court watchers had problems gaining access to individual Criminal District courtrooms a total of 43% of the time and to Magistrate courtrooms 4% of the time. Court watchers had problems with both hearing and seeing the parties engaged in Criminal District Court proceedings conducted by Zoom 24% of the time.



N = Observations from June 29-December 31, 2020: 10 (White); 13 (Flemings-Davillier); 16 (Willard); 14 (Bonin); 10 (Landrum/ad hoc); 13 (Pittman); 15 (Ad Hoc Jay Daniels); 21 (Buras); 18 (Herman); 17 (Derbigny); 16 (Ad Hoc Hunter Harris); 21 (Zibilich).

## MAGISTRATE COURT

Magistrate Court accessibility was made more difficult since court watchers often did not know whether to use the official Zoom link posted on the court website<sup>197</sup> (which was usually non-functional) or an additional Zoom link privately provided by the Magistrate Court to Court Watch NOLA. Magistrate Court did not suffer the imaging and sound problems plaguing many of the Criminal District Court's Zoom proceedings likely because all the observed proceedings involved incarcerated defendants located in the Orleans Justice Center as compared to defendants making appearances in court.

Providing virtual access to observe courts is a welcome accountability mechanism that allows members of the public, crime survivors, and loved ones of both defendants and crime survivors to be able to observe court proceedings. In fact, there is a growing national movement to retain virtual access to court, even when courtrooms revert back to in-person court appearances.<sup>198</sup> Orleans Parish Criminal District Court has already invested sizeable resources into a new upgrade for the audibility of its system;<sup>199</sup> these resources should not be wasted. Orleans Parish Criminal District Court should continue to allow virtual access to its courtrooms.

### Recommendation 2

Orleans Parish Criminal District and Magistrate Courts should continue to allow virtual public access to their courts and access to individual courtrooms should not be based on who you are or your relationship with a judge. The courts should make it a priority to update their video systems so those attending court proceedings can properly see all people who are a part of the proceedings. Magistrate Court should ensure the publicly available Zoom link listed on its website is functional.

## B. GENERAL ACCESSIBILITY OF MUNICIPAL COURT

New Orleans Municipal Court, where more minor criminal cases such as prostitution, trespass, and simple marijuana charges are heard, had a very different 2020 opening and closing schedule than Orleans Parish Criminal District and Magistrate Courts. From December 15, 2019 until January 22, 2020, the New Orleans Municipal Court, which is essentially a city court, closed due to the cyberattack on the City of New Orleans computers.<sup>200</sup>

As with the other criminal courts, New Orleans Municipal Court stopped having in-person proceedings due to the COVID pandemic on March 16, 2020.<sup>201</sup> However, from March 16, 2020 until March 20, 2020, a week in which there were no mask requirements in court,<sup>202</sup> court staff were expected to attend court to handle cases of those who were incarcerated.<sup>203</sup> Among those required to appear were clerks, stenographers, judges, New Orleans Public Defenders, and at least one Deputy Constable.<sup>204</sup> After working in Municipal Court during the week of March 16, 2020, at least one Deputy Constable contracted Covid 19.<sup>205</sup> This Deputy Constable died on March 30, 2020 of complications related to Covid 19, days after his wife died awaiting her test results.<sup>206</sup> Most Municipal Court employees were not required to appear for work at the court from March 23, 2020 to June 1, 2020.<sup>207</sup>

Starting on March 30, 2020, Municipal Court first appearances (where bond or pre-trial release are determined) took place virtually by Zoom.<sup>208</sup> Court Watch NOLA commends Chief New Orleans Municipal Court Judge Sean Early for giving Court Watch NOLA official permission to access these first appearances

by Zoom that same day Court Watch NOLA requested permission.<sup>209</sup> Orleans Public Defenders provided the Zoom link which the Municipal Court judges and staff used for first appearances from March 30, 2020 to December 6, 2020. However, this court link was never shared publicly by New Orleans Municipal Court on its website or elsewhere, so other than Court Watch NOLA, the public could not access the court. For the most part, Municipal Court first appearances accessed via the Orleans Public Defenders Office's Zoom account had many fewer access, sound, and imaging problems than in the Orleans Parish Criminal District. This was likely because the proceedings involved incarcerated defendants who were located at the Orleans Justice Center and not defendants making in-person court appearances. However, Court Watch NOLA found that Municipal Court judges themselves had problems working, accessing, and understanding Zoom.

Below find a sample of court watcher comments per New Orleans Municipal courtroom. Where available, Court Watch NOLA included one positive and one negative comment relating to general Zoom accessibility, sound problems, and image problems.

#### **Judge Paul Sens, Division A, New Orleans Municipal Court**

- Once everyone was on it seemed to go smoothly. The judge began proceedings as soon as he entered the call which was before. 9AM, 4/20/20
- The judge did not appear via video only audio. 10/9/20

#### **Judge Robert Jones, Division B, New Orleans Municipal Court**

- Zoom sessions generally went smoothly. 5/11/20
- This was a strange session. The judge did not identify himself and did not turn on his video. (Court Watch staff member) Darrin (Browder) provided the judge's name. There was no city attorney or clerk. The judge asked the OPD attorney to provide information about the defendants. The judge never addressed the defendants directly. The defendants never came to the camera. I could only see their legs and feet. 10/30/20

#### **Judge Stephen Jupiter, Division C, New Orleans Municipal Court**

- Zoom session. When I logged into the session at 9:00, court was already underway. I was able to catch the end of one first appearance and hear the ruling made on another. 5/29/20

#### **Judge Mark Shea, Division D, New Orleans Municipal Court**

- It was a good session! 9/24/20
- The sound quality was very poor this morning. Also, the docket was disorganized, and everyone had trouble figuring it out. 10/20/20

#### **Judge Sean Early, Division E, New Orleans Municipal Court**

- This session was fine! 9/24/20
- The judge didn't understand that the defendants were also in the Zoom call and asked about whether they were present and could hear what he was saying. 4/28/20

#### **Judge Joseph Landry, Division F, New Orleans Municipal Court**

- Judge Landry arrived late, did not appear on video, and never identified himself. 10/23/20



The New Orleans Municipal Court opened on June 1, 2020 to have in-person court proceedings.<sup>210</sup> Unlike Criminal District Court, Municipal Court did not offer defendants the option of appearing by Zoom, unless the individual was incarcerated. Instead, from June 1, 2020 to present, New Orleans Municipal Court took temperatures, addresses, and phone numbers of those coming into court, and asked defendants, to sit socially distanced in the courtroom<sup>211</sup> in a time period when the number of new confirmed COVID cases in New Orleans rose to 315 in a day.<sup>212</sup> Court Watch NOLA decided that sending volunteers into New Orleans Municipal Court in 2020 was detrimental to their health and wellbeing and determined to not do so. Court Watch NOLA volunteers still do not court watch in-person in New Orleans Municipal Court, at the publish date of this report.

The New Orleans Municipal Court does not have an Emergency Plan of its own but instead relies on the Orleans Parish Criminal District Court's Emergency Plan,<sup>213</sup> an amalgam of documents many of which have been compiled from the days preceding Hurricane Katrina.<sup>214</sup> The Criminal District Court's plan does not include any plan for public access to Municipal Court.<sup>215</sup>

### Recommendation 3

New Orleans Municipal Court should not rely on Orleans Parish Criminal District Court's outdated Emergency Preparedness Plan. Any new plan adopted should include a system by which public access to court proceedings is prioritized, along with the health and safety of court users and personnel.

In the beginning of the COVID shutdown, the New Orleans Municipal Court struggled to determine the best approach to conduct bail and pre-trial release hearings for those arrested on municipal charges, working first to determine if the Orleans Parish Sheriff's Office could initiate video access.<sup>216</sup> Orleans Public Defender Supervising Attorney Lauren Anderson allowed the court to use her personal Zoom account for seven months before the court set up its own.<sup>217</sup> Ms. Anderson helped lift the New Orleans Municipal Court into the future by not only allowing the court to use her Zoom platform but daily providing Court Watch NOLA first appearance dockets.

### Orleans Public Defender Supervising Attorney, Lauren Anderson

*"I understand that it was not the responsibility of an underresourced public defender's office to provide a Zoom account for the Municipal Court to hold court proceedings. But I did it because no one in the offices of the Municipal Court or the Sheriff were being proactive in making it happen. There were people in the jail during a pandemic languishing after being arrested for incredibly minor crimes with no ability to be released by court. What else could we do?"*

Ms. Anderson worked in-person in the Municipal Court the week of March 16, 2020 and between June 1, 2020 and December 30, 2020,<sup>218</sup> even when other attorneys may have wanted to refuse for health reasons to do the same.<sup>219</sup> Ms. Anderson had a caseload of over 3,000 municipal cases by December 2020 before she left the Orleans Public Defenders.<sup>220</sup> As a comparison, the National Advisory Commission on Criminal Justice Standards and Goals sets the maximum number of misdemeanor cases a public defender should ever have at 400 a year.<sup>221</sup> While she worked at Municipal Court in 2020, Ms. Anderson also acted as the Magistrate Court supervisor, making bail arguments on behalf of defendants arrested for felony offenses.<sup>222</sup> As reward for her efforts, Ms. Anderson was quarantined twice and tested positive for COVID once.<sup>223</sup>

### Commendation 2

Court Watch NOLA commends Orleans Public Defender Supervising Attorney Lauren Anderson for her work ethic, dedication, and ingenuity, ensuring every single person who was arrested on municipal charges was able to effectively and efficiently have their day in court. Ms. Anderson always ensured Court Watch NOLA was both included in first appearances and was provided the first appearance docket.

## C. DOCKETS

In order for Court Watch NOLA volunteers to gather effective data from observing court, they need access to a docket or a court calendar. The docket lists the defendant's name, case number, section of court, the crime(s) the defendant is charged with, and the proclaimed reason the case is to be heard in court.

In the words of one court watcher:

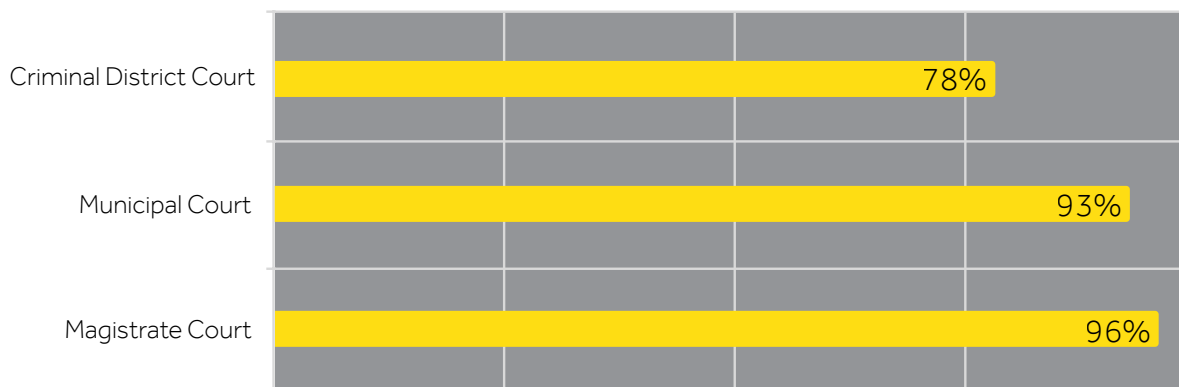
"There was no docket. This makes it extremely difficult to understand the proceedings." -  
12/17/2020 from Orleans Criminal District Courtroom Section B, Judge Willard

In fact, providing dockets upon public request is central to the mission of most courts;<sup>224</sup> dockets are in fact key documents that must be available to the public.<sup>225</sup> The Conference of State Administrators include as two of its major principles that (1) the public has a qualified right of access to court records and (2) the judiciary is obligated to provide access to public court records and to improve the convenience of that access.<sup>226</sup>

While criminal courts in New Orleans have failed to make their docket publicly available online many other courts have<sup>227</sup> including the Louisiana Supreme Court,<sup>228</sup> the 24th Judicial Court in Jefferson Parish,<sup>229</sup> the 33rd Judicial Court in Allen Parish,<sup>230</sup> as well as criminal courts in New York City,<sup>231</sup> San Francisco,<sup>232</sup> and San Diego,<sup>233</sup> among others. The Conference of Chief Justices and the Conference of State Court Administrators have developed a list of the court records that should be electronically available online such as, "calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing."<sup>234</sup> A 2016 Council for Court Excellence/National Center for State Courts survey showed that 21 out of 28 court administrators reported providing remote online access to court records.<sup>235</sup>

Arthur Morrell's Clerk of Court's office is required to provide the Magistrate Court docket to the Magistrate Commissioner so the latter can conduct court. During the COVID pandemic, the Magistrate Commissioners or their judicial clerk provided the docket to Court Watch NOLA so volunteers could effectively observe this Court. Thus, the 96% rate of Magistrate Court docket receipt, reflected in the chart below, demonstrates the transparency and attention to the public given by Magistrate Commissioners and their staff. The lower 78% docket receipt rate for Criminal District Court in the chart below, shows how often Clerk of Court Arthur Morrell and his staff provided Court Watch NOLA (and thus the public) the necessary dockets for Criminal District Court. During the COVID pandemic, Court Watch NOLA received Municipal Court first appearance dockets from the Orleans Public Defenders. The public of course should receive dockets from the Municipal Court and not the Orleans Public Defenders office.<sup>236</sup> However, the fact that Court Watch NOLA received consistent New Orleans Municipal Court dockets at all is a marked improvement from years past.

## Court Watchers Received Dockets During the Pandemic



**N** = (Criminal District Court) 285; (Municipal Court) 182; (Magistrate Court) 365.

Seen in the data above is the frequency which court watchers received dockets in Orleans Parish Magistrate Court from March 18, 2020 to March 17, 2021 in Criminal District Court from June 25, 2020 to March 20, 2021 and New Orleans Municipal Court from March 30, 2020 to December 30, 2020.

### Recommendation 4

The Orleans Parish Clerk of Court and the New Orleans Municipal Clerk of Court should make all court dockets available online. Both clerk of court offices depend entirely on public taxpayer's money and dockets in all New Orleans criminal courts should be publicly available as they are in other courts across the state and the country.

## D. ATTORNEY-CLIENT CONFIDENTIAL COMMUNICATION

The attorney-client privilege is one of the oldest evidentiary privileges in the common law, dating back to at least 1654.<sup>237</sup> This privilege exists to incentivize lawyers and their clients to have forthcoming conversations, which in turn furthers the truth-seeking function of the legal system.<sup>238</sup> The privilege also exists to ensure an open and free exchange of information between attorneys and their clients which, in turn, allows an attorney to provide the best legal counsel possible.<sup>239</sup> When there is government interference with the attorney-client privilege, it implicates the Sixth Amendment Right to Counsel<sup>240</sup> and the Right of Access to the Courts.<sup>241</sup>

The attorney-client privilege is integral for incarcerated inmates, who otherwise have diminished capacity to communicate privately, free from government surveillance.<sup>242</sup> Most correctional facilities record phone conversations between inmates and those non-lawyer parties to whom the inmate makes calls.<sup>243</sup> Prosecutors will listen to the recordings of phone calls between incarcerated defendants and non-lawyers and determine if they can use the recordings as evidence in the defendant's underlying case or whether a new prosecution should be initiated for other criminal acts evidenced in the phone call.<sup>244</sup> Such phone calls have turned up threats made by defendants to crime survivors and plans of future criminality.<sup>245</sup>

However, an inmate's right to speak privately with counsel during a legal proceeding is a separate issue, and has been recognized as a "fundamental constitutional right."<sup>246</sup> Historically speaking, inmates have enjoyed

the attorney-client privilege in conjunction with in-person attorney visits,<sup>247</sup> letters,<sup>248</sup> and phone calls.<sup>249</sup> Most recently, the United States House of Representatives has passed a legislative bill that ensures emails between incarcerated defendants and their attorneys are protected under attorney-client privilege and are not read by law enforcement.<sup>250</sup>

In 2017, Court Watch NOLA had several meetings with the Orleans Parish Sheriff's Office requesting that the office no longer record attorney-client privileged calls made from the jail. At the end of 2017, after meeting with Court Watch NOLA, the Orleans Parish Sheriff's Office would agree to not record attorney-client calls only made to an attorney's landline upon the attorney signing an affidavit.

Four years later, the Orleans Parish Sheriff's Office's website still states that it does not record calls to attorneys' landlines only upon an attorney's filing of a sworn affidavit.<sup>251</sup> The website makes no mention of the availability of unrecorded calls to an attorney's cellular phone. In said affidavit, the attorney must prohibit, "any other third party to participate in any non-recorded call."<sup>252</sup> The affidavit warns that "OPSO may report any violation of these rules to law enforcement agencies and to the Louisiana State Bar Association as is deemed necessary."<sup>253</sup> Thus, due to this stern warning, an attorney might believe that they would be reported to law enforcement if they allowed their paid investigators or paralegals to take part in any such calls,<sup>254</sup> although both investigators and paralegals are legally allowed to be part of such calls without the attorney-client privilege being violated.<sup>255</sup>

With the onset of the COVID pandemic, the Orleans Parish Sheriff's Office has allowed attorneys from Orleans Public Defenders and at least one law school clinic professor to have unrecorded and often free calls between their incarcerated clients and the attorney's cellular phones.<sup>256</sup> However, many private defense attorneys have waited to receive the same right, sometimes for over a year.<sup>257</sup> Additionally in 2021, the Orleans Parish Sheriff's Office has told Court Watch NOLA they will allow unrecorded calls between attorneys and clients with the attorney's investigator or paralegal being a part of the call.<sup>258</sup> This policy change is welcome, but is not official unless reflected publicly on the Sheriff's website. In 2021, the Orleans Parish Sheriff's Office allowed the Orleans Public Defenders to have non-recorded Zoom calls with their incarcerated clients, extending the same offer, via their website, to private attorneys.<sup>259</sup> Again, this is a commendable step for the Orleans Parish Sheriff's Office, but it is insufficient to offer video calls when private defense attorneys are still waiting to be granted the right to have unrecorded phone calls with their clients.

It should not be incumbent upon a prosecutor's office to face the financial burden of somehow separating attorney-client privileged calls from other calls made by inmates.<sup>260</sup> However, in situations where the government records attorney-client calls, there is no taint team or special master in place, and the prejudice is too great,<sup>261</sup> the United States Supreme Court has found that the defendant's conviction should be vacated.<sup>262</sup> Thus, a prosecutor's office should be concerned whenever calls made by an incarcerated defendant to their attorney are recorded by the jail and handed over to the prosecution.

District Attorney Jason Williams committed in his electoral campaign to not listen to attorney-client phone calls provided to him from the Orleans Parish Sheriff's Office.<sup>263</sup> However, the District Attorney's Office must listen to a portion of the privileged call if only to identify the call as one which the office should not listen to in its entirety. Thus, another remedy for transparency is required.

### Recommendation 5

The Orleans Parish Clerk of Court and the New Orleans Municipal Clerk of Court should make all court dockets available online. Both clerk of court offices depend entirely on public taxpayer's money and dockets in all New Orleans criminal courts should be publicly available as they are in other courts across the state and the country.

In 2020, the Orleans Parish Sheriff's Office renewed its contract with the giant prison telecom company Securus.<sup>264</sup> Within the contract, the Orleans Parish Sheriff's Office agreed to be part of the THREADS program.<sup>265</sup> Nationally, the THREADS program encompasses an enormous database of recorded prison calls, phone records, billing names, and addresses of those people an inmate calls, and scanned prisoner mail. All the data in the Threads database is shared between the thousands of correctional facilities where Securus operates as well as any other law enforcement agency that is willing to buy into the THREADS system.<sup>266</sup> On its website in 2017, but since scrubbed, Securus boasted its "growing database that already included the names and billing addresses of over 600,000 people who were not incarcerated, but who had at some point communicated with incarcerated people over the Securus network."<sup>267</sup> Also within the Orleans Parish Sheriff's Office contract with Securus is an agreement to allow Securus to use its "Guarded Exchange" program on phones within the Orleans Justice Center. The "Guarded Exchange" program employs artificial intelligence<sup>268</sup> that identifies voice inflection<sup>269</sup> and words which Securus alone has determined as "suspicious or suggestive" within inmates recorded phone calls to the outside world.<sup>270</sup> Securus users such as the Orleans Parish Sheriff's Office can also add notes to call logs establishing a link between an incarcerated defendant, the person the incarcerated person has called, and any activity the Sheriff's office has identified as suspicious.<sup>271</sup> These so-called "trends" are not subject to external substantiation before they are provided to the law enforcement agencies across the country that have bought into the Securus system.<sup>272</sup> It is unknown whether Guarded Exchange is being used yet by the Orleans Parish Sheriff's Office.

Also under the THREADS program, Securus and the jail that is under contract with Securus creates an incarcerated person's "voice print"<sup>273</sup> (a vocal sample created for user authentication)<sup>274</sup> and retains it regardless of whether or not the defendant is found innocent and is released from jail the day after the inmate records the voice print.<sup>275</sup> While the Orleans Justice Center does not yet appear to have begun recording voice prints or scanning prisoner mail<sup>276</sup> this capacity exists and the public should be vigilant in ensuring this part of the THREADS program will not be initiated by the Orleans Parish Sheriff's Office.

Securus's contract with the Orleans Parish Sheriff's Office states that call storage will be "increased to 5 years."<sup>277</sup> However, Securus itself retains such call recordings and other data after the end of the contract period<sup>278</sup> and a law enforcement agency that has bought the data and phone calls that the Orleans Parish Sheriff's Office is providing through the THREADS program has the ability to copy such recorded phone calls and other data onto their personal computers where it can be retained indefinitely.<sup>279</sup>

In fact, while "private calls," such as those between attorneys and clients and those made to clergy, are supposed to be automatically eliminated from all monitoring or recording,<sup>280</sup> this determination is made solely by the local jail. Thus, when a jail such as the Orleans Parish Sheriff's Office<sup>281</sup> does not facilitate unrecorded phone calls between attorneys and clients, such an infringement causes additional liability.

In 2015, hackers uploaded from Securus' database more than 70 million call records and call recordings of which at least 14,000 calls were between inmates and their attorneys. In 2018, Securus was hacked again. This time hackers uploaded more than 2,800 usernames, email addresses, and phone numbers.

In 2017, an objection was made to the Federal Communications Commission (FCC) that Securus was allowing “the system to be used by prison staff or other law enforcement officials to keep tabs on private citizens without any sort of warrant or court order.” United States Senator from Oregon, Ron Wyden, raised a similar objection.<sup>282</sup>

In its contract with the Orleans Parish Sheriff’s Office, Securus has ensured liability for recording attorney-client confidential calls or anything else related to use of the THREADS program, will rest largely on the Orleans Parish Sheriff’s Office and not on Securus.<sup>283</sup> The contract requires that the customer (Orleans Parish Sheriff’s Office) “comply with all privacy, consumer protection, marketing, and data security laws and government guidelines applicable to Customer’s access to and use of information obtained in connection with or through the THREADS application.”<sup>284</sup> The contract goes on to state that “the Customer is solely responsible for its compliance with such laws and that Provider makes no representation or warranty as to the legality of the use of the THREADS application [emphasis in contract].”<sup>285</sup> Of particular concern to Securus (and should be to all New Orleanians) is which correctional employees the Orleans Parish Sheriff’s Office allows to access recorded calls, allows to access the names of and addresses of those private people who inmates call from jail.

Specifically, the contract says:

“Customer acknowledges that the information available through the THREADS application includes personally identifiable information and that it is Customer’s obligation to keep all such accessed information secure. Accordingly, Customer shall (a) restrict access to THREADS to those law enforcement personnel who have a need to know as part of their official duties; (b) ensure that its employees (i) obtain and/or use information from the THREADS application only for lawful purposes and (ii) transmit or disclose any such information only as permitted or required by law; (c) keep all user identification numbers confidential and prohibit the sharing of user identification numbers...”<sup>286</sup>

For further protection of its own corporate liability, Securus included a clause in the contract that Orleans Parish Sheriff’s Office “agrees that provider’s aggregate liability for any and all losses or injuries arising out of any act or omission of Provider in connection with the THREADS application, regardless of the cause of the loss or injury, and regardless of the nature of the legal or equitable right claimed to have been violated, **shall never exceed \$100.00.** [emphasis added]”<sup>287</sup> The contract goes on to say that the Orleans Parish Sheriff’s Office Customer “promises that it will not seek to recover from Provider an amount greater than such sum even if Customer was advised of the possibility of such damages.”<sup>288</sup>

Securus has settled lawsuits over improperly recording attorney-client privileged phone calls in 2016 (in Texas), in 2019 (in Kansas and in California),<sup>289</sup> and Maine in 2020.<sup>290</sup> The lawsuit in Kansas was settled for \$3.7 million dollars.<sup>291</sup> In response to the Kansas lawsuit Securus Spokesperson Jade Trombetta stated in part, “We are troubled by any misuse of our technology, even if unintentional...”<sup>292</sup>

As compensation for the telephone services Securus provides the Orleans Justice Center, the Orleans Parish Sheriff’s Office receives 86% of all user payments for in-state telephone calls made by incarcerated defendants.<sup>293</sup> In 2020, according to documents submitted to the City Council by the Orleans Parish Sheriff’s Office, the Orleans Parish Sheriff’s Office’s 2020 projected revenue from jail phone calls was \$900,000.<sup>294</sup>

### Recommendation 6

All attorney-client calls made from the jail should be unrecorded. The process by which attorneys are able to receive phone calls from their clients should be simple, clear, and streamlined; a notarized affidavit should not be required. The Orleans Parish Sheriff’s Office should not take part in the Securus THREADS program unless it can ensure confidential attorney-client phone calls are not part of such a database and financial liability does not rest upon the people of Orleans Parish.

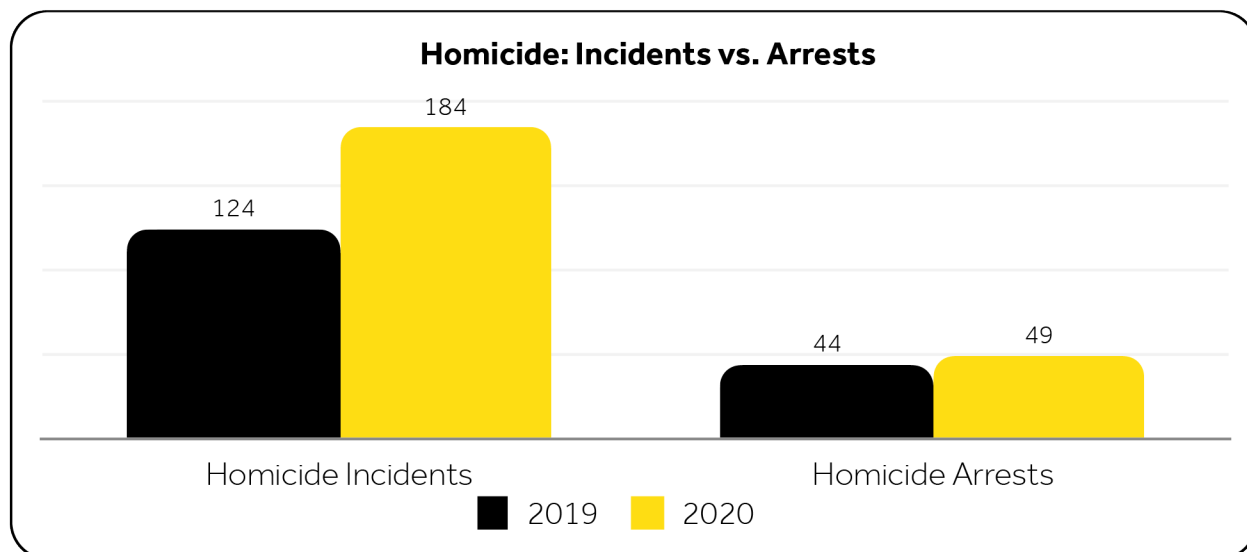
## V. EFFICIENCY

Fairness and accessibility are fundamental values to any court system.<sup>295</sup> However, a system that fails to use its resources effectively or manage its work efficiently will not serve justice and will forfeit public trust and confidence.<sup>296</sup>

In 2020, it was no secret that there was a large backlog in Orleans Parish Criminal District Court due to the COVID-19 pandemic.<sup>297</sup> One of the reasons for this backlog was the inability of the Criminal District Court to convene a jury to preside over trials.<sup>298</sup> On May 15, 2020, the Louisiana Supreme Court called for a suspension of all jury trials.<sup>299</sup> However, by the time of this report, Orleans Criminal District had not begun to convene juries due to precautionary health and safety concerns.<sup>300</sup> On March 15, 2020, the Louisiana Supreme Court stopped the clock on speedy trial calculations,<sup>301</sup> thus stopping the release of a defendant from jail or the dismissal of a criminal case when the prosecution has not fulfilled its duty in bringing a case to trial.<sup>302</sup>

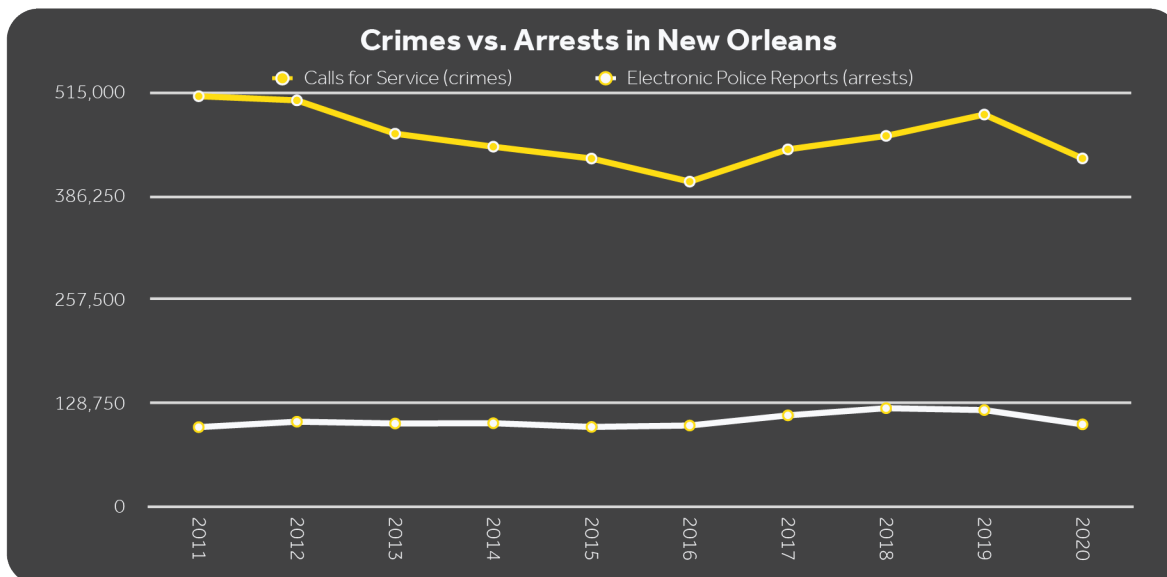
The backlog in cases was not a result of an increase in overall crime as has been incorrectly represented. Specifically, on December 1, 2020, the Metropolitan Crime Commission reported to Local Fox News 8 that during the ongoing pandemic, the backlog in cases at Orleans Parish Criminal District Court was similar to what New Orleans experienced following Hurricane Katrina, with this difference, "The population of the city didn't leave, they've been here and unfortunately crime has been increasing in 2020. You're looking at an excess of 150 people in custody on murder charges waiting to be tried."<sup>303</sup>

In reality, crime decreased in 2020 from the 2019 crime rate, with an 11% decrease in calls to the police in 2020.<sup>304</sup> In fact, there were 6% fewer calls for service to the New Orleans Police Department in 2020 than the median number of calls for the last nine years (from 2011 to 2019).<sup>305</sup> According to Jeff Asher, Public Safety Consultant with the City Council, the number of homicides in New Orleans did increase from 124 homicides in 2019 to 184 homicides in 2020 but, the number of homicide arrests only increased from 44 arrests (35% of homicide incidents) in 2019 to 49 arrests (27% of homicide incidents) in 2020.<sup>306</sup> Despite incorrect claims to the contrary, while there were more murders, the murder rate was not the cause of a court backlog.



**Source:** Jeff Asher, Public Safety Consultant to the New Orleans City Council.

And most significant for examining the court backlog, the number of overall arrests sharply decreased, from 15,498 arrests for all crimes in 2019 to almost half of that, 7,887 arrests in 2020.<sup>307</sup> Thus, an increased crime rate in 2020, could not have led to the backlog in Orleans Parish Criminal District Court. However, blaming increased crime for the backlog in Criminal District Court would certainly increase public fear of crime, and preying on a community's fear is neither unusual nor uncommon.



**Source:** New Orleans Police Department <data.nola.gov, last accessed 4/26/2021>.<sup>308</sup>

Court Watch NOLA has monitored courtroom efficiency for over 14 years. In fact, efficiency has been part of Court Watch NOLA's core mission from the start. The importance of reliable efficiency data cannot be underestimated if efficiency in the courts is to be improved. Comparing the COVID crisis to post-Hurricane Katrina when crime spiked, causes New Orleanians to become unnecessarily panicked due to fear and incorrect data.

In a recent study conducted in the scientific journal *Nature*, scientists studied the nature of fear and its impact upon a population, taking into consideration whether fear of crime could be increased by consumption of media.<sup>309</sup> The study found that significant levels of fear are often reported by people who are rarely victimized and that many more people are fearful of crime than are actual victims of crime.<sup>310</sup> Fear of crime was reported to impinge on quality of life, causing paranoia, anxiety and on a social level, prejudice, and segregation.<sup>311</sup> The study concluded,

"Fear of crime is a problem in its own right, with costly and long-lasting consequences to the social life of a city and therefore, understanding its causes and the reasons why it emerges as a social phenomenon plays a key role in the correct design of policies."<sup>312</sup>

Instead of blaming an increase in overall crime in 2020 when there was none, it is important to examine the real driver of inefficiency, the failure to resolve criminal cases, many of which were in the system predating 2020.<sup>313</sup> In 2019, the Orleans Public Defenders office closed (whether by dismissal, plea, or trial) over 4,000 felony and nearly 8,000 misdemeanor cases.<sup>314</sup> In 2020, the number of closed cases declined to just over 2,000 felony and only 1,300 misdemeanor cases.<sup>315</sup> By February 2021, the Orleans Public Defenders had 11,000 cases pending in criminal court.<sup>316</sup> These cases represent the majority of cases in the New Orleans criminal courts, as the Orleans Public Defenders represent 85% of all the criminal cases in New Orleans criminal courts.<sup>317</sup>



## A. CONTINUANCES AND PLEAS

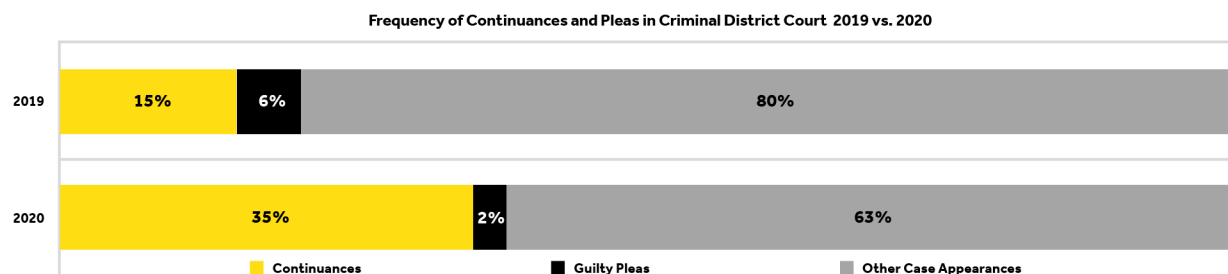
Due to the prohibition on jury trials in 2020, if the prosecution chose to prosecute and not dismiss charges, a criminal defendant had a limited choice in how to handle their case. They could:

- Request that a judge preside over their trial in what is known as a *bench trial* or
- Take a *plea* to whatever punishment the prosecutor or judge offered the defendant or
- Delay the case with *continuances* until the court begins to have jury trials or the defendant opted for one of the two above options.

A continuance is a postponement of a scheduled hearing, trial, or other adjournment until a later date.<sup>318</sup> As seen in the chart below, the proportion of case continuances increased by 20 percentage points during the pandemic as compared to 2019, whereas the proportion of guilty pleas decreased by 5.5 percentage points in the same time frame.

In the words of a court watcher:

- The courts delayed all but two of the twenty-nine cases on the docket I was able to witness today. Sixteen of those cases were continued without the defendant even in the courtroom. It was today's session that truly illuminated why there are such enormous backlogs in the courtroom - there is lack of responsibility for progressing cases, the audio is terrible, and there are long delays. While I want to fault the judge, no attorney attempted to bring organization into the court either. To quote the judge during one of the delays, "It's been a shit show today." from Orleans Criminal Courtroom Section J, Judge Derbigny 10/13/20



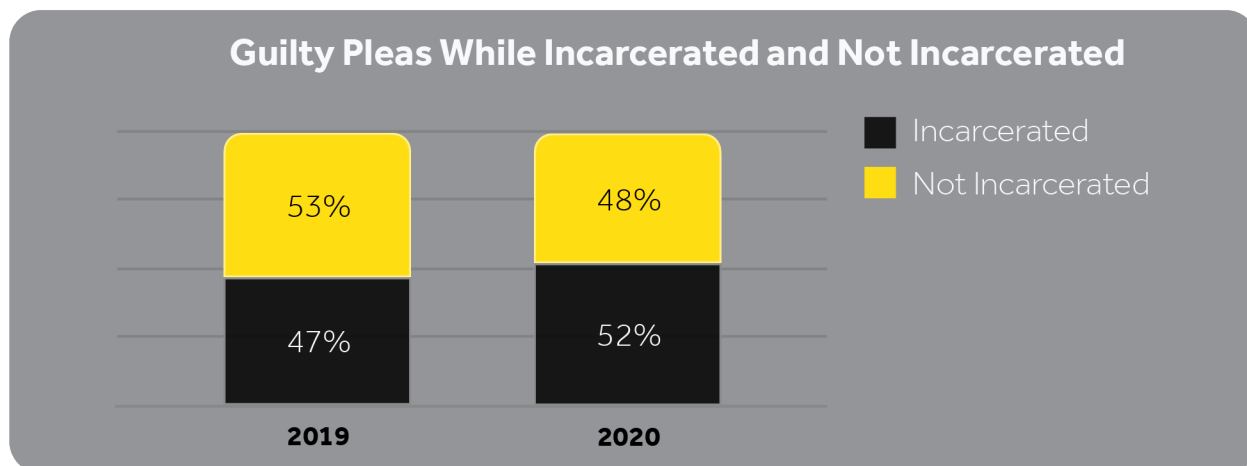
**N** = case appearances observed in Criminal District Court 4,375 (Mar 17-Dec 31, 2020) and 8,726 (Jan 1-Dec 31, 2019).<sup>319</sup>

A plea bargain is the practice of negotiating an agreement between the prosecution and the defense, whereby the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for more lenient sentencing, a specific sentence, or a dismissal of other charges.<sup>320</sup> Defendants are also able to plead guilty in front of a judge without an agreement from the prosecution, but defendants who have a previous felony record will often not do so as the prosecution may increase the amount of jail time offered by the judge, effectively removing the judge's discretion in sentencing.<sup>321</sup>

Most criminal defendants do not bring their case to trial, and the vast majority of felony cases in Orleans Parish Criminal District Court end in the criminal defendant pleading guilty.<sup>322</sup> A system in which criminal defendants did not take pleas and every defendant took their case to trial would overwhelm both the criminal courts and the resources provided to public defenders, prosecutors, the sheriff's office, the police department, the clerk's office, and judges.<sup>323</sup> Many argue that the number of cases brought against criminal defendants in New Orleans already overwhelms the given resources, even with the large number of criminal defendants who take pleas.<sup>324</sup> The plea bargain process decreases the case disposition time, since

normally criminal defendants take a plea before they reach trial. The time between arrest and trial in Orleans Parish Criminal District Court can be anywhere from several months to over ten years.<sup>325</sup>

However, as seen in the chart above, the plea rate was over twice as high in 2019 as it was in 2020. The 2020 plea rate in Orleans Parish Criminal District Court was low and the plea rate of incarcerated defendants was only slightly larger than that of non-incarcerated defendants despite what must have been an incredible fear of defendants to remain locked up in a facility during a health pandemic.



**N** = (2019) 474; (2020) 92 guilty pleas observed in Criminal District Court.

One explanation for the low rate of pleas in 2020 is that District Attorney Leon Cannizzaro made few new plea offers in 2020, many fewer than in 2019.<sup>326</sup> That is to say, a defendant could take a plea when a plea offer had previously been made on their case but with a new arrest in 2020, often no plea offer was made.<sup>327</sup>

Another possible explanation for the low plea rate is that even when new plea offers were being made, defendants did not want to plead guilty to the offers made by Cannizzaro, because the amount of incarceration time offered was too high for the defendant or because the plea was otherwise unattractive to the defendant.<sup>328</sup> Defense attorneys and their clients may also have been waiting to see if a new District Attorney elected in 2020 and taking office in 2021 might offer new plea bargains with less incarceration time.<sup>329</sup> All District Attorney candidates running for election at the end of 2020 had been explicit about prioritizing violent crimes over non-violent or drug offenses.<sup>330</sup> Since we know nonviolent offenses made up 56% of all the arrests in 2020, it may have been the case that defendants and defense attorneys expected plea offers to reflect those campaign promises.

One court watcher left the following comment:

*"Private defense attorney Gary Wainwright had several clients on the docket that day and he expressed frustration to the Judge and ADA Jay Wascom about several things regarding DA Leon Cannizzaro. His first clients were codefendants who declined to accept the plea deal offered to them by the DA, which was 10 years double bill for several charges related to drug and weapon possession. Wainwright said the offer was racist. Wainwright said, "What is Cannizzaro trying to accomplish?" and questioned whether he wanted to let any cases resolve before the November election for DA. Another private defense attorney, Lionel Burns, also said he was frustrated with Cannizzaro and questioned whether he wanted to resolve any cases before the end of the year. He said his client caught COVID in jail, where [he] has been for more than 5 months because of a parole hold, and that his client and other defendants deserve relief because of the delays with the court. Burns' client's fiancée had been on her*

*own financially for all that time and had been struggling.* -from Orleans Parish Criminal District Court Section H, Judge Buras 9/3/20

## B. FAILURES TO APPEAR

If a defendant fails to appear in court, the court may issue an arrest warrant and if found the defendant will be arrested and brought to court.<sup>331</sup> A defendant will not be issued a subpoena or otherwise provided notice by the court if the judge decides to issue a warrant for the defendant's failure to return to court.<sup>332</sup> If a defendant is arrested on a failure to appear warrant, the defendant will remain in Orleans Justice Center until they are brought before the court in which they failed to appear.<sup>333</sup> This process may take several days.<sup>334</sup> It costs taxpayers \$169 a day to house an incarcerated defendant,<sup>335</sup> adding up to \$73.3 million a year to run the jail according to the Vera Institute of Justice.<sup>336</sup> After the defendant is brought in front of the relevant court, the defendant will not be released if the judge sets a bail amount that a defendant is unable to pay.<sup>337</sup> However, the court has several options other than issuing a warrant when the defendant does not come to court: it may request the Orleans Parish Sheriff's Office serve the defendant with a subpoena; the judge may simply notify the defendant's attorney of the date the defendant should return to court; or the court itself may send out notices of next appearance to the address listed on file for the defendant.<sup>338</sup>

This process was made more complicated by court closures during COVID and also by the shutdown of the city's network (called Court Notify)<sup>339</sup> through which defendants and witnesses are served with subpoenas and thus notified of their next court appearances.<sup>340</sup> The Orleans Parish Sheriff's Office is already limited to serving subpoenas to the address originally provided by the defendant when the latter is arrested or provided a summons<sup>341</sup> and criminal defendants as a group tend to be transitory, living in changing locations and often homeless.<sup>342</sup> However, during the COVID pandemic, even when the Sheriff's Office did have the correct address, defendants would sometimes not answer the door despite the use of face masks and personal protective equipment (PPE) worn by sheriff deputies.<sup>343</sup> According to the Sheriff's Office, many fewer subpoenas for defendants and witnesses were issued in 2020 than in 2019 and often the judge would simply forego serving a subpoena on the defendant at all, preferring to inform the defense attorney, in the hope the latter could reach their client better than a subpoena could in the middle of a health pandemic.<sup>344</sup>

With the closure of the courts after the COVID stay at home order, it became incredibly confusing for some defendants who were out of jail to understand when and how (in-person or virtually) to appear for their day in court.<sup>345</sup> During the COVID pandemic, each New Orleans criminal court had a different practice relating to court closure and the issuing of warrants.

## CRIMINAL DISTRICT COURT AND MAGISTRATE COURT

Court appearances in Orleans Parish Criminal District Court were rescheduled for non-incarcerated defendants en masse from March 16 until April 30, 2020,<sup>346</sup> a total of 46 days. However, depending on the courtroom, some felony court judges began to hold court adjournments for non-incarcerated defendants online with Zoom by early April.<sup>347</sup> While the online court proceedings generally only involved incarcerated defendants in early April,<sup>348</sup> each courtroom did its own thing, with all courtrooms using Zoom for non-incarcerated defendants by June 1, 2020.<sup>349</sup> From March 15, 2020 to November 12, 2020, Orleans Parish Criminal District Court issued a total of fifteen different official court orders or statements informing the public whether to appear in-person for court or not, many orders contradicting the earlier order made a week or a month before.<sup>350</sup>

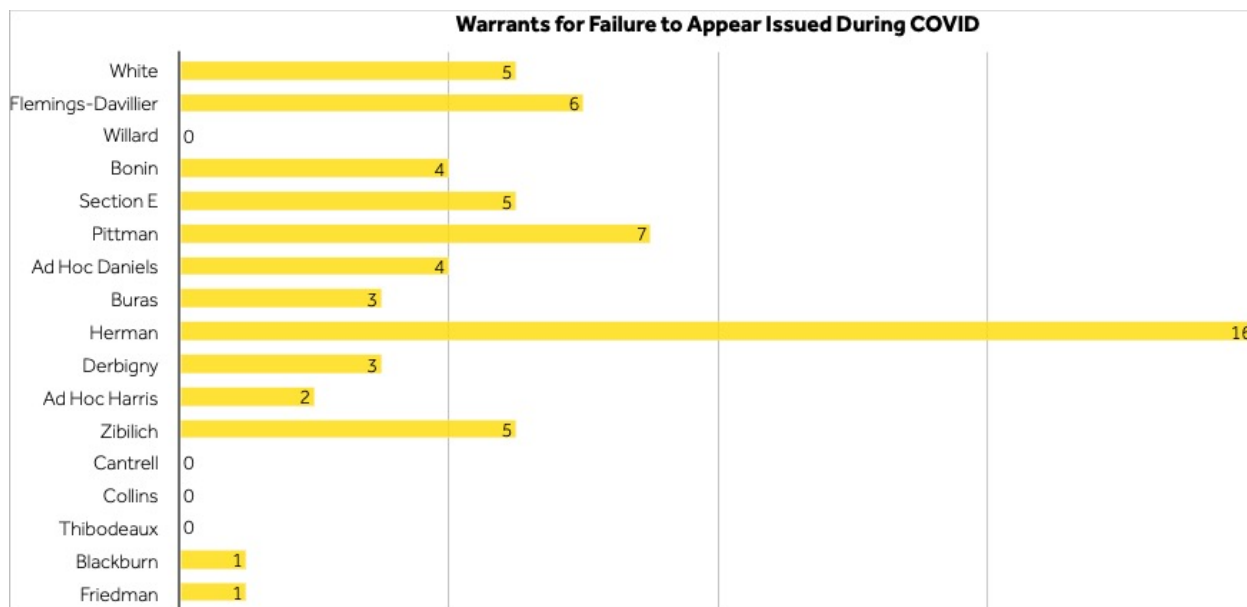
Those who had previously-scheduled court dates and who were not too confused or too frightened of COVID exposure could appear at Criminal District Court from June 1, 2020 to July 1, 2020 to receive further direction.<sup>351</sup> Between those dates, representatives from the Criminal District Clerk of Court's Office and the Orleans Parish Sheriff's Office set up outside of the Criminal District Court building under a tent and provided defendants with a subpoena for a new court date where defendants would be required to attend court via Zoom or in-person.<sup>352</sup> From July 6, 2020 to September 28, 2020, representatives from the Clerk's Office and the Sheriff's Office moved inside the court and provided defendants with a subpoena for a new court date when defendants would be required to appear via Zoom or in-person.<sup>353</sup>

The confusion felt by defendants is evidenced by court watcher comments such as that below:

- o "There were at least three defendants for which the ability to understand or have access to ZOOM was going to be used to issue Alias Capias against them, with no bonds! OPD Miller stated that the defendants had been issued orders to appear in-person and may not have been notified to appear via ZOOM because an OPD, Stephanie Woodard, was no longer employed by OPD, and/or that they may have appeared physically to court and turned away because court is closed due to Covid 19. OPD Miller also stated that he was apt to believe that at least 2 of the defendants didn't have internet access, and another was an elder. The court stated that it was the responsibility of the OPD to get the notices out, and if he could get in touch with the defendants before court recessed, she would reconsider. All four were able to be contacted, two of which HAD appeared in-person to court and turned away, one who was in the hospital, and another had been given another date to appear in January. All warrants were recalled. It was confirmed that none had internet access." – 12/10/20 from Orleans Parish Criminal District Courtroom Section E, Ad Hoc Judge Rhonda Goode-Douglas

All court proceedings in Orleans Parish Magistrate Court became virtual and were conducted on Zoom from March 16, 2020 until December 31, 2020, with many judges also allowing for in person appearances during a portion of this time period.<sup>354</sup> Defendants who had been released on bail before March 16, 2020 and had upcoming court dates in Magistrate Court after March 16, 2020 faced confusion at whether they should appear in-person to court or should appear to court at all.

Orleans Parish Criminal District Court should be commended for having promoted public health by quickly creating a system to allow for virtual court appearances by Zoom; particularly Seann Halligan, George Schiaffino, and David Tamborella should be commended for quickly getting the court online. Additionally, Court Watch NOLA does not censure the Orleans Parish Criminal District Court for the series of court orders that contradicted the court's earlier issued court orders. Orleans Parish Criminal Court was doing the best it could during a health pandemic and anyone else in their shoes without a comprehensive emergency plan could have done little better. However, it is problematic that Orleans Parish Criminal District Court judges issued warrants for defendants who failed to appear in court in 2020, a frightening time when Orleans Parish Criminal Court itself had not given consistent orders.



**Source:** Orleans Parish Sheriff's Office and Docket Master. This figure represents failure to appear warrants issued between March 16-December 31, 2020.<sup>355</sup>

The number of arrests made on warrants for failure to appear in Criminal District Court and Magistrate Court between March 16<sup>th</sup> and December 31, 2020 are illustrated above.<sup>356</sup> Out of the 62 warrants issued during this period, 29% were issued when the defendant failed to appear at arraignment, 69% were issued when the defendant failed to appear for other scheduled case appearances, and one defendant was issued two warrants on separate cases- one at arraignment, and one later in the case.<sup>357</sup>

## NEW ORLEANS MUNICIPAL COURT

In New Orleans Municipal Court, the court was closed to in-person appearances for 56 days.<sup>358</sup> New Orleans Municipal Court had a message on its website stating, "Every case with our court that had a date of appearance between the period of March 13, 2020, through May 29, 2020, are [sic] in the process of being reset for a future date"<sup>359</sup> and placed public service announcements with all major television networks, in the New Orleans Advocate, and with the City of New Orleans Communications Division, stating the same.<sup>360</sup>

New Orleans Municipal Court opened back up on June 1, 2020 and remained open for in-person appearances<sup>361</sup> during the worst spikes of the COVID pandemic.<sup>362</sup> The court took temperatures and asked precautionary contagion questions upon arrival in the building as well as required defendants to sit spatially distant in court.<sup>363</sup> Defendants could hardly be blamed for failing to appear in-person in court in the middle of a pandemic, when making a court appearance by Zoom was not an available option. This is especially the case if defendants had learned via the news that a Deputy Constable had died of COVID a few days after working in New Orleans Municipal Court. If a defendant had already made an initial appearance in Municipal Court, the clerks of individual Municipal Court judges mailed notices of appearance to the addresses the latter had given at the time of arrest or at the time they had received a summons.<sup>364</sup> The Municipal Clerk of Court mailed notices to defendants who had received paper summons but had yet to make an initial appearance at Municipal Court.<sup>365</sup> Whether defendants had given proper addresses or were still at the addresses they had provided months before is unknown.

## Municipal Attachments Issued 2019, 2020



Source: DigiComm.

Unlike Orleans Criminal District Court, New Orleans Municipal Court issued an order on June 9, 2020, prohibiting a defendant from being incarcerated on a warrant for failure to appear.<sup>366</sup> From an efficiency viewpoint, this order is commendable. However, as seen in the chart above, Municipal Court judges continued to issue warrants for the defendant's failure to appear between June 1, 2020 and December 31, 2020 despite an order prohibiting them from doing so. While a single defendant may be issued multiple warrants if they were charged with multiple offenses, it is egregious for a court to issue 314 warrants in 2020 during a health pandemic, violating their own judicial order, regardless of whether the judge had proof the defendant had been personally served with a subpoena for the court date or not.

As of May 2021, 18 attachments had been issued on cases that had closed in 2020, 16 of which were issued solely because the defendant had not paid fines or fees.<sup>367</sup> In two cases, arrest warrants were issued to defendants who owed as little as \$70.<sup>368</sup> For cases that closed in 2020, Judge Early issued eleven arrest warrants for failure to pay fines or fees; Judge Larche-Mason issued three warrants; Judge Shea issued two warrants. Court Watch NOLA questions why judges hearing municipal cases reverted back to issuing warrants for fines and fees so quickly, considering the fear and confusion that were regularly felt by New Orleanians due to the COVID pandemic in 2020 and still in 2021. The New Orleans Municipal Court has become well known for the high number of warrants that still exist in its court from years past; at this juncture there is roughly a municipal or traffic court warrant for every seven New Orleans residents.<sup>369</sup>

### TEXT REMINDERS

Issuing failure to appear warrants that will cause a defendant to be arrested in the middle of a pandemic is not ideal. However, neither is it good policy for a judge to issue repeated continuances for failure to appear. Repeated continuances are problematic from an efficiency standpoint, as the court must continue to pay court personnel such as judges, clerks, prosecutors, and public defenders to appear in court when the defendant does not.<sup>370</sup> A better approach is needed.

As was mentioned in Court Watch NOLA's 2017 Magistrate Court report, best practice dictates sending reminders of court dates via text alerts.<sup>371</sup> In fact, text alerts are used in more than a dozen states to remind defendants to appear for court, including Virginia, California, Pennsylvania, Maryland, Florida, and Washington.<sup>372</sup> In Lafayette, Louisiana, text reminders were sent to defendants for arraignment hearings, misdemeanor adjournments, felony adjournments, and traffic court adjournments. Court appearance rates in Lafayette Parish for all court dates increased from 48% to 62%.<sup>373</sup> In a similar study conducted in New York City criminal courts where text messages included information about what to expect in court and

the consequences of failing to appear, such a system led to a 26% drop in no-shows over a one-year period.<sup>374</sup>

In August 2019, Mayor Cantrell's Office of Criminal Justice Coordination launched the "SMS Text Court Date Reminders program," an innovative program that sends criminal defendants cellular phone text reminders for upcoming court dates.<sup>375</sup> This program is used to prompt defendants of upcoming court appearances in all New Orleans criminal courts.<sup>376</sup> While the Orleans Parish Criminal District Court program lacks the ability to send texts to felony defendants represented by private attorneys, this program still offers 85% of felony court criminal defendants<sup>377</sup> the opportunity to be notified of court appearances.<sup>378</sup> New Orleans Municipal Court offers 100% of criminal defendants the opportunity to be notified of court appearances.<sup>379</sup>

However, with the cyberattack on New Orleans City servers in 2019, the SMS texting program was disabled and remained disabled during most of the critical period<sup>380</sup> when it could have offered New Orleans criminal courts the ability to communicate with defendants about court closures and reappearances. The SMS texting program became operational again for Orleans Parish Criminal District and Magistrate Courts around August 2020.<sup>381</sup> However, the SMS texting program remains inoperative for the New Orleans Municipal Court at the time of this report.<sup>382</sup>

### Recommendation 7

The Mayor's Office of Criminal Justice Coordination's program that provides text reminders to appear in court is commendable. Service of this critical program should be restored for New Orleans Municipal Court. This text messaging program should also be extended to criminal defendants charged with felonies who are represented by private attorneys. Judges should be hesitant to issue warrants during a pandemic especially if there is no evidence that a defendant was personally served with a subpoena. This is especially true since the SMS texting program was inoperative, and courts were closed during the pandemic.

## A. SUMMONS FOR STATE MISDEMEANORS AND LOW-LEVEL FELONIES

Even before the onset of the COVID pandemic, a criminal summons in lieu of arrest for misdemeanors and low-level felonies has been cited as a best practice by several national think tanks. According to the International Association of Chiefs of Police and the University of Cincinnati Center for Police Research and Policy,<sup>383</sup> citations and summons in lieu of arrest lead to "expected benefits [that] include time and cost savings for the police; the broader criminal justice system; and for the individual receiving the warning, citation, or summons."<sup>384</sup> Sample data from 1,300 United States law enforcement agencies show that citations take 24.2 minutes to process, compared to arrests, which takes 85.8 minutes to process.<sup>385</sup>

The American Bar Association has stated that a summons is warranted when the alleged crime does not involve "the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property."<sup>386</sup> The International Association of Chiefs of Police has stated that summonses be issued "to address misdemeanors that are low-level, nonviolent offenses" and "nonviolent felonies [that] may not present an immediate threat to the public."<sup>387</sup>

During the COVID pandemic, preventing contagion of the virus and social distancing became priorities.<sup>388</sup> According to the International Association of Chiefs of Police, "Due to physical and contraband regulations, some jails may have limited ability to fully enact these precautions, putting the jail population and those who

work in them at particularly high risk.<sup>389</sup> Social distancing is almost impossible for officers when making an arrest. An arrestee may not be wearing a mask and an officer will often be required to have a physical interaction with the arrestee.<sup>390</sup>

At the beginning of the COVID pandemic, New Orleans Police Department policy dictated that police officers be allowed to issue a summons instead of making an arrest only in cases in which a municipal offense and not a state misdemeanor or felony was committed.<sup>391</sup> Municipal offenses are criminal statutes passed by the City Council, signed into law by the Mayor, and promulgated into the New Orleans City Criminal Code.<sup>392</sup> Typical municipal offenses include trespass<sup>393</sup> and disturbing the peace.<sup>394</sup> State misdemeanors and felonies are laws passed by the Louisiana State legislature and are more severe in punishment than municipal offenses, ranging from a fine up to the death penalty.<sup>395</sup> This means that when officers encounter someone who has engaged in offenses such as cocaine possession or failure to return a rental car, the New Orleans Police Department officer is forbidden by departmental policy to issue that individual a summons.<sup>396</sup> In this circumstance, the police officer must be in close contact with and lay hands on the individual whether the individual is sick with COVID or not.

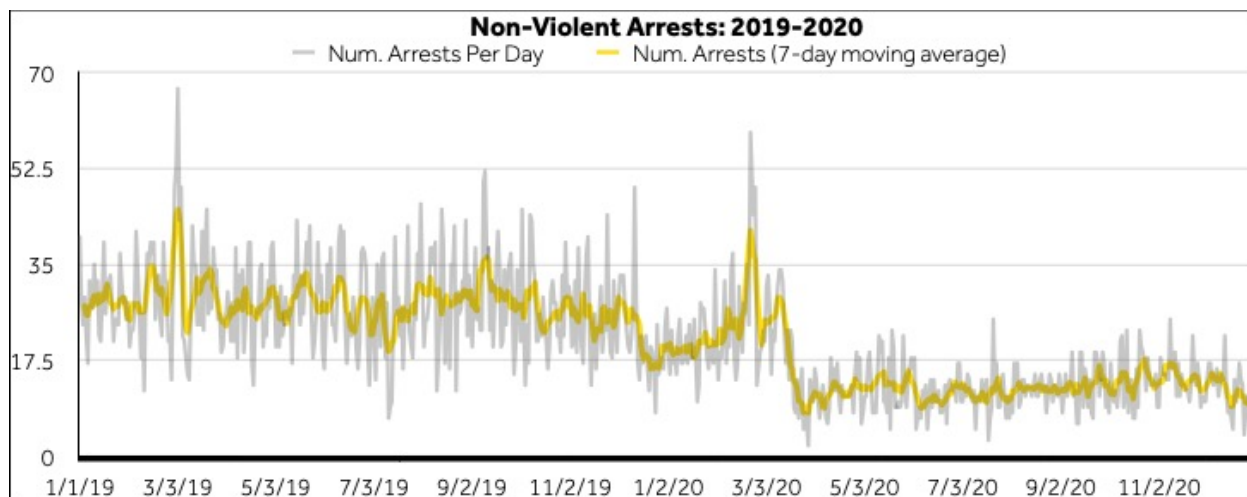
In a letter to the editor in the New Orleans Advocate, retired New Orleans Police Department Officer Jerry Kaczmarek and Independent Police Monitor, Susan Hutson stated,

"While the New Orleans Police Department has reduced arrests, it has resisted using the summons, a strong alternative that could better protect all of us, including our men and women on patrol. Across the country, police are contracting COVID-19 at alarming rates. Putting someone in handcuffs and transporting them to the jail multiplies the chances of infection for the officer, the detainee, everyone at the jail, and the community at large. To respect our officers' sacrifice, we must minimize unnecessary arrests... Superintendent Shaun Ferguson says he encourages officers to issue summonses wherever possible, and that is commendable, but his written orders prohibit officers from doing so in the majority of cases."<sup>397</sup>

Although the New Orleans Police Department refused to change its policy despite the pandemic to give officers the decision-making power to offer a summons or make an arrest on state charges,<sup>398</sup> New Orleans City Council stepped in and changed the most egregious ramifications of the New Orleans Police Department's failure to change its policy. After much work by a coalition that includes Court Watch NOLA, Orleans Parish Prison Reform Coalition, Roderick & Solange MacArthur Justice Center, the Orleans Public Defenders, the Independent Police Monitor, Community Recallers, and many others,<sup>399</sup> on December 17, 2020, then Councilman Jason Williams, sponsored a bill that required that a summons ticket be offered to a defendant accused of committing a state misdemeanor.<sup>400</sup> City Council kept in place a mandatory arrest requirement for domestic violence offenses, for illegal possession of a weapon offenses, and in a few other circumstances.<sup>401</sup>

The law was passed in December of 2020,<sup>402</sup> so did not take effect before thousands of people's lives were put at risk by being arrested and incarcerated instead of being offered a summons. By December 31, 2020, there had been 323 inmates and 33 employees who had been diagnosed with COVID in the Orleans Justice Center.<sup>403</sup> Orleans Parish Justice Center was experiencing COVID rates over forty times the national average.<sup>404</sup> Below find arrests from 2019 to 2020 on non-violent, non-sex offenses, and non-domestic violence offenses.<sup>405</sup> These are all offenses for which defendants did not receive a summons.<sup>406</sup>





**Source:** Orleans Parish Sheriff's Office. Analysis by William Faulkner.<sup>407</sup>

With the new law, city council mandated that New Orleans Police Department officers issue a summons for most state misdemeanors.<sup>408</sup> However, officers are still required to make an arrest for all felony non-violent, non-sex, non-domestic offenses. Arrests are thus required for such offenses as possession of small amounts of cocaine despite newly elected District Attorney Jason Williams' announcement that he would not prosecute possession of small amounts of most controlled substances.<sup>409</sup>

### Recommendation 8

The New Orleans Police Department should allow police officers the discretion to issue summons in lieu of arrests for all felony non-violent, non-domestic, and non-sex offenses. New Orleans Police Department officers should be trusted to determine when to issue a summons in lieu of an arrest for these felony offenses. The taxpayers of New Orleans should not be forced to expend resources when an arrest is not warranted.

## VI. VICTIM RIGHTS AND PUBLIC SAFETY

The term "community justice" has been defined by prosecutors and national prosecutorial associations as the increased collaboration between criminal justice agencies and communities in the joint pursuit of public safety, as well as a "pursuit of justice for victims, offenders and all community members affected by crime."<sup>410</sup> National prosecutorial associations have stated that increased public safety occurs when prosecutors serve specific stakeholders such as victims and witnesses who play important roles in conjunction with public safety.<sup>411</sup>

However, often crime survivors have had to speak for themselves, independent of political officials, when those officials do not support survivors with the resources and approaches that would allow them to be safe and secure.<sup>412</sup> In its 2016 annual report, Court Watch NOLA revealed District Attorney Cannizzaro's practice of incarcerating crime survivors for failure to testify in court.<sup>413</sup> For the four years after Court Watch NOLA's revelation, crime survivors spoke loudly and independently and Cannizzaro faced many public questions over his treatment of them.<sup>414</sup> In 2020, Cannizzaro determined it best to not face re-election.<sup>415</sup> Cannizzaro's successor, the newly-elected District Attorney Jason Williams, faces the

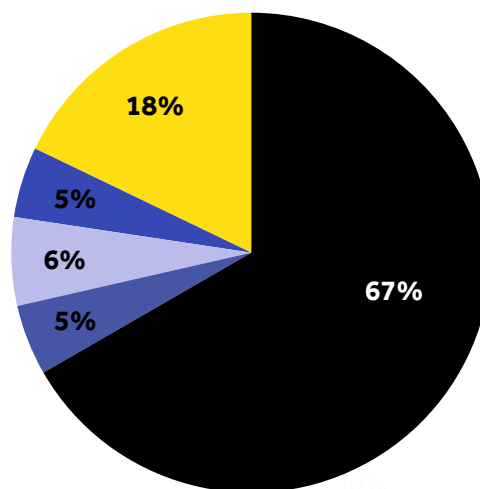
intimidating task of reconstructing trust between New Orleans crime survivors and the Orleans Parish District Attorney's Office.

## A. CRIME SURVIVORS AS DEFENDANTS

Defendants and crime survivors often come from the same community and have the same needs.<sup>416</sup> Studies have shown that exposure to trauma and post-traumatic stress disorder may increase the chances of both arrest and incarceration.<sup>417</sup> Crime victims with untreated trauma may show aggressive, retaliatory behaviors and/or engage in substance abuse, all leading to increased rates of arrest.<sup>418</sup> Experts in the victim advocacy field have concluded that a more effective response to the trauma of victims would reduce repeat victimization and future offending.<sup>419</sup> Ensuring that victims receive the proper treatment enhances a victim's respect for the rule of law.<sup>420</sup> This is a simple concept but worthy of repeating: crime victims will respect the system that respects them.<sup>421</sup> Often the behavior that causes crime survivors to be arrested arises from a criminal legal system that failed to protect them and failed to provide the resources to heal their trauma, trauma which often began before they were victimized and was reinforced once they became a crime survivor.<sup>422</sup> While it has been well documented that those incarcerated for violent felony offenses have themselves often witnessed or been the victims of violent offenses,<sup>423</sup> the strongest correlation between victims and the rate of arrest was not the experience of trauma but the victim's chronic exposure to trauma.<sup>424</sup>

### Reasons Defendants Could Also Be Victims

- mutual aggression or self-defense
- defendant is the victim in another case
- CWN volunteer did not specify
- defense attorney raised the possibility
- defendant was injured



N= 84 observations of Orleans Parish Magistrate Court.

### Court Watcher Comment

"[The defendant] was charged with two gun possession charges, however, OPD reported that he was arrested and charged when he was in the process of stopping two individuals who were breaking into his

**2/4/20 Magistrate Court Commissioner Thibodeaux's courtroom**

### Court Watcher Comment

"The defendant was booked on prostitution charges, because her mom called the police saying that she was worried about her. The police tricked her into meeting them and then arrested her. Sad and shady story." **12/10/21 Magistrate Court Commissioner Collins courtroom**

With the Black Lives Matter Movement, community groups in different cities around the country increasingly demanded that some of the money allocated to law enforcement be reallocated to community-based alternatives.<sup>425</sup> When governments reduce money for law enforcement, as has occurred in New Orleans, this often means less money for law enforcement but not necessarily more money for community alternatives.<sup>426</sup> Exceptions existed in places like Boston,<sup>427</sup> Austin<sup>428</sup> and Los Angeles,<sup>429</sup> where a robust and organized community pushed to translate resource savings into community-based programming. However, when money has been made available for community alternatives in different cities, such alternatives have often centered on treatment for defendants and not necessarily treatment for crime survivors.<sup>430</sup>

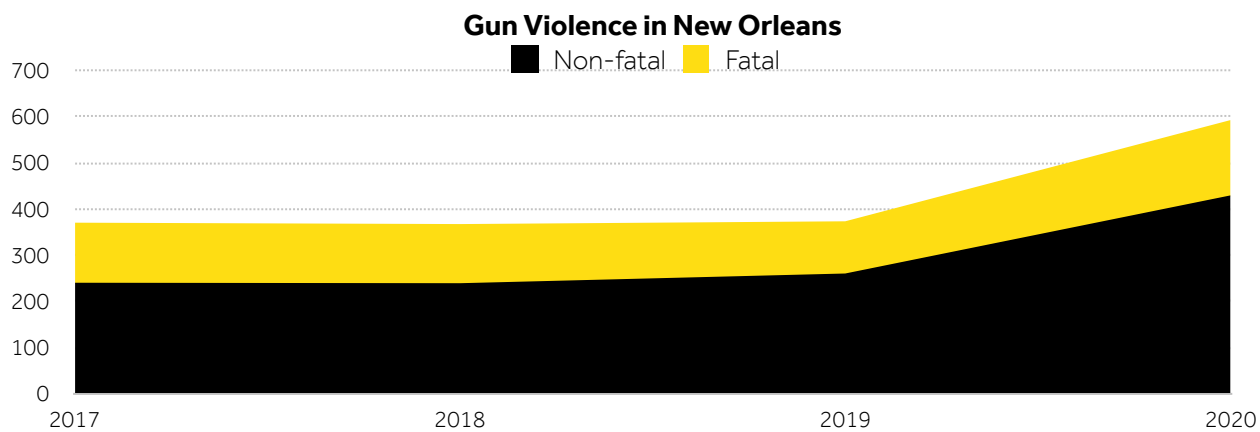
District Attorney Jason Williams faces the intimidating task of reconstructing trust between the District Attorney's Office and crime survivors. He faces such a task with \$1,435,606 less money in his budget than his predecessor had.<sup>431</sup> Likewise, the New Orleans Police Department budget was decreased in 2021 by \$15,922,467.<sup>432</sup> None of these millions of dollars that were subtracted from law enforcement's budget was reinvested in community-based alternative programs that would help those impacted by crime and the justice system. Certainly, the money was never seen by the crime-survivor community. This should change, especially as the City of New Orleans emerges from the New Orleans Police Department Consent Decree which costs the city over \$2 million dollars a year.<sup>433</sup>

The closest New Orleans has come to reinvesting money in community-based alternatives for crime survivors is the money it pledged to a restorative justice program run out of the Center for Restorative Approaches. The New Orleans Restorative Justice program would allow criminal defendants and crime survivors to create restorative circles in which a defendant takes responsibility for the pain or the damage the defendant caused, consistent with the crime victim's wishes. Incarceration is removed as an option in restorative justice programs and with successful participation, the defendant will avoid imprisonment.<sup>434</sup> Restorative justice in Orleans Parish Criminal District Court has been proposed for years by Court Watch NOLA and others,<sup>435</sup> but recently became more viable as a part of a new movement in New Orleans called the "Roadmap for Optimizing Decarceration, Diversion & Restorative Justice for Orleans Parish."<sup>436</sup> The Roadmap movement is pushing New Orleans to move from mass incarceration toward a comprehensive, systematic approach to addressing violence in a more restorative manner that addresses root causes.<sup>437</sup> After a huge push from Court Watch NOLA, the Center for Restorative Approaches, St. Charles Baptist Church, and many others, the City of New Orleans promised \$600,000 to support a new restorative justice program.<sup>438</sup> Later, the \$600,000 promised to the community-based program by the city became \$300,000.<sup>439</sup> More recently the Center for Restorative Justice was told that the promised money "had been lost."<sup>440</sup> To date, the promised funds have not been provided to the Restorative Justice Program by the Chief Administrative Officer in Mayor LaToya Cantrell's office.

Groups that provide direct services to crime survivors, such as Silence is Violence or the Family Justice Center have not received any additional money from the city to continue to provide help and trauma services and are often forced to compete against each other for the few non-city resources available.<sup>441</sup> Silence is Violence provides services such as grief support, financial advocacy, and help navigating the criminal legal system to survivors of many different crimes.<sup>442</sup> The Family Justice Center operates a trauma recovery center for survivors of intimate partner and sexual violence.<sup>443</sup> It provides trauma counselling, housing referrals, emergency shelter services, legal services, youth and teen programming, advocacy and case management, primary medical care, forensic medical exams, and classes related to healing.<sup>444</sup> With a witness protection program that has negligible resources to protect those with the courage to interact with law enforcement<sup>445</sup> and a legal system that provides few services, we must ask why we expect victims to trust law enforcement enough to report crime.

New Orleans has had the nation's highest murder rate of any big city a dozen times since 1993, with 424 murders in 1994 at the height of the city's bloodletting.<sup>446</sup> In what can only be considered a past history we continue to repeat, Dennis Rousey's book, "Policing the Southern City: New Orleans, 1805-1889," states that New Orleans's murder rate was about 10 times that of Philadelphia from 1857 to 1859, and that only about a fifth of New Orleans murders led to conviction because witnesses and jurors were too petrified to participate in the criminal justice process.<sup>447</sup> In fact, gun violence and its resulting trauma have been with us for over 150 years, the trauma seemingly embedded into the DNA of our city.

In 2020, there was a 44% increase in fatal shooting incidents (a total of 163) relative to 2019, when there were 113.<sup>448</sup> There was a 65% increase in nonfatal shooting incidents (a total of 429), compared to 260 in 2019.<sup>449</sup>



**Source:** New Orleans Police Department Calls for Service analyzed by Datalytics.

Although New Orleans is lucky to have a trauma center for survivors of intimate partner and sexual violence, it does not have a trauma recovery center for gun violence survivors. The first national trauma recovery center was developed as a pilot program in San Francisco.<sup>450</sup> The evidence-based model aims to help the hardest-to-reach survivors of violent crime recover from trauma by offering trauma-informed clinical case management; evidence-based individual, group and family psychotherapy; crisis intervention; medication management; legal advocacy and assistance in filing police reports and accessing victim compensation funds.<sup>451</sup> Trauma Recovery Centers were originally developed to provide services for survivors of violent crime who were unlikely to engage in existing mainstream mental health or social services.<sup>452</sup>

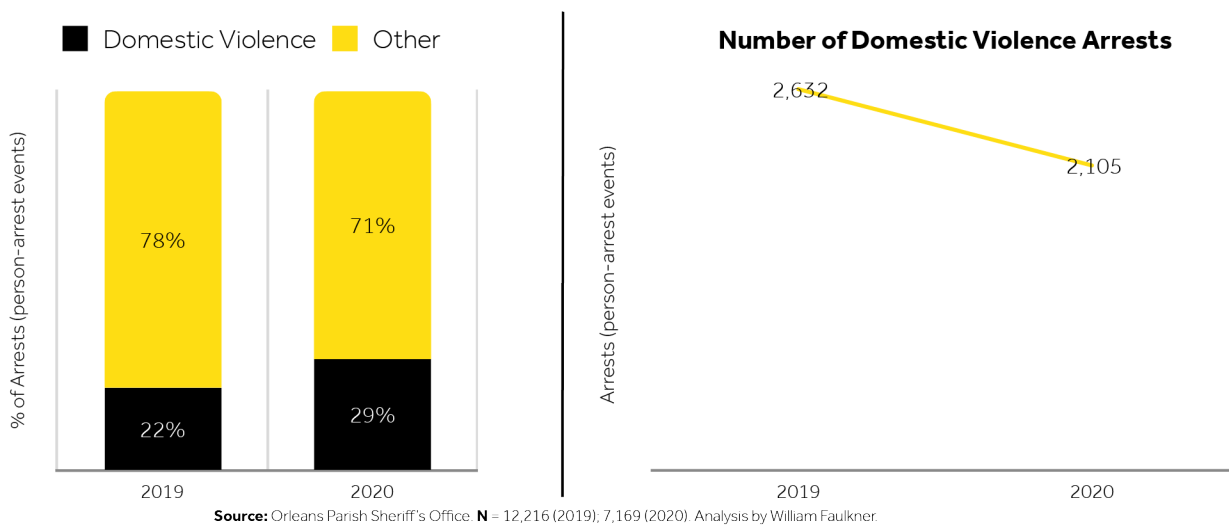
### Recommendation 9

The Mayor and City Council should invest the money it deducts from law enforcement and consent decree budgets into community-based alternatives; especially now that the New Orleans Police Department's consent decree is coming to an end. Specifically, the City of New Orleans should invest in a trauma recovery center for gun violence victims so the latter can finally receive the trauma services they need.

## B. GUN POSSESSION AND INTIMATE PARTNER VIOLENCE

According to a study from the Violence Policy Center, homicide data from 2018 shows that Louisiana had the fifth highest rate of women killed by men in the United States.<sup>453</sup> According to the 2018 data, there were 54 homicides of women by men in Louisiana; 34 of the victims were African American, 19 were Caucasian, and one was of unknown race.<sup>454</sup> In all of these homicide cases, victims knew their offenders.<sup>455</sup> Of the victims, 64% were wives, common-law wives, ex-wives, or girlfriends of the offenders.<sup>456</sup> Of the 32 victims killed by intimate partners, 22 were killed with a gun.<sup>457</sup> In Louisiana, in cases in which a woman was killed by a man and the weapon was known, 69% were killed with guns.<sup>458</sup> And closer to home, the New Orleans Family Justice Center reported that approximately 40% of domestic violence and sexual assault victims aided by the organization reported that their abuser had a gun.<sup>459</sup> Certainly gun possession and risk of harm are interrelated with domestic violence in New Orleans.<sup>460</sup>

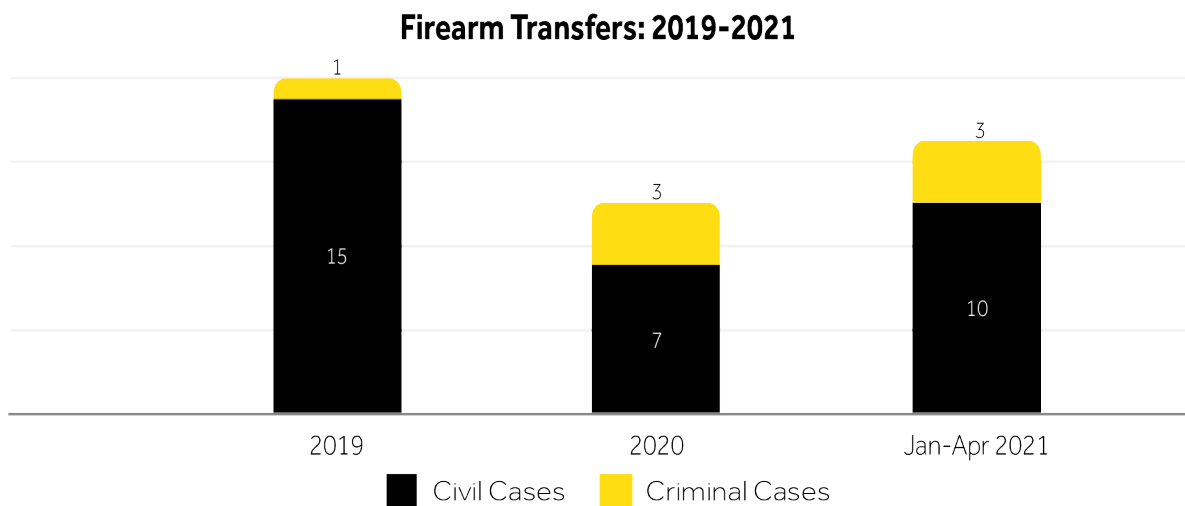
As seen in the chart below, while domestic violence incidents in New Orleans numbered 527 fewer in 2020 than in 2019, the number of calls to service (calls made to the police) for all crimes also decreased in 2020.<sup>461</sup> As seen below, the proportion of arrests on domestic abuse charges increased by nearly 8% compared to that of 2019.<sup>462</sup>



In 2018, a state law went into effect requiring that people with an active domestic violence protective order against them transfer any firearm they possess to their local sheriff or another third party.<sup>463</sup>

As seen in the chart below, from January 2019, when the program began, until December 31, 2019, the Orleans Parish Sheriff's Office received 16 firearms (15 civil cases and 1 from criminal cases). From January 1, 2020, to December 31, 2020, the Orleans Parish Sheriff's Office received 10 firearms (7 civil cases and 3 from criminal cases). And from January 1, 2021, to April 26, 2021, the Orleans Parish Sheriff's Office has

received 13 firearms (10 from civil cases and 3 from criminal cases).<sup>464</sup> It is hard to believe that after more than two years of a firearm transfer program, the program has only netted 39 firearm transfers, of which only 7 come from criminal cases.<sup>465</sup>



**Source:** Orleans Parish Sheriff's Office.

The pre-trial release of a criminal defendant should be determined by a number of risk factors associated with the defendant and the facts surrounding the crime, including firearm use and risk of harm to the victim.<sup>466</sup> Risk of release and risk to public safety are two factors that statutorily and constitutionally may be taken into consideration by a judge in deciding to release a defendant or not.<sup>467</sup> In 2020, responding New Orleans Police Department officers were required to ask domestic violence survivors four questions related to risk while at the crime scene.<sup>468</sup> These risk questions were a work product of the City of New Orleans Health Department's Blueprint for Safety program and technical assistance provider Praxis, International.<sup>469</sup> The answers to the risk questions are then placed in the court file for the judge to consider in weighing pre-trial release.<sup>470</sup>

In 2020, these risk questions included:

- Do you think the defendant will seriously injure or kill you, your children, or someone else?
- How frequently do they intimidate, threaten, or assault you?
- Describe the time you were the most frightened or injured by them.
- Have you ever been threatened or intimidated by the defendant for seeking help or attempting to seek help from law enforcement, the courts, or others?<sup>471</sup>

In January of 2020, Court Watch NOLA approached New Orleans Police Department Sergeant Richard Pari and Deputy Superintendent Paul Noel to ask the New Orleans Police Department to add a fifth risk question about the defendant's possession of any firearm.<sup>472</sup> The Police Department agreed to do so.<sup>473</sup> In fact, this process was already underway through an important initiative started by the City of New Orleans Health Department back in 2018.<sup>474</sup> In February 2021, after extensive work conducted by a coalition created by Court Watch NOLA (including the Mayor's Department of Health, the Family Justice Center, the New Orleans Police Department, and the Office of the Consent Decree Monitor), the New Orleans Police Department officers agreed to add a fifth risk question asked of domestic violence survivors, to wit,

**"Does he/she possess or have access to firearms?"**

- 5a. Has he/she used firearms to threaten or control you or other people?
- 5b. What is the type, description, and location of any firearm?<sup>475</sup>

This fifth question asked of domestic violence survivors at the crime scene is of vital importance because it allows judges to know whether a defendant possesses a gun that should be transferred to a third party, consistent with Louisiana State Law. New Orleans Family Court Judge Bernadette D'Souza, who is well known for her ability to get guns out of the hands of domestic violence assailants,<sup>476</sup> cites as a reason for her success that she receives information directly from the victim about the abuser's gun possession and gun use.<sup>477</sup> With this information, Judge D'Souza is able to question abusers more effectively to get them to transfer their firearms.<sup>478</sup>

### Commendation 3

Court Watch NOLA commends New Orleans Police Department Sergeant Richard Pari as well as Nelle Noble and Jocelyn Pinkerton of the City of New Orleans Health Department for ensuring that New Orleans Police Department officers uniformly ask domestic violence survivors about their aggressors' access to guns. This information is placed in the court file and allows judges to get guns out of the possession of domestic violence assailants.

Since Court Watch NOLA began reporting on the new law requiring those with a domestic violence stay-away order to transfer their firearms to the Orleans Parish Sheriff's Office, Magistrate Court judges have increasingly been telling such defendants that they cannot possess a firearm. This is marked progress for which judges should be commended. However, the law requires not only that the judge inform such defendants they cannot possess firearms but also that the judge asks defendants in open court for the number of firearms they possess and the location of such firearms.<sup>479</sup> As an alternative to asking these questions in open court, the judge can require the defendant to include this information in an affidavit submitted to the court.<sup>480</sup> In 2020 during COVID, Magistrate Court judges did not ask defendants to fill out an affidavit listing the number of guns in their possession and the location of any such guns.<sup>481</sup> Even if a judge was not required by law to ask a defendant with a domestic violence stay-away order about gun possession, the judge is more likely to learn about the defendant's gun possession if the judge asks the question and waits for the answer instead of simply forbidding the practice without engaging in a dialogue; it is for this reason in part that Family Court Judge Bernadette D'Souza has been so successful.<sup>482</sup>

"The law that governs the possession of guns by a defendant when associated with a domestic violence criminal charge was passed in Louisiana to protect victims of domestic violence who are killed by guns 65% of the time. Victims of these crimes are at most high risk when they are trying to leave a violent relationship, when victims report being strangled (68% of victims), when victims are pregnant and when perpetrators have possession of guns. Louisiana continues to rank in the top 5 of domestic homicides in the country because we have sporadic and inconsistent application of the laws by our criminal justice system and because it does not focus its resources on holding the most violent perpetrators accountable. In addition to prohibiting firearm use, it is always best for the judge to ask the defendant whether he or she possesses a firearm and the location of such a firearm. Where there is a dialogue between the defendant and the judge, we have a greater chance of getting the guns out of the possession of those who could hurt victims." <sup>483</sup> -Mary Claire Landry, Executive Director of the Family Justice Center New Orleans

And in fact, Court Watchers noted the difference when the judge did not ask about gun possession:

- o Collins is very precise in her instructions about a stay away order. She does tell them they can't have a gun and if they have one, they have to give it to the sheriff in 48 hours. However, she does not ask if they have access to a weapon- 7/20/20 from Orleans Parish Magistrate courtroom M2, Commissioner Collins

- o Judge Blackburn always takes extra effort to explain all the conditions of a Stay Away order, including the prohibition of possessing a firearm. He goes into detail about what "no contact" means. And, while never asking if the defendant owns a gun, he makes sure they understand that they cannot possess one during the term of the Stay Away order; he even goes over the process for turning a gun into to the Sheriff and retrieving it later. - 9/16/20 from Orleans Parish Magistrate courtroom M4, Commissioner Blackburn 9/16/20

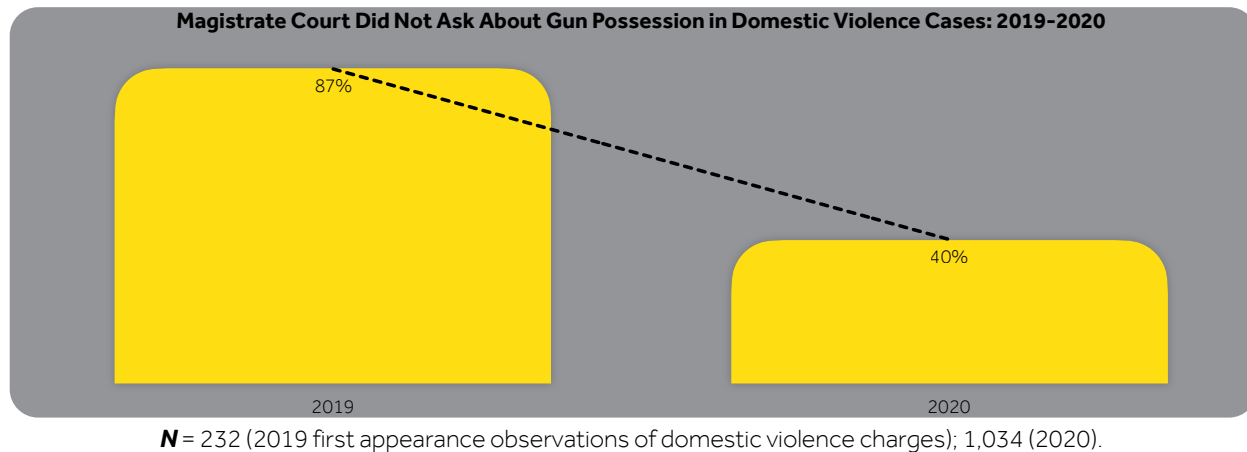
As compared to when Judges did ask about firearm possession:

- o Judge Friedman was thorough in all explanations of bonds, stay away orders, and asked each defendant charged with domestic violence if they had access to guns- 8/16/20 from Orleans Parish Magistrate courtroom M5, Commissioner Friedman

And as compared to when a judge said nothing about gun possession at all:

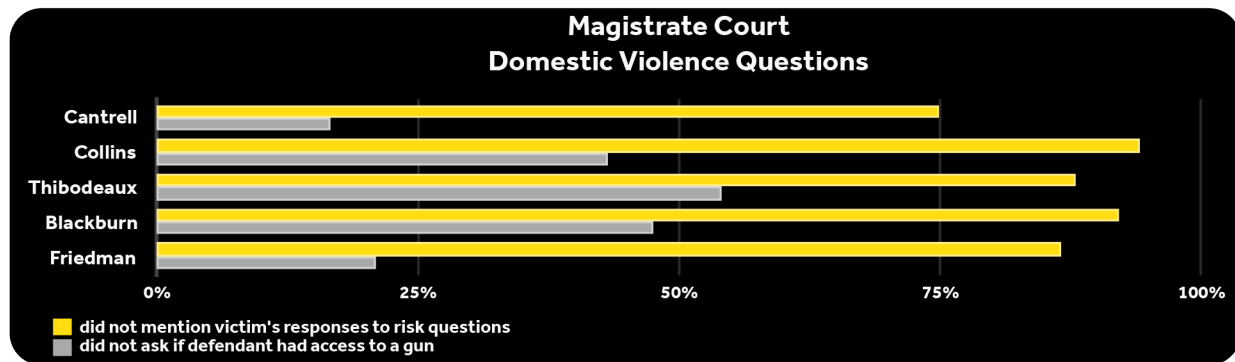
- o Judge Thibodeaux does not specifically inform the defendant in a Domestic Violence case that they are being referred to D.V. services. When he issues a Stay Away order, he says that the defendant must give the address where they will be staying and phone number "for the record", then the representative from the DV program just says to call her when they get released. He never mentions any issue with possession of a gun during the time a Stay Away order is in effect- 8/18/20 from Orleans Parish Magistrate courtroom M3, Commissioner Thibodeaux

As seen in the figure below, the Commissioners<sup>484</sup> failed to ask whether the defendant owned or had access to guns in at least 40% of the court watch observations of domestic violence bail hearings. This is a 47% improvement over their rate of asking the same question in 2019.



As stated above, judges also receive the answers to other risk questions asked of domestic violence victims including whether the domestic violence victims have been previously threatened by the defendant. As seen in the chart below, the Magistrate and Commissioners failed to mention the victim's responses to the risk questions in at least 90% percent of observed domestic violence bail hearings. In at least 94% of domestic abuse cases observed, Commissioner Collins did not mention the victim's responses to any of the four risk questions in court. In at least 54% of domestic abuse cases observed, Commissioner Thibodeaux did not ask whether the defendant owned or had access to guns.





**N** = 24 (Cantrell first appearance observations of domestic violence charges); 222 (Collins); 233 (Thibodeaux); 256 (Blackburn); 299 (Friedman).

Now, with additional information provided by domestic violence survivors about the defendant's gun possession and placed in the court file by the New Orleans Police Department, judges have additional information upon which to base their inquiry as to whether the defendant possesses a gun.<sup>485</sup>

### Recommendation 10

The Orleans Parish Magistrate and Commissioners should ask every defendant subject to a pertinent domestic violence stay-away order whether they possess a firearm and the location of the firearm. The Orleans Parish Magistrate and Commissioners should also inform every defendant subject to a pertinent domestic violence stay-away order that they must transfer their firearms to the sheriff or a third party. The Orleans Parish Magistrate and Commissioners should mention answers to domestic violence risk questions, so they are made part of the court record.

Individuals from the defense bar have expressed a concern about whether being compelled to answer a question related to firearm possession is a Fifth Amendment violation of the defendant's right against self-incrimination.<sup>486</sup> While firearm possession is not unlawful for most people in Louisiana,<sup>487</sup> it is unlawful and punishable by as much as twenty years as a first offense for those who have been convicted of certain felony offenses, including most of the drug offenses.<sup>488</sup> It is perhaps for this reason that judges have been hesitant to ask defendants who have an active domestic violence stay-away order about their gun possession.

### Court Watcher Comment

"Blackburn several times said to a defendant, 'I am not going to ask you if you own a firearm, but if you do, you must turn it in...' I wish I had asked him why he said that, and I will next time I watch his court, but I suspect it may be because some of these [men] had felonies on their records and therefore he would be asked them to admit that they committed the crime or a felon having a firearm." **6/3/20 Commissioner Blackburn's courtroom**

A best practice method that has been used in jurisdictions such as California,<sup>489</sup> New Mexico,<sup>490</sup> Colorado,<sup>491</sup> Minnesota,<sup>492</sup> and Wisconsin<sup>493</sup> is to create “use immunity” in which the individual’s direct admission to firearm possession cannot be used to prosecute the defendant for a separate crime, such as possession of a firearm by a person convicted of certain felonies.

The concept of handing over illegal firearms without sanction is not a new concept. Gun buyback and drop-off centers have existed in New Orleans for many years and have generally met with success.<sup>494</sup> If the objective is to protect domestic violence survivors, it is important for the Orleans Parish District Attorney’s Office to put into practice a use immunity provision; the priority must be to immediately remove the firearm as is consistent with the law.

### Recommendation 11

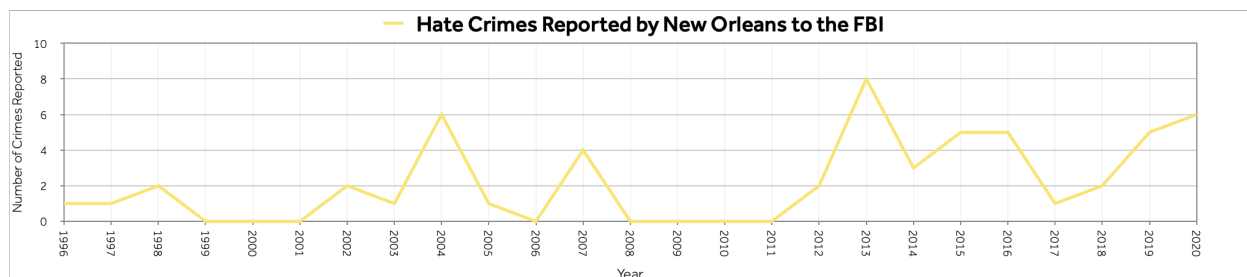
The District Attorney should implement a use immunity provision that will allow defendants to follow the law and transfer their guns to a third party without being prosecuted for an additional crime based solely on their gun possession admission. This practice will keep domestic violence survivors safer without violating the defendant’s constitutional rights.

## C. VICTIM DEMOGRAPHICS AND HATE CRIMES

Hate crimes, or criminal acts motivated by bias against a protected class of individuals, are unique not only in their intent, but also in the far-reaching consequences they have for whole communities.<sup>495</sup> Unlike many crimes, hate crimes impact not only victims and their loved ones, but entire communities who share the identities of those impacted.<sup>496</sup>

The year 2020 marked a national surge in hate crimes against Asian Americans<sup>497</sup> and represented the deadliest year on record for transgender Americans--particularly transgender people of color.<sup>498</sup> In fact, the Center for the Study of Hate and Extremism found that anti-Asian hate crimes increased by an alarming 149% in 2020, despite a drop in overall 2020 hate crimes by 7%. The drop in hate crimes overall has been explained as likely due to “a lack of interaction at frequent gathering places [including] transit, commercial businesses, schools, events, and houses of worship” during the COVID pandemic.<sup>499</sup> Notably, a 2021 Washington Post study concluded that, while Asian Americans faced a spike in bias-motivated violence following the outbreak of the COVID-19 pandemic and rhetoric from former President Trump, American awareness of anti-Asian bias did not increase significantly.<sup>500</sup>

Through the Federal Bureau of Investigation’s Uniform Crime Reporting Program, New Orleans has reported an annual increase in incidents of bias-motivated crime since 2017.<sup>501</sup> The year 2020 was no different, with six incidents of hate crime reported involving nine victims, five victims were Black, one Caucasian, one Asian, one bisexual and one homosexual man.<sup>502</sup> However, the numbers reported by the New Orleans Police Department to the Federal Bureau of Investigation are low and likely do not represent the full picture of bias-motivated crime in New Orleans.<sup>503</sup>



**Source:** The FBI Uniform Crime Reporting Program & the New Orleans Police Department Dashboard. 2020 numbers not yet reported to the FBI.

Experts have found that hate crime data is limited, as often hate crimes themselves are notoriously under-reported.<sup>504</sup> In fact, the National Crime Victimization Survey found that, between 2003 and 2011, upwards of 85% of survivors of violent hate crime did not report to the police.<sup>505</sup> Under-reporting of hate crimes erases victims and survivors while minimizing the egregious nature of these crimes. Under-reporting can also have lethal consequences.<sup>506</sup>



"Crime targeting the Vietnamese community is real and crime targeting our elders is real. It may only be spoken about at community events or at dinner tables but it does not make it any less real. It has gone on for decades but it has gotten worse in the last few years. It is underreported for so many reasons but often it is felt that law enforcement won't help us anyway." -*Minh Thanh Nguyen, founder and former Executive Director of (Vietnamese American Young Leaders Association) VAYLA, community advocate, and crime survivor family member*

For myriad reasons, many survivors of crime who suspect that the incident was motivated by bias never report. This is due in part to historically fraught relationships between law enforcement and marginalized groups.<sup>507</sup> For example, the National Center for Trans Equality's 2016 Report found that, among 28,000 transgender respondents, 57% were reluctant to turn to law enforcement when they needed help,<sup>508</sup> and 58% of transgender individuals surveyed who had had interactions with law enforcement reported experiences of harassment, abuse, and other mistreatment at the hands of police.<sup>509</sup> However, lack of faith in law enforcement is not the only reason that survivors may not report.<sup>510</sup> Fear of retribution, deportation, distrust in the criminal legal system, and fear of being identified as a member of a specific sexual orientation, race, or creed all contribute to the under-reporting of hate crimes in the United States.<sup>511</sup>

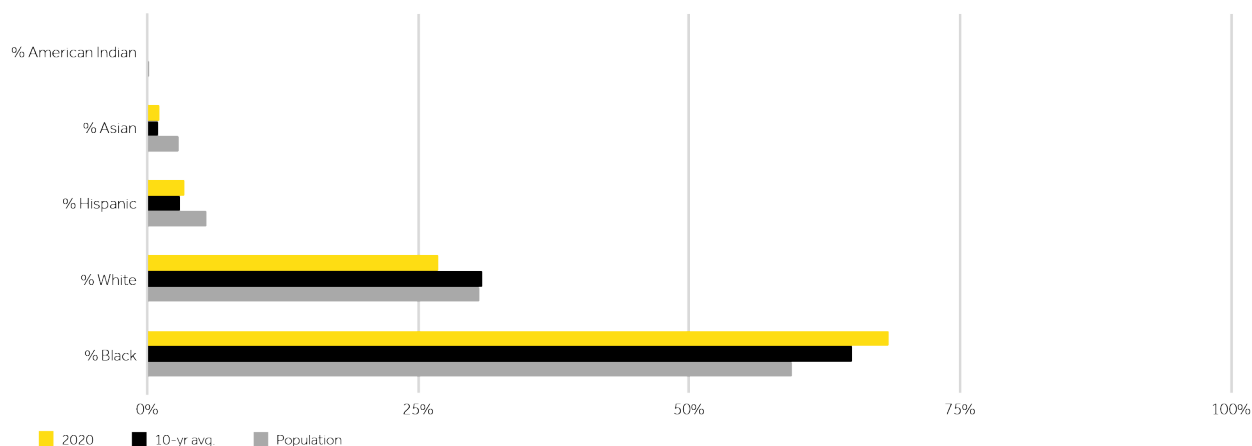
When hate crime incidents are reported, they do not always lead to an arrest, a conviction, or a record reflecting bias-motivated crimes.<sup>512</sup> In an eight-month-long study examining survivors who suspected that they were victims of a hate crime, two-thirds of respondents were unable to provide "tangible evidence...that could be used by law enforcement" and only 2.5% of reported incidents were confirmed by law enforcement to be motivated by hate.<sup>513</sup> In one telling incident, a 27-year-old drag queen in New York was wearing a shirt promoting his drag personality when he was violently beaten by a group of teenagers, resulting in a torn ear, damaged jaw, and severed tendon in his hand. In his frantic effort to get away, he could not recall if the assailants had used homophobic slurs. As a result, police did not investigate the incident as a hate crime.<sup>514</sup>

In Louisiana, the Crime Victims Reparations Board does not provide financial compensation for property loss, with the exception of "catastrophic property loss" which is limited to the loss of one's current

residence – provided the victim owns the residence and currently occupies it.<sup>515</sup> Survivors of property hate crimes often do not receive compensation for property lost.<sup>516</sup> Where a reported incident does not lead to an arrest, a conviction, or compensation, members of the targeted community often feel there is little incentive to report crime.<sup>517</sup>

Further data is necessary to fully understand how crime affects marginalized communities. Dependable data helps governments, elected leaders, and community members identify issues, support targeted communities, and uplifts the experiences of survivors.<sup>518</sup> In order to address this and better serve historically marginalized groups, criminal justice leaders must emphasize creating community trust through community-led initiatives and more robust public reporting.<sup>519</sup> The demographics of who is reporting general crime, such as shown in the chart below, must be studied and law enforcement must determine whether reporting is low in a community based on the number of actual crimes that occur or because of law enforcement's lack of connection to the specific community.

### Ethnicity of Crime Survivors in New Orleans: 10-year average vs. 2020 vs. population



**Source:** New Orleans Police Department electronic police reports 2010-2020 <data.nola.gov accessed 3/9/2021>; U.S. Census Bureau population estimates for New Orleans, LA as of July 1, 2019.

When it comes to reporting hate crime, transparency can be improved on the part of the New Orleans Police Department. Court Watch NOLA examined New Orleans Police Department data on 2020 hate crimes as identified in electronic police reports found on the City of New Orleans Open Data website and found that demographic information on defendants and victims is limited to three categories: age, race, and sex.<sup>520</sup> While age, race and sex are important pieces of the picture, they do not encompass the full scope of protected identities as outlined in Louisiana state hate crime law,<sup>521</sup> or federal hate crime law.<sup>522</sup> Such demographic data is too limited for communities to realize the true scope of bias-motivated crime in New Orleans and should be further expanded. Additionally, although the New Orleans Police Department reports specific categories of bias motivation to the Federal Bureau of Investigations,<sup>523</sup> the City of New Orleans Open Data website does not provide the bias-motivation categories in its anonymized data that is publicly available.<sup>524</sup>

### Recommendation 12

Where there is an indication that a crime was bias-motivated or is a hate crime, the New Orleans Police Department should make the documented motivation of such crimes available to the public through anonymized data. Providing that data to New Orleanians and those in impacted communities in New Orleans will allow for a more complete picture of how bias-motivated crime affects our community. Local officials and law enforcement should partner with impacted communities to ensure that all bias-motivated crimes in Orleans Parish are properly recorded.

## D. VICTIM-CENTERED JUSTICE

Crime victims have certain rights under Louisiana Law. These rights include but are not limited to:

- o reasonable notice to be present and heard during all critical stages of pre-conviction and post-conviction proceedings;
- o ability to review and comment upon the pre-sentence report prior to the imposition of sentence;
- o being considered when a judge rules on a defense motion for continuance;
- o notification concerning an accused's arrest, release, escape, or re-apprehension;
- o a secure waiting area during court proceedings where the victim is not in close proximity to the defendant, their family, or friends; and
- o present an impact statement.<sup>525</sup>

In New Orleans, crime survivors have traditionally not been given notice of bail hearings.<sup>526</sup> Thus, Court Watch NOLA created a group along with the New Orleans's Department of Health to ensure crime survivors were given such notice and informed they were welcome at any such hearings. This group has further expanded to include representatives from the Family Justice Center and the offices of the Criminal Clerk of Court, the Orleans Parish Sheriff, and the Orleans Parish District Attorney Jason Williams. In May 2021, the Orleans Parish Sheriff's Office after promising the coalition it would do so, designed and implemented a system which allows survivors to learn of the day and time of the defendant's bail hearing.<sup>527</sup> Court Watch NOLA commends Orleans Parish Sheriff's actions for doing so.

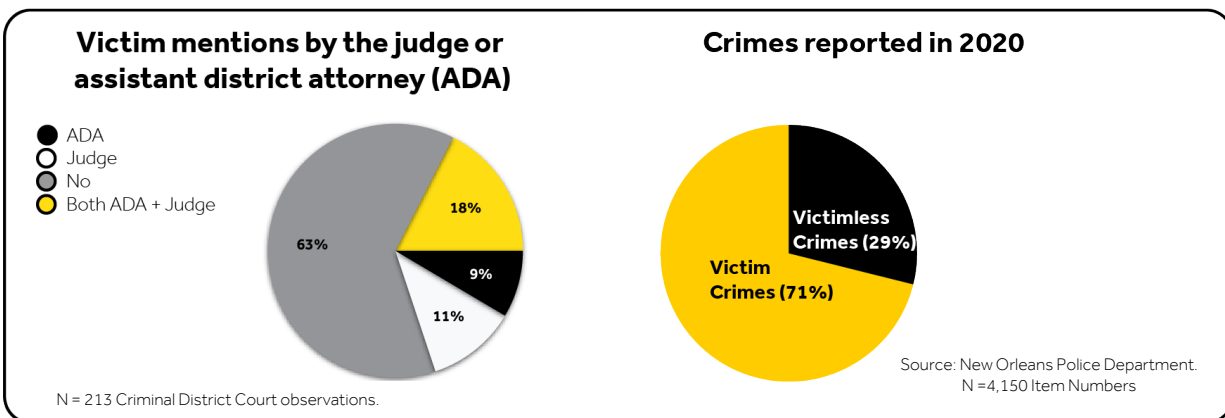
The Orleans Parish District Attorney must prioritize communications with crime survivors. Crime survivors see the law as fairer and more legitimate when they have some control over the process and feel that they have been heard.<sup>528</sup> Since public trust came to an all-time low between crime survivors and District Attorney Leon Cannizzaro, the Orleans Parish District Attorney's Office should redouble their efforts in both resources and attention to create relationships of trust with individual crime survivors.

*"Under the leadership of District Attorney Cannizzaro, there were so many challenges victims faced that were unjust and unethical. They failed to notify victims and offer supportive services such as transportation and relocation services. They most often intimidated victims and witnesses to participate in court proceedings."<sup>529</sup> - Tamara Jackson Executive Director of Silence is Violence*

Survivor-centered justice is defined as the systematic focus on the needs and concerns of the crime survivor and ensuring such needs and concerns are at the forefront of all system players' responses.<sup>530</sup> While there are many ways a district attorney's office and at times judges can focus on the needs and concerns of crime survivors in the criminal courts, below is a best practice checklist to ensure crime survivors are treated with dignity by the criminal court process:

- o Listen to the survivor and allow the survivor to make decisions related to services and outcomes.<sup>531</sup>
- o Provide a range of information to survivors including on orders of protection, bail, pleas, release from custody, sentencing provisions and the appellate process.<sup>532</sup>
- o Encourage survivors to become involved in the criminal justice process by scheduling court proceedings to facilitate survivor participation, providing appropriate notice, and providing assistance with employers and childcare. Respect the right of survivors to not participate in court processes or support services where they do not desire to do so.<sup>533</sup>
- o Designate a single service provider to work with survivors throughout their recovery to ensure they do not "fall through the cracks" in the network of services.<sup>534</sup>
- o Accompany survivors to court, help them prepare their impact statements, and refer them to other sources of adjudication and post-adjudication support.<sup>535</sup>

The chart below to the left illustrates the percentage of observations during which judges, and prosecutors mentioned victims in court. Neither can it be said that judges or prosecutors mentioned crime victims as rarely as they did because there were so few victim crimes in 2020.<sup>536</sup> As seen in the chart below to the right, 71% of the arrests reported in 2020 were victim crimes.



Prosecutors in Section A mentioned victims of crime most frequently, 6 times (50%) out of a total 12 observations. Prosecutors in Section J mentioned victims least frequently, only twice (11%) out of 19 total observations.

In 2020, Judge Buras mentioned victims of crime most frequently, 12 times (48%) out of a total 25 observations. Judge Derbigny mentioned victims least frequently, only twice (11%) out of 19 total observations. Judges too must listen to survivors,<sup>537</sup> provide information to survivors and be respectful to survivors.<sup>538</sup>

As one court observer noted:

- o "The Judge said if your person [the victim] doesn't call the police we wouldn't be here in the first place" I found the judge's statement here disrespectful in both tone and substance. In my view, the judge was implying: 1) if the victim didn't want a stay away order they should have never called the cops in the first place and 2) the outcome of the case after the initial 911 call does not and should not involve the victim's feelings or opinion." 11/24/20 from Orleans Parish Criminal District Courtroom Section C, Judge Willard

And above all judges and prosecutors must understand what a terrifying process appearing in court often is for crime survivors.<sup>539</sup>

### Recommendation 13

Orleans Parish Criminal District Court judges and the Orleans Parish District Attorney's Office must focus more resources and attention on survivors, so they receive the healing and empowerment they deserve and do not fall through the cracks. Prosecutors must adopt a crime survivor-centered approach to prosecution, ensuring to the best of their ability that court proceedings occur when a survivor can be present and providing assistance with employers and childcare in order to make a court appearance possible for a crime survivor.

## D. THE ORLEANS REENTRY COURT PROGRAM

The Orleans Reentry Court Program (Reentry Court Program) was created in 2010 by Judge Laurie White and retired Judge Arthur Hunter.<sup>540</sup> Both judges collaborated with the Louisiana Assistant Secretary of the Department of Corrections on creating a program for offenders to be released from prison with the necessary job skills needed to acquire gainful employment.<sup>541</sup> The Reentry Court Program was created by Louisiana Revised Statute 13:5401, which allows Louisiana District Courts to create reentry courts through a majority vote of all the judges in the court in question.<sup>542</sup> The statute also requires the court to secure its own funding and to work in conjunction with the Louisiana Workforce Commission in all efforts.<sup>543</sup> Judges from all Louisiana parishes may refer defendants to the program<sup>544</sup> but currently, the majority of defendants who have been admitted to the program have come from Orleans, Jefferson, St. Tammany, and Lafayette parishes.<sup>545</sup> The goal of the Reentry Court Program is to increase public safety, reduce recidivism, and reduce crime in the community.<sup>546</sup> Since the November 2020 election, New Orleans Judge Marcus DeLarge has begun to run the Reentry Court Program along with Judge White in Orleans Parish.<sup>547</sup>

The Reentry Court Program has won numerous awards, including the American Correctional Association's Innovation in Corrections Award,<sup>548</sup> the Louisiana State Penitentiary State Re-Entry Service Award,<sup>549</sup> and Judges White and Hunter have been named American Bar Association Legal Rebels for having created the program.<sup>550</sup>

Currently, to be eligible for the Program, a defendant cannot be convicted of a crime of violence<sup>551</sup> or a sex offense; cannot have a prior conviction for a sex offense;<sup>552</sup> cannot be sentenced as a multiple offender (largely defined as having a prior felony conviction in the last ten years),<sup>553</sup> and cannot be sentenced to a term of incarceration which exceeds ten years.<sup>554</sup> The court will also determine if it is in the best interest of the community and in the interest of justice for the defendant to be sentenced to the Reentry Court Program by considering the following factors:

- The nature of the crime;
- Any special characteristics or circumstances of the defendant;
- Whether there is a probability that the defendant will cooperate with and benefit from the workforce development sentencing program;
- Whether the available workforce development sentencing program is appropriate to meet the needs of the defendant;
- The impact of the defendant's sentencing upon the community;
- Recommendations, if any, of the district attorney, law enforcement, the victim;
- Provisions for the likelihood of obtaining restitution from the defendant;

- o Any mitigating circumstances and any other circumstances reasonably related to the defendant's case.
- o Any other circumstance reasonably related to the defendant's case.<sup>555</sup>

A Judge, the District Attorney, or a defense attorney may request a defendant be considered for the Reentry Court Program.<sup>556</sup> In 2019, the Orleans Parish Criminal District Court added 12 new participants into the Program that came from two sections of Criminal District Court.<sup>557</sup>

If a defendant is accepted into the Orleans Reentry Court Program, the defendant must waive his right to trial and plead guilty. The defendant will then be sentenced to the custody of the Department of Public Safety and Corrections to complete the in-prison portion of the Program, which takes roughly two years to complete, and is referred to as the Offender Rehabilitation and Workforce Development Program and is located at the Louisiana State Penitentiary at Angola.<sup>558</sup> Before the defendant can start the intake process, the Louisiana Department of Public Safety and Corrections Reentry Service must have the capacity to enroll the defendant and have the bed space available.<sup>559</sup>

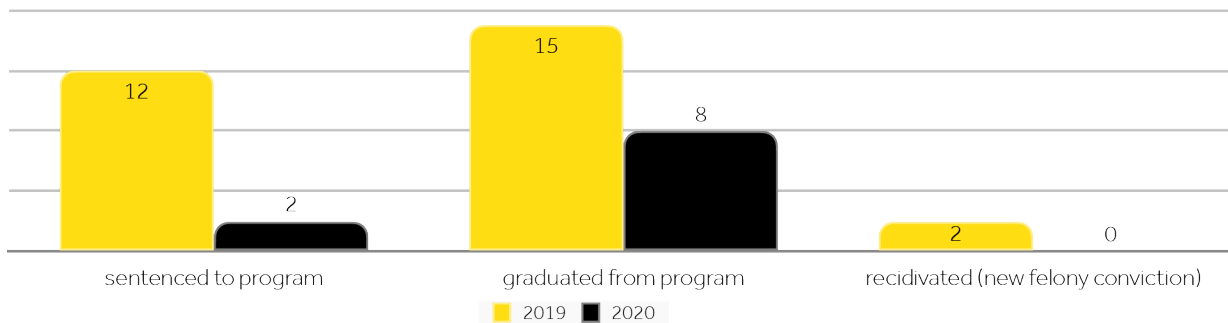
The in-prison portion of the Reentry Court Program is largely run by reformed "lifer" inmates in the Louisiana State Penitentiary who oversee the educational, vocational, and moral rehabilitation for about 100 or more participants who have been admitted to the Program.<sup>560</sup> The Program participants are given a vocational mentor and a social/moral mentor, with each mentor working daily with the participant to meet the Program milestones within the two year timeline.<sup>561</sup> During the in-prison portion, Program participants are required to receive their high school equivalence degree,<sup>562</sup> over 100 hours of life skills classes, substance abuse treatment if necessary, and vocational training, with a requirement they receive a minimum of two nationally recognized certifications.<sup>563</sup> Participants can receive vocational training in fields, including carpentry, plumbing, electrical, masonry, welding, culinary arts, automotive and collision repair, and other high-demand and high-wage fields.<sup>564</sup> All vocational mentors are nationally certified in their designated field and help their mentees develop an Individualized Career Plan.<sup>565</sup>

The in-prison portion of the Program also involves a social and moral aspect run by inmate mentors, many of whom are graduates of the New Orleans Baptist Theological Seminary, established within Angola in 1995.<sup>566</sup> Each social mentor supervises the educational progress, vocational progress, and disciplinary issues of four to six participants.<sup>567</sup> Participants must complete 100 hours of life skills classes, workshops, and group therapy sessions.<sup>568</sup> Social programs include Alcoholics Anonymous and Narcotics Anonymous,<sup>569</sup> and in 2018, Judge White applied for and received Federal Grant funding for the purpose of providing participants with enhanced substance use treatment services, including medication-assisted treatment (MAT).<sup>570</sup> The services have been integrated into both the in-prison and probation portions of the Reentry Court Program to ensure participants are provided comprehensive wrap-around services and individualized case management.<sup>571</sup>

Upon completion of the requirements of the in-prison portion of the Reentry Court Program, participants petition the Court to suspend the remainder of their sentence and place them on probation under the intensive supervision of the reentry division of the court.<sup>572</sup> The participants and their case managers present the Court with an individualized transition plan to address their reentry needs, including employment, housing, education, treatment, transportation, and legal needs, prior to their release.<sup>573</sup>



### Reentry Program Participants

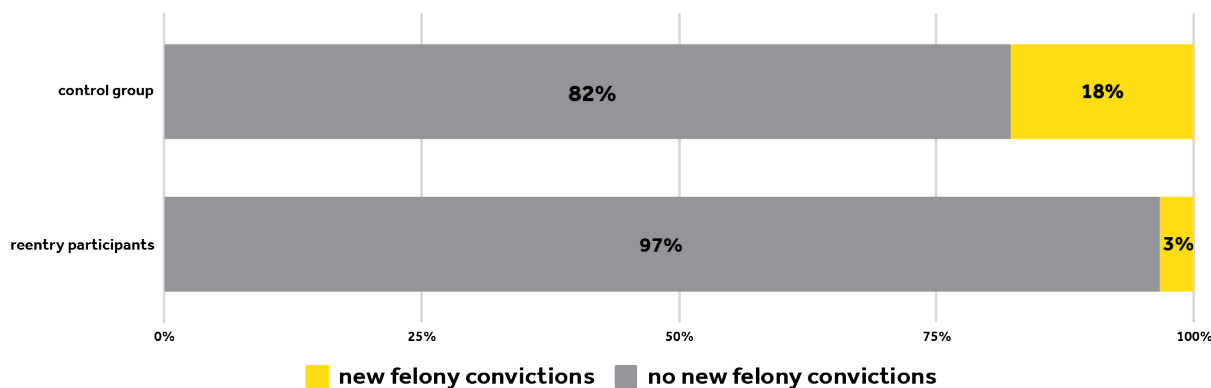


Source: Lindsay Jay Jeffrey, Reentry Court Program Project Coordinator, Criminal District Court Parish of Orleans

Upon a satisfactory transition plan, the Court will vacate the sentence and resentence the participant to three years of active probation, whereupon they will be monitored by the Judge, a probation officer, and case managers as they complete the milestones of the probation portion of the Program.<sup>574</sup> The participants also work with the team of Reentry Court Program service providers, which include psychiatry and addiction treatment specialists, a medical psychologist, a nurse practitioner, and education and professional development specialist, and a mentor specialist. The Orleans Reentry Court Program holds monthly Docket Days where the participants come to Court and meet with their entire case management team and the other participants to discuss their progress through the Program milestones and any issues they face as they navigate their reentry.<sup>575</sup> If the participant violates any condition of probation, the Court may revoke the probation and order the participant to serve the sentence previously imposed and suspended or alternatively a sentence of not more than twelve months.<sup>576</sup> If a participant is convicted of committing another felony during their time in the Program, they are removed.<sup>577</sup> In 2019, only 2 participants were removed from the program because of a new felony conviction.<sup>578</sup>

The figure below compares recidivism rates between those participants in the Orleans Reentry Court Program and defendants who were eligible to enter into the program but who did not become Reentry Court Program participants.

### Recidivism of Reentry Participants vs. Control Group (2016-2019)



Source: Marcus Kondkar, Department of Sociology, Loyola University - New Orleans.

Both men and women are eligible to be part of the Orleans Reentry Court Program.<sup>579</sup> However, due to flooding at the facility where the in-prison portion of the women's Reentry Court Program was housed, no women have been sentenced into the Program out of Orleans in the past three years.<sup>580</sup> The Department of Corrections, which has been a partner in the success of the Program,<sup>581</sup> has indicated the in-prison portion of the women's Reentry Court Program is functioning and eligible women can be sentenced to the Orleans Reentry Court Program. It is important that the necessary services and resources provided to the men sentenced to the Program are also provided to the women sentenced to the Program to ensure they are afforded the same benefits as their male counterparts.

#### Recommendation 14

Orleans Parish Criminal District Court judges and the Orleans Parish District Attorney's Office must focus more resources and attention on survivors, so they receive the healing and empowerment they deserve and do not fall through the cracks. Prosecutors must adopt a crime survivor-centered approach to prosecution, ensuring to the best of their ability that court proceedings occur when a survivor can be present and providing assistance with employers and childcare in order to make a court appearance possible for a crime survivor.

*Court Watch NOLA is proud to  
fight for accountability in New Orleans.*

*Join us.*

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# ACKNOWLEDGEMENTS

Court Watch NOLA thanks our 2020 volunteers and interns, who were so generous with their time and energy, and without whom this report would not have been possible. Court Watch NOLA thanks the Orleans Parish District Attorney's Office, Orleans Public Defenders, Orleans Parish Sheriff's Office, Criminal District Court Clerk of Court, Orleans Parish Judicial Administrator's Office, Municipal Court Judicial Administrator, Civil Rights Corp, the Vera Institute of Justice, the MacArthur Justice Center, the Anti-Defamation League, the Family Justice Center, Innocence Project New Orleans, Amnesty International, Silence is Violence, Judge Laurie White, City Council Public Safety Consultant Jeff Asher, Ben Horwitz, New Orleans Police Department Sergeant Pari and Lieutenant Chris Lea, Re-Entry Court Coordinator Lindsay Jeffrey and Evaluator Marcus Kondkar, William Faulkner, and every brave whistleblower who chose to remain anonymous, for providing data, insight, research (legal and otherwise) or advice for this report. This report was edited by Julia Cass. Finally, Court Watch NOLA thanks WAKE, the entire Tech2Empower community, and Lift Agency for their tireless work creating templates and designs for Court Watch NOLA.

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- <sup>190</sup> *Id.*
- <sup>191</sup> E-mail from Shannon Sims, Deputy Jud. Admin., Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Nov. 25, 2020, 9:05 CST) (on file with author).
- <sup>192</sup> Text Message from Rob Kazik, Jud. Admin., Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr. 6, 2021, 9:09 CST) (on file with author); Text Message from Rob Kazik, Jud. Admin., Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr. 6, 2021, 10:10 CST) (on file with author).
- <sup>193</sup> E-mail from Shannon Sims, Deputy Jud. Admin., Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Nov. 25, 2020, 9:05 CST) (on file with author).
- <sup>194</sup> Court Watch NOLA sent emails about accessibility, audibility, and image problems in criminal district court from October 14, 2020, 11:29 AM until December 2020 to Orleans Parish Criminal District Court Judicial Administrator. Before Court Watch NOLA began sending such emails, Court Watch NOLA staff spoke directly to the Judicial Administrator's Office.
- <sup>195</sup> Email from Jesse Manley, Volunteer Director of Court Watch NOLA, to Rob Kazik, Judicial Administrator Orleans Criminal District Court (Wed., Oct 14, 2020, 11:29 AM CST) (on file with author).
- <sup>196</sup> Interview by Simone Levine with Seann Halligan, Chief of Info. Tech., Orleans Par. Crim. Dist. Ct. (Apr. 7, 2021, 17:02 CST).
- <sup>197</sup> Orleans Criminal Court Virtual Courtrooms, Orleans Criminal District Court, <https://www.criminalcourt.org/virtual-court.html> (last visited May 16, 2021).
- <sup>198</sup> Mettler, *supra* note 8.
- <sup>199</sup> Interview by Simone Levine with Seann Halligan, Chief of Info. Tech., Orleans Par. Crim. Dist. Ct. (Apr. 7, 2021).

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- <sup>200</sup> Rilwan Balogun, Municipal and Traffic Court Reopens Following Cyber Attack, Fox News (Jan 22, 2020, 4:55 PM), <https://www.fox8live.com/2020/01/22/municipal-traffic-court-reopens-following-cyber-attack/>.
- <sup>201</sup> State Court Closures in Response to the Coronavirus (COVID-19) Pandemic Between March and November 2020, Ballotpedia (Nov. 4, 2020), [https://ballotpedia.org/State\\_court\\_closures\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic\\_between\\_March\\_and\\_November\\_2020](https://ballotpedia.org/State_court_closures_in_response_to_the_coronavirus_(COVID-19)_pandemic_between_March_and_November_2020).
- <sup>202</sup> New Orleans Municipal and Traffic Courthouse Employee COVID-19 Protocol (on file with author).
- <sup>203</sup> E-mail from Lauren Anderson, Managing Att’y, Orleans Pub. Def., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr. 13, 19:50 CST) (on file with author).
- <sup>204</sup> Interview by Simone Levine with Lauren Anderson, Managing Att’y, Orleans Pub. Def. (Mar. 15, 2021); Interview by Simone Levine with Sean Early, Chief Judge, New Orleans Municipal Ct. (Apr. 29, 2020). In New Orleans, the Constable is the chief law enforcement officer for First City Court, which has jurisdiction over the entire eastbank of Orleans Parish. Under order of the First City Court of New Orleans, the Constable’s Office serves pleadings, makes seizures, conducts evictions, conducts sales of properties. Deputy Constables are hired by the Constable, Lambert C. Bossier, Jr’s Office but can work in other courts. What We Do!, Lambert C. Boissiere: First City Court Constable for the City of New Orleans, <https://www.orleansconstable.net/services> (last visited May 16, 2021).
- <sup>205</sup> Deputy Constable Levi Kelling Arnold, Officer Down Memorial Page, <https://www.odmp.org/officer/24863-deputy-constable-levi-kelling-arnold> (last visited May 16, 2021).
- <sup>206</sup> In Memory of Deputy Constable Levi Kelling Arnold, CaseGuard (Mar. 30, 2020), <https://caseguard.com/articles/in-memory-of-deputy-constable-levi-kelling-arnold/>.
- <sup>207</sup> E-mail from Lauren Anderson, Managing Att’y, Orleans Pub. Def., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr 6, 12:48 PM) (on file with author).
- <sup>208</sup> E-mail from Lauren Anderson, Managing Att’y, Orleans Pub. Def., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr 6, 12:48 PM) (on file with author).
- <sup>209</sup> Phone Interview by Simone Levine with Sean Early, Chief Judge, Municipal Ct. (Mar. 27, 2020).
- <sup>210</sup> E-mail from Lauren Anderson, Managing Att’y, Orleans Pub. Def., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr 6, 12:48 PM) (on file with author).
- <sup>211</sup> Interview by Simone Levine with Lauren Anderson, Managing Att’y, Orleans Pub. Def. (Mar. 15, 2021).
- <sup>212</sup> On 12/27/20 there were 315 new cases in a day according to the Data Center. Rachel Weinstein, Monitoring the COVID-19 Pandemic in New Orleans and Louisiana, The Data Center (Mar. 24, 2020) <https://www.datacenterresearch.org/covid-19-data-and-information/covid-19-data/#cases-and-deaths-in-new-orleans>.
- <sup>213</sup> E-mail from Edward Walters, Jud. Admin., New Orleans Municipal Ct., to Veronica Bard, Deputy Dir., Ct. Watch NOLA (Mar. 16, 2021, 15:19 CST) (on file with author).
- <sup>214</sup> Interview by Simone Levine with Lauren Anderson, Managing Att’y, Orleans Pub. Def. (Mar. 15, 2021).
- <sup>215</sup> E-mail from Edward Walters, Jud. Admin., New Orleans Municipal Ct., to Veronica Bard, Deputy Dir., Ct. Watch NOLA (Mar. 16, 2021, 15:19 CST) (on file with author).
- <sup>216</sup> Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff’s Off. (Mar. 19, 2020); E-mail from Simone Levine, Exec. Dir., Ct. Watch NOLA, to Marlin Gusman, Sheriff, Orleans Par. (Mar. 20, 2020, 17:56 CST) (on file with author); Text Message from Lauren Anderson, Managing Att’y, Orleans Pub. Def., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 1, 2021, 9:55 CST) (on file with author); Interview by Simone Levine with Sean Early, Judge, Municipal Ct. (Mar. 20, 2020, 15:00 CST).
- <sup>217</sup> Text Message from Lauren Anderson, Managing Att’y, Orleans Pub. Def., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 1, 2020, 16:25 CST) (on file with author).
- <sup>218</sup> Interview by Simone Levine with Lauren Anderson, Managing Att’y, Orleans Pub. Def. (Mar. 15, 2021, 10:30 CST).
- <sup>219</sup> Id.
- <sup>220</sup> Id.
- <sup>221</sup> Standard 13.12 Payment for Public Representation, National Legal Aid & Defender Association, <http://www.nlada.org/defender-standards/national-advisory-commission/black-letter> (last visited May 16, 2021).
- <sup>222</sup> Text Message from Lauren Anderson, Managing Att’y, Orleans Pub. Def., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 1, 2020, 16:25 CST) (on file with author).
- <sup>223</sup> Interview by Simone Levine with Lauren Anderson, Managing Att’y, Orleans Pub. Def. (Mar. 15, 2021).
- <sup>224</sup> See id.
- <sup>225</sup> Docket (Court), Wikipedia, [https://en.wikipedia.org/wiki/Docket\\_\(court\)](https://en.wikipedia.org/wiki/Docket_(court)) (last visited May 16, 2021).
- <sup>226</sup> CONF. OF STATE COURT ADMIN’S, CONCEPT PAPER ON ACCESS TO COURT RECORDS, National Center for State Courts (Aug., 2000), <https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/311/rec/29>.
- <sup>227</sup> Remote Access to Court Electronic Records (RACER) Committee of the Council for Court Excellence, Remote Public Access to Electronic Court Records: A Cross-Jurisdictional Review for the D.C. Courts (April 2017), pg 1-4. [http://www.courtexcellence.org/uploads/publications/RACER\\_final\\_report.pdf](http://www.courtexcellence.org/uploads/publications/RACER_final_report.pdf) (Twenty out of 21 states responding, reported online access in civil and criminal cases, with slightly fewer permitting such access in criminal cases).
- <sup>228</sup> Docket, Louisiana Supreme Court, <https://www.lasc.org/Docket> (last visited May 16, 2021).

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- <sup>229</sup> 24th Judicial Court - Search the Docket, Clerk of Court, <https://www.jpclerkofcourt.us/dockets/> (last visited May 16, 2021).
- <sup>230</sup> Docket A, 33rd Judicial District Court, <http://www.33jdc.com/DocketA.htm> (last visited May 16, 2021).
- <sup>231</sup> Welcome to eCourts, New York State Unified Court System, <https://iapps.courts.state.ny.us/webcivil/ecourtsMain> (last visited May 16, 2021).
- <sup>232</sup> Welcome, Superior Court of California - County of San Francisco, <https://www.sfsuperiorcourt.org/> (last visited May 16, 2021).
- <sup>233</sup> Court News, Superior Court of California - County of San Diego, [http://www.sdcourt.ca.gov/portal/page?\\_pageid=55.1&\\_dad=portal&\\_schema=PORTAL](http://www.sdcourt.ca.gov/portal/page?_pageid=55.1&_dad=portal&_schema=PORTAL) (last visited May 16, 2021).
- <sup>234</sup> Martha Wade Steketee & Alan Carlson, Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts, National Center for State Courts (Oct 2002).
- <sup>235</sup> Remote Access to Court Electronic Records (RACER) Committee of the Council for Court Excellence, Remote Public Access to Electronic Court Records: A Cross-Jurisdictional Review for the D.C. Courts (April 2017), pg 1-4. [http://www.courtexcellence.org/uploads/publications/RACER\\_final\\_report.pdf](http://www.courtexcellence.org/uploads/publications/RACER_final_report.pdf)
- <sup>236</sup> As of January 1, 2021 Court Watch NOLA began to have dockets emailed from the individual Municipal Court judge's clerk of court's offices.
- <sup>237</sup> *Upjohn v. United States*, 449 U.S. 383, 389 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2290 (McNaughton rev. ed. 1961)) ("Confidential disclosures by a client to an attorney made in order to obtain legal assistance are privileged").
- <sup>238</sup> See *id.* ("The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client").
- <sup>239</sup> *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888) (explaining that a client has a privilege of "secrecy upon communications between client and attorney" to facilitate the "administration of justice").
- <sup>240</sup> In *Weatherford v. Bursey*, 429 U.S. 545 (1977), the government conceded that "the sixth amendment's assistance-of-counsel guarantee can be meaningfully implemented only if a criminal defendant knows that his communications with his attorney are private and that his lawful preparations for trial are secure against intrusion by the government, his adversary in the proceeding." *Id.* at 554 n.4 (quoting Brief for the United States at 71, *Hoffa v. United States*, 385 U.S. 293 (1966) (quoted in Brief for the United States as Amicus Curiae at 24 n.1, 3)).
- <sup>241</sup> *Proconier v. Martinez*, 416 U.S. 396, 419 (1974). ("[The right of access to the courts] means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation ... are invalid.") (overturned on other grounds); *Greater Newburyport Clamshell Alliance v. Public Serv. Co. of New Hampshire*, 838 F.2d 13, 19 (1st Cir. 1988).
- <sup>242</sup> See *Hudson v. Palmer*, 468 U.S. 517, 525–26 (1984), (stating that inmates are not entitled to a "subjective expectation of privacy" in their prison cells); 1 James G. Carr & Patricia L. Bellia, *Law Of Electronic Surveillance* § 3:6 (2015) (noting an inmate's "diminished privacy expectation" while incarcerated); see also *United States v. DeFonte*, 441 F.3d 92, 94 (2d Cir. 2006) (explaining that although there is a diminished expectation of privacy for inmates, they still have the protection of the attorney-client privilege).
- <sup>243</sup> Susan Candiotti & Sally Garner, Recorded Calls Keep Inmates Locked Up, CNN (Mar. 26, 2011), <http://www.cnn.com/2011/CRIME/03/26/jailhouse.calls.recordings/index.html>.
- <sup>244</sup> *Id.*
- <sup>245</sup> Ken Armstrong, A Phone Call From Jail? Better Watch What You Say, The Marshall Project (Feb. 4, 2015), <https://www.themarshallproject.org/2015/09/04/a-phone-call-from-jail-better-watch-what-you-say>.
- <sup>246</sup> The United Supreme Court has loudly stated, "inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid." *Proconier v. Martinez*, 416 U.S. 396, 419 (1974).
- <sup>247</sup> *Black v. United States*, 385 U.S. 26 (1966).
- <sup>248</sup> *Ex parte Hull*, 312 U.S. 546, (1941).
- <sup>249</sup> *United States v. Coplon*, 191 F.2d 749, cert. denied, 342 U.S. 926 (1952).
- <sup>250</sup> Effective Assistance of Counsel in the Digital Era Act, H.R. 5546, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/5546>.
- <sup>251</sup> Attorney Visitation at OPSO, Orleans Parish Sheriff's Office, [https://www.opso.us/index.php?option=com\\_content&view=article&id=333&Itemid=795](https://www.opso.us/index.php?option=com_content&view=article&id=333&Itemid=795) (last visited May 16, 2021); Meeting with Gary Maynard, Compliance Dir., Orleans Par., and Blake Arcuri, Couns., Orleans Par. Sheriff's Off. (Feb. 1, 2018).
- <sup>252</sup> Affidavit, Orleans Parish Sheriff's Office, <https://www.opso.us/rokdownloads/Forms/Atty%20Affidavit%20Phone.pdf> (last visited May 16, 2021).
- <sup>253</sup> *Id.*
- <sup>254</sup> *Id.*; Attorney Visitation, *supra* note 253.
- <sup>255</sup> LA Code Evid. §506 B(2).
- <sup>256</sup> Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff's Off. (Apr. 22, 2021).

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<sup>257</sup> E-mail from Judson Mitchell, Professor, Loyola L. Sch., to Simone Levine, Ex. Dir., Ct. Watch NOLA (Apr. 20, 2021, 11:30 CST) (on file with author); Text Message from anonymous, Private Defense Attorney, to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 20, 2020, 11:35 CST) (on file with author); Text Message from David Capasso, Private Defense Attorney, to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 20, 2020, 12:13 CST) (on file with author); Telephone Interview with anonymous whistleblower (May 10, 2021).

<sup>258</sup> Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff's Off. (Apr. 22, 2021, 10:53 CST).

<sup>259</sup> Interview by Simone Levine with Danny Engleberg, Chief of Trials, Orleans Pub. Def. (Apr. 2, 2021, 13:30 CST); Home, Orleans Parish Sheriff's Office, <https://www.opso.us/> (last visited May 16, 2021).

<sup>260</sup> Harvey Rice, Jails Break the Law When They Record Conversations of Lawyers & Inmates, Houston Chronicle (Mar 20, 2012), <https://texasjailproject.org/2012/03/2029/>.

<sup>261</sup> Where criminal activity between the attorney and the client is suspected, federal law enforcement and occasionally state law enforcement have instituted a separate "taint team" that has reviewed attorney-client privileged material but not divulged privileged material with the law enforcement team investigating the underlying alleged criminal activity. In one Louisiana case, the Louisiana Supreme Court determined a defendant would not receive a new trial where the jail had recorded an attorney-client call but certain protections were put in place to preserve the attorney-client privilege. These protections included a prosecutorial taint team and an alternative means by which the defendant could have had an unmonitored telephone call with his attorney but failed to use it. # The "taint-team" has met with controversy and sometimes a court will appoint a special master, preferring an independent third party over law enforcement, to review attorney-client privileged material.

<sup>262</sup> Black v. United States, 385 U.S. 26 (1966).

<sup>263</sup> A Plan For Accountability, The People's DA Coalition, <https://nolapeoplesda.org/> (last visited May 16, 2021).

<sup>264</sup> "The initial term of this Agreement (the "Initial Term") shall begin on the Effective Date and shall end on November 30, 2013. Thereafter, unless one party delivers to the other written notice of non-renewal at least 90 days prior to the end of the then current term, this Agreement shall automatically renew for successive periods of 1 year each. Notwithstanding anything to the contrary, the terms and conditions of this Agreement shall continue to apply to each Schedule for so long as we continue to provide the Application to you after the expiration or earlier termination of this Agreement." Securus Contract, First Amendment to Master Services Agreement (on file with author).

<sup>265</sup> Securus Contract, First Amendment to Master Services Agreement (on file with author).

<sup>266</sup> Garrett Hazelwood, Securus Technologies Is Cashing In On Immigrant Detention, VICE (June 12, 2020, 7:00 AM), <https://www.vice.com/en/article/pkypjz/securus-technologies-is-cashing-in-on-immigrant-detention>.

<sup>267</sup> Id.

<sup>268</sup> Jonathan Kozlowski, Prosecution Support, Law Enforcement Product News (July/Aug. 2020), <https://editions.mydigitalpublication.com/publication/?i=666205&p=13&pp=1&view=issueViewer>.

<sup>269</sup> Id.

<sup>270</sup> Securus Contract, First Amendment to Master Services Agreement (on file with author).

<sup>271</sup> Cahn, supra note 29 at 3. From the Securus website, "Linking Patterns Using THREADS inner circle reporting option, investigators can see a web of individuals that inmates are contacting in a pattern, and display the targets 'working group.' For example, an inmate may call his brother every Tuesday, and then right after that phone conversation he calls his cousin. THREADS will highlight this call pattern implying to the investigators that whatever was discussed with the brother, most likely was discussed with his cousin." Securus Threads, Securus Technologies, <https://securustechnologies.tech/securusthreads/> (last visited May 16, 2021).

<sup>272</sup> Cahn, supra note 29 at 3.

<sup>273</sup> Id. at 4.

<sup>274</sup> Id. at 2.

<sup>275</sup> Id.

<sup>276</sup> Interview by Simone Levine with Bruce Reiley, Deputy Dir., Voice of the Experienced (May 7, 2021, 15:08 CST); Interview by Simone Levine with Kiana Calloway, Chapter Organizer VOTE New Orleans (May 9, 2021, 16:59 CST).

<sup>277</sup> Securus Contract, First Amendment to Master Services Agreement (on file with author).

<sup>278</sup> Cahn, supra note 29 at 5.

<sup>279</sup> Id. at 3.

<sup>280</sup> Cahn, supra note 29 at 3.

<sup>281</sup> Securus Contract, First Amendment to Master Services Agreement (on file with author).

<sup>282</sup> Shaun Nichols, Lawyer Warned FCC of Securus Phone-Tracking Risks 10 Months Ago, The Register (May 23, 2018), [https://www.theregister.com/2018/05/23/lawyer\\_warned\\_fcc\\_of\\_securus\\_phonetracking\\_risks\\_10\\_months\\_ago/](https://www.theregister.com/2018/05/23/lawyer_warned_fcc_of_securus_phonetracking_risks_10_months_ago/).

<sup>283</sup> Securus Contract, First Amendment to Master Services Agreement (on file with author).

<sup>284</sup> Id.

<sup>285</sup> Id.

<sup>286</sup> Id.

<sup>287</sup> Id.

<sup>288</sup> Id.

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<sup>289</sup> Cahn, *supra* note 29 at 8.

<sup>290</sup> Keaton Ross, 'Sued Every Way and Sunday.' New Prison Phone Provider has Troubled History, Oklahoma Watch (August 27, 2020), <https://oklahomawatch.org/2020/08/27/sued-every-way-and-sunday-new-prison-phone-provider-has-troubled-history/>

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> Orleans Parish Sheriff's Office 2020 Proposed Annual Budget "Template 1- Proposed Annual Budget" submitted to New Orleans City Council.

<sup>295</sup> Due Process of Law, Legal Information Institute, <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/due-process-of-law> (last visited May 16, 2021).

<sup>296</sup> Final Report March 2017: Recommendations For Strengthening the Unified Court System of North Carolina, North Carolina Commission on the Administration of Law & Justice 22 (2017), <https://university.pretial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4ead3494-c31f-fc15-4860-410d6dceb501>.

<sup>297</sup> Kimberly Curth, Crime Watchdog Says Orleans Court System Faces a Backlog Similar to What the City Faced Following Katrina, Fox 8 News (Dec. 1, 2020, 3:10 PM), <https://www.fox8live.com/2020/12/01/crime-watchdog-says-orleans-court-system-faces-backlog-similar-what-city-faced-following-katrina/>.

<sup>298</sup> Matt Sledge, Jury Trials Can Resume in Louisiana, but New Orleans Courts Take Different Approaches to Tricky Topic, Nola.com (Mar. 16, 2021, 4:00 AM), [https://www.nola.com/news/courts/article\\_37fdc2ae-85e1-11eb-b714-4f19e9abf9dc.html](https://www.nola.com/news/courts/article_37fdc2ae-85e1-11eb-b714-4f19e9abf9dc.html).

<sup>299</sup> La. Sup. Ct. Order (2020), [https://www.lasc.org/COVID19/Orders/2020-05-15\\_LASC\\_DEADLINES.pdf](https://www.lasc.org/COVID19/Orders/2020-05-15_LASC_DEADLINES.pdf) (last visited May 16, 2021).

<sup>300</sup> Text Message from Rob Kazik, Jud. Admin., Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr. 28, 2021, 8:04 CST).

<sup>301</sup> La. Sup. Ct. Order (2020), [https://www.lasc.org/COVID19/Orders/2020-03-16\\_LASCOrder.pdf](https://www.lasc.org/COVID19/Orders/2020-03-16_LASCOrder.pdf).

<sup>302</sup> *Id.*; Matt Sledge, Coronavirus Slows Pace of Justice to Crawl in New Orleans, Frustrating Victims and Defendants Alike, Nola.com, [https://www.nola.com/news/coronavirus/article\\_ecf3ff1e-c2f7-11ea-b08f-ef154da1079e.html](https://www.nola.com/news/coronavirus/article_ecf3ff1e-c2f7-11ea-b08f-ef154da1079e.html).

<sup>303</sup> Curth, *supra* note 299.

<sup>304</sup> Calculated from New Orleans Police Department Calls for Service. Home, DataDriven, <https://datadriven.nola.gov/home/> (last visited May 16, 2021).

<sup>305</sup> *Id.*

<sup>306</sup> E-mail from Jeff Asher, Pub. Safety Consultant, New Orleans City Council, to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr. 13, 2021, 8:55 CST) (on file with author).

<sup>307</sup> *Id.*

<sup>308</sup> The numbers represented in this chart are an overestimate of crime and arrests in New Orleans, because police officers respond to calls for service and write reports on incidents which are often unrelated to criminal activity. This chart is intended to illustrate the proportion of calls for service that are represented in NOPD police reports.

<sup>309</sup> Rafael Preito Curiel & Steven Richard Bishop, Fear of Crime: The Impact of Different Distributions of Victimization, Humanities & Social Sciences Communication, (Apr. 17, 2018), <https://www.nature.com/articles/s41599-018-0094-8>.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> Nicholas Chrastil, 'The System Is At a Breaking Point': New DA, Public Defenders Work to Reduce Backlog of Cases at Criminal District Court, The Lens (Jan 20, 2021) <https://thelensnola.org/2021/01/20/the-system-is-at-a-breaking-point-new-da-public-defenders-work-to-reduce-backlog-of-cases-at-criminal-district-court/>.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> David Hammer, Victims, Defendants Waiting for Justice as Coronavirus Continues to Halt New Orleans Criminal Cases, Nola.com (Feb. 26, 2021, 4:30 PM), [https://www.nola.com/news/courts/article\\_3aa33066-7551-11eb-89c1-3b506191fea9.html](https://www.nola.com/news/courts/article_3aa33066-7551-11eb-89c1-3b506191fea9.html).

<sup>317</sup> E-mail from Lindsey Hortenstine, Communications Director Orleans Public Defenders, to Simone Levine, Exec. Dir., Ct. Watch NOLA (Mar. 31, 2021, 7:50 CST) (on file with author).

<sup>318</sup> La. Code Crim. Pro. § 708.

<sup>319</sup> At least 22% of cases observed in 2020 were continued. However, Court Watch NOLA did not track the total number of continuances or continuances which occurred for unlisted reasons.

<sup>320</sup> Plea Bargaining, Britannica, <https://www.britannica.com/topic/plea-bargaining> (last visited May 16, 2021).

<sup>321</sup> Interview by Simone Levine with Danny Engleberg, Chief of Trials, Orleans Pub. Def. (May 12, 2021, 9:51 CST).

<sup>322</sup> Location Restrictions in Louisiana, *supra* note 57.

<sup>323</sup> Elizabeth Carpenter, Plea Bargaining in Criminal Cases, Blog (Oct. 26, 2012), <https://www.neworleans-criminal-defense.com/attorneyblog/2012/10/26/plea-bargaining-in-criminal-cases-new-orleans-criminal-defense-attorney/>; Emily Yoffe, Innocence is Irrelevant, *The Atlantic* (Sept. 2017), <https://www.theatlantic.com/magazine/archive/2017/09/innocence-isirrelevant/534171/>.

<sup>324</sup> Jarvis DeBerry, 3 Ways New Orleans' Criminal Justice System is in a Shambles, *Nola.com* (Jan. 14, 2016), [https://www.nola.com/news/crime\\_police/article\\_0bfd7b85-4975-5b1f-b474-051a93c6e5d3.html](https://www.nola.com/news/crime_police/article_0bfd7b85-4975-5b1f-b474-051a93c6e5d3.html).

<sup>325</sup> Sara J. Berman, The Basics of a Plea Bargain, Nolo, <https://www.nolo.com/legal-encyclopedia/the-basics-plea-bargain.html> (last visited May 16, 2021); Of the 5 oldest cases the oldest case is Alonzo Gonzales. He has 2 cases that are still going and they both were initiated in 2008. The next date for either case is 4/26/21. Both cases are assigned to Sect. K. The charges are 2 counts of 14:64.3 Armed Robbery with a firearm case # 480972; the other charge is 14:30.1 2nd Degree Murder, Armed Robbery, 6 counts of Agg Assault on a Peace Officer & Unath use of a Motor Vehicle, with the next court date of 4/26/21. \* On 3/19/18 the first trial was held and the jury was hung on the murder, armed robbery charges. The defendant was found not guilty of the Agg Assault charge and guilty of unauthorized use charge. The next court date is 4/26/21.

<sup>326</sup> Interview by Simone Levine with Danny Engleberg, Chief of Trials, Orleans Pub. Def. (May 12, 2021, 9:51 CST).

<sup>327</sup> Id.

<sup>328</sup> Id.; Interview by Simone Levine with David Gapasso, Priv. Def. Att'y (May 2, 2021, 10:56 CST).

<sup>329</sup> Interview by Simone Levine with David Gapasso, Priv. Def. Att'y (May 2, 2021, 10:56 CST).

<sup>330</sup> Color of Change, The People's DA Coalition - Candidate Forum, Facebook (Sept. 30, 2020, 00:28), <https://www.facebook.com/colorofchange/videos/813662559461551/>.

<sup>331</sup> Interview by Simone Levine with Keith Johnson, Bond Forfeiture Adm'r, Clerk of Crim. Dist. Ct. (Apr. 9, 2020, 11:39 CST); The National Crime Information Center is a computerized index of criminal justice information (in example - criminal record history information, fugitives, stolen properties, missing persons). It is available to Federal, state, and local law enforcement and other criminal justice agencies and is operational 24 hours a day, 365 days a year. National Crime Information Center, Federal Bureau of Investigation, <https://fas.org/irp/agency/doj/fbi/is/ncic.htm> (last visited May 16, 2021).

<sup>332</sup> Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff's Off., and Arthur Lawson, Sheriff Captain, Orleans Par. (May 3, 2021, 13:30 CST).

<sup>333</sup> Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff's Off. (Apr. 22, 2021, 10:53 CST).

<sup>334</sup> Id.

<sup>335</sup> Jon Wool et al., Paid in Full: A Plan to End Money Injustice in New Orleans, VERA Institute of Justice 39 (June 2019), <https://www.vera.org/downloads/publications/paid-in-full-report.pdf>.

<sup>336</sup> What Jail Costs: Cities - New Orleans, LA, VERA Institute of Justice, <https://www.vera.org/publications/what-jails-cost-cities/new-orleans-la> (last visited May 16, 2021).

<sup>337</sup> Pretrial Release, American Bar Association, [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_pretrialrelease\\_blk/](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/) (last visited May 16, 2021).

<sup>338</sup> Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff's Off., and Arthur Lawson, Sheriff Captain, Orleans Par. (May 3, 2021, 13:30 CST).

<sup>339</sup> CourtNotify was non-functional for over a year due to the cyber-attack on the City of New Orleans servers.

<sup>340</sup> Due to the shutdown of the CourtNotify system, all courts wrote subpoenas by hand and the Orleans Parish Sheriff's picked up the subpoenas. Although this caused more work for both clerk's offices and the Orleans Parish Sheriff's Office, it does not appear to have caused any change in the way defendants were subpoenaed. Interview by Simone Levine with Keith Johnson, Bond Forfeiture Adm'r, Clerk of Crim. Dist. Ct. (Apr. 9, 2020, 11:39 CST); Interview by Simone Levine with Edward Walters, Municipal Court Judicial Administrator (Apr. 29, 2021, 15:04 CST); Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff's Off., and Arthur Lawson, Sheriff Captain, Orleans Par. (May 3, 2021, 13:30 CST).

<sup>341</sup> Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff's Off. (Apr. 22, 2021, 10:53 CST).

<sup>342</sup> Ryan E. Little et al., Cities Try To Arrest Their Way Out of Homeless Problems, ABC News (June 29, 2020, 12:07 CST), <https://abcnews.go.com/US/wireStory/cities-arrest-homeless-problems-71511969>.

<sup>343</sup> Interview by Simone Levine with Blake Arcuri, Couns., Orleans Par. Sheriff's Off., and Arthur Lawson, Sheriff Captain, Orleans Par. (May 3, 2021, 13:30 CST).

<sup>344</sup> Id.

<sup>345</sup> Interview by Simone Levine with Danny Engleberg, Chief of Trials, Orleans Pub. Def., and Colin Reingold, Chief of Special Litig., Orleans Pub. Def. (Apr. 2, 2021).

<sup>346</sup> Interview by Simone Levine with Shannon Sims, Deputy Jud. Admin., Orleans Crim. Dist. Ct. (Apr. 9, 2020, 11:10 CST); Order, Criminal District Court For the Parish of Orleans, [https://www.criminalcourt.org/uploads/2/5/3/5/25359518/2020-03-15\\_orleanscriminal.pdf](https://www.criminalcourt.org/uploads/2/5/3/5/25359518/2020-03-15_orleanscriminal.pdf) (last visited May 16, 2021); Order, Criminal District Court for the Parish of Orleans, [https://www.criminalcourt.org/uploads/2/5/3/5/25359518/2020\\_04\\_09\\_13\\_34\\_45.pdf](https://www.criminalcourt.org/uploads/2/5/3/5/25359518/2020_04_09_13_34_45.pdf) (last visited May 16, 2021).

<sup>347</sup> E-mail from Shannon Sims, Deputy Jud. Admin., Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 5, 2021, 12:38 CST) (on file with author).

<sup>348</sup> Text Message from Calvin Johnson, Judge, Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr. 24, 2021, 16:44 CST); Interview by Simone Levine with Seann Halligan, Chief of Info. Tech., Orleans Par. Crim. Dist. Ct. (Apr. 7, 2021, 17:02 CST).

<sup>349</sup> Interview by Simone Levine with Seann Halligan, Chief of Info. Tech., Orleans Par. Crim. Dist. Ct. (Apr. 7, 2021, 17:02 CST).

<sup>350</sup> On March 15, 2020, the Court issued a statement, "All attorneys, defendants and witnesses with scheduled criminal proceedings and notices to appear from March 16, 2020 through April 10, 2020 shall appear between April 13, 2020 and April 17, 2020 for a subpoena for their new court date. On April 9th, Orleans Criminal District Court issued another statement stating, "All attorneys, defendants and witnesses with scheduled notices to appear from March 16, 2020 through April 30, 2020 shall appear between May 18, 2020 and May 22, 2020 for a subpoena for their new court date." Then on April 27, 2020, the court issued another order stating, "The Orleans Parish Criminal District Court has extended its closure until further notice... Those attorneys, defendants and witnesses with scheduled notices to appear should refer to docketmaster on the Sheriff's website at [www.opcso.org](http://www.opcso.org) for their new court date. On April 29, 2020, the court ordered that while the court was in Phase 1, court proceedings would take place online and that once Phase II started, court proceedings would take part in-person, part online. There was no guidance for defendants to determine when their individual mandated court date might take place except that it is, "scheduled by the respective section judge." As for timing when the court will shift to in-person appearances the April 29, 2020 court order stated the following, "Phase One will remain in place until two weeks after the withdrawal of Louisiana State Governor John Bel Edwards' Stay at Home Order and the withdrawal of the City of New Orleans Mayor LaToya Cantrell's Stay at Home Order." One month later, on May 28, 2020, the Court issued another order that it would reopen June 1, 2020 with court proceedings occurring in-person at the court but the court accommodating online appearances as well. Additionally, the May 28th order mentioned that defendants who are out of jail and with notices to appear between March 13, 2020 and May 31, 2020 should appear in-person at Criminal District Court to receive service for a new court date but the order warned that out of court defendants could only appear Monday through Thursdays between the hours of 9:00 a.m. and 1:00 p.m. and only in the following manner:

- If the last number of your social security number is 0, 1, or 2 appear for re-service on Mondays
- If the last number of your social security number is 3, 4 or 5 appear for re-service on Tuesdays
- If the last number of your social security number is 6, 7, 8, or 9 on Wednesdays
- All can appear for re-service on Thursday

After May 28, 2020, there were no further public announcements of how to appear in court (whether in person or virtually) and when to appear in court if your original appearance was scheduled during a court closure but the court announced it would be closed on: August 10th to August 17th (possible COVID exposure), August 24th to August 26th (Hurricanes Marco and Laura), August 27, 2020 (Inclement weather), September 14th and September 15th (Hurricane Sally), October 28th through October 30th (Hurricane Zeta), and November 12th (Possible Covid exposure).

<sup>351</sup> E-mail from Shannon Sims, Deputy Jud. Admin., Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 5, 2021, 12:38 CST) (on file with author).

<sup>352</sup> Id.

<sup>353</sup> Id.

<sup>354</sup> Interview by Simone Levine with Seann Halligan, Chief of Info. Tech., Orleans Par. Crim. Dist. Ct. (Apr. 7, 2021, 17:02 CST).

<sup>355</sup> According to the Supreme Court of Louisiana, Judge Karen Herman presided over Section E, in addition to Section I, from July 20th to November 30th, 2020. During that period of time, Judge Herman issued 4 capias warrants in Section E. Then-Judge-elect Rhonda Goode-Douglas presided over Section E from December 1-31, 2020, and during that time, she issued one capias warrant.

<sup>356</sup> According to Datalytics's New Orleans Criminal Justice Overview 2020, the low numbers of arrests may be attributed to the ransomware attack on New Orleans municipal entities in December 2019, along with the COVID pandemic. Out of the warrants issued for failure to appear in Orleans Parish Criminal District and Magistrate Courts 29% were issued for defendants who failed to appear at their arraignment in Orleans Parish Criminal District Court.

<sup>357</sup> Analysis of data received from the Orleans Parish Sheriff's Office and information from Docket Master.

<sup>358</sup> Municipal & Traffic Court of New Orleans, City of New Orleans, <https://www.nola.gov/municipal-traffic-court/> (last visited May 16, 2021).

<sup>359</sup> Id.

<sup>360</sup> Interview by Simone Levine with Edward Walters, Jud. Admin., New Orleans Municipal Ct. (Apr. 29, 2021, 15:04 CST).

<sup>361</sup> Interview by Simone Levine with Edward Walters, Jud. Admin., New Orleans Municipal Ct. (Apr. 29, 2021, 15:04 CST).

<sup>362</sup> On 12/27/20 there were 315 new cases in a day according to the Data Center. Rachel Weinstein, Monitoring the COVID-19 Pandemic in New Orleans and Louisiana, The Data Center (Mar. 24, 2020), <https://www.datacenterresearch.org/covid-19-data-and-information/covid-19-data/#cases-and-deaths-in-new-orleans>.

<sup>363</sup> NEW ORLEANS MUNICIPAL AND TRAFFIC COURT INITIAL SCREENING QUESTIONNAIRE; Interview by Simone Levine with Edward Walters, Jud. Admin., New Orleans Municipal Ct. (Apr. 29, 2021, 15:04 CST).

<sup>364</sup> Interview by Simone Levine with Edward Walters, Jud. Admin., New Orleans Municipal Ct. (Apr. 29, 2021, 15:04 CST); Interview by Simone Levine with Sean Early, Chief Judge, New Orleans Municipal Ct. (Mar. 27, 2021); Interview by Simone Levine with Bobby Jones, Judge, New Orleans Municipal Ct. (May 10, 2021, 8:13 CST); E-mail from Joseph Landry, Judge, New Orleans Municipal Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 4, 2021, 18:53 CST) (on file with author); Text



Message from Paul Sens, Judge, New Orleans Municipal Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 10, 2021, 11:19 CST) (on file with author); Interview by Simone Levine with Mark Shea, Judge, New Orleans Municipal Ct. (May 10, 2021, 8:30 CST).

<sup>365</sup> E-mail from Chris Sens, Clerk of Ct., New Orleans Municipal Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 11, 2021, 20:26 CST).

<sup>366</sup> Municipal and Traffic Court of New Orleans State of Louisiana En Banc Order #1007-2020 (Jun. 9, 2020).

<sup>367</sup> E-mail from Catherine Rieder, Att’y, Orleans Pub. Def., to Lauren Anderson, Managing Att’y, Orleans Pub. Def., and Simone Levine, Exec. Dir., Ct. Watch NOLA, and Veronica Bard, Deputy Dir., Ct. Watch NOLA, and Darrin Browder, Chapter Dev. Specialist, Ct. Watch NOLA (May 4, 2021, 12:50 CST) (on file with author).

<sup>368</sup> Id.

<sup>369</sup> Emily Lane, WDSU Investigates: ‘Ghost Warrants’ Backlog Haunts Accused in New Orleans Municipal Court, WDSU News (Sept. 28, 2020, 8:23 AM), <https://www.wdsu.com/article/wdsu-investigates-ghost-warrants-backlog-haunts-accused-in-new-orleans-municipal-court/34184106>.

<sup>370</sup> Norman Lefstein, Securing Reasonable Caseloads: Ethics and Law in Public Defense (American Bar Ass’n ed., 2011), [https://www.americanbar.org/content/dam/aba/publications/books/lis\\_slaid\\_def\\_securing\\_reasonable\\_caseloads.authch\\_eckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/books/lis_slaid_def_securing_reasonable_caseloads.authch_eckdam.pdf).

<sup>371</sup> The State of Magistrate Court: 2016-2017 Data Collection Period 30-31 (Ct. Watch NOLA ed., 2017), [https://www.courtwatchnola.org/wp-content/uploads/Court-Watch-NOLA-Magistrate-Court-Report\\_Oct2017.pdf](https://www.courtwatchnola.org/wp-content/uploads/Court-Watch-NOLA-Magistrate-Court-Report_Oct2017.pdf)

<sup>372</sup> Associated Press, Text Message Reminders Help People Remember Their Court Dates, Los Angeles Times (May 4, 2019, 5:51 PM), <https://www.latimes.com/nation/la-na-court-case-text-reminders-defendants-20190504-story.html>.

<sup>373</sup> Holly Howat et al., Improving Court-Appearance Rates Through Court-Date Reminder Phone Calls 77-87 (2016).

<sup>374</sup> Associated Press, *supra* note 374.

<sup>375</sup> With the new system, court event data such as upcoming court dates would be pushed nightly from the City’s data warehouse to the statewide public defender case management software. Upcoming court date data is then integrated by the Public Defender Board through a third-party text notification service, allowing text notifications to be sent to defendants ahead of each court date. Office of Criminal Justice Coordination Newsletter - Spring 2020, Mayor LaToya Cantrell’s Office, Mar. 29, 2021, Spring 2020.

<sup>376</sup> Interview by Simone Levine with Nathaniel Weaver, Senior Project Manager, Crim. Just. Performance Mgmt. City of New Orleans (Apr. 23, 2021, 15:00 CST).

<sup>377</sup> E-mail from Lindsey Hortenstine, Commc’n & Dev. Dir., Orleans Pub. Def., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Mar. 31, 2021, 7:50 CST) (on file with author).

<sup>378</sup> Interview by Simone Levine with Nathaniel Weaver, Senior Project Manager, Crim. Just. Performance Mgmt. City of New Orleans (Apr. 23, 2021, 15:00 CST).

<sup>379</sup> Interview by Simone Levine with Eddie Walters, Jud. Admin., New Orleans Municipal Ct. (Apr. 29, 2021, 15:04 CST).

<sup>380</sup> Interview by Simone Levine with Nathaniel Weaver, Senior Project Manager, Crim. Just. Performance Mgmt. City of New Orleans (Apr. 23, 2021, 15:00 CST).

<sup>381</sup> Text Message from Nathaniel Weaver, Senior Project Manager, Crim. Just. Performance Mgmt. City of New Orleans, to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr. 26, 2021, 10:39 CST) (on file with author).

<sup>382</sup> Interview by Simone Levine with Eddie Walters, Jud. Admin., New Orleans Municipal Ct. (Apr. 29, 2021, 15:04 CST).

<sup>383</sup> Arrest Alternatives: Lessons from Research, *supra* note 42.

<sup>384</sup> Id.

<sup>385</sup> Id.

<sup>386</sup> Pretrial Release, American Bar Association, [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_pretrialrelease\\_blk/](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/) (last visited May 17, 2021).

<sup>387</sup> Alternative Methods for Delivering Essential Law Enforcement Services, International Association for Chiefs of Police, <https://www.theiacp.org/resources/document/alternative-methods-for-delivering-essential-law-enforcement-services> (last visited May 17, 2021).

<sup>388</sup> Carlos Miguel Ferreira et al., The COVID-19 Contagion - Pandemic Dyad: A View from Social Sciences, Societies (Oct. 6, 2020), <https://www.mdpi.com/2075-4698/10/4/77/pdf>.

<sup>389</sup> Alternative Methods for Delivering Essential Law Enforcement Services, International Association of Chiefs of Police, <https://www.theiacp.org/resources/document/alternative-methods-for-delivering-essential-law-enforcement-services> (last visited May 17, 2021).

<sup>390</sup> Joel H. Garner & Christopher D. Maxwell, *supra* note 44.

<sup>391</sup> New Orleans Police Dept. Operations Manual Chapter: 41.8 Title: Affidavit & Summons (Non-traffic) (Oct. 29, 2017).

<sup>392</sup> A defendant can serve up to a maximum of 8 months in jail on a municipal offense. Library.municode.com. (2019).

Municode Library, available at [https://library.municode.com/la/new\\_orleans/codes/code\\_of\\_ordinances?nodeId=PTIICO\\_CH54CRCO\\_ARTIINGE\\_S54-23BA](https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=PTIICO_CH54CRCO_ARTIINGE_S54-23BA) (Last visited 5/10/21)

<sup>393</sup> New Orleans, La., Code § 54-153 (2019).

<sup>394</sup>Id. § 54-403.

<sup>395</sup>La. R.S. § 14:2.

<sup>396</sup>New Orleans Criminal Code Sec. 54-505 Sec (g); NOPD Operations Manual, Affidavit and Summons, Chapter 41.8.

<sup>397</sup>Susan Hutson & Jerry Kaczmarek, Letters: NOPD Can Adapt to Protect Officers and Our Community, *The Advocate* (Apr. 23, 2020, 6:00 AM), [https://www.theadvocate.com/baton\\_rouge/opinion/letters/article\\_353e0bd0-80f3-11ea-bcd2-6f93fec7addb.html](https://www.theadvocate.com/baton_rouge/opinion/letters/article_353e0bd0-80f3-11ea-bcd2-6f93fec7addb.html).

<sup>398</sup>Matt Sledge, *supra* note 45.

<sup>399</sup>Nicholas Chrastil, *supra* note 315.

<sup>400</sup>Nicholas Chrastil, Proposed City Laws Would Discourage Arrest for Minor Crimes, Require Disclosure of Body Cam Footage to Defendants, *The Lens* (Jul. 29, 2020), <https://thelensnola.org/2020/07/29/proposed-city-laws-would-discourage-arrests-for-minor-crimes-require-disclosure-of-body-cam-footage-to-defendants/>.

<sup>401</sup>Where an officer could not determine the individual's identity, the person acts in a violent or destructive manner, the person indicates a disregard for the summons or where the person had a criminal history of two or more felony convictions, or five or more convictions for any offense.

<sup>402</sup>New Orleans Criminal Code Sec. 54-28,

[https://library.municode.com/la/new\\_orleans/codes/code\\_of\\_ordinances?nodid=PTIICO\\_CH54CRCO\\_ARTIINGE\\_S54-28SUOFINARBO&showChanges=true](https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodid=PTIICO_CH54CRCO_ARTIINGE_S54-28SUOFINARBO&showChanges=true).

<sup>403</sup>COVID 19-Update 12-30-20 Office of the Sheriff Marlin Gusman (on file with author).

<sup>404</sup>Orleans Parish Sheriff's Office Update Regarding COVID-19 Testing and Precautions, Orleans Parish Sheriff's Office, [https://www.opso.us/index.php?option=com\\_content&view=article&id=693:orleans-parish-sheriffs-office-update-regarding-covid-19-testing-and-precautions&catid=144:covid-19&Itemid=872](https://www.opso.us/index.php?option=com_content&view=article&id=693:orleans-parish-sheriffs-office-update-regarding-covid-19-testing-and-precautions&catid=144:covid-19&Itemid=872) (last visited May 17, 2021); COVID in the U.S.: Latest Map and Case Count, *The New York Times*, <https://www.nytimes.com/interactive/2021/us/covid-cases.html> (last visited May 17, 2021).

<sup>405</sup>In 2020, arrests on non-violent offenses decreased by 12 percentage points. William Faulkner, Orleans Parish Sheriff's Office Data Analysis.

<sup>406</sup>In some circumstances, arrests are made by agencies other than the New Orleans Police Department, such as the Louisiana State Police and the Harbor Police.

<sup>407</sup>For any questions regarding the OPSO data or analysis thereof, please contact William Faulkner at [wfaulkner@gmail.com](mailto:wfaulkner@gmail.com). Resources available include: (a) raw data, (b) [R] script used to clean data through Github, (c) data analysis files in Excel format.

<sup>408</sup>Wesley Muller, New Law Requires Summons Instead of Arrest for Low-Level Crimes in New Orleans, *Louisiana Illuminator* (Dec. 18, 2020), <https://lailuminator.com/2020/12/18/new-law-requires-summons-instead-of-arrest-for-low-level-crimes-in-new-orleans/>.

<sup>409</sup>Matt Sledge, Many New Orleans Drug Possession Charges Will Be Tossed, But Arrests Won't Stop; Here's Why, *Nola.com* (Apr. 16, 2021, 5:45 PM), [https://www.nola.com/news/crime\\_police/article\\_f16010b4-9eee-11eb-afd5-df1b6d5d16ae.html](https://www.nola.com/news/crime_police/article_f16010b4-9eee-11eb-afd5-df1b6d5d16ae.html).

<sup>410</sup>Irons-Guynn, Cherryl, Keynote Address at ABA Conference: The Role of the American Prosecutor and the Advent of Community Prosecution (2009), [https://scholarshare.temple.edu/bitstream/handle/20.500.12613/1499/Irons\\_temple\\_0225E\\_10086.pdf?sequence=1](https://scholarshare.temple.edu/bitstream/handle/20.500.12613/1499/Irons_temple_0225E_10086.pdf?sequence=1).

<sup>411</sup>Nugent, M. Elaine et al., Exploring the Feasibility and Efficacy of Performance Measures in Prosecution and Their Application to Community Prosecution, *National District Attorney Association and American Prosecutors Research Institute* 11.

<sup>412</sup>3 Regina E. Herzlinger, Can Public Trust in Nonprofits and Governments Be Restored?, *Harvard Business Review* (Mar.-Apr. 1996), <https://hbr.org/1996/03/can-public-trust-in-nonprofits-and-governments-be-restored>.

<sup>413</sup>E-mail from Ken Daley, Pub. Info. Off., Orleans Par. Dist. Att., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 18, 2018, 18:38 PM EST) (on file with author).

<sup>414</sup>*People v. Burnett*, No. 514542, (Orleans Crim. Dist. Ct., May 13, 2018).

<sup>415</sup>Nicholas Chrastil, Cannizzaro Will Not Seek Third Term as DA, *The Lens* (Jul. 24, 2020), <https://thelensnola.org/2020/07/24/cannizzaro-will-not-run-for-reelection/>.

<sup>416</sup>Lena Jäggi et al., The Relationship Between Trauma, Arrest, & Incarceration Hist. Among Black Ams.: Findings from the Nat'l Survey of Am. Life, *6 Society and Mental Health* 187 (2016).

<sup>417</sup>Id.

<sup>418</sup>Id.

<sup>419</sup>Jeremy Travis, Keynote Address at National Press Club: Summoning the Superheroes: Harnessing Sci. & Passion to Create a More Effective & Humane Response to Crime, in *The Sentencing Project, To Build a Better Crim. Just. Sys.: 25 Experts Envision the Next 25 Years of Reform*, 5-13 (2012).

<sup>420</sup>Id.

<sup>421</sup>Id.

<sup>422</sup>Why Does New Orleans Have More Murders Than Similar Cities? Experts Search for Answers, *supra* note 48.

<sup>423</sup>Id.

<sup>424</sup> Id.

<sup>425</sup> Mariame Kaba, Yes, We Mean Literally Abolish the Police, *The New York Times* (Jun. 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

<sup>426</sup> Fola Akinnibi et al., Defund the Police: City Budgets Show Many Communities Increasing, Leaving Funding Flat in 2021 (Jan. 12, 2021), <https://www.bloomberg.com/graphics/2021-city-budget-police-funding/>.

<sup>427</sup> Mary Markos, Boston Mayor Walsh Wants to Reallocate Police Overtime Funds. Here's Where the Money Would Go, *NBC 10 Boston* (Jun. 15, 2020, 1:12 PM), <https://www.nbcboston.com/news/local/in-proposed-budget-boston-mayor-walsh-reallocates-police-overtime-funds/2143019/>.

<sup>428</sup> Austin, Texas is using part of their budget cuts from the police department to provide supportive housing to the homeless. Jemima McEvoy, Austin To Use Money Cut From Police Budget To Run Hotel For Homeless Population, *Forbes* (Jan. 28, 2021, 9:45 AM), <https://www.forbes.com/sites/jemimamcevoy/2021/01/28/austin-to-use-money-cut-from-police-budget-to-buy-hotel-for-homeless-population/?sh=79c1148c4612>.

<sup>429</sup> Los Angeles, California passed a bill to reroute part of the LAPD budget toward community policing efforts and homelessness prevention. City News Service, City Council Approves Plan to Allocate Part of LAPD's Budget to Social Programs For Low-Income Communities, *NBC 4 Los Angeles* (Mar. 3, 2021, 7:41 AM), <https://www.nbclosangeles.com/news/local/la-city-council-approves-plan-to-allocate-part-of-lapds-budget-to-social-programs-for-low-income-communities/2540530/>.

<sup>430</sup> Mike Perlstein, Mayor Cantrell: Time for NOPD Consent Decree to End, *WWLTV* (Jun. 25, 2020, 5:42 PM), <https://www.wwltv.com/article/news/local/orleans/nopd-consent-decree-end/289-40d7b4b1-5f0a-483e-afaf-3289492b2409#:~:text=Cantrell%20and%20Ferguson%20both%20acknowledged,to%20pay%20for%20outside%20monitors>.

<sup>431</sup> 2020 Annual Operating Budget, City of New Orleans: Mayor LaToya Cantrell, <https://council.nola.gov/council/media/Assets/Documents/2020-Proposed-Budget-Book.pdf> (last visited May 17, 2021) (noting that the Orleans Parish District Attorney's 2020 budget was \$6,678,029); 2021 Proposed Annual Operating Budget in Brief, City of New Orleans: Mayor LaToya Cantrell, [https://www.nola.gov/getattachment/Mayor/Budget/FY21-Budget-in-Brief\\_Final.pdf?lang=en-US](https://www.nola.gov/getattachment/Mayor/Budget/FY21-Budget-in-Brief_Final.pdf?lang=en-US) (last visited May 17, 2021) (noting that the 2021 budget was 5,742,423); Nicholas Chrastil, Public Defenders To Receive More City Funding Than Ever Before - But Not Quite the 'Parity' with DA As Promised by City Council, *The Lens* (Nov. 19, 2020), <https://thelensnola.org/2020/11/19/public-defenders-to-receive-more-city-funding-than-ever-before-but-not-quite-the-parity-with-da-as-promised-by-city-council/> (noting that 300,000 will be taken out of the city's 2021 budget and reallocated to the Orleans Public Defenders, making the number 5,442,423).

<sup>432</sup> 2020 Annual Operating Budget, City of New Orleans: Mayor LaToya Cantrell, <https://council.nola.gov/council/media/Assets/Documents/2020-Proposed-Budget-Book.pdf> (last visited May 17, 2021); 2021 Proposed Annual Operating Budget in Brief, City of New Orleans: Mayor LaToya Cantrell,

<sup>433</sup> Matt Sledge, New Orleans Mayor LaToya Cantrell Calls for Quick End to Oversight as NOPD Braces for Harsh Report, *Nola.com* (Jun. 25, 2020, 2:58 PM), [https://www.nola.com/news/courts/article\\_91acb1ec-b71b-11ea-8a4b-2b3f22c588ce.html](https://www.nola.com/news/courts/article_91acb1ec-b71b-11ea-8a4b-2b3f22c588ce.html).

<sup>434</sup> Id. at 4.

<sup>435</sup> Meeting with Laura Cannizzaro, Assistant Dist. Att'y, Orleans Par., in Dist. Att'y Off. (Nov. 7, 2020); Meeting with Andrew Doss, Dir. of Pol'y & Partners, Future Tide Partners (Jun. 13, 2018); Meeting with Andrew Doss, Dir. of Pol'y & Partners, Future Tide Partners, and Nelle Noble, Priv. Citizen (Jun. 20, 2019); Meeting with Nelle Noble, Priv. Citizen (Jul. 19, 2020); Meeting with Helena Moreno, Councilmember, New Orleans City Council, Andrew Tuozzolo, Chief of Staff, New Orleans City Councilmember, and Sayde Finkel, Pub. Pol'y Dir., New Orleans City Councilmember Helena Moreno (Jul. 20, 2020).

<sup>436</sup> Roadmap to Optimizing Decarceration, Diversion & RJ Report Final 4 (2021).

<sup>437</sup> Id.

<sup>438</sup> Text Message from Jason Williams, Councilmember, City of New Orleans, to Simone Levine, Exec. Dir., Ct. Watch NOLA (Oct. 12, 2020, 17:32 CST) (on file with author).

<sup>439</sup> Interview by Simone Levine, with Keith Lampkin, Chief of Staff, Councilmember Jason Williams (Dec. 11, 2020, 9:15 CST).

<sup>440</sup> Text Message from Keith Lampkin, Chief of Staff, Councilmember Jason Williams, to Simone Levine, Exec. Dir., Ct. Watch NOLA (Feb. 19, 2021) (on file with author).

<sup>441</sup> Text Message from Tamara Jackson, Dir., Silence is Violence, to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 3, 2021, 9:03 CST) (on file with author); Interview by Simone Levine with Mary Claire Landy, Dir., Fam. Just. Ctr. (May 3, 2021, 14:30 CST).

<sup>442</sup> About, Silence is Violence, <http://silenceisviolence.org/about> (last visited May 17, 2021).

<sup>443</sup> Interview by Simone Levine with Mary Claire Landy, Dir., Fam. Just. Ctr. (May 3, 2021, 14:30 CST).

<sup>444</sup> Our Services, New Orleans Family Justice Center, <https://nofjc.org/our-services> (last visited May 17, 2021).

<sup>445</sup> Mark Perlstein, New Orleans Man's Murder Shows the Danger of Becoming a Witness, *4 WWL* (Sept. 25, 2020, 6:34 PM), <https://www.wwltv.com/article/news/crime/new-orleans-mans-murder-shows-the-danger-of-becoming-a-witness/289-f1346fa1-2cc8-4b01-845b-850760b10e88>.

<sup>446</sup> Jeff Asher et al., Why Does Louisiana Consistently Lead the Nation in Murders?, *The New York Times* (Feb. 15, 2021), <https://www.nytimes.com/2021/02/15/upshot/why-does-louisiana-consistently-lead-the-nation-in-murders.html>.

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<sup>447</sup> Id.

<sup>448</sup> New Orleans Criminal Justice Overview of 2020, Datalytics 5.

<sup>449</sup> Id.

<sup>450</sup> About Trauma Recovery Centers, Alliance for Safety and Justice, <https://www.traumarecoverycentermodel.org/about-trauma-recovery-centers/> (last visited May 17, 2021).

<sup>451</sup> Id.

<sup>452</sup> Id.

<sup>453</sup> Why Men Murder Women: An Analysis of 2018 Homicide Data page 15 (Violence Pol'y Ctr., 2020),

<https://vpc.org/studies/wmmw2020.pdf>.

<sup>454</sup> Id.

<sup>455</sup> Id.

<sup>456</sup> Id.

<sup>457</sup> Id.

<sup>458</sup> Susan Buchanon, La. Wants to Take Guns Away From Domestic Abusers, The La. Weekly (Jan. 22, 2019),

<http://www.louisianaweekly.com/la-wants-to-take-guns-away-from-domestic-abusers/>.

<sup>459</sup> Fragmented and Unequal: A Justice System that Fails Survivors of Intimate Partner Violence in Louisiana, USA, Amnesty International 27 (2019).

<sup>460</sup> Evan Defilippis & Devin Hughes, The Myth of the Good Guy with a Gun, Slate (Jan. 15, 2015),

<https://slate.com/technology/2015/01/good-guy-with-a-gun-myth-guns-increase-the-risk-of-homicide-accidents-suicide.html>.

<sup>461</sup> There was a decrease in calls for service from 2019 to 2020. New Orleans Police Department Calls for Service, DataDriven, data.nola.gov (last visited Mar. 11, 2021).

<sup>462</sup> William Faulkner, Orleans Parish Sheriff's Office Booking Data.

<sup>463</sup> La. R.S. 46:2136.3 The wording of LA R.S. 46:2136.3 prohibits a defendant "from possessing a firearm or carrying a concealed weapon for the duration of the injunction or protective order if both of the following occur: (1) The permanent injunction or protective order includes a finding that the person subject to the permanent injunction or protective order represents a credible threat to the physical safety of a family member, household member, or dating partner (2) The permanent injunction or protective order informs the person subject to the permanent injunction or protective order that the person is prohibited from possessing a firearm pursuant to the provisions of 18 U.S.C. 922(g)(8) and this Section. See also Quick Reference Guide to Firearms Prohibitions, Louisiana Protective Order Registry, [https://www.lasc.org/court\\_managed\\_prog/LPOR/Qk\\_ref\\_firearms\\_criminal.pdf](https://www.lasc.org/court_managed_prog/LPOR/Qk_ref_firearms_criminal.pdf) (last visited May 17, 2021).

<sup>464</sup> While the Sheriff's Office should also be receiving proof a defendant transferred paperwork to a third party, they have not received such paperwork in the last few years, believing that defendants may have mistakenly dropped such paperwork off to Orleans Parish Criminal District or Magistrate Court instead. Phone Interview by Simone Levine with Richard Woodfork, Lieutenant, Orleans Par. Sheriff's Off. (May 7, 2020, 15:54 CST); E-mail from Richard Woodfork, Lieutenant, Orleans Par. Sheriff's Off., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 3, 2021, 9:10 CST) (on file with author).

<sup>465</sup> E-mail from Richard Woodfork, Lieutenant, Orleans Par. Sheriff's Off., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 12, 2021, 8:28 CST); E-mail from Richard Woodfork, Lieutenant, Orleans Par. Sheriff's Off., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 3, 2021, 9:10 CST).

<sup>466</sup> La. Code. Crim. Proc. art. 316.

<sup>467</sup> Id.

<sup>468</sup> Domestic Violence, New Orleans Police Dept. Operations Manual Chapter 42.4 (April 5, 2015),

<https://www.nola.gov/getattachment/NOPD/NOPDConsent-Decree/Chapter-42-4-Domestic-Violence.pdf/>.

<sup>469</sup> Email from Jocelyn Pinkerton, Domestic Violence Special Projects Manager City of New Orleans Health Department, to Simone Levine, Executive Director of Court Watch NOLA (Thu, May 27, 2:28 PM CST) (on file with author).

<sup>470</sup> Meeting with Mary Claire Landy, Dir., Fam. Just. Ctr., and Calvin Johnson, Crim. Just. Comm'r, City of New Orleans, and Kim Sport, Priv. Att'y, and Helena Moreno, Representative, La. State Legislature, and Brooke Smith, Chief of Staff, Mayor Mitchell Landrieu, and Sarah Schirmer, Pol'y Advisor Off. of Crim. Just. Coordination, Mayor Mitch Landrieu, in City Hall, Suite 8W03 Conf. Room (Jan. 19, 2018, 13:30 CST).

<sup>471</sup> Id.

<sup>472</sup> Interview by Simone Levine with Paul Noel, Deputy Superintendent, New Orleans Police Dept., and Richard Pari, Sergeant, New Orleans Police Dept. (Jan. 17, 2020).

<sup>473</sup> Id.

<sup>474</sup> Press Release, New Orleans Health Department Partners with NOPD to Officially Add Question of Firearm Possession to Domestic Violence Police Reports (Feb. 19, 2021).

<sup>475</sup> E-mail from Richard Pari, Sergeant, New Orleans Police Dept., to Simone Levine, Exec. Dir., Ct. Watch NOLA (Apr. 9, 2021, 8:23 CST) (on file with author).

<sup>476</sup> Rachel Martin, Judge Bernadette D'Souza Discusses Family Law and Her Path to the Bench, Virginia Law Weekly (Sept. 30, 2020), <https://www.lawweekly.org/front-page/2020/9/29/judge-bernadette-dsouza-discusses-family-law-and-her-path-to-the-bench>.

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- <sup>477</sup> Interview by Simone Levine with Bernadette D'Souza, Judge, Civil Dist. Ct. (May 21, 2020, 13:20 CST).
- <sup>478</sup> Ann Givens, New Orleans Judges Rarely Order Domestic Abusers to Give Up Their Guns, *The Trace* (Jun. 2, 2020), <https://www.thetrace.org/2020/06/domestic-abuse-guns-new-orleans/>.
- <sup>479</sup> La. Code. Crim. Proc. art. 1002 C (1).
- <sup>480</sup> La. Code. Crim. Proc. art. 1002 C (1).
- <sup>481</sup> While there were forms that defendants were required to sign (through docusign) that forbade gun possession in their circumstance, there was no form that allowed defendants with an active domestic violence stay away order to confirm whether they had (a) gun(s) in their possession and the location of their gun(s) as is required by CCRP 1002 C (1). Text Message from Shannon Sims, Deputy Jud. Admin., Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 14, 2020, 11:55 CST) (on file with author). Where such an affidavit is not made available to the defendant, the court must ask the defendant in open court whether the defendant has guns in their possession and the location of such guns.
- <sup>482</sup> Interview by Simone Levine with Bernadette D'Souza, Judge, Civ. Dist. Ct. (May 21, 2020, 13:30 CST).
- <sup>483</sup> Interview by Simone Levine with Mary Claire Landy, Dir., Fam. Just. Ctr. (May 17, 2021, 9:00 CST).
- <sup>484</sup> Magistrate Cantrell did not conduct first appearances during COVID, thus Court Watch NOLA did not include him in the sample.
- <sup>485</sup> Meeting with Mary Claire Landy, Dir., Fam. Just. Ctr., and Calvin Johnson, Crim. Just. Comm'r, City of New Orleans, and Kim Sport, Priv. Att'y, and Helena Moreno, Representative, La. State Legislature, and Brooke Smith, Chief of Staff, Mayor Mitchell Landrieu, and Sarah Schirmer, Pol'y Advisor Off. of Crim. Just. Coordination, Mayor Mitch Landrieu, in City Hall, Suite 8W03 Conf. Room (Jan. 19, 2018, 13:30 CST).
- <sup>486</sup> Interview by Simone Levine with Colin Reingold, Chief Special Litig., Orleans Pub. Def. (Mar. 9, 2021, 16:00 CST).
- <sup>487</sup> Location Restrictions in Louisiana, *supra* note 57.
- <sup>488</sup> R.S. 14:95.1, <http://www.legis.la.gov/legis/Law.aspx?d=78740> (assessing possession of firearm or carrying concealed weapon by a person convicted of certain felonies).
- <sup>489</sup> See Ca. Fam. Code Div. 10 6389 (d); Telephone Interview by Simone Levine with Julia Weber, Implementation Dir., Giffords L. Ctr. to Prevent Gun Violence (May 29, 2020).
- <sup>490</sup> N. M. Stat. Ann. 40-13-13(A)(6)F. Evidence establishing ownership or possession of a firearm pursuant to this section shall not be admissible as evidence in any criminal proceeding.
- <sup>491</sup> HB 1225 (IV). No Testimony Or Other Information Compelled Pursuant To This Subsection, Or Any Information Directly Or Indirectly Derived From Such Testimony Or Other Information, May Be Used Against The Defendant In Any Criminal Case, Except Prosecution For Perjury Pursuant To Section 18-8-503.
- <sup>492</sup> Sec. 518B Subd. 15. Admissibility of testimony in criminal proceedings. Any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding.
- <sup>493</sup> Sec. 518B Subd. 15. Admissibility of testimony in criminal proceedings. Any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding.
- <sup>494</sup> Dan Fagan, New Orleans Gun Buyback Event 'A Waste of Time and PR Stunt', *The Advocate* (Jan. 22, 2019, 6:00 PM), [https://www.theadvocate.com/baton\\_rouge/opinion/article\\_293e32a0-1e67-11e9-9152-3f10899519e1.htm](https://www.theadvocate.com/baton_rouge/opinion/article_293e32a0-1e67-11e9-9152-3f10899519e1.htm); Associated Press, New Orleans Musician Offers Kids Trumpets for Guns, *U.S. News & World Report* (Jul. 22, 2020, 2:22 AM), <https://www.usnews.com/news/us/articles/2020-07-22/new-orleans-musician-offers-kids-trumpets-for-guns>.
- <sup>495</sup> Anti-Asian Hate Crime Reported to Police in America's Largest Cities: 2020, *supra* note 59.
- <sup>496</sup> The Psychology of Hate Crimes, American Psychological Association, <https://www.apa.org/advocacy/interpersonal-violence/hate-crimes> (last visited May 18, 2021).
- <sup>497</sup> Anti-Asian Hate Crime Reported to Police in America's Largest Cities: 2020, *supra* note 59.
- <sup>498</sup> Hall & Lopez, *supra* note 60.
- <sup>499</sup> Anti-Asian Hate Crime Reported to Police in America's Largest Cities: 2020, *supra* note 59.
- <sup>500</sup> Jonathon P. Schuld et al., Americans Aren't Learning About Anti-Asian Bias. We Have the Data, *The Washington Post* (Apr. 23, 2021, 5:00 AM), <https://www.washingtonpost.com/politics/2021/04/23/americans-arent-learning-about-anti-asian-bias-we-have-data/>.
- <sup>501</sup> Uniform Crime Reporting Data, *supra* note 61.
- <sup>502</sup> E-mail from James G. Gallagher, Info. Tech., New Orleans Police Dept., to Chris Lea, Lieutenant, New Orleans Police Dept., and Veronica Bard, Dep. Dir., Ct. Watch NOLA (May 18, 2021 14:19 CST) (on file with author).
- <sup>503</sup> Ronald L. Davis & Patrice O'Neill, The Hate Crimes Reporting Gap: Low Numbers Keep Tensions High, *Police Chief Magazine*, <https://www.policechiefmagazine.org/the-hate-crimes/> (last visited May 18, 2021).
- <sup>504</sup> *Id.*
- <sup>505</sup> *Id.*
- <sup>506</sup> *Id.*
- <sup>507</sup> Devine & Byington, *supra* note 62.
- <sup>508</sup> Failing to Protect and Serve: Police Department Policies Toward Transgender People, National Center for Transgender Equality (May 7, 2019), <https://transequality.org/issues/resources/failing-to-protect-and-serve-police-department-policies-towards-transgender-people>.

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- <sup>509</sup> Murders of Transgender People in 2020 Surpasses Total for Last Year in Just Seven Months, National Center for Transgender Equality (Aug. 7, 2020), <https://transequality.org/blog/murders-of-transgender-people-in-2020-surpasses-total-for-last-year-in-just-seven-months>.
- <sup>510</sup> Devine & Byington, *supra* note 62.
- <sup>511</sup> *Id.*
- <sup>512</sup> *Id.*
- <sup>513</sup> *Id.*
- <sup>514</sup> *Id.*
- <sup>515</sup> Crime Victim Reparations, Louisiana Commission on Law Enforcement and Administration of Criminal Justice, <http://www.lcle.state.la.us/programs/cvr.asp> (last visited May 17, 2021).
- <sup>516</sup> *Id.*
- <sup>517</sup> Interview by Simone Levine with Minh Thanh Nguyen, Founder, Vietnamese American Young Leaders Ass'n (Apr. 28, 2020, 13:12 CST).
- <sup>518</sup> Using Data to Shed Light: The Importance of Recording and Reporting Hate Crimes, OSCE-ODIHR (Sept. 29, 2014), <https://hatecrime.osce.org/infocus/using-data-shed-light-importance-recording-and-reporting-hate-crimes>.
- <sup>519</sup> Interview by Simone Levine with Minh Thanh Nguyen, Founder, Vietnamese American Young Leaders Ass'n (Apr. 28, 2020, 13:12 CST).
- <sup>520</sup> See Electronic Police Report 2020, City of New Orleans Open Data (Feb. 4, 2020), <https://data.nola.gov/Public-Safety-and-Preparedness/Electronic-Police-Report-2020/hjbe-qzaz>.
- <sup>521</sup> La. R.S. 14:107.2A.
- <sup>522</sup> The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249.
- <sup>523</sup> Interview by Simone Levine with Chris Lea, Lieutenant, New Orleans Pol. Dept. (May 17, 2021, 14:44 CST).
- <sup>524</sup> See Electronic Police Report 2020, *supra* note 521.
- <sup>525</sup> David E. Aaronson, New Rights and Remedies: The Federal Crime Victims' Rights Act of 2004 28 Pace L. Rev. 623 (2008), <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1105&context=plr>.
- <sup>526</sup> Interview by Simone Levine with Tamara Jackson, Dir., Silence is Violence (Apr. 7, 2020, 9:12 CST).
- <sup>527</sup> Magistrate Court List, Orleans Parish Sheriff's Office, [https://www.opso.us/index.php?option=com\\_wrapper&view=wrapper&Itemid=883](https://www.opso.us/index.php?option=com_wrapper&view=wrapper&Itemid=883) (May 18, 2021).
- <sup>528</sup> Stephanos Bibas, Transparency and Participation in Criminal Procedure, 81 N.Y.U. L. Rev. 911 (2006).
- <sup>529</sup> Text Message from Simone Levine, Exec. Dir., Ct. Watch NOLA, to Tamra Jackson, Dir., Silence is Violence (Apr. 13, 2020, 7:25 CST) (on file with author).
- <sup>530</sup> Standards for Providing Services to Survivors of Sexual Assault, State of New Jersey, <https://www.state.nj.us/lps/dcj/standar2.htm> (last visited May 17, 2021); Victim/Survivor-Centered Approach, *supra* note 65.
- <sup>531</sup> Victim/Survivor-Centered Approach, *supra* note 65.
- <sup>532</sup> Meaningful Crime Victims' Rights Require Discovery of Case Information and Records, National Crime Victim Law Institute, <https://law.lclark.edu/live/files/22581-discovery-of-case-information-and-records> (last visited May 17, 2021).
- <sup>533</sup> National Policy Guidelines for Victim Empowerment, OHCHR, <https://www.ohchr.org/Documents/Issues/Women/SR/Shelters/National%20policy%20guidelines%20for%20victim%20empowerment.pdf> (last visited May 18, 2021).
- <sup>534</sup> What is a Victim Justice?: A Checklist, Office of Justice Programs, [https://www.ncjrs.gov/ovc\\_archives/sartkit/focus/resources-checklist.html](https://www.ncjrs.gov/ovc_archives/sartkit/focus/resources-checklist.html) (last visited May 17, 2021).
- <sup>535</sup> *Id.*
- <sup>536</sup> Incidents that arose in 2020 and resulted in a state arrest are represented as a "victim crime" when the arresting officer designated a person as the victim and a "victimless crime" when the arresting officer designated a thing (e.g., a business, government, or society) as the victim. E-mail from Chris Lea, Lieutenant, New Orleans Police Dept., to Veronica Bard, Deputy Dir., Ct. Watch NOLA (May 7, 2021, 13:26 CST).
- <sup>537</sup> Victim/Survivor Centered Approach, *supra* note 65.
- <sup>538</sup> Meaningful Crime Victims' Rights Require Discovery of Case Information and Records, *supra* note 533.
- <sup>539</sup> New Directions From the Field: Chapter 4, U.S. Department of Justice Office of Justice Programs, [https://www.ncjrs.gov/ovc\\_archives/directions/chap4.htm](https://www.ncjrs.gov/ovc_archives/directions/chap4.htm) (last visited May 18, 2021).
- <sup>540</sup> Orleans Reentry Court Program: Persistence, Peers, and Possibilities, *supra* note 67.
- <sup>541</sup> *Id.*
- <sup>542</sup> R.S. 13:5401(A).
- <sup>543</sup> *Id.*
- <sup>544</sup> *Id.*
- <sup>545</sup> Interview by Simone Levine with Laurie White, Judge, Orleans Par. Crim. Dist. Ct. (May 8, 2021, 10:49 CST).
- <sup>546</sup> Interview by Darrin Browder with Laurie White, Judge, Orleans Par. Crim. Dist. Ct. and Lindsay Jeffrey, ORCP Project Coordinator (March 4, 2020, 12:00 pm CST).

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- <sup>547</sup> Interview by Simone Levine with Lindsay Jeffrey, Proj. Coordinator, Reentry Ct. (Mar. 25, 2021, 14:00 CST).
- <sup>548</sup> Email from Laurie White, Section A Judge, Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 18, 2020, 11:56 CST) (on file with author); Daniel Bethencourt, Gautreaux Among 7 To Be Inducted Into La. Justice Hall of Fame, *The Advocate* (Jul. 25, 2014, 8:32 CST), [https://www.theadvocate.com/baton\\_rouge/news/article\\_72afee89-5929-5892-ad14-449076d65786.html](https://www.theadvocate.com/baton_rouge/news/article_72afee89-5929-5892-ad14-449076d65786.html).
- <sup>549</sup> Daniel Bethencourt, *supra* note 549.
- <sup>550</sup> Stephanie Francis Ward, Arthur Hunter Jr.: From Cop to Judge to Fighting Recidivism, *American Bar Association* (Sept. 10, 2015, 8:20 CST), [https://www.abajournal.com/legalrebels/article/arthur\\_l\\_hunter\\_from\\_cop\\_to\\_judge\\_to\\_fighting\\_recidivism](https://www.abajournal.com/legalrebels/article/arthur_l_hunter_from_cop_to_judge_to_fighting_recidivism).
- <sup>551</sup> R.S. 14:2 (B).
- <sup>552</sup> R.S. 15:541.
- <sup>553</sup> R.S. 15:529.1.
- <sup>554</sup> R.S. 13:5401 B (1)(d).
- <sup>555</sup> R.S. 13:504 B (6) (a-k).
- <sup>556</sup> La. R.S. 13:5401A.
- <sup>557</sup> Email from Lindsay Jeffrey, Project Coordinator, Reentry Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA, Darrin Browder, Chapter Dev. Specialist, Ct. Watch NOLA, and Laurie White, Judge, Orleans Par. Crim. Dist. Ct. (Apr. 29, 2021, 12:29 CST) (on file with author).
- <sup>558</sup> R.S. 13:5401 B (3)(a).
- <sup>559</sup> R.S. 13:5401 B (2)(b).
- <sup>560</sup> Orleans Reentry Court Program: Persistence, Peers, and Possibilities, *supra* note 67.
- <sup>561</sup> *Id.*
- <sup>562</sup> HiSet is one of three exams that is used to measure high school equivalence. HiSet was built on the Office of Career, Technical, and Adult Education (OCTAE) College and Career Readiness Standards for Adult Education, the HiSet exams give out-of-school youth and adults the best opportunity to demonstrate their skills and knowledge and earn a state-issued high school equivalent (HSE) credential. What is High School Equivalency?, HiSet, <https://hiset.ets.org/what> (last visited May 17, 2021).
- <sup>563</sup> *Id.*
- <sup>564</sup> *Id.*
- <sup>565</sup> *Id.*
- <sup>566</sup> *Id.*
- <sup>567</sup> *Id.*
- <sup>568</sup> Orleans Reentry Court Program: Persistence, Peers, and Possibilities, *supra* note 67.
- <sup>569</sup> Orleans Reentry Court Program: Persistence, Peers, and Possibilities, *supra* note 67.
- <sup>570</sup> Email from Laurie White, Judge, Orleans Par. Crim. Dist. Ct., to Simone Levine, Exec. Dir., Ct. Watch NOLA (May 12, 2020, 10:59 CST) (on file with author).
- <sup>571</sup> Orleans Reentry Court Program: Persistence, Peers, and Possibilities, *supra* note 67 at 2.
- <sup>572</sup> The reentry court has the right to impose any condition related to the participant's rehabilitation.
- <sup>573</sup> Orleans Reentry Court Program: Persistence, Peers, and Possibilities, *supra* note 67 at 4.
- <sup>574</sup> *Id.* at 5.
- <sup>575</sup> *Id.*
- <sup>576</sup> R.S. 15:574.4.4.
- <sup>577</sup> Orleans Reentry Court Program: Persistence, Peers, and Possibilities, *supra* note 67 at 5.
- <sup>578</sup> Email from Dr. Marcus Kondahar, Professor, Loyola Univ., to Veronica Bard, Deputy Dir., Ct. Watch NOLA, and Darrin Browder, Chapter Dev. Specialist, Ct. Watch NOLA (May 7, 2021, 16:32 CST) (on file with author).
- <sup>579</sup> Meeting with Simone Levine, Exec. Dir., Ct. Watch NOLA, Laurie White, Judge, Orleans Par. Crim. Dist. Ct., Marcus DeLarge, Judge, Orleans Par. Crim. Dist. Ct., Marcus Kondkar, Professor, Loyola Univ., Darrin Browder, Chapter Dev. Specialist, Ct. Watch NOLA (May 11, 2021, 14:00 CST).
- <sup>580</sup> *Id.*
- <sup>581</sup> *Id.*