



Office of Inspector General

City of New Orleans

City of New Orleans Arrest and Detention Policies For Non-Violent Misdemeanors and Traffic Offenses

OIG-I&E-10-008

**E. R. Quatrevaux
Inspector General**

Final Report

June 2, 2011

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL

April 6, 2011

Re: City of New Orleans Arrest and Detention Policies for Non-violent Misdemeanors and Traffic Offenses: OIG-I&E-10-008

I certify that the inspector general staff assigned to this project are free of personal or other external impairments to independence.

A handwritten signature in blue ink, appearing to read 'E.R. Quatrevaux', located below the certification text.

E.R. Quatrevaux
Inspector General

City of New Orleans Arrest and Detention Policies
for Non-Violent Misdemeanors and Traffic Offenses
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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) evaluated policies and practices of the New Orleans Police Department (NOPD), the Orleans Parish Sheriff's Office (Sheriff), the New Orleans Municipal Court, and the City Attorney's Office relating to the arrest, detention, and prosecution of municipal code violations and traffic offenses. The objectives of this evaluation were to determine costs incurred by the City as a result of these practices and to assess the impact of policies adopted by the City, including an ordinance enacted in 2008 to reduce the number of arrests.

The City of New Orleans is responsible for the costs of housing and medical care for detainees awaiting trial on municipal code and state law charges and for inmates serving sentences for municipal code offenses. The City pays a per diem for every individual booked at the Orleans Parish Prison (OPP), which is operated by the Sheriff.

One of the factors contributing to the high costs of New Orleans' criminal justice system is the City's longstanding practice of arresting and jailing unusually high numbers of individuals charged with low-level, nonviolent offenses. In recent years, the City has begun to implement policy changes aimed at reducing the arrest rate for municipal code violations so that resources can be focused on serious crime. The City enacted an ordinance in 2008, requiring NOPD officers to: (1) issue summonses in lieu of arresting individuals for most municipal code violations; (2) prepare a written justification for every municipal code arrest; and (3) report the total numbers of municipal code arrests versus summonses on a quarterly basis. In addition, a change was enacted to a state law in 2010 to make it clear that police officers have discretion not to arrest individuals on out-of-parish traffic warrants for minor infractions, such as unpaid traffic fines.

We analyzed OPP booking records for the approximately 30,000 arrests made by the NOPD in the six-month period from July 1, 2009 through December 31, 2009, to evaluate whether NOPD practices reflected the policy changes intended to reduce arrests for minor infractions. Our analysis showed that:

- The City's arrest rate in 2009 was more than three times the national average for cities with more than 250,000 inhabitants.
- Thirty-six percent of the approximately 60,000 arrests made by the NOPD in 2009 were for municipal code violations or traffic offenses.
- The City paid the Sheriff more than \$3 million in 2009 for detaining individuals arrested for municipal code violations or traffic charges.
- More than fourteen percent of the NOPD arrests in 2009 resulted from out-of-parish warrants for minor offenses, such as unpaid traffic fines.

OIG staff also reviewed a number of arrest reports and interviewed NOPD officials to determine what steps the NOPD had taken to implement the requirements contained in the 2008 ordinance for written justifications and quarterly reports of municipal code arrests. We found that:

- The NOPD arrest reports contained no written justifications or descriptions of circumstances that warranted arrests made for municipal code violations;
- The NOPD had not implemented a system to track and report summonses versus arrests for municipal code offenses; and
- In October 2010, the NOPD's policy research division had not instructed officers that the law no longer required them to arrest individuals for out-of-parish warrants, and was awaiting an opinion from the City Attorney to interpret the change in law.

The OIG analyzed records showing time served in OPP for individuals arrested from July 1, 2009 through December 31, 2009, and sentenced to jail as punishment for municipal code offenses. We also interviewed representatives of the City Attorney's Office, which prosecutes municipal code violations, concerning the City's prosecutorial policies and practices. We found that:

- The most common offenses for which these individuals were jailed, in order of frequency, were public drunkenness, disturbing the peace, criminal trespass, obstructing a public way, and begging;
- During a six-month period, 1,270 individuals were arrested multiple times on charges for non-violent behavior associated with alcoholism and mental illness;
- The City Attorney's Office had not implemented effective diversion programs as an alternative to imprisonment;
- In 2009, the annual cost to the City for sentencing petty offenders to jail was approximately \$1.4 million.

The OIG reviewed the City's funding of OPP operations, which is based on a per diem paid to the Sheriff for each City detainee. This per diem arrangement is the result of a consent decree in a federal lawsuit initiated by prisoner advocates alleging unconstitutional conditions and practices at OPP. The Sheriff sought court action through this lawsuit to force the City to increase funding for the care of prisoners. The City and the Sheriff agreed in 2003 on a per diem of \$22.39 for each inmate. The evidence suggests that this per diem amount is inadequate to sustain the operation of the jail and the Sheriff has requested an increase from the City. The OIG found that:

- The City lacks sufficient information about the Sheriff's expenditures for jail operations to make an informed assessment of the level of funding it should provide to house prisoners.
- The per diem funding arrangement provides a disincentive for the Sheriff to correct inefficient information systems that delay the release of some detainees.

Based on these findings, the OIG concluded that in 2009, the City continued to arrest and jail too many individuals for non-violent, low level misdemeanors, diverting criminal justice resources that

could have been used to combat serious crime. The City has taken steps, including the enactment of the 2008 ordinance, to change these wasteful and ineffective policies, but a concerted effort must be maintained to change long-standing practices. The OIG made the following recommendations:

1. The NOPD should ensure that all police officers understand and comply with recent changes in policy and law regarding arrests for municipal and traffic violations, attachments, and out-of-parish warrants.
2. The City Attorney's Office should develop a capacity to screen municipal charges and implement diversion programs and sentencing alternatives.
3. The City should establish alternatives for enforcing municipal code compliance, including decriminalization of some offenses.
4. The City and the Sheriff should establish a method for funding OPP operations on the appropriate level based on a transparent budget and cost-effective operational practices.

A draft of this report was provided to the New Orleans Police Department, the Orleans Parish Sheriff's Office, the Municipal Court, and the City Attorney's Office for review and comment prior to publication. Of these entities, only the City Attorney's Office chose to submit a response, which is attached to this report as Appendix A.

I. OBJECTIVES, SCOPE, AND METHODOLOGY

The Office of Inspector General for the City of New Orleans (OIG) evaluated policies and practices of the New Orleans Police Department (NOPD), the Orleans Parish Sheriff's Office (Sheriff), and the City Attorney's Office relating to the arrest, detention, and prosecution of non-violent misdemeanors and traffic offenses under the City's municipal code. We also evaluated the NOPD's practice of making arrests based on out-of-parish warrants for traffic violations or other minor offenses. This evaluation was conducted in accordance with the Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews.¹

The objectives of this evaluation were to determine costs incurred by the City as a result of these policies and practices and to assess the impact of recent changes in law and new policies adopted by the City. The cost analysis considered the current system for funding jail operations and the likely cost implications of the Sheriff's budgetary concerns and operational deficiencies at the jail. The evaluation also assessed the effectiveness of the City's arrest and detention policies in promoting criminal justice objectives, including protecting public safety, deterring crime, seeking justice for victims, and rehabilitating offenders.

The OIG analyzed data obtained from the Sheriff's Office on individuals arrested in the City and booked at Orleans Parish Prison from July 1, 2009, through December 31, 2009. The analysis identified the charges underlying each arrest, the duration of detention, and the reason for release. The OIG interviewed the Sheriff and members of his staff, employees of the New Orleans Police Department (NOPD) and the City Attorney's Office, the East Baton Rouge Parish Sheriff and the Jefferson Parish Sheriff. We also reviewed the NOPD policy manual and NOPD arrest records for selected individuals.

This evaluation includes findings and recommendations based on prudent management practices and best practices promulgated by nationally recognized criminal justice organizations to promote cost effectiveness and accountability.

¹ Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General, *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2004).

II. INTRODUCTION

Nearly 33% of the City of New Orleans' \$492 million General Fund budget for 2009 was devoted to the criminal justice system, including the New Orleans Police Department (NOPD), the Municipal Court, the Orleans Parish Criminal Sheriff's Office (Sheriff), and the Orleans Parish District Attorney (DA). By far the largest of the City's criminal justice expenses was \$119 million for police services and \$26.6 million for housing and medical care of detainees at the Orleans Parish Prison (OPP). One of the factors contributing to these high costs is the City's long-standing practice of arresting and detaining extraordinarily high numbers of individuals charged with low-level, nonviolent offenses.²

Over the past few years, City officials have recognized that these arrest and detention practices are both costly and ineffective, and have begun to make policy changes to bring New Orleans in line with nationally recognized best practices. In June 2007, the New Orleans City Council endorsed criminal justice reform initiatives aimed at reducing the numbers of people arrested and jailed for minor infractions. Judges from the City's Municipal Court and Traffic Court issued orders in 2008, aimed at securing the speedy release of individuals jailed on traffic and municipal code charges. In June 2008, the City enacted an ordinance calling for NOPD officers to forgo arrests and instead issue summonses to most individuals charged with violating the City's municipal code.

The OIG undertook this review of individuals jailed in the last six months of 2009 at the Orleans Parish Prison (OPP) to evaluate the effect of the City's recent policy changes on the rate of arrest and detention for minor offenses. We found that 15,530 – approximately half of the arrests during this time period – resulted from municipal code violations, traffic charges, and out-of-parish warrants for minor offenses. We also found that although most people arrested on these charges were released within a few days, these arrests accounted for 64,189 jail days or about 11.5% of the total jail days served during this six-month period.

The OIG staff was greatly assisted in the preparation of this report by the full cooperation of the Sheriff's office and of City employees and officials.

² Brown, Richard H., and Alison C. Richards, "Part II Crimes: An Analysis of Municipal Offenses and their Effect on the Criminal Justice System of New Orleans." Prepared by The Mayor's Criminal Justice Coordinating Council, December 1980. This report can also be found at www.nolaog.org/main/inside.php?page=public_records.

III. FINDINGS

BACKGROUND

In recent years, City officials have become aware that New Orleans' unusually high arrest rate stems partly from the NOPD's practice of making arrests rather than issuing summonses for minor infractions. The Vera Institute of Justice, Inc. (Vera), a nonprofit organization dedicated to advancing best practices in criminal justice, reported to the City Council's Criminal Justice Committee in June 2007,³ that a high proportion of arrests involved municipal code violations, which are typically low-level, "quality of life" offenses.⁴ According to a Metropolitan Crime Commission, Inc. (MCC) report, half of all arrests in New Orleans in 2007 were based on municipal code or traffic violations.⁵ Both Vera and the MCC advised City leaders that the practice of arresting such high numbers of people charged with minor, non-violent offenses uses valuable police and jail resources without improving public safety and urged them to enforce municipal and traffic laws through the use of summonses rather than arrests.⁶

New Orleans' high arrest rate has a major impact on the City's budget for at least two reasons. First, NOPD officers spend a substantial portion of their time arresting and booking defendants. The NOPD does not have a lock-up facility, so all arrestees are booked at the OPP, a process that can take one or more police officers off the street for several hours. Second, the City pays the Sheriff, who is responsible for the operation of the OPP, a per diem for every detainee held either on a municipal or traffic charge, an out-of-parish warrant, or awaiting trial on a state charge.⁷ Although most individuals arrested for non-payment of traffic fines or minor offenses are released within a few days, sometimes without posting bond, the City incurs a cost for every arrestee booked at the OPP. The City is also responsible for the cost of medical care for these detainees.

In addition to a high rate of arrest, the City of New Orleans' incarceration rate is about three times the U.S. average.⁸ A multitude of factors contribute to the City's remarkably high incarceration

³ "Proposals for New Orleans' Criminal Justice System: Best Practices to Advance Public Safety and Justice." The Vera Institute of Justice, June 2007. www.vera.org/download?file=2849/no_proposals.pdf

⁴ The City of New Orleans Municipal Code outlaws such conduct as property damage, disturbing the peace, trespass, public intoxication, and prostitution. These misdemeanor offenses are prosecuted by the City Attorney in Municipal Court and are punishable by a fine and/or up to six months in jail.

⁵ "Third and Fourth Quarter 2007 Orleans Parish Criminal Justice System Accountability Report." The Metropolitan Crime Commission, February 19, 2008. www.metropolitancrimecommission.org/html/research.html

⁶ An NOPD officer may issue a written summons, in lieu of arrest, directing the individual charged with a traffic or Municipal Code violation to appear in court to answer the charges, according to Section 54-28 of the Code of the City of New Orleans.

⁷ Louisiana Revised Statute 15:824 states that the Louisiana Department of Public Safety and Corrections assumes responsibility for prisoners convicted on state charges at the time of sentencing.

⁸ Minton, Todd D., "Jail Inmates at Midyear 2009 – Statistical Index," June 2010, NCJ 230122. According to this 2009 Bureau of Justice Statistics nationwide survey of local jails, the number of jail inmates in the U.S. averaged 250 per 100,000 residents. The overall 2009 OPP population was more than 1,000 inmates per 100,000 residents. Excluding state sentenced prisoners and federal detainees held at OPP which reduces the rate to about 721 per 100,000, close to three times the national average. <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim09st.pdf>

rate, including NOPD arrest practices, court policies related to setting bail, lack of alternatives to detention, and inefficiencies in the criminal justice system, resulting in delays in filing charges.⁹ Significantly reducing the rate of incarceration will require a collaborative effort by all the actors in the criminal justice system, including state and municipal courts, the District Attorney, the Public Defender, the Sheriff, the City Attorney, and the NOPD. These entities, together with the Mayor and City Council, formed the Criminal Justice Leadership Alliance (CJLA) in 2007, and made a commitment to implement reforms in the areas of pretrial detention, sentencing alternatives, substance abuse and mental health treatment, arrest practices, and sanctions for municipal offenses.

The CJLA is actively working on an assessment and implementation plan for a comprehensive set of system-wide reforms to make the criminal justice system more cost effective and to improve public safety. The proposed reforms go far beyond the scope of this evaluation, which deals primarily with City of New Orleans policies and practices for enforcing municipal and traffic codes. This report focuses on a more narrow set of issues to provide recommendations that can be implemented by the City to improve efficiency and effectiveness.

The City policies and practices reviewed in this report are:

1. Arresting individuals for municipal and traffic offenses rather than issuing summonses to appear in court.
2. Arresting and detaining individuals on outstanding traffic warrants issued by courts outside of Orleans Parish.
3. Using criminal sanctions, including jail, to enforce the municipal code.
4. Using diversion programs and alternatives to incarceration.

As previously discussed, the City has begun implementing policy changes, and passed an ordinance in 2008, aimed at reducing the number of arrests for non-violent, low-level offenses. In this evaluation, the OIG analyzed data for individuals arrested and jailed during the final six months of 2009, to determine the extent to which arrest and detention practices changed in response to these policy changes. We also examined the City's policies for prosecuting municipal code violations. We used the evidence gathered in this evaluation to calculate the impact of all of these practices on the City's budget and to gauge their effectiveness at promoting criminal justice objectives, which include public safety, deterrence, retribution, and rehabilitation.

FINDING 1. IN 2009, THE ARREST RATE IN THE CITY OF NEW ORLEANS WAS MORE THAN THREE TIMES THE NATIONAL AVERAGE FOR CITIES WITH MORE THAN 250,000 INHABITANTS.

The OIG analyzed data provided by the Orleans Parish Criminal Sheriff (Sheriff) for all individuals booked at the Orleans Parish Prison (OPP) following an arrest during the six-month period from July 1, 2009, through December 31, 2009. There were 30,576 arrests in the City of New Orleans

⁹ "Proposals for New Orleans' Criminal Justice System" at www.vera.org/download?file=2849/no_proposals.pdf

during this six-month period, nearly all carried out by the New Orleans Police Department (NOPD). This rate translates into about 60,000 arrests annually.¹⁰ To put this figure into perspective, the FBI’s Uniform Crime Reporting data for 2009 showed that U.S. cities with populations over 250,000 averaged about 5,000 arrests per 100,000 residents.¹¹ The City of New Orleans, with a population of about 344,000,¹² had an annual arrest rate of over 17,000 per 100,000 residents – more than three times the national average – during the six-month period we reviewed.

FINDING 2. ARRESTS RELATED TO MUNICIPAL CODE AND TRAFFIC VIOLATIONS RESULTED IN MORE THAN \$3 MILLION IN JAIL COSTS TO THE CITY OF NEW ORLEANS IN 2009.

The OIG examined the charges in the OPP booking data to determine the number of arrests based on municipal or traffic offenses.

Municipal offenses: The 10 most commonly cited municipal charges, in order of frequency, are shown in Figure 1 below:

Municipal Offense	Individuals Charged with Offense*
Public Drunkenness	2,639
Disturbing the Peace	1,850
Criminal Trespass	1,610
Resisting/Obstructing an Officer	689
Battery	466
Obstructing a Public Place	428
Theft	413
Lewd Conduct	317
Begging	294
Misrepresenting Name/Age/Address	279

*Most arrestees were charged with more than one offense

Traffic offenses: State criminal statutes apply to certain motor vehicle offenses, including: Vehicular Homicide (La.R.S.14:32.1), Vehicular Negligent Injuring (La.R.S.14:39.1), Operating a Vehicle While Intoxicated (La.R.S.14:98 et seq.), and Hit-and-Run Driving (La.R.S.14:100). For the purpose of this analysis, we did not include these criminal offenses in calculating the number of arrests made for traffic violations. Even without counting these serious motor vehicle offenses, we found that 11,122 of the arrests made – about 36% of the total – involved only municipal or traffic

¹⁰ “2009 Orleans Parish Criminal Justice System Accountability Report.” The Metropolitan Crime Commission, June 23, 2010, reported that there were 59,974 arrests in 2009, an increase of 11% over the arrest total for 2008. <http://www.metropolitancrimecommission.org/html/documents/2009NOCJSAccountabilityReport.pdf>

¹¹ The FBI compiles the rate of arrest per 100,000 population based on data from 66 U.S. cities with populations of over 250,000 persons. http://www2.fbi.gov/ucr/cius2009/data/table_31.html

¹² The United States Census Bureau official 2010 census counted 343,829 people living in New Orleans. <http://2010.census.gov/2010census/data/>

violations or attachments. These arrests resulted in 57,030 jail days, or about 10% of the total jail days served by individuals arrested during this period.¹³

Observations: Most people arrested on municipal or traffic charges were released within a few days. But every arrestee booked at OPP, even if released within an hour, results in a charge to the City for at least one day. If the arrestee is booked before midnight and released after midnight, the City is charged for two days even if the actual jail stay was only a few hours. Under the jail funding system currently employed in Orleans Parish, every arrest costs the City and results in a payment to the Sheriff.

Pursuant to a 2003 consent decree, the City pays the Sheriff a per diem of \$22.39 for housing and board for each detainee and an additional sum for medical care. Data analyzed by the OIG shows that the City incurred about \$2,874,383 in 2009 for housing and board of individuals arrested solely for municipal code or traffic violations and attachments. In addition, the pro rata share of the funds paid to the Sheriff for medical care for these detainees was about \$305,540, bringing the total cost of these detentions to an estimated \$3,179,923 for the year.

FINDING 3. THE NOPD HAD NOT IMPLEMENTED THE REPORTING SYSTEM REQUIRED BY CITY ORDINANCE FOR MUNICIPAL CODE ARRESTS.

The City enacted an ordinance in June 2008, requiring NOPD officers to issue summonses, except in domestic violence cases, rather than making arrests for municipal code violations, unless specific circumstances justify an arrest. The ordinance requires police officers to complete a form for every municipal code arrest, describing with specificity the circumstances that justify the arrest. The NOPD is required to prepare quarterly reports showing numbers of summonses and arrests, with reasons for arresting municipal code violators.¹⁴ The NOPD Operations Manual incorporated these requirements in 2009.¹⁵

In August 2008, the NOPD also adopted new policies relating to attachments issued by New Orleans Municipal and Traffic Courts. A court will issue an attachment when an individual cited for violating an ordinance fails to pay a fine or make a court appearance. In the past, an individual with an outstanding attachment was automatically subject to arrest. Under the revised NOPD policies, officers are directed not to make an arrest unless the court has designated the attachment as one that calls for arrest. The new policies require officers to write citations for “failure to appear” and issue summonses with new court dates to individuals with routine municipal attachments.

The intent of the City ordinance and the NOPD policy revisions was to reduce the volume of arrests for minor infractions, both to reduce costs and to enable the police to focus more effort on serious crime. According to statistics compiled by the MCC, overall arrests for municipal code

¹³ The 30,576 arrests made by the NOPD from July 1 through December 31, 2009, resulted in a total of 556,049 jail days.

¹⁴ Section 54-28 of the Code of the City of New Orleans.

¹⁵ New Orleans Police Department Operations Manual Chapter 41.8.

offenses declined slightly each year from 2007 through 2009.¹⁶ Although there is reason to believe the new City policies are beginning to have some effect on NOPD practices, this report's finding that 36% of all arrests in the latter half of 2009 resulted from municipal code or traffic violations indicates that police officers were not consistently acting in accordance with these policies.

OIG staff interviewed the NOPD Deputy Superintendent of the Field Operations Bureau in October 2010, to determine what measures have been taken to implement the policies enacted by ordinance in 2008. In that interview, the Deputy Superintendent confirmed that the Department is actively encouraging officers to issue summonses in lieu of arrest whenever it is appropriate to do so. He was not, however, aware that the ordinance requires the NOPD to prepare quarterly reports of summonses and arrests and said that the Department had not implemented a system to create these reports.

The OIG also looked at a small number of arrest reports to determine whether police officers had complied with the ordinance requiring them to describe with specificity circumstances justifying an arrest for a municipal code violation. From booking records, we identified individuals with multiple arrests on municipal charges and asked the NOPD for the arrest reports for 27 of these arrests. The records provided contained no descriptions of any circumstances to justify the arrest; in many cases, the only explanation offered was "necessary action taken," abbreviated as "NAT." The records we reviewed do not constitute a representative sample of all arrests made in this time period, and it is not possible draw a conclusion about the overall rate of non-compliance with the ordinance based on this data. Nonetheless, this observation suggests that the NOPD needs to reinforce this requirement to ensure that the change in policy is translated into a change in practice.

FINDING 4. MORE THAN 14% OF THE ARRESTS MADE IN 2009 WERE BASED ON WARRANTS ISSUED IN OTHER PARISHES FOR TRAFFIC VIOLATIONS OR OTHER MINOR INFRACTIONS.

When an individual receives a summons for a traffic violation or other infraction and fails to pay the fine or appear in court to contest it, the court issues a warrant or attachment, calling for the individual to be arrested and booked. In other Louisiana jurisdictions, including Jefferson Parish and East Baton Rouge Parish, a law enforcement officer who discovers an out-of-parish warrant relating to a minor offense typically releases the individual with an admonition to get the matter resolved, rather than making an arrest. Until 2010, however, the NOPD operated under a determination, supported by an opinion issued by the Louisiana Attorney General in 2007, that an officer was legally required to arrest and book anyone with an out-of-parish warrant, even if the warrant related to nothing more than an unpaid traffic fine.¹⁷

¹⁶ Some of this decline appears to be attributable to a decision by the Orleans Parish District Attorney to prosecute domestic violence cases under state law rather than as municipal offenses. See "Orleans Parish Criminal Justice System 2009 Accountability Report", The Metropolitan Crime Commission, June 23, 2010. <http://www.metropolitancrimecommission.org/html/documents/2009NOCJSAccountabilityReport.pdf>

¹⁷ Louisiana Attorney General Opinion No. 07-0281, December 18, 2007.

The NOPD's indiscriminate arrests on out-of-parish warrants contributed substantially to the City's high arrest rate; the OIG's analysis identified 4,408 arrests in a six-month period resulting from minor matters in other parishes. The OPP handles these arrests by booking the individual, then contacting court officials in the other parish for authority to release, unless there is a standing authorization. According to OPP deputies, Jefferson Parish courts have given the Sheriff a blanket authorization to release individuals held on warrants for most traffic violations, but other jurisdictions, including municipal courts in Gretna, Westwego, Harahan, and Kenner, require the Sheriff's staff to notify them in each instance before authorizing release. These jurisdictions formerly had personnel available around the clock for this purpose, but now have limited hours and are closed weekends and holidays. This means that an individual arrested for an out-of-parish traffic warrant on Friday after 4:00 p.m. on a long weekend may be held at OPP until court personnel can be reached the following Tuesday. In the vast majority of these cases, the other jurisdiction declines to pick up the inmate and instead instructs the Sheriff to release the individual with a new date to appear in court.

Of the 4,408 out-of-parish warrant arrests in the six-month period, the vast majority resulted in release within one or two days, but in some cases, the individual was held three or more days. These arrests did nothing to preserve public safety, but these brief detentions resulted in an estimated jail costs in excess of \$300,000 in 2009. But the more substantial cost to the City, though harder to quantify, was undoubtedly the thousands of hours NOPD officers devoted to an estimated 8,800 unnecessary arrests over the course of the year.

Criminal justice reform advocates succeeded in winning the passage of state legislation in 2010 that makes it clear that police officers have discretion to issue summonses in lieu of arrest to individuals with out-of-parish warrants for most misdemeanors, including traffic offenses.¹⁸ When we interviewed the NOPD Deputy Superintendent of the Field Operations Bureau in October 2010, he told us that the Department's policy research division had questions on the interpretation of this new law and was awaiting an opinion from the City Attorney. If the City Attorney opines that NOPD officers now have discretion not to make these arrests, the Department will issue field training policies to reflect this change.

FINDING 5. IN 2009, THE ANNUAL COST TO THE CITY OF SENTENCING PETTY OFFENDERS TO JAIL WAS APPROXIMATELY \$1.4 MILLION.

Although the great majority of inmates at OPP were awaiting arraignment or trial, a significant minority were serving sentences – potentially up to 180 days for some violations – for municipal offenses. Some of these individuals were chronic offenders with multiple arrests. During the six-month period we examined, 1,270 individuals had at least two arrests and 336 were arrested three or more times. The arrests were most often based on charges for behavior associated with substance abuse and mental illness. The most common offenses for which these individuals were jailed, in order of frequency, were:

¹⁸ Louisiana Code of Criminal Procedure, Article 211.5.

- Public Drunkenness
- Disturbing the Peace
- Criminal Trespass
- Obstructing a Public Way
- Begging

Figure A on pages 13-14 depicts the arrest histories and jail time served by 20 individuals arrested and convicted multiple times in a six-month period. The offenses charged do not pose a serious threat to public safety and their repetitive pattern indicates that jail is not an effective deterrent to the behaviors. Many other cities have moved away from using criminal sanctions to deal with non-violent behavior associated with alcoholism and mental illness, in large part because this approach is costly, ineffective, and diverts resources away from serious crime.¹⁹

The OIG estimated that sentences imposed by the Municipal Court accounted for about 29,000 jail days in the last six months of 2009; this incarceration rate translates into almost \$1.3 million annually in per diem costs to the City. In addition, the pro rata share of medical costs attributable to these sentences, in 2009, was about \$139,040, bringing the total to \$1.4 million annually.

Aside from issues of effectiveness and cost, the use of imprisonment as a sanction in these cases raises serious constitutional issues. The City's criminal code ordinances allow judges to impose a fine of up to \$500, a jail sentence, or both for almost any violation. In 2007, a class action lawsuit, *Dear v. Shea*, No. 07-1186 (E.D. La. Mar. 6, 2007), was filed on behalf of indigent defendants sentenced to either pay a fine or serve jail time for municipal code violations. The lawsuit alleged that these individuals were jailed because of their inability to pay their fines, in violation of the constitutional guarantees of equal protection under the laws and due process of law.

The plaintiffs in *Dear v. Shea* entered into an agreement with the Municipal Court judges to settle the lawsuit in 2007. The judges agreed to impose community service sentences, instead of jail time, as an alternative to fines for people unable to pay. The data we reviewed, however, indicates that the Court's community service program was not a viable alternative for everyone, and that approximately 800 individuals served jail sentences for municipal offenses in the six months covered by our review. Some of them spent more than half of their time in jail during this time period, as shown in Figure A. Given that these individuals could have secured their release by paying a fine, it is reasonable to conclude that they were indigent.

¹⁹ Warren, Roger K., "Evidence-Based Practices to Reduce Recidivism," The Crime and Justice Institute and the National Institute of Corrections, August 2007. <http://nicic.gov/Library/023358>

Figure A

Sample of Individuals Arrested Repeatedly Between July 1 and December 31, 2009

Individual	Date of Arrest	Date of Release	Jail Days	Charges
1	8/5/2009	9/4/2009	31	Criminal Trespass; Disturbing the Peace; Obstructing Public Place; Public Drunkenness
	10/23/2009	12/9/2009	48	
	12/14/2009	1/13/2010	31	
	<i>Total Jail Days = 110</i>			
2	8/23/2009	8/24/2009	2	Contempt of Court; Criminal Trespass; Disturbing the Peace; Public Drunkenness; Resisting/Obstructing Officer
	8/25/2009	8/26/2009	2	
	9/14/2009	10/23/2009	40	
	11/11/2009	12/8/2009	28	
	12/18/2009	1/7/2010	21	
<i>Total Jail Days = 93</i>				
3	7/9/2009	7/10/2009	2	Begging; Criminal Trespass; Disturbing the Peace; Lewd Conduct; Obstructing Public Place; Public Drunkenness; Resisting/Obstructing Officer
	8/13/2009	8/15/2009	3	
	8/19/2009	8/22/2009	4	
	8/24/2009	9/17/2009	25	
	10/7/2009	11/28/2009	53	
	12/8/2009	12/10/2009	3	
	12/31/2009	1/25/2010	26	
<i>Total Jail Days = 116</i>				
4	7/10/2009	7/26/2009	17	Battery; Begging; Crossing/Traversing Police Barrier; Disturbing the Peace; Obstructing Public Place; Public Drunkenness; Resisting/Obstructing Officer
	8/8/2009	8/29/2009	22	
	8/29/2009	9/6/2009	9	
	9/7/2009	9/8/2009	2	
	9/16/2009	10/27/2009	42	
	10/27/2009	11/6/2009	11	
	12/10/2009	1/23/2010	45	
<i>Total Jail Days = 148</i>				
5	8/7/2009	9/10/2009	35	Begging; Disturbing the Peace; Public Drunkenness
	9/27/2009	10/27/2009	31	
	11/25/2009	12/19/2009	25	
<i>Total Jail Days = 91</i>				
6	7/17/2009	8/12/2009	27	Criminal Trespass; Disturbing the Peace; Obstructing Public Place; Public Drunkenness
	9/6/2009	10/6/2009	31	
	10/20/2009	11/21/2009	33	
	11/27/2009	12/16/2009	20	
	12/17/2009	12/31/2009	15	
<i>Total Jail Days = 126</i>				
7	7/28/2009	8/18/2009	22	Begging; Contempt of Court; Disturbing the Peace; Misrepresenting Name/Age/Address; Obstructing Public Place; Public Drunkenness; Resisting/Obstructing Officer
	9/16/2009	10/8/2009	23	
	10/25/2009	11/25/2009	32	
	11/28/2009	12/21/2009	24	
<i>Total Jail Days = 101</i>				
8	7/31/2009	9/2/2009	34	Assault; Disturbing the Peace; Obstructing Public Place; Public Drunkenness; Sleeping on Public Property
	9/18/2009	10/9/2009	22	
	12/10/2009	2/10/2010	62	
<i>Total Jail Days = 118</i>				
9	8/7/2009	9/7/2009	32	Contempt of Court; Criminal Trespass; Disturbing the Peace; Public Drunkenness
	9/17/2009	9/18/2009	2	
	9/30/2009	10/2/2009	3	
	10/2/2009	11/4/2009	34	
	11/21/2009	11/23/2009	3	
	11/27/2009	12/29/2009	33	
<i>Total Jail Days = 107</i>				
10	7/10/2009	8/27/2009	49	Criminal Trespass; Disturbing the Peace; Lewd Conduct; Obstructing Public Place; Public Drunkenness; Resisting/Obstructing Officer
	8/30/2009	9/6/2009	8	
	9/12/2009	9/14/2009	3	
	9/15/2009	9/25/2009	11	
	10/4/2009	10/31/2009	28	
	11/3/2009	12/18/2009	46	
	12/19/2009	12/28/2009	10	
<i>Total Jail Days = 155</i>				

Individual	Date of Arrest	Date of Release	Jail Days	Charges
11	8/4/2009	8/26/2009	23	Contempt of Court; Criminal Trespass; Disturbing the Peace; Littering; Obstructing Public Place; Public Drunkenness
	9/14/2009	10/19/2009	36	
	11/7/2009	11/27/2009	21	
	<i>Total Jail Days = 80</i>			
12	7/16/2009	8/8/2009	24	Criminal Damage to Property; Criminal Trespass; Disturbing the Peace; Possession of Stolen Things; Theft
	9/12/2009	10/6/2009	25	
	11/5/2009	11/27/2009	23	
	<i>Total Jail Days = 72</i>			
13	7/26/2009	8/17/2009	23	Criminal Impersonating; Misrepresenting Name/Age/Address; Obstructing Public Place; Public Drunkenness
	8/24/2009	9/16/2009	24	
	10/21/2009	1/19/2010	91	
	<i>Total Jail Days = 138</i>			
14	7/15/2009	7/17/2009	3	Begging; Criminal Trespass; Disturbing the Peace; Obstructing Public Place; Public Drunkenness; Resisting/Obstructing Officer
	7/26/2009	8/17/2009	23	
	9/10/2009	9/12/2009	3	
	9/16/2009	9/28/2009	13	
	10/12/2009	11/11/2009	31	
	11/29/2009	1/4/2010	37	
<i>Total Jail Days = 110</i>				
15	7/23/2009	7/25/2009	3	Begging; Criminal Trespass; Disturbing the Peace; Lewd Conduct; Obstructing Public Place; Public Drunkenness
	7/28/2009	8/29/2009	33	
	9/30/2009	10/1/2009	2	
	10/1/2009	10/22/2009	22	
	10/29/2009	11/3/2009	6	
	11/18/2009	12/10/2009	23	
<i>Total Jail Days = 89</i>				
16	7/10/2009	7/31/2009	22	Criminal Trespass; Customer Leaving with Glass; Obstructing Public Place; Public Drunkenness
	8/9/2009	9/1/2009	24	
	9/26/2009	10/22/2009	27	
	12/5/2009	12/8/2009	4	
<i>Total Jail Days = 77</i>				
17	7/3/2009	7/6/2009	4	Criminal Trespass; Disturbing the Peace; Misrepresenting Name/Age/Address; Obstructing Public Place; Public Drunkenness; Resisting/Obstructing Officer
	8/24/2009	9/15/2009	23	
	10/6/2009	10/29/2009	24	
	11/11/2009	12/7/2009	27	
	12/9/2009	1/6/2010	29	
<i>Total Jail Days = 107</i>				
18	7/14/2009	7/15/2009	2	Begging; Criminal Trespass; Obstructing Public Place; Obstructing Sidewalk; Putting Garbage in Street; Resisting/Obstructing Officer
	7/24/2009	7/25/2009	2	
	8/4/2009	8/26/2009	23	
	9/6/2009	9/9/2009	4	
	9/10/2009	9/10/2009	1	
	9/15/2009	10/9/2009	25	
	10/21/2009	11/12/2009	23	
11/25/2009	12/27/2009	33		
<i>Total Jail Days = 113</i>				
19	7/3/2009	8/3/2009	32	Criminal Trespass; Disturbing the Peace; Lewd Conduct; Public Drunkenness; Resisting/Obstructing Officer
	9/5/2009	10/9/2009	35	
	10/13/2009	11/12/2009	31	
	11/17/2009	1/2/2010	47	
<i>Total Jail Days = 145</i>				
20	7/24/2009	8/17/2009	25	Contempt of Court; Criminal Trespass; Disturbing the Peace; Theft
	8/19/2009	9/18/2009	31	
	10/9/2009	11/23/2009	46	
<i>Total Jail Days = 102</i>				
Overall Total Jail Days= 2,198				

This figure depicts a sample of the 1,270 individuals arrested multiple times during a six-month period for municipal offenses. The pattern in this sample suggests de facto institutionalization, with some individuals spending more time in confinement than at liberty.

The failure of the Municipal Court's community service program to divert these defendants from jail may stem from weaknesses in its design and implementation. Experience has shown that approximately 90% of offenders can be expected to complete a court-ordered term of service in a well-designed community service program.²⁰ In comparison, those sentenced by the Municipal Court completed only about 39% of the court-ordered hours in 2009.²¹

Successful community service sentencing programs reserve jail time as retribution in appropriate cases, where the punishment fits the crime. These programs also screen out individuals who pose unacceptably high risks, including those with severe alcohol and drug problems. The Municipal Court reverts to community service sentences as the default punishment, regardless of the nature of the offense, for people who cannot pay a fine. As a result, the Court sometimes imposes community service sentences for behavior associated with alcoholism and mental illness, a practice that does little to promote the interests of justice. The Court does not screen defendants or assess individual factors that could make them unsuitable for community service, and those who fail to complete court-ordered service are subject to jail, unless they are able to pay a fine.

FINDING 6. THE CITY ATTORNEY'S OFFICE DID NOT EFFECTIVELY SCREEN COMPLAINTS AND HAD NOT IMPLEMENTED DIVERSION PROGRAMS.

The City Attorney is charged with representing the City's interests in the enforcement of local laws and acts as the prosecutor for charges filed under the City's criminal code. In this role, the City Attorney's office has elected to act simply as a case processor, whose caseload is dictated by police activity. The sole focus is to achieve convictions and impose sanctions for petty offenses. As a result of this approach, these attorneys push more than 35,000 cases through the Municipal Court each year, with no meaningful screening, diversion programs, or alternatives to prosecution. The sheer volume of prosecutions precludes a meaningful assessment of the evidence or individual circumstances underlying each complaint. There appears to be little consideration about whether this approach is cost effective or serves the primary objectives of the criminal justice system.

In addition to evidence that the indiscriminate prosecution of petty offenses is costly and ineffective, the practice raises serious constitutional issues, such as those presented in *Dear v. Shea*, discussed in Finding 5, as well as in another lawsuit filed against the City in 2009. In *City of New Orleans v. Baham*, a defendant prosecuted for begging sought to have the charges quashed on the grounds that the City ordinance prohibiting begging on public streets is unconstitutional.²² After the Municipal Court refused to dismiss the charges, the defendant asked the Louisiana Supreme Court to invalidate the ordinance. To settle the case, the City Attorney's office eventually

²⁰ Greene, Judith A., "The New York City Community Service Sentencing Program (4th Interim Report)." Vera Institute of Justice, March 1, 1984. <http://www.vera.org/content/new-york-city-community-service-sentencing-program-fourth-interim-report>

²¹ Data provided by Municipal Court.

²² *City of New Orleans v. Baham*, Application for Writ of Certiorari, State of Louisiana Supreme Court (2009), Writ Denied 2009-KK-2109 (January 5, 2010).

dropped the charges and, in late 2009, agreed to stop prosecuting cases under the begging ordinance.²³

The alternative to the City Attorney’s prosecutorial model is an approach known as community prosecution. According to the American Prosecutors Research Institute, an arm of the National Association of District Attorneys, community prosecution is a proactive, problem-solving approach that is particularly well suited to filling gaps in services and available sanctions for minor offenses. The community prosecutor takes an active role in screening complaints and implementing diversion programs for problems that can be managed more effectively outside the criminal system. This is a practical approach that often involves partnerships with other agencies, such as health care providers, social services, housing agencies, and businesses to find the most effective and sensible solutions to complex social problems.²⁴

FINDING 7. THE FUNDING MECHANISM FOR HOUSING DETAINEES AT OPP DID NOT PROVIDE ADEQUATE ACCOUNTABILITY FOR THE USE OF RESOURCES.

State law requires parish governments in other parishes and the City of New Orleans in Orleans Parish to pay for housing detainees in parish jails. Since the 1990s, the City has funded OPP expenses by paying the Sheriff a per diem for each detainee, rather than establishing a budget of operating costs.

The per diem funding arrangement was created through a consent decree filed in a federal lawsuit. The class action lawsuit, *Hamilton v. Morial*,²⁵ filed by prisoner advocates in federal court in 1969, alleged that conditions and practices at the OPP, including lack of access to medical care, violated the United States Constitution. The lawsuit became one of the longest running civil rights cases in history, spanning 40 years. Through this case, the Sheriff repeatedly sought court action to force the City to increase funding for care of prisoners. In 2003, the City and Sheriff entered into an agreement that requires the City to pay \$22.39 per day for each inmate and an annual lump-sum for medical care.²⁶

The per diem rate paid by the City has remained unchanged since 2003. Although it is difficult to determine the amount needed to provide acceptable standards of care at OPP, data from other facilities indicate that the current \$22.39 rate is inadequate. By way of comparison, a 2003 report prepared by the Virginia State Legislature on operating costs for local and regional jails showed a statewide average per diem cost of \$54.81, with costs for individual facilities ranging from \$29.81

²³ Notwithstanding the 2009 agreement, OIG staff observed Municipal Court cases in 2010 in which defendants were prosecuted for begging. In one case, the judge refused to accept a guilty plea from a defendant, based on her understanding that the City had adopted a policy against prosecuting begging charges. The attorney representing the City in that case appeared to be unaware of the City’s agreement.

²⁴ “What Does it Mean to Practice Community Prosecution?” American Prosecutors Research Institute, February 2004. http://www.ndaa.org/pdf/what_does_mean_practice_cp.pdf

²⁵ *Hamilton v. Morial*, 2005 U.S. Dist. LEXIS 36519 (E.D. La., Dec. 8, 2005).

²⁶ *Hamilton v. Morial* was dismissed in 2009, at the request of the plaintiffs, but the court retains jurisdiction over the agreement governing per diem and lump-sum payments from the City.

to \$125.51, based on a variety of factors.²⁷ Currently, the State of Louisiana pays a per diem of \$26.39 and the U.S. Marshal's Service pays \$43.00 to house state and federal inmates at OPP.

According to a July 29, 2010, letter from the Sheriff to the Mayor, the Sheriff's office has operated at a deficit for years, using reserves and borrowed funds to cover the costs of jail operations. In his letter, the Sheriff described the financial shortfall as unsustainable and requested an increase in the City's per diem rate from \$22.39 to \$27.00. He also said that actual medical expenses for City prisoners far exceed the \$3.2 million City payment, and asked that the City increase its payment for 2011 to cover actual costs, estimated at more than \$4.8 million. The Sheriff warned that if the City will not voluntarily increase its payments, he will seek a modification of the consent decree from the federal court.

In addition to the Sheriff's claim that jail operating costs are underfunded, a 2008 operation review of the OPP, performed at the Sheriff's request as a technical assistance project of the National Institute of Corrections, found that the Sheriff's office was facing a dire financial crisis. According to the 2008 report, the crisis was due in part to the inadequate per diem rate and in part to the office's accounting weaknesses and failure to prepare financial analyses that would enable management to make informed decisions. The operational review also documented serious deficiencies in many areas of jail operations, including inmate supervision, facility maintenance and sanitation, medical care, and mental health treatment.

In 2008, the U.S. Department of Justice (DOJ) conducted an investigation of the conditions of confinement at the OPP, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997. The DOJ presented the Sheriff with a report in September 2009, describing conditions that did not meet constitutionally mandated standards. The deficiencies documented in the report are serious, pervasive, and disturbing. The DOJ report describes a pattern and practice of unnecessary and inappropriate uses of force by correctional officers, a high incidence of inmate on inmate violence, inadequate assessment and treatment of mental illness, unsafe medication management, poor sanitation and pest control, and unsanitary and dangerous food handling. The DOJ is authorized by law to initiate a lawsuit to force the Sheriff's office to correct these problems, but has so far refrained from doing so in order to work toward a cooperative resolution. Whether or not the DOJ takes legal action, it is clear that the Sheriff must institute changes in jail operations that could result in higher costs. These costs will be borne by the City, either through a higher per diem or some other compensation method agreed to by the City and Sheriff.

Under the current funding arrangement, the City has no input into the Sheriff's budget; as an independently elected official, the Sheriff has sole authority over staffing levels and spending decisions. In recent years, the annual budget submitted by the Sheriff to the City Council has contained little information to show how the funds provided by the City are used. The Sheriff's budget submission for the 2011 fiscal year included more detail than in past years, but still primarily reported expenditures as broad functional categories, making it difficult to assess the actual cost of services provided to City inmates.

²⁷ "Jail Cost Report FY 2003." State of Virginia's Compensation Board Report to the General Assembly, November 1, 2004. <http://www.scb.state.va.us/Docs/jail%20cost%20report%20fy2003.pdf>

The lack of budget transparency is complicated by the per diem payment arrangement, which gives the Sheriff a financial incentive to maximize the jail count. Although the number of arrests and the lengths of jail stays are determined by other entities – the police and the courts – the Sheriff is in charge of processing the information that moves detainees in and out of the jail system. The OIG found inefficiencies in the Sheriff’s processes that cause delays in releasing detainees. These delays are unfair to detainees and burdensome to the City, but under the current compensation system, the Sheriff lacks a financial motivation for improving the speed of information processing.

The Sheriff’s office developed the information technology systems used for booking and jail management, and beginning in the 1980s, also developed the docket management and minute clerk system used by the Orleans Parish Criminal District Court (CDC).²⁸ The CDC’s information technology system is still maintained by the Sheriff’s office and is partially integrated with the jail management system. Under this system, booking information entered by the Sheriff’s office automatically creates a record in the CDC’s database for charges filed under state law.

Data reviewed by the OIG shows that, despite the partial integration of booking and court records, inefficient systems are still used for crucial communications. One example is the notification sent by the Sheriff to inform a court that an individual with an outstanding “capias” or “warrant” issued by that court has been arrested.²⁹ Timely notice is important to enable the court to set a hearing to resolve the matter promptly. Under some circumstances, a delay in resolving an outstanding capias matter will result in an unnecessary delay in releasing the individual from detention. The OIG’s review of booking data identified 520 individuals arrested with an outstanding capias. A random sample of 107 of these arrests was evaluated to determine whether the court was notified of the arrest in a timely manner. For this sample, an average of 7 days elapsed from the date of arrest to the date the capias notification appeared on the court docket. Once the notification appeared on the docket, there was often an additional delay of several days before the actual court hearing.

The OIG interviewed deputies in the Sheriff’s office about the capias notification process. In cases where the Sheriff’s personnel are aware of an outstanding capias, the Sheriff’s Records Division will prepare paperwork on a form to be hand-carried to the court. The deputy responsible for making deliveries picks up paperwork approximately every other day, and after paperwork is delivered to the court, further delay may occur if the court clerk does not immediately enter the notification into the docket system.

Sheriff’s deputies told the OIG that this reliance on hand-delivered paper forms delays other crucial communications, including notices of refusal of charges by the District Attorney and court orders to release detainees. According to these deputies, delays in release occur on a regular basis because paperwork generated by the court is not delivered to the Sheriff’s office on the same day.

²⁸ The Criminal District Court has jurisdiction over state criminal matters in Orleans Parish, except for the lesser offenses that have been delegated to the Municipal Court.

²⁹ A capias is a court order for the arrest of a named person, often for failing to pay a fine or failing to appear. The named person should be brought before the court as soon as possible to resolve the outstanding matter.

If court personnel entered this data electronically into an integrated system, the Sheriff's office could receive a judge's order to release a detainee or a DA's decision not to charge the individual substantially sooner and could begin to process the release earlier. We were not able to quantify the number of additional jail days that result from these communication delays, but Sheriff's personnel confirmed that delays of one or more days are routine.

Inefficiencies in information systems provide an example of an operational problem that the Sheriff has no financial incentive to remedy under the current per diem system. With respect to OPP operations, the City is required to pay for services over which it has no control. If payment were based on actual costs, rather than a per diem, both parties would have the same incentives to develop cost-effective operating practices. Although the evidence indicates that the current per diem rate is inadequate, it would be imprudent for the City to blindly pay increased costs without increased budget transparency and assurances that funds are used appropriately.

VII. CONCLUSION AND RECOMMENDATIONS

A. CONCLUSION

This report discusses changes in NOPD practices and in the City's policies for dealing with petty crimes that could reduce the amount the City currently spends to incarcerate individuals for municipal and traffic code offenses and out-of-parish warrants. The categories of arrests and detentions covered in this report, however, accounted for only about 11.5% of the total jail days served during the period of our review, so these changes alone will not dramatically shrink the OPP population. Other work currently underway by the Criminal Justice Leadership Alliance may lead to changes in other areas, such as pretrial detention of defendants charged with state crimes, which could have a greater impact on the overall rate of incarceration and its cost to the City.

Reducing the OPP population through appropriate policy changes can produce cost savings for the City. However, there are fixed costs associated with jail operations, and reducing population will not decrease operational costs by the same proportion. Moreover, there is strong evidence that the \$22.39 per diem the City currently pays the Sheriff to house inmates is inadequate. The budget crisis facing the Sheriff's office and the serious operational deficiencies reported by the DOJ will put pressure on the City to increase jail funding. Rather than reducing spending, the City is likely to be wrestling with ways to control mounting costs in future years. This prospect makes it critical to change arrest and detention practices and implement coordinated criminal justice policies that use resources effectively.

The recommendations contained in this report can help reduce ineffective arrest and detention practices that waste criminal justice resources. The City has already taken steps to change some of these policies, including the 2008 ordinance intended to reduce arrests for municipal offenses. However, the data we reviewed from the latter half of 2009 and our 2010 interview with NOPD officials indicate that it will take a concerted and sustained effort to bring the City's practices in line with new policies.

We note that former Mayor Ernest N. Morial established the Mayor's Criminal Justice Coordinating Council (MCJCC) in 1979 to recommend changes to the City's criminal justice policies. In a December 1980 report, the MCJCC focused on the same practices described in this report and warned that:

The system can no longer afford to arrest, prosecute and incarcerate everyone engaged in a misdemeanor offense since this practice burdens the court and corrections components as well as NOPD resources.³⁰

³⁰ Brown and Richards, "Part II Crimes," 49.

The MCJCC made specific recommendations in the 1980 report, including issuing summonses rather than making arrests for minor offenses, and diverting cases that are unsuitable for prosecution to other community-based social service programs.

The data evaluated in 2009 shows that the City was still adhering to the practices the MCJCC described as wasteful and ineffective 30 years ago. The City has recently begun to adopt policies to bring about changes recommended in 1980, but the practice of arresting and jailing people for minor infractions is based on ingrained attitudes that may be resistant to change. To change longstanding practices, the City will need to communicate clear expectations and hold officials in leadership roles accountable for implementing the new policies.

B. RECOMMENDATIONS

RECOMMENDATION 1. THE NOPD SHOULD ENSURE THAT ALL POLICE OFFICERS UNDERSTAND AND COMPLY WITH RECENT CHANGES IN POLICY AND LAW REGARDING ARRESTS FOR MUNICIPAL AND TRAFFIC VIOLATIONS, ATTACHMENTS, AND OUT-OF-PARISH WARRANTS.

To the extent that NOPD officers have historically operated under an assumption that making more arrests indicates more effective police work or justifies more overtime work, the NOPD leadership must convey a clear message that unnecessary arrests that divert police time from serious crime are discouraged. The OIG found that the NOPD was not preparing reports, as required by ordinance, to track the numbers of summonses versus arrests for municipal violations. Without tracking these numbers and enforcing the requirement that officers prepare written justifications for arrests, the NOPD will not be able to hold commanders or officers accountable for arrest practices.

The OIG also found that in October 2010, the NOPD policy research division had not been instructed that a new state law, enacted in 2010, makes it clear that police officers are not required to arrest individuals with out-of-parish warrants for minor offenses. If the NOPD requires clarification from the City Attorney on this matter, it should be obtained immediately, and all officers should be instructed on this important change.

RECOMMENDATION 2. THE CITY ATTORNEY'S OFFICE SHOULD DEVELOP A CAPACITY TO SCREEN MUNICIPAL CHARGES AND IMPLEMENT DIVERSION PROGRAMS AND SENTENCING ALTERNATIVES.

This approach was recommended in the MCJCC's 1980 report, which reported that funding had recently been granted to implement a City Attorney's Screening and Diversion Program. According to the report, the newly established program was expected to play an important role in preserving court and jail resources and finding more cost-effective solutions to chronic social problems:

The City Attorney Screening and Diversion Program has been established to screen cases prior to trial to determine those which are appropriate for referral to the Municipal Court Services Program or other community based social service programs. The screening function now allows the City Attorney to anticipate many of those cases which will ultimately be dismissed and to divert those cases out of the system before they are allowed to crowd court dockets and to unnecessarily burden court resources. Moreover, recognizing that some cases require alternative intervention in order to arrive at successful resolution, the diversion component facilitates referral to include this and appropriate counseling and treatment services.³¹

Although a screening and diversion program was apparently initiated in 1980, it did not last. In a 2010 interview, the City Attorney said that the office plays no role in determining which cases are prosecuted in Municipal Court. The office employs four attorneys to handle Municipal Court cases on a part-time basis, who are allowed to simultaneously maintain private law practices. The City Attorney told us that she would like to prohibit the practice of criminal defense by City prosecutors, but that no such restriction currently exists.

The City's current approach to prosecuting cases is not well suited to dealing with the challenges the City faces. The reliance on part-time attorneys, perhaps as a cost-savings measure, is ill-advised because it risks conflicts of interest and because it undermines the professionalism of the prosecutor's office. These part-timers have no mandate, no time, and no incentive to play a proactive role in setting criminal justice policy or developing more effective solutions for chronic problems.

The City Attorney told OIG staff that she would like to establish a criminal justice coordinator position within the office to implement a diversion program and sentencing alternatives. Such a position could be a first step toward implementing changes, but it will also be necessary to refocus the office's basic approach to prosecution. The funding needed to build the capacity of the City Attorney's office would be more than offset by reducing the burden of unnecessary and ineffective prosecutions.

RECOMMENDATION 3. THE CITY SHOULD ESTABLISH ALTERNATIVES FOR ENFORCING MUNICIPAL CODE COMPLIANCE, INCLUDING DECRIMINALIZATION OF SOME OFFENSES.

Employing the resources of the police, courts, and jails to enforce ordinances is costly and it would be sensible to consider less drastic means to promote compliance. One alternative involves nothing more than establishing policies that call for police to issue warnings in some instances rather than elevating minor infractions to cases that bog down the criminal courts. Another alternative is to rely on civil fines to enforce some ordinances rather than burdening the criminal justice system with a large volume of minor cases.

³¹ Brown and Richards, "Part II Crimes," 51.

Some believe that the threat of jail is useful or even necessary to motivate people to pay fines. But using jail as a collection tool is costly and not always effective, particularly because the Municipal Court does not routinely assess a defendant's ability to pay when imposing a fine. The OIG found that the City currently devotes inordinate resources to attempting to collect fines through the criminal justice system. In the arrest data we reviewed, we found many arrests on municipal attachments, which are sometimes issued for non-payment of fines. We also observed jail sentences imposed for contempt, based on failure to pay fines. The expense of these collection efforts, which involve the police, the City Attorney's office, the Municipal Court, and jail time, make them counter-productive.

The City has the option to use civil remedies to collect fines, both in criminal and civil cases. Louisiana law provides that a court imposing a fine in a criminal case may sign a judgment to recover funds through civil remedies and through income tax refund interception.³² For offenses where fines are determined to be the most appropriate sanction, exploring civil remedies for non-payment could relieve the criminal justice system of this unnecessary burden.

RECOMMENDATION 4. THE CITY AND THE SHERIFF SHOULD ESTABLISH A METHOD FOR FUNDING OPP OPERATIONS AT THE APPROPRIATE LEVEL BASED ON A TRANSPARENT BUDGET AND COST-EFFECTIVE OPERATIONAL PRACTICES.

The Sheriff's budget crisis and the DOJ's report of operational deficiencies at the OPP will put pressure on the City to increase current OPP funding. These circumstances make it urgent to change arrest and detention practices that unnecessarily increase OPP population without improving public safety. At the same time, the City must demand more accountability for the use of funds than the Sheriff has provided in recent years.

The Sheriff's office, like other political subdivisions, is subject to the Louisiana Local Government Budget Act, which sets out specific requirements for preparing a comprehensive budget for each fiscal year. The budget must include estimates of all receipts and revenues, itemized by source, and all proposed expenditures itemized by department, function, and character.³³ To satisfy this law and provide a meaningful accounting for the use of City funds, the Sheriff must prepare an itemized budget of revenues and expenditures for jail operations, based on a chart of accounts developed by the Louisiana Legislative Auditor.³⁴ This City needs this information to determine the funding required to maintain acceptable standards of jail operation.

³² La. C.Cr.P. Art. 886.

³³ La. R.S. 39:1305.

³⁴ La. R.S. 39:1304.



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CITY ATTORNEY

May 17, 2011

E. R. Quatrevaux
Inspector General
City of New Orleans
525 St. Charles Ave.
New Orleans, LA 70130

Dear Mr. Quatrevaux,

Please accept this response of the City Attorney's Office to the Report of the Inspector General, entitled *City of New Orleans Arrest and Detention Policies for Non-Violent Misdemeanors and Traffic Offenses*, OIG-I&E-10-008. This response does not address Finding 3 or Finding 5, because these findings are not relevant to the operation or policies of the City Attorney's Office. I trust that the responses of the Orleans Parish Sheriff's Office, the New Orleans Police Department, and the City of New Orleans Municipal Court provide adequate response to these findings.

I note also that the findings and recommendations in this Report are based on data collected between July 1, 2009 and December 31, 2009, and therefore does not reflect the current state of affairs or the reforms more recently implemented. One of these reforms is the Municipal Court Working Group that meets on a monthly basis to explore methods and practices that will assist in improving the functions of the Municipal Court. This group consists of members from all departments and agencies that work in the Municipal Court system, i.e., the City Attorney's Office, the Sheriff's Office, the New Orleans Police Department, the Indigent Defenders Office, Municipal Court Judges, etc.

With the Municipal Court Working Group, the commitment of the current administration, and the focus of the City Attorney's Office on efficiency and accountability in all aspects of its operation, including its Municipal Court section, we had already begun addressing many of the challenges noted in this Report. The City Attorney's Office has in place plans to implement even more changes that will increase efficiency and serve justice. Likewise, we are open to receiving, reviewing, and considering all suggestions from this Report, the Municipal Court Working Group, the Vera Institute, the Sheriff's Office, the Municipal Court Judges, and all other knowledgeable groups.

Below are more specific responses of the City Attorney's Office to the findings and recommendations of this Report.

Finding 1. In 2009, the arrest rate in the City of New Orleans was more than three times the national average for cities with more than 250,000 inhabitants.

The Municipal Court Working Group has been instrumental in leading the initiative to create municipal ordinances to allow the New Orleans Police Department to issue summonses instead of arresting defendants for various misdemeanor offenses that had been formerly only chargeable as state offenses. This change went into effect January 30, 2011. Since that date, there has been a noticeable increase in the number of summonses issued instead of arrest, thus drastically reducing the incarceration rate for defendants charged with municipal and traffic offenses. Unfortunately, the Reports findings and recommendations relied on outdated data and did not capture this information.

Finding 2. Arrests related to municipal code and traffic violations resulted in more than \$3 million in jail costs to the City of New Orleans in 2009.

As discussed above, the municipal ordinance changes that went into effect on January 30, 2011 have drastically reduced the incarceration rate for municipal code and traffic violations. The reduced incarceration rate has led to a proportional reduction in the City's per diem and other jail costs.

Finding 4. More than 14% of the arrests made in 2009 were based on warrants issued in other parishes for traffic violations and other minor infractions.

In 2009, the year the Report's data was collected, the New Orleans Police Department was arresting defendants for traffic warrants from other parishes pursuant to an opinion issued by the Louisiana Attorney General on December 18, 2007. This opinion stated in pertinent part that an officer was legally required to arrest and book anyone with an out-of-parish warrant, even if the warrant related to nothing more than an unpaid traffic fine. To that end, the New Orleans Police Department was duty-bound to follow the law and had no discretion as to whether to arrest these defendants. More recently, the law has been changed to allow officers discretion on whether to arrest or issue a summons in this circumstance. Current data should reflect a reduced arrest rate on out-of-parish traffic warrants.

Finding 6. The City Attorney's Office did not effectively screen complaints and had not implemented diversion programs.

The City Attorney's Office is charged by the Home Rule Charter with directing and supervising the legal affairs of the City, including instituting and prosecuting any and all suits, civil or criminal, as may be deemed necessary for the assertion or protection of the rights and interests of the City.

The City Attorney's Office acts as municipal prosecutor for charges filed under the City's criminal code. Municipal charges are not petty offenses, but instead are crimes that affect the life, safety, and welfare of the citizens of New Orleans. As the City's prosecutors, part of the city attorneys' duties are to prosecute criminal defendants and to secure convictions. However, the main duty of the municipal prosecutors in the City Attorney's Office is to impartially pursue

justice in all cases. Sometimes, justice requires criminal prosecution and conviction, while in other instances, it may require diversion, alternative resolutions, and/or dismissals.

Contrary to the Report's assertion, the City Attorney's Office does not indiscriminately prosecute municipal offenses without a meaningful assessment of the evidence or individual circumstances underlying each complaint. Instead, the City Attorney's Office screens, reviews, and assesses every case within 48 hours of an arrest.

In the municipal and traffic justice system, the legislative branch creates the laws and defines offenses and the judicial branch decides individual cases and imposes sanctions. The City Attorney's Office, as it is charged to do, prosecutes those cases that require prosecution. The city attorneys are the lawyers that represent the City: the jurisdiction and duties of the City Attorney's Office are dictated by ordinance and the charter; the City Attorney's Office does not independently initiate legislation; and the City Attorney's Office's does not drive policy directives.

Finding 7. The funding mechanism for housing detainees at OPP did not provide adequate accountability for the use of resources.

As the Report notes, the per diem funding arrangement was created through a federal consent decree. The consent decree in the case of *Hamilton v. Morial* directs the City to pay the Sheriff's office \$22.39 per day for each inmate and an annual lump sum for medical care. The City and the Sheriff are currently considering modification of the consent decree. Until the federal court modifies its decree, the City is legally bound to maintain the current per diem arrangement.

Recommendation 1. The NOPD should ensure that all police officers understand and comply with recent changes in policy and law regarding arrests for municipal and traffic violations, attachments, and out-of-parish warrants.

Although this recommendation is directed at the New Orleans Police Department, the City Attorney's Office recognizes that it can play a role in educating the police force regarding changes in the law regarding arrests for municipal and traffic violations, attachments, and out-of-parish warrants, and it is willing to assist where necessary. In addition, the City Attorney's Office is providing quality of life training, and will continue to offer that training on an annual basis.

Recommendation 2. The City Attorney's Office should develop a capacity to screen municipal charges and implement diversion programs and sentencing alternatives.

As discussed above, the City Attorney's Office does currently screen all municipal charges. Since the time of the investigation for this report, the City Attorney has hired a Criminal Justice Coordinator who is in charge of diversion program issues and sentencing alternatives.

The system of part-time prosecutors in the City Attorney's Office has been in place for decades. The underlying principle is to hire and retain well-experienced and efficient attorneys. These part-time municipal prosecutors at all times act with the professionalism and ethics required by

the City Attorney's Office. Moreover, the City Attorney's Office does not have a part in setting the City's criminal justice policy. Nevertheless, the current City Attorney and Chief Administrative Officer are reviewing the system and exploring making all attorneys full-time.

Recommendation 3. The City should establish alternatives for enforcing municipal code compliance, including decriminalization of some offenses.

Although it is the legislative branch, and not the City Attorney's Office, that has the sole authority to determine what is and is not a crime, the City Attorney's Office will continue to discuss these issues with all partners in the criminal justice system.

Additionally, the Report recommends that the City Attorney's Office should pursue civil fines to enforce some ordinances rather than burdening the criminal justice system with a large volume of minor cases. While civil remedies may be available to the City to collect fines, to do so would be time consuming, unduly burdensome, and, more importantly, an inefficient use of City resources.

Recommendation 4. The City and the Sheriff should establish a method for funding OPP operations at the appropriate level based on a transparent budget and cost-effective operational practices.

The City is currently under a court order, decreed in *Hamilton v. Morial*, requiring the City to pay the sheriff a per diem. However, all members of the criminal justice system, including the City Attorney's Office, are reviewing this issue and are committed to maintaining acceptable and cost-efficient standards of jail operation.

Thank you for considering this response to the Report. I hope that this letter sufficiently explains the position and future direction of the City Attorney's Office, and would welcome the opportunity to further discuss these issues with you.

With Kind Regards,



Charlene Larche-Mason
Chief Deputy City Attorney
Traffic and Municipal Courts

cc: Nannette Jolivette Brown, City Attorney