



**Orleans Criminal  
District Court,  
Magistrate Court &  
Municipal Court:**

***2018 Executive  
Summary***

## I. EXECUTIVE SUMMARY

Court Watch NOLA (CWN) is a non-profit organization with the mission of promoting 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 113 CWN volunteers from January 1, 2018 to December 31, 2018 in Criminal District, Magistrate, and Municipal Courts with a total of 810 court settings observed. This report explores the topics of conflicts of interest, victim rights, bail, right to counsel, fines and fees, criminal contempt, pre-trial drug testing and efficiency in the Orleans Parish criminal courts and the larger criminal justice system during 2018.

### **Judicial Ethics--Campaign Financing**

The Code of Judicial Conduct teaches judges that, in order for the community to retain confidence in them, the judge must not only be independent and honest but just as importantly, the judge must be believed by all to be independent and honest.<sup>1</sup> In examining campaign contributions from 2008-2018, CWN found that Judge Paul Bonin received a \$1,000 campaign loan from ETOH Monitoring, LLC ("ETOH") executives in his successful 2016 election<sup>2</sup> and at least \$8,150 in campaign financing from ETOH monitoring executives over the last ten years.<sup>3</sup> Judge Bonin was found to have steered defendants to the ETOH for ankle monitoring in 23 cases. On several occasions, Judge Bonin refused to release the defendants from jail until the defendant's family had arranged for ETOH to establish ankle monitoring services.<sup>4</sup> On several other occasions, Judge Bonin refused to release criminal defendants from their ankle monitors until the defendant paid ETOH all remaining fees the defendant owed to ETOH. In at least two cases, Judge Bonin threatened to incarcerate the defendant for failing to pay ETOH. In 2018, ETOH's ankle monitoring cost approximately \$10 a day, and Judge Bonin often required criminal defendants to wear ankle monitors for months.

- **Recommendation 1:** Judges should avoid conflicts of interest that reflect adversely on the judge's impartiality, interfere with the proper performance of the judge's duties, or exploit the judge's judicial position. Judges should not accept campaign funds and loans that might reasonably appear as influencing the judge's official conduct or undermining the judge's independence, integrity, or impartiality. Where it is impossible for a judge to avoid a conflict of interest, it is incumbent upon the judge to disclose the conflict of interest to the relevant parties to avoid the impression of impropriety.

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<sup>1</sup> See Leslie Abramson, Canon 2 of the Code of Jud. Conduct, 79 Marq. L. Rev. 962 (1996).

<sup>2</sup> La. Ethics Admin. Program, La. Campaign Fin. Rep. No. 59725 for Paul Bonin (8/10/16).

<sup>3</sup> La. Ethics Admin. Program, La. Campaign Fin. Rep. No. 61852 for Paul Bonin (1/19/17); La. Ethics Admin. Program, La. Campaign Fin. Rep. No. 60688 for Paul Bonin (11/4/16); La. Ethics Admin. Program, La. Campaign Fin. Rep. No. 35430 for Paul Bonin (2/15/13); La. Ethics Admin. Program, La. Campaign Fin. Rep. No. 32109 for Paul Bonin (8/8/12); La. Ethics Admin. Program, La. Campaign Fin. Rep. No. 804529 for Paul Bonin (10/4/08).

<sup>4</sup> Court Transcript transcribed by Stenographer Eve Kazik, Criminal District Court Section D., Case No. 542162, (Oct. 24, 2012).

### **Judicial Ethics--One-Party Sidebars**

From 2016 until present, CWN has tracked one-party sidebars, the discussion between the judge and either the defense or the prosecution without the opposing party present, conducted at the bench or in judicial chambers, and outside the earshot of the public. According to the Judicial Canons, a judge shall not permit private or ex parte interviews, arguments, or communications designed to influence their judicial action in any case.<sup>5</sup> These ex parte sidebars often occur during one-party sidebars. In fact, one the best way we have to reduce back-room dealings between the powerful players of our system and judges is by reducing the ex parte meetings that are evidenced in one-party sidebars.

- **Recommendation 2:** Where a one-party sidebar is absolutely necessary for administrative reasons, judges should announce to the public that the facts of a case are not being discussed or that the matter being discussed is purely administrative. Judges should attempt to discontinue the practice of one-party sidebars since it gives a public impression that undermines confidence in the judge's independence, integrity, and impartiality.

### **Judicial Ethics--Intolerance and Prejudice**

Canon 3 of the Code of Judicial Conduct states in part, "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so."<sup>6</sup> In 2018, CWN volunteers observed 16 incidents in Magistrate Court, 11 incidents in Criminal District Court, and one incident in Municipal Court where the CWN volunteer perceived someone in the court "was treated inappropriately or differently based on gender, race, ethnicity, religion, age, disability status, sexual orientation, or economic status," with racial prejudice being the most common type of perceived discrimination. Permitting a public official to openly engage in discrimination encourages the public to believe that discriminatory attitudes, statements, and actions are acceptable, normal, and thus can be emulated and even escalated.<sup>7</sup>

- **Recommendation 3:** Judges should refrain from any action or statement that could give the impression of bias against a defendant or other individual in their courtroom based on gender, race, ethnicity, religion, age, disability status, sexual orientation, or economic status. Judges have the responsibility of ensuring that prejudice and bias are not tolerated by the lawyers and court staff in the judge's courtroom.

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<sup>5</sup> La. Code Jud. Con. § 3(A)(6) (2019).

<sup>6</sup> La. Code Jud. Con. § 3 (2019).

<sup>7</sup> Brian Levin & John David Reitzel, Cal. State University, San Bernadino Ctr. for the Study of Hate & Extremism, Rep. to the Nation: Hate Crimes Rise in the U.S. Cities and Counties in Time of Division & Foreign Interference (May 2018), [https://csbs.csusb.edu/sites/csusb\\_csbs/files/2018%20Hate%20Final%20Report%205-14.pdf](https://csbs.csusb.edu/sites/csusb_csbs/files/2018%20Hate%20Final%20Report%205-14.pdf). See also Anti-Defamation League, <https://www.adl.org/education/resources/tools-and-strategies/pyramid-of-hate-en-espanol> (last visited Mar. 9, 2019).

### **Victim Rights--Victims in Magistrate Court**

Since March 2018, assistant district attorneys no longer appear for 14 out of 19 Magistrate Court settings. That means there is no assistant district attorney making bail arguments, speaking on the victim's behalf, or speaking to victims in Magistrate Court in more than ¾ of Magistrate Court settings. Often, crime victims have pivotal information about the defendant's likelihood of returning to court and their likelihood of committing new crimes upon pre-trial release.<sup>8</sup> Without the prosecutor in Magistrate Court, the victim has lost a pivotal opportunity to transmit whether the defendant poses a danger to them or anyone else in the larger community.

- **Recommendation 4:** The Orleans Parish District Attorney's Office should regularly attend and take part in all first appearance hearings in Magistrate Court. When crime victims have information that relates to the defendant's pre-trial release, the prosecutor should ensure that such information is transmitted to the Magistrate or Commissioner who is determining pre-trial release.

### **Victim Rights--Untreated Victim Trauma**

Experts in the victim advocacy field have concluded that a more effective response to victim trauma will reduce repeat victimization and future offending.<sup>9</sup> Crime victims with untreated trauma can exhibit aggressive, retaliatory behaviors and/or engage in illicit substance use, all leading to increased rates of arrest.<sup>10</sup> When CWN volunteers were asked to record the number of Magistrate Court cases where the defendant could also potentially be considered the victim of a crime, CWN volunteers found that in 77% of cases, the defendant may have been defending himself or herself from another individual.<sup>11</sup> Despite the well-documented correlation between chronic exposure to trauma and an increased rate of arrest,<sup>12</sup> the Louisiana Crime Victim Reparation Board is currently prohibited from providing resources to any non-sex crime victim who has been convicted of a felony in the last three years before becoming a crime victim, or any crime victim who is currently on probation or parole.<sup>13</sup> Louisiana House Bill 85 would eliminate the

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<sup>8</sup> Int'l Ass'n of Chiefs of Police Victim Services Comm., Law Enforcement's Role in Supporting Victims' Needs Through Pre-trial Just. Reform (June 2015), <https://www.theiacp.org/sites/default/files/2018-08/SupportingVictimsThroughpre-trialReform.pdf> ("If the standard procedure for determining pre-trial release is consistently informed by the results of a risk assessment and testimony provided by the victim(s), as opposed to a static bond schedule, better informed decisions can be reached. Institutionalizing this practice also helps meet the need of victims to be heard throughout the justice process").

<sup>9</sup> Jeremy Travis, Summoning the Superheroes: Harnessing Sci. & Passion to Create a More Effective & Humane Response to Crime: 25th Anniversary Keynote Address, in *The Sentencing Project, To Build a Better Crim. Just. Sys.: 25 Experts Envision the Next 25 Years of Reform*, 5-13 (Marc Mauer & Kate Epstein eds., 2012), available at <http://www.sentencingproject.org/wp-content/uploads/2016/01/To-Build-a-Better-Criminal-Justice-System.pdf>.

<sup>10</sup> Lena Jäggi et al., The Relationship Between Trauma, Arrest, and Incarceration History Among Black Ams.: Findings from the Nat'l Survey of Am. Life, 6 *Society and Mental Health* 187-206 (2016).

<sup>11</sup> N = 26 observations of Magistrate Court.

<sup>12</sup> Deborah Prothrow-Stith, The Promise of Prevention: Public Health as a Model for Effective Change, in *The Sentencing Project, To Build a Better Criminal Justice System: 25 Experts Envision the Next 25 Years of Reform*, 28-29 (Marc Mauer & Kate Epstein eds., 2012), available at <http://www.sentencingproject.org/wp-content/uploads/2016/01/To-Build-a-Better-Criminal-Justice-System.pdf>.

<sup>13</sup> Alysia Santo, For Black Crime Victims with Criminal Records, State Help is Hard to Come by, *The Marshall Project & Reveal from the Ctr. for Investigative Reporting*, U.S.A. Today, Sept. 13, 2018, available at <https://www.usatoday.com/story/news/nation/2018/09/13/crime-victim-compensation-funds-blacks/1218283002/>.

prohibition against providing resources to crime victims and their families who have been convicted of a crime or who are currently on probation or parole.<sup>14</sup>

- **Recommendation 5:** State political leaders and the community at large should support Louisiana House Bill 85 and eliminate the discriminatory prohibition against crime victims receiving crime victim compensation when such victims have a criminal conviction or are on probation or parole.

### **Victim Rights--The Traumatized Victim and Testimony in Court**

The majority of crime victims do not report the crime they are victimized by, and many others decide not to proceed with criminal charges after reporting.<sup>15</sup> In Louisiana, crime victims and witnesses who are under 17 years of age or who are developmentally disabled can testify in another room outside of the court and be simultaneously televised by closed-circuit television to the court and jury.<sup>16</sup> There is nothing in either federal or Louisiana State Law that limits the ability of an equally-traumatized adult victim or witness from being able to testify via closed-circuit television if an important public policy requirement is present and the defendant is unable to reliably testify without a closed-circuit television.<sup>17</sup> CWN volunteers tracked the number of times a fragile victim or witness either testified or was asked to testify in criminal court. Out of a total of seven observations, CWN volunteers indicated that no Judge offered a confidential space (i.e., not the public courtroom) where the victim or witness could testify. Fragile victims or witnesses observed by CWN volunteers included three victims of non-sexual offenses, two survivors of sex crimes, and two witnesses with mental or emotional disabilities.

- **Recommendation 6:** The Louisiana State Legislature should consider amending Louisiana Statutes § 15:283 to allow an adult victim or witness to testify via simultaneous televised testimony (1) if expert testimony shows the victim or witness would likely suffer serious emotional distress, and (2) without such simultaneous televised testimony, the victim or witness could not reasonably communicate their testimony to the court or to the jury. Where possible, the Orleans Parish District Attorney should consider making a motion requesting such a traumatized adult victim or witness be able to testify via closed-circuit television if expert testimony establishes that trauma had such a debilitating effect on the victim or witness and the reliability of the victim or witness' testimony is otherwise assured.

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<sup>14</sup> H.B. 85, 2019 H. Legis. Servs., Reg. Sess. (La. 2019), available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=1116146>.

<sup>15</sup> Judith Lewis Herman, The Mental Health of Crime Victims: Impact of Legal Intervention, 16 *Journal of Traumatic Stress* 159-166 (2003), available at <https://onlinelibrary.wiley.com/doi/epdf/10.1023/A%3A1022847223135>.

<sup>16</sup> La. Stat. Ann. § 15:283(A)(1)(2).

<sup>17</sup> Meg Garvin, et al., Allowing Adult Sexual Assault Victims to Testify at Trial via Live Video Tech., in *Nat'l Crime Victim Law Inst. Viol. Against Women Bulletin*, 1 (2011), available at [law.lclark.edu/live/files/11775-allowing-adult-sexual-assault-victims-to-testify](http://law.lclark.edu/live/files/11775-allowing-adult-sexual-assault-victims-to-testify). See also Natalie Montell, A New Test for Two-Way Video Testimony: Bringing *Maryland v. Craig* into the Technological Era, 50 *U. Louisville L. Rev.* 361, 373 (2012).

### **Bail, Fines, and Fees--The Return on Indictment Process**

After the grand jury returns a "true bill" and a felony case is brought to the Criminal District Court for the first time, for at least 10 years if not longer<sup>18</sup> it has been the practice of the District Attorney's Office to argue for a bail increase without notifying the defense, without the defense attorney present, without the defendant present, and without a written motion. The average bail amount increased by 577% between Magistrate Court and Criminal District Court, from an average of \$165,103 in Magistrate Court to an average of \$1,117,472 after the true bill indictment was filed in Criminal District Court (the return on indictment). This amount decreased by only 6%, or an average of \$64,037, after the defense attorney had an opportunity to reargue bail, ultimately averaging \$1,053,435. Sometimes criminal defendants who had already paid their bail were rearrested in criminal court without notice, even though they had followed all the conditioned requirements of their bail bond release. Constitutional law requires the defense attorney to be present when bail is argued at a return on indictment. The defendant himself or herself should also be present in court for this proceeding if the prosecution chooses to argue for a bail increase.

- **Recommendation 7:** The defendant and the defense attorney must be notified and produced, respectively, for any bail argument; a bail argument should not be an ex parte proceeding. When a defendant is "charged at large," they should be arrested and brought to the arraignment proceeding where bail can be set if needed. Judges should not entertain a bail argument without the defendant and the defense attorney present; the defendant's presence can only be waived for the bail argument by their attorney or by the defendant's voluntary failure to appear.
- **Commendation 1:** CWN commends Chief Judge Keva Landrum-Johnson for ensuring constitutional rights are upheld in her court during the return on indictment process. She has been courageous in prohibiting an unsound practice from continuing in her courtroom, persuasive toward others on the bench to abide by the Constitution, and transparent with the public.

### **Bail, Fines, and Fees--Municipal Court Compliance with the 2017 Municipal Bail Reform Law**

In January 2017, New Orleans City Council passed comprehensive bail reform for all municipal (city) offenses. The municipal bail reform statute requires that a defendant charged only with municipal offenses and having no warrants<sup>19</sup> or additional pending cases be released on their own recognizance (with no bail)<sup>20</sup> unless the defendant is charged with municipal battery, assault, illegal carrying of a weapon, impersonating a peace officer, or domestic violence.<sup>21</sup> CWN is pleased to report that of the 109 Municipal Court cases it reviewed, Municipal Court judges complied with the Municipal Code Ordinances in all cases. In all cases in the CWN sample, in

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<sup>18</sup> Telephone Interview between Simone Levine and Defense Attorney Gary Wainright. (May 2, 2019); Telephone Interview with Derwyn Bunton, Chief Dist. Defender, Orleans Pub. Defenders (Apr. 29, 2019).

<sup>19</sup> New Orleans Mun. Code § 54-23 (2019).

<sup>20</sup> New Orleans Mun. Code § 54-23(c) (2019).

<sup>21</sup> New Orleans Mun. Code § 54-23(d) (2019).

which defendants were eligible to be released on their own recognizance ("ROR") under the municipal bail reform statute, defendants in only 8 cases were ordered to pay bail without an ROR. These eight cases all fell within the Municipal Bail Ordinance exceptions.

### **Bail, Fines, and Fees--Drug Test Fees**

Many observers have concluded that a user-pay system, in which criminal defendants are required to pay court fines and fees to financially maintain the court system, poses more problems than it offers solutions.<sup>22</sup> Drug tests for Orleans Parish-based defendants cost \$10 each, whereas drug tests for out-of-town individuals cost \$25 each.<sup>23</sup> The amount that criminal defendants paid for drug testing in Orleans Parish in 2018 totaled \$74,233.<sup>24</sup> However, the cost of the drug testing facility inside the court was \$350,126, and the cost of the collections department staffing was \$133,996.80.<sup>25</sup> Increasingly, experts have started to push judges to question whether drug testing that would initially cost indigent users, but would later, when the indigent court users are unable to pay, cost taxpayers--are in fact worth the cost.<sup>26</sup> One of the main questions a judge should ask is what the court's larger objective behind its requirement for drug testing a defendant.<sup>27</sup> This is especially true when the criminal case for which the defendant is charged neither relates to drugs nor is there solid evidence of the defendant's drug abuse.<sup>28</sup>

### **Incarceration as Punishment--Contempt for Failure to Hire a Private Attorney**

A judge has the power to fine or imprison a person for contempt of court if, broadly speaking, the individual does not comply with the court's lawful order.<sup>29</sup> The United States Supreme Court (U.S. Supreme Court) has warned of the potential for abuse in using imprisonment as a sanction for contempt, citing it as an "arbitrary" power which is "liable to abuse," and warning that "care is needed to avoid arbitrary or oppressive conclusions."<sup>30</sup> Additionally, research on procedural fairness, which is an evidence-based practice endorsed by the American Judges Association, National Center for State Courts, Conference of Chief Justices, and Conference of State Court Administrators,<sup>31</sup> has shown that when the public has a positive perception of courtroom

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<sup>22</sup> Joseph Shapiro, All Things Considered: As Court Fees Rise, The Poor Are Paying the Price, Nat'l Public Radio (May 19, 2014), available at <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> ("A yearlong NPR investigation found that the costs of the criminal justice system in the United States are paid increasingly by the defendants and offenders. It's a practice that causes the poor to face harsher treatment than others who commit identical crimes and can afford to pay. Some judges and politicians fear the trend has gone too far").

<sup>23</sup> Orleans Criminal District Ct, Drug Testing, <http://www.criminalcourt.org/drug-testing.html> (last visited May 1, 2019).

<sup>24</sup> Response to Public Records Request from Robert Kazik, Orleans Criminal District Ct. Judicial Adm'r, to Veronica Bard, CWN Deputy Director (Feb. 19, 2019) (on file with CWN).

<sup>25</sup> Interview with Robert Kazik, Jud. Adm'r, Orleans Parish Crim. Dist. Ct. (Apr. 15, 2019). The Collections Department is required to collect all court fines and fees, not just drug test fees.

<sup>26</sup> Jessica Brand, How Fines and Fees Criminalize Poverty: Explained, The Appeal, Jul. 16, 2018, available at <https://theappeal.org/fines-and-fees-explained-bf4e05d188bf/>.

<sup>27</sup> Telephone Interview with Lisa Foster, Co-Director, Fines and Fees Justice Ctr. (Apr. 16, 2019).

<sup>28</sup> *Id.*

<sup>29</sup> La. Code Crim. Pro. § 17.

<sup>30</sup> Bloom v. Illinois, 391 U.S. 194, 202 (1968).

<sup>31</sup> See Susanne Beier, et al., Influence of Judges' Behavior on Perceived Procedural Justice, 44 J. of Applied Social Psychology 57 (2014) (neutral observers may be better suited to making procedural fairness judgments than defendants themselves because they may have "a more objective perception of the [defendant's] actual treatment."). Utah and

procedure as fair, neutral, and respectful, it results in reduced recidivism and increased compliance with court orders.<sup>32</sup>

CWN examined cases in which a defendant was held in contempt for failing to hire a private defense attorney. In one example, Judge Paul Bonin originally remanded the defendant (so that there was no bail the defendant could pay to be released) for 9 days until Judge Bonin changed the order to allow the defendant to pay bail, and they were finally released after 4 days in jail. In the second example found by CWN, Judge Darryl Derbigny sentenced a defendant to 25 hours of community service for contempt in failing to hire a private defense attorney even though the defendant had previously been appointed a public defender on an earlier and still open pending case.

- **Recommendation 8:** Courts should hold a defendant in contempt for failure to hire a private defense attorney only if there is proof beyond a reasonable doubt that the defendant willfully disobeyed the court's order to hire a private defense attorney. Additionally, courts should carefully determine a defendant's ability to pay for a private attorney before ordering them to do so. In addition to providing legal due process, it is important for judges to meet the public's expectations that courtroom procedure is fair, neutral, and respectful.

#### **Incarceration as Punishment--Contempt for a Defendant's Positive Drug Screen**

Orleans Criminal District Court judges may be punishing defendants for non-definitive drug test results. While the Drug Testing Lab on the first floor of the Orleans Criminal District Courthouse is capable of running initial drug screens, which produce presumptive results,<sup>33</sup> scientific best practices require a secondary confirmatory test for the most accurate results.<sup>34</sup> The Drug Testing Lab lacks the technology for this definitive confirmatory test,<sup>35</sup> yet Criminal District Court judges are incarcerating, fining, and ordering community service for defendants who have presumptively positive drug test results. Despite the problems with the lab analysis, at least 77 pre-trial defendants were held in contempt for purportedly positive drug tests in 2018, with 59 pre-trial defendants serving an average of 18 days in jail, including two pre-trial defendants who were held in contempt of court in 2018 for positive drug screens for marijuana alone and jailed an average of 19 days.<sup>36</sup>

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Alaska, two leaders in the procedural fairness movement, also use citizen observers to rate Judges as part of the two states' official judicial performance evaluations. Hon. Steve Leben, *The Procedural-Fairness Movement Comes of Age*, Nat'l Ctr. for State Cts., Trends in State Cts. 60-61 (2014).

<sup>32</sup> Resol. 12, Conf. of Chief JJs./Conf. of State Ct. Adm'rs, Access, Fairness and Pub. Trust Comm. (Jul. 31, 2013), <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07312013-Support-State-Supreme-Court-Leadership-Promote-Procedural-Fairness-CCJCOSCA.ashx>.

<sup>33</sup> Agreement for Services Between DCI and New Orleans Criminal Ct. (June 8-9, 2019) (on file with CWN).

<sup>34</sup> Margaret Jarvis, et al., Consensus Statement: Appropriate Use of Drug Testing in Clinical Addiction Med., 11 J. of Addiction Med. 163-73 (2017).

<sup>35</sup> See Response to Public Records Request from Robert Kazik, Orleans Criminal District Ct. Judicial Adm'r, to Veronica Bard, CWN Deputy Director (Feb. 21, 2019) (on file with CWN).

<sup>36</sup> Sources: Orleans Parish Sheriff's Office Docket Master & Orleans Criminal District Court Clerk's Office.

- **Recommendation 9:** Judges should not sanction defendants without proper testing that follows scientific best practices. The Drug Testing Lab should research available definitive confirmation testing options. Once the Lab has a scientifically accepted procedure in place, the Lab should execute its procedures consistently in every case. Judges should carefully consider their objectives for ordering each drug test and question whether a drug test required of a specific defendant at that specific moment will help achieve those judicial objectives.

### **Incarceration as Punishment--Use of the Habitual Offender Laws**

Louisiana's habitual offender law requires judges to increase mandatory minimum sentences for criminal defendants who have previously been convicted of felony offenses when judges are requested to do so by the prosecution.<sup>37</sup> From January 2009 until 2017, the Orleans Parish District Attorney used the habitual offender law in sentencing more often than any other Louisiana Parish.<sup>38</sup> However, with recent changes made to state law relating to the sentencing of habitual offenders, the Orleans Parish District Attorney's Office has used the habitual offender law in sentencing less than it had before.<sup>39</sup> CWN also found a slight decrease in the rate of defendants who pleaded guilty after someone had referred to them as a habitual offender from 16% in 2017 to 13% in 2018.<sup>40</sup>

### **Incarceration as Punishment--New Orleans's New Municipal Marijuana Laws**

In March 2016, Mayor Landrieu signed an ordinance passed by the City Council that allowed the New Orleans Police Department to issue a summons instead of making an arrest in certain marijuana cases and to require a fine instead of jail time.<sup>41</sup> While several websites, particularly tourist or marijuana enthusiast websites, tout the change in the law as "decriminalization,"<sup>42</sup> marijuana remains very much illegal in New Orleans, and it is essential that the public is educated as to the current status of the law. Currently, there are more than 25 different exceptions that would allow for arrest instead of a municipal summons on a marijuana possession case. That being said, in 2018, NOPD issued a summons in 85% of the 2,871 total incidents involving marijuana possession.<sup>43</sup>

<sup>37</sup> La. Stat. Ann. § 15:529.1.

<sup>38</sup> Reveal: 10 Years or Life, Ctr. for Investigative Reporting (Oct. 6, 2018), available at <https://www.revealnews.org/episodes/10-years-or-life>.

<sup>39</sup> Eve Abrams, Habitual Offender Prosecutions down in New Orleans, *The Lens*, Nov. 29, 2018, available at <https://thelensnola.org/2018/11/29/habitual-offender-prosecutions-down-in-new-orleans/>; Matt Sledge & John Simerman, New Orleans DA, Criminal Court and Cops Make Budget Pitches to Council, *New Orleans Advocate*, Nov. 13, 2018, available at [https://www.theadvocate.com/new\\_orleans/news/courts/article\\_ed110fa0-e78e-11e8-839d-af0f2a46754f.html](https://www.theadvocate.com/new_orleans/news/courts/article_ed110fa0-e78e-11e8-839d-af0f2a46754f.html).

<sup>40</sup> N = 456 (2017), 487 (2018) Criminal District Court observations.

<sup>41</sup> Kevin Litten, NOPD Marijuana Arrests Plunged to 1 Percent After Ordinance Change, *Nola.com*, Mar. 28, 2018, available at [https://www.nola.com/politics/2018/03/marijuana\\_ordinance\\_new\\_orlean.html](https://www.nola.com/politics/2018/03/marijuana_ordinance_new_orlean.html).

<sup>42</sup> Marijuana Policy Project, *La. Med. Marijuana Program Still not Functioning*, <https://www.mpp.org/states/louisiana/> (last visited Mar. 1, 2019). See also Kush Tourism, *Is Weed Legal in La.? La. Marijuana Laws*, <https://kushstourism.com/louisiana-marijuana-information/> (last visited May 1, 2019).

<sup>43</sup> Source: Municipal and Traffic Court of New Orleans Clerk of Court. n = 2,437 (persons issued summons for marijuana possession), 434 (persons arrested for marijuana possession).

- **Recommendation 10:** The public and the tourism industry should educate themselves on the marijuana laws in New Orleans and ensure public material such as websites provide the correct information about when an individual is able to receive a summons for a New Orleans Municipal Code marijuana violation and when an individual is not able to receive a summons. The tourism industry and others should remove all references to marijuana being decriminalized in New Orleans.

### **Efficiency--Criminal District Court's Oldest Cases**

Tracking efficiency has been part of CWN's core mission for the last 11 years. It is essential when a not-for-profit monitors for efficiency that the not-for-profit examines the real drivers of inefficiency. Instead of placing the full blame for inefficiency on judges, it is a priority to reveal the real causes of inefficiency in the Orleans Parish Criminal Courts, especially since, in many instances, judges are powerless to stop the inefficiency.<sup>44</sup> CWN examined the ninety-eight oldest active cases in Criminal District Court, beginning with a case instituted in 2005. The top reasons for delay in these cases were: 34% because an incarcerated defendant was not brought to court when scheduled; 16% for continuances requested by the prosecution;<sup>45</sup> 11% for continuances requested by the defense;<sup>46</sup> 11% for continuances on joint motion (between the prosecution and the defense);<sup>47</sup> 7% for continuances requested by the Court;<sup>48</sup> and in 6%, because the defendant appeared without counsel. The type of delays CWN tracked involved anything from delays of days to delays of months. CWN further analyzed the largest delay for why incarcerated defendants were not brought to court by the responsible agency. Out of all of the delays caused by an incarcerated defendant not being brought to court, in 57% of continuances, the Orleans Parish Sheriff's Office was responsible for not bringing the defendant to court; in 38% of continuances, the Louisiana Department of Corrections was responsible for not bringing the defendant to court; and in 5% of continuances, the Eastern Louisiana Mental Health System was responsible for not bringing the defendant to court. The court and the prosecution can do little to get a jailed defendant into

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<sup>44</sup> State v. Barnes, 72 So. 3d 938 (La. App. 4 Cir. 8/29/2011). This Court has previously found, in unpublished writ dispositions, that it is an abuse of the trial court's discretion to deny a motion for continuance when both sides in a criminal case agree to a continuance of trial; See also State v. Lee, 11-1176 (La. App. 4 Cir. 8/25/11); State v. Richardson, 09-0953 (La. App. 4 Cir. 7/20/09); State v. King, 11-0243 (La. App. 4 Cir. 2/18/11); State v. Terry, 11-0245 (La. App. 4 Cir. 2/18/11).

<sup>45</sup> In 917 of these continuances, the minute entry in the docket merely said the case was continued by the State. In 29 of these continuances, a law enforcement witness was unavailable. In 24 of these continuances, the Assistant District Attorney ("ADA") was unavailable. In 22 of these continuances, the ADA owed discovery to the defense. In 3 of these continuances, the ADA was unprepared. In 2 of these continuances, a civilian witness for the prosecution was unavailable. In 1 continuance, the ADA had not requested the defendant to be brought from jail.

<sup>46</sup> In 466 of these continuances, the minute entry in the docket merely said the case was continued by the defense. 80 continuances occurred because of a change in defense attorney. In 78 of these continuances, the defendant had been released and did not return to court. 41 continuances occurred because the defense attorney was unavailable, and 7 continuances occurred because a witness for the defense was unavailable.

<sup>47</sup> In 556 of these continuances, the minute entry in the docket merely said the case was continued by joint motion. In 47 continuances, the Court ruled the defendant incompetent, and in 35 continuances, the Court ruled the defendant competent. 24 continuances occurred due to writs to the Fourth Circuit Court of Louisiana, and 17 continuances occurred due to writs to the Supreme Court of Louisiana.

<sup>48</sup> 157 continuances occurred because the Court was closed. In 147 continuances, the Court was trying another case. In 94 of these continuances, the minute entry in the docket merely said the case was reset by the Court. In 76 of these continuances, the case was transferred to another court.

court (the number one reason for inefficiency according to CWN data in Figure 24) if OPSO has not informed the court or the prosecution which jail facility in which the defendant is located.

- **Recommendation 11:** Judges are not solely responsible for court inefficiency and the public should educate themselves on this issue. The Orleans Parish Sheriff's Office should ensure that criminal defendants are brought to court. The Orleans Parish Sheriff's Office should also ensure that the court and the prosecution are properly notified as to whether an incarcerated defendant is being held in the Orleans Justice Center or in another jail within the jurisdiction of the Department of Corrections.