

# Detention of Alleged Probation and Parole Violators in Orleans Parish Prison

NOVEMBER 2015

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## MESSAGE FROM THE DIRECTOR

Jails are mainly intended to detain people awaiting trial who present a danger to public safety or risk of flight. In *United States v. Salerno*, the Supreme Court stated, "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." But this principle is routinely ignored. Vera's analysis of people in New Orleans's jail alleged to have violated the terms of their probation or parole found that detention prior to adjudication appears to be similarly overused for this group.

The overuse of jails is costly to taxpayers and has profoundly negative implications for the people we detain, their families and communities, and public safety. After decades of hyper-incarceration, policymakers throughout the country are rethinking what is needed not only to keep communities safe but to reduce the harms of an overreliance on incarceration. We must start by looking at who we are putting in our jails, how long we detain them, and whether they should be there in the first place.

A handwritten signature in black ink, appearing to read 'Jon Wool', with a stylized, cursive script.

Jon Wool  
Director, New Orleans Office  
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# Executive summary

As states have moved to reduce their prison populations, attention has turned toward the role that jails play in driving mass incarceration. In New Orleans, the high local detention rate and associated costs have prompted a review of local detention practices. Among the largest groups of people detained in the city's jail, the Orleans Parish Prison (OPP), are probationers and parolees accused of violating one or more conditions of their supervision. In 2012, this group represented roughly 19 percent of OPP's population, was disproportionately young black males, and cost the city more than \$8.8 million.<sup>1</sup>

This policy report discusses an analysis conducted by the Vera Institute of Justice's New Orleans Office (Vera), in collaboration with the state Division of Probation and Parole, to measure the use of detention for people suspected of probation and parole violations in OPP in 2012; identify circumstances when detention might not be used appropriately; and recommend practice changes to safely reduce detention of this group and the related costs.

Vera concluded that detention of alleged probation and parole violators appears to be overused for four main groups of supervisees in New Orleans:

- > people who, after adjudication of their alleged violations of probation or parole, are released to the community or receive non- or low-incarceration sentences;
- > people detained for alleged technical violations, such as failure to report to the supervising officer, combined with failure to pay supervision fees;
- > people arrested for new felony charges who are detained without adequate consideration of their circumstances, such as the nature of the new charges or the risk the supervisee poses to public safety; and
- > people in all circumstances who are detained for lengthy periods.

Based on this analysis, Vera recommends the following practice changes in New Orleans, and for consideration elsewhere:

- > reduce initial use of detention by maximizing the use of administrative sanctions to respond to technical violations and by revising internal policies at the local probation and parole office to guide officers in their discretionary use of detention;
- > avoid the prolonged detention of supervisees by routinely reviewing the detention status of alleged violators;

- > coordinate roles among system actors to develop common procedures for requesting or declining initial detention when appropriate for probationers with new felony charges and for the parole board's involvement in detention decisions for parolees;
- > make proceedings for probation cases more effective, by establishing a standard time frame for the period between arrest and disposition of violations in all cases in which detention is deemed necessary; and
- > ensure that data regarding the use of detention for alleged probation and parole violators is accurately and thoroughly collected, shared, monitored, and analyzed.

## GLOSSARY OF TERMS USED IN THIS REPORT

**Adjudication** of alleged probation and parole violations is a judge's or parole board's determination of an alleged violator's guilt and the appropriate sanctions.

A **detainer** places a hold on a person, preventing his or her release from jail until adjudication or until the judge or parole board orders the person released. It is requested by probation and parole officers.

In this report, **detention** refers to the confinement of adults before adjudication.

**Good-time release** is the status of state prisoners who serve the last portion of their sentence under community supervision after accumulating sufficient "good time" credits for good behavior or completing programming in prison.

When someone on probation or parole allegedly commits a new offense, the **new charge** can be a ground for violation proceedings and detention.

**Parole** allows people sentenced to prison to serve the last portion of their sentence in the community under supervision of a parole agency.

**Probation** is the form of community supervision applied when a sentencing judge imposes a suspended prison sentence under the supervision of a probation agency.

**Revocation** is an order by a judge or parole board to rescind a person's probation or parole because of a failure to comply with the terms of supervision. When this happens, a judge or parole board may impose all or part of the original jail or prison sentence that was suspended.

A **technical violation** is a supervisee's failure to comply with a condition of supervision other than by committing a new offense (see "new charge"), such as failure to report to a probation officer.

*City leaders are focusing on who is detained in Orleans Parish Prison and the drivers of detention.*

## Background

In 2005, the local incarceration rate in New Orleans was more than five times the national average.<sup>2</sup> Hurricane Katrina and its aftermath exposed this and other pervasive troubles afflicting the city's criminal justice system, particularly the extraordinary overuse of jail.<sup>3</sup> Ten years later, through the efforts of government agencies and community-based organizations, the city has reduced the number of people it incarcerates on any given day by more than two-thirds.<sup>4</sup> But New Orleans still uses detention beyond its needs, with a jail population of roughly 1,800 and a local detention rate double the national urban average.

As government and civic leaders in New Orleans are challenging the use of incarceration as the default response to crime, and the harms of over-incarceration are becoming ever more plain, the city has committed to a jail of no more than 1,438 beds.<sup>5</sup> Moreover, the city faces the daunting cost of bringing OPP in line with constitutional standards as laid out in a federal consent decree.<sup>6</sup> Toward this end, city leaders are focusing on who is detained in OPP and the drivers of detention. The number and length of stay of alleged probation and parole violators make it a critical group to examine—especially because this is a group that is rarely studied.<sup>7</sup>

### DISCRETION IN USING DETENTION

People under community supervision must abide by a predetermined set of rules such as reporting to a probation or parole officer, seeking employment, and refraining from illegal drug use and other criminal activity. Violations of these rules may result in a range of possible sanctions, the most serious of which is the revocation of supervision and reinstatement of a prison sentence. As judges, probation and parole officers, and the parole board consider violations and potential sanctions—sometimes a lengthy process—alleged violators may be detained in jail. In Louisiana, the decision to jail a probationer or parolee suspected of violations is mostly discretionary. There are two levels of decision making. First, officers of the state Division of Probation and Parole determine the appropriate course of action based on the alleged violation, including an option to request that the person be held in jail until adjudication. Second, the judge (for probation) and parole board (for parole and good-time release) determine whether the violation was committed, what sanction is appropriate, and, while those determinations are pending, whether the person should be detained.

Judges, probation and parole officers, and the parole board have considerable discretion when faced with alleged violations, both pre- and post-adjudication. Louisiana law does not require detention for a person suspected of a probation or parole violation; alleged violators can remain under supervision in the community until the violations are adjudicated.<sup>8</sup> Discretion is limited only when parole officers seek revocation for an alleged parole violator, as detention is the sole statutorily authorized trigger for violation proceedings.<sup>9</sup> However, parole

officers can request that the parole board impose additional conditions without seeking detention or filing for revocation.<sup>10</sup> Similarly, judges in probation cases can adjudicate alleged violations without detaining a supervisee.<sup>11</sup>

Discretion is essential in allowing system actors to make individualized decisions, a fundamental principle of criminal justice systems in the United States. As the findings of Vera's analysis in New Orleans show, the law's allowance for discretion in alleged violation cases does not mean it is widely used in individual cases. Not only are large numbers of alleged violators detained, many of them are detained with little to no consideration for their individual circumstances and the appropriateness of detention. It is crucial to analyze the use of discretion and understand factors that might influence system actors, such as large probation and parole supervision caseloads and implicit or explicit rules concerning certain types of violations.

For any alleged violations, supervisees are entitled to a violation hearing to contest the allegations before the sentencing judge or parole board (called the Committee on Parole in Louisiana).<sup>12</sup> The fact that an alleged violator is detained pre-adjudication does not predict the outcome of the violation process. Indeed, a detained person can be found not guilty of the violation and sent back to supervision, just as a person who is not detained can be revoked and sent to prison. Even when a person is guilty of a violation, probation and parole officers, judges, and parole boards typically have discretion to choose from a range of possible responses.<sup>13</sup> (In Louisiana, a probation and parole officer is responsible for both types of supervision.) At one end of the spectrum, the judge may reprimand a supervisee or send him or her back to supervision with additional conditions; at the other, the judge or parole board can revoke supervision and send the person to prison. A judge or parole board is not obligated to revoke probation or parole; the only exception is automatic revocation for a parolee facing a new felony charge.<sup>14</sup>

Probation and parole officers also have a wide array of sanctions at their disposal before involving the judge or board. Since 2011, if previously authorized by a judge or parole board and if the supervisee consents and admits to a violation, probation and parole officers in Louisiana can directly impose administrative sanctions in case of a technical violation without the judge's or parole board's involvement.<sup>15</sup>

## Consequences of detaining alleged violators

In New Orleans, supervisees are routinely detained in OPP while they wait for a hearing on alleged violations. The use of such detention has little, if any, apparent relationship to whether people will be sanctioned if the violation is upheld, given that many detention episodes result in a return to supervision.

No research has concluded that holding alleged probation and parole violators in jail has an impact on recidivism. There is, however, evidence that

*Judges, probation and parole officers, and the parole board in Louisiana have considerable discretion when faced with alleged violations.*

incarceration, when used as a post-adjudication sanction, is no more effective in reducing recidivism than community-based sanctions are.<sup>16</sup> A growing body of research also shows that responses to violations are most effective when they are swift and certain.<sup>17</sup> Per these findings, the lengthy detention of alleged violators is unlikely to produce any public safety benefits.

In addition, deprivation of freedom has profound negative effects for individuals, their families and communities, and public safety. As with pretrial detention, detaining probationers and parolees can greatly destabilize them, risking the loss of job, income, and housing, all of which jeopardize their chances of success in the community and increase chances of immediate and future recidivism.<sup>18</sup>

## TYPES OF VIOLATIONS AND THE VIOLATION PROCESS

There are two ways that probationers and parolees can violate the conditions of their supervision: new offenses and technical violations. First, if probationers or parolees allegedly commit a new offense, they will be facing new charges in the criminal justice system in addition to the violation process. In New Orleans, the status of the new case has implications for the violation process: for example, if a judge decides not to detain someone for an alleged violation, the person might not be able to be released if she or he cannot pay a financial bond in the new case. Second, when probationers and parolees break the rules of supervision other than by committing a new offense, it is considered a technical violation. The process is more streamlined for technical violations that do not involve another criminal case.

If a supervisee is arrested for committing a new offense, the New Orleans Police Department notifies the local probation and parole office, which decides whether to issue a detainer to prevent the person from being released from jail. If no detainer is filed, the supervisee will be released to the community if he or she is released on the new case through financial or non-financial bond.

In case of alleged technical violations, the probation and parole officer can request—and the judge or parole board can order—the issuance of an arrest warrant.<sup>a</sup> A probationer can also be summoned to appear in court to address any alleged violation without being arrested.<sup>b</sup>

Whenever detention is triggered by probation and parole officers, the judge or parole board must determine whether there was probable cause for the arrest.<sup>c</sup>

For detainers based on new charges or alleged technical violations, the judge or parole board has the authority to lift the hold placed on a supervisee and order release on bail.<sup>d</sup>

<sup>a</sup> LA. REV. STAT. ANN. §15:574.7 (2014); and LA. CODE CRIM. PROC. ANN. art. 899 (2014).

<sup>b</sup> Ibid.

<sup>c</sup> Ibid.

<sup>d</sup> Ibid.

# Findings

Vera's analysis concluded that pre-adjudication detention was overused in Orleans Parish Prison in 2012 for:

- > alleged violators who were ultimately not revoked to prison or received non-incarceration sanctions;
- > supervisees suspected of technical violations; and
- > supervisees arrested on new charges for whom the detention decision was apparently reflexive rather than based on individual circumstances.

The average length of pre-adjudication detention of 89 days also suggests that violation proceedings could be swifter.

Detained probationers who are returned to supervision present the greatest opportunity to reduce the use of pre-adjudication detention. For this group, over-detention is most common among 1) people detained on certain new charges that suggest the underlying conduct does not present a risk to public safety, such as drug possession charges; 2) people with new charges that are later refused; and 3) people whose detainer was lifted after a lengthy detention. Areas of apparent over-detention for people facing alleged technical violations included routine detention for failure to appear in court and failure to pay court fines and fees.

## DATA SOURCES

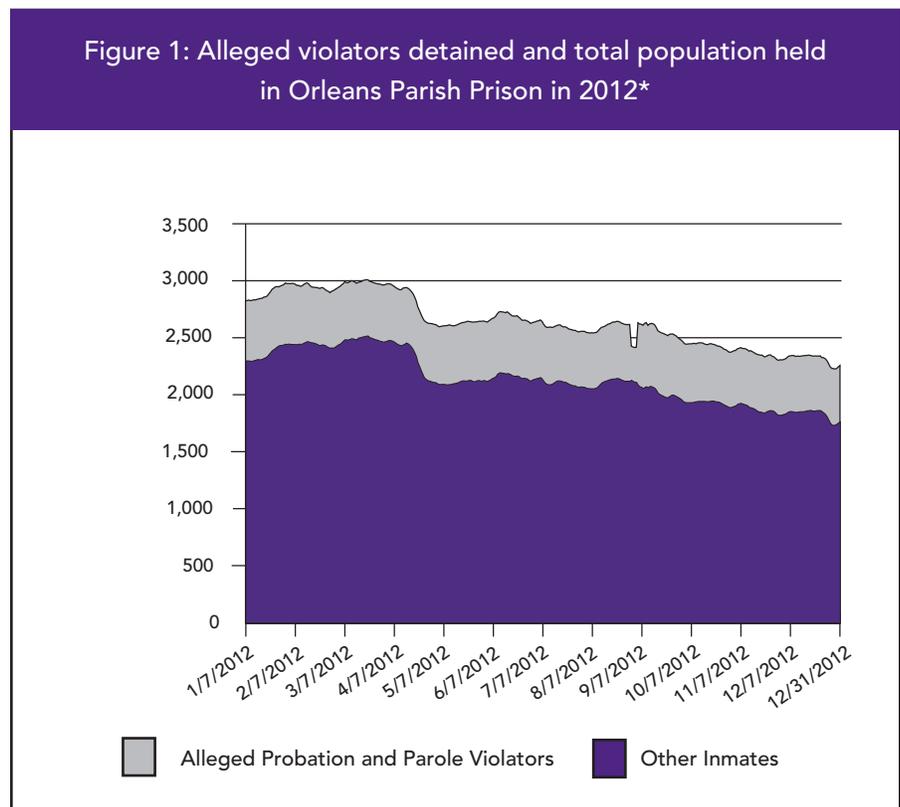
This report is based primarily on the following data provided by the Louisiana Department of Public Safety and Corrections (DPS&C) and analyzed by Vera staff:

- > "CAJUN" case management system: This provided data about people supervised by DPS&C and detained in OPP at some point in 2012 for alleged violations.
- > Case study: The data for this subset came from the CAJUN database and included only alleged probation violators detained in OPP and later released to the community. The information contained in the CAJUN database was supplemented by manual queries of publicly available court records.
- > Lotus Notes records: This data provided the reason for alleged probation violations for 2012 "active offenders."
- > One-day snapshot: This data is about DPS&C supervisees classified in the CAJUN database as detained in OPP on August 26, 2013.

## TOTAL ALLEGED VIOLATORS DETAINED

On any given day in 2012, 503 people alleged to have violated the conditions of their supervision were detained in OPP, representing 19 percent of the jail population (see Figure 1 below).<sup>19</sup> Moreover, 2,073 probationers or parolees jailed for alleged violations consumed 184,328 bed days in OPP. The majority of them were probationers (61 percent), followed by people on good-time release (36 percent) and those on parole (2 percent).

The detention of alleged violators in OPP imposed a significant cost to the city in 2012. Using an estimated daily per-inmate cost of \$50, pre-adjudication detention of alleged parole and probation violators cost roughly \$9.2 million.<sup>20</sup> Although the state Department of Public Safety and Corrections (DPS&C) started reimbursing part of those costs for alleged good-time and parole violators in recent years, most of the cost (\$8.8 million in 2012) is borne by the City of New Orleans and therefore city taxpayers.<sup>21</sup>



\*The decreased population in late August reflects the evacuation of OPP prior to Hurricane Isaac.

## MORE THAN 1 IN 5 SUPERVISEES WERE DETAINED

The use of detention for alleged violators is so widespread that 21 percent of people on probation and parole spent some time in jail in 2012. Roughly 20 percent of all people on probation in New Orleans, 24 percent of good-time supervisees, and 12 percent of parolees were detained at some point in 2012 (see Figure 2). On average, supervisees spent 6 percent of their time under supervision in jail awaiting adjudication of alleged violations.

**Figure 2: Supervisees Detained in Orleans Parish Prison for Alleged Violations in 2012**

SUPERVISION TYPE	SUPERVISION		DETENTION		DETENTION/ SUPERVISION RATIO	
	INDIVIDUALS	SUPERVISION DAYS	INDIVIDUALS	DETENTION DAYS	INDIVIDUALS	DAYS
PROBATION	6,143	1,875,334	1,217	113,171	20%	6%
GOOD TIME	3,525	952,823	848	66,738	24%	7%
PAROLE	339	99,411	42	4,419	12%	4%
TOTAL	10,007	2,927,568	2,107	184,328	21%	6%

Figure 3 below shows the number of admissions to OPP in 2012 for alleged violations by people supervised in the community and the number of days they were held until the adjudication of the violation. If a violation is due to an arrest for a new charge, the length of the detention period is influenced by the existence of a probation or parole detainer as well as by proceedings in the new case, such as financial bail.

Alleged probation violators spent 87 days in jail on average. The length of stay for people on good-time release was 60 days and for those on parole, 97 days, on average. This count includes only pre-adjudication jail bed days—those spent in the jail prior to revocation, release, or transfer—and does not include any time served at OPP after revocation or after conviction on a new charge.

**Figure 3: Alleged Violators Admitted to Orleans Parish Prison in 2012**

SUPERVISION	INDIVIDUALS	ADMISSIONS	AVG. PRE-ADJUDICATION LENGTH OF STAY (DAYS)
PROBATION	916	1,041	87
GOOD TIME	643	818	60
PAROLE	32	37	97

## YOUNG BLACK MALE SUPERVISEES ARE MORE LIKELY TO BE DETAINED

To understand the detained population of alleged probation and parole violators, it is important to explore their demographic characteristics. More than 72 percent of people on probation, good-time release, and parole in New Orleans are black males. Black females are the second largest group, representing 14 percent of supervisees, and white males are third at 10 percent.

Black males are disproportionately detained in the jail on violations and use a disproportionate number of bed days. Although black males are 72 percent of those under supervision, they represent 82 percent of those who are detained and accounted for 86 percent of the days that those detained spent in OPP. Twenty-five percent of black male supervisees eventually spend time in jail for violations though only 14 percent of white male supervisees do.

Young male supervisees are also overrepresented in detention at OPP. Although men ages 23 to 35 represent 38 percent of supervisees, they are 44 percent of those detained and account for 47 percent of OPP bed days. Similarly, men ages 16 to 22 represent 10 percent of supervisees, but 17 percent of the detained population and account for 19 percent of bed days. Close to a third of male supervisees ages 16 to 35 were detained in 2012.

Although racial disparities are significant, Vera's analysis found no evidence of racially biased intent in policies, protocols, or guidelines. More research is needed to determine whether these disparities are due to the individual circumstances of supervisees or the result of unconscious or conscious biases of system actors.

## MOST DETAINED VIOLATORS RETURN TO THE COMMUNITY

Research suggests that sanctions, including short jail stays, imposed directly by probation or parole officers when necessary to address certain violations, have positive results on supervisees and decrease their chance of recidivism.<sup>22</sup> Such administrative sanctions, when used appropriately, promote more effective supervision through the use of swift, certain, and gradual responses. However, detaining alleged probation and parole violators before adjudication—that is, before a sanction is imposed—has damaging effects on two levels. First, it puts probationers and parolees at risk of harm from unnecessary detention, destabilizes their lives, and increases their likelihood of committing future crimes.<sup>23</sup> Second, it inflates the jail population and increases costs for the jurisdiction and its taxpayers. Given such human and financial costs, measuring the number of affected people is insufficient.<sup>24</sup> Rather, the inquiry should focus on the appropriateness of detention in each case by examining all relevant factors. Three key factors in the possible overuse of detention in New Orleans are detention outcomes, the nature of the alleged violation, and the length of pre-adjudication stay.

*Twenty-five percent of black male supervisees eventually spend time in jail for violations though only 14 percent of white male supervisees do.*

Pre-adjudication detention should be used when it is necessary to protect public safety and should be avoided in circumstances when incarceration is not a likely or appropriate response to the violation after adjudication. If the alleged violation is so minor that internal procedures recommend non-incarceration sanctions, detaining the alleged violator before a finding of guilt is problematic.<sup>25</sup>

Detention should be reserved for supervisees with alleged violations serious enough to result in incarceration if found guilty. Conversely, if the result of a detention period is a return to community supervision, that detention period was either unnecessary (and therefore counterproductive in its long-term consequences) or was used as a substitute for a post-adjudication sanction to compel behavioral change, thus raising due process concerns.

Figure 4: Outcomes of pre-adjudication detention and days spent in Orleans Parish Prison

OUTCOMES	PROBATION		GOOD TIME		PAROLE	
	ADMISSIONS	DAYS	ADMISSIONS	DAYS	ADMISSIONS	DAYS
COMMUNITY W/ SUPERVISION	456	39	281	28	15	62
COMMUNITY W/O SUPERVISION	31	71	22	112	0	0
OTHER INCARCERATION	65	52	49	82	4	104
REVOCAATION (NOT OPP)	19	83	5	89	1	67
ADMINISTRATIVE REVOCAATION	33	46	8	26	0	0
TREATMENT	10	45	7	29	0	0
UNCLEAR	9	52	1	113	0	0
NO RELEASE (OPP)/ MISSING**	58	459	13	463	3	396
REVOCAATION (OPP)	306	114	319	79	12	105
TECH 402 (OPP)***	54	35	97	18	1	2
TOTAL/WEIGHTED AVERAGE	1,041	87	802	78	36	107

\*This group might include a small number of parolees who were sent to jail for a few days as an administrative sanction.

\*\*The length of stay of this group is inaccurately high due to missing release data.

\*\*\*Tech 402 is a short jail sentence (no longer than 90 days) for a first technical violation.

A significant portion of detentions in 2012 resulted in the supervisee being allowed to return to the community. This was the outcome for 47 percent of detained probationers, 38 percent of detained good-time supervisees, and 42 percent of detained parolees.

Supervisees returned to the community because they were cleared of the alleged violations or found guilty of them but the judge or parole board determined that the violation was minor enough to warrant a sanction in the community. The size of this group suggests an overuse of pre-adjudication detention or, at the very least, the difficulties of system actors in identifying cases in which detention is appropriate.

Pre-adjudication detention, especially for a lengthy period, can be destabilizing and counterproductive for supervisees who are ultimately sent to a treatment facility, as well as questionable for those sent to an alternative facility or given a short-term prison sentence. This is particularly striking when the detention period is longer than the incarceration sanction. If pre-adjudication detention is being used in lieu of an incarceration sanction (for someone ultimately released at disposition), this raises concerns of good practice, due process, and overall effectiveness.

### PRE-ADJUDICATION DETENTION IS OVERUSED IN TECHNICAL VIOLATION CASES AND MAY BE OVERUSED IN RESPONSE TO CERTAIN ALLEGATIONS OF NEW CRIMINAL BEHAVIOR

To understand whether deprivation of liberty is necessary, it is critical to discern the reason for detention. Because of data limitations, it was impossible to report on the reasons for detention for all supervisees in OPP in 2012. However, Vera was able to provide analysis based on a one-day snapshot of 514 detained supervisees in 2013, and, to the extent possible, report on the specific reasons for detention of probationers.<sup>26</sup>

On August 26, 2013, 81 percent of detained alleged violators had pending charges—that is, they were accused of committing another offense while on supervision. The remaining 19 percent were held on technical violations only. On that day, nearly 100 supervisees were in jail pending the adjudication of one or more technical violations.

For the 416 individuals with pending charges on August 26, 2013, the alleged violation and the pending charges were both in pre-adjudication status. A presumption of innocence, and thus of pre-adjudication liberty, applies to the new charges and, at the very least, detention should not be automatic when a supervisee is arrested for new charges. The results of the one-day snapshot should be tested with a longer-term sample.

Vera's analysis of a 2012 subset of New Orleans probationers—those who returned to supervision in the community after their detention—showed that among those with new charges, drug possession charges (26 percent) were the most frequent. Property offense charges took the longest to address, with 120 days of pre-adjudication detention on average. A small number of probationers were detained for alleged municipal offenses (misdemeanors) for an average of 58 days before adjudication.

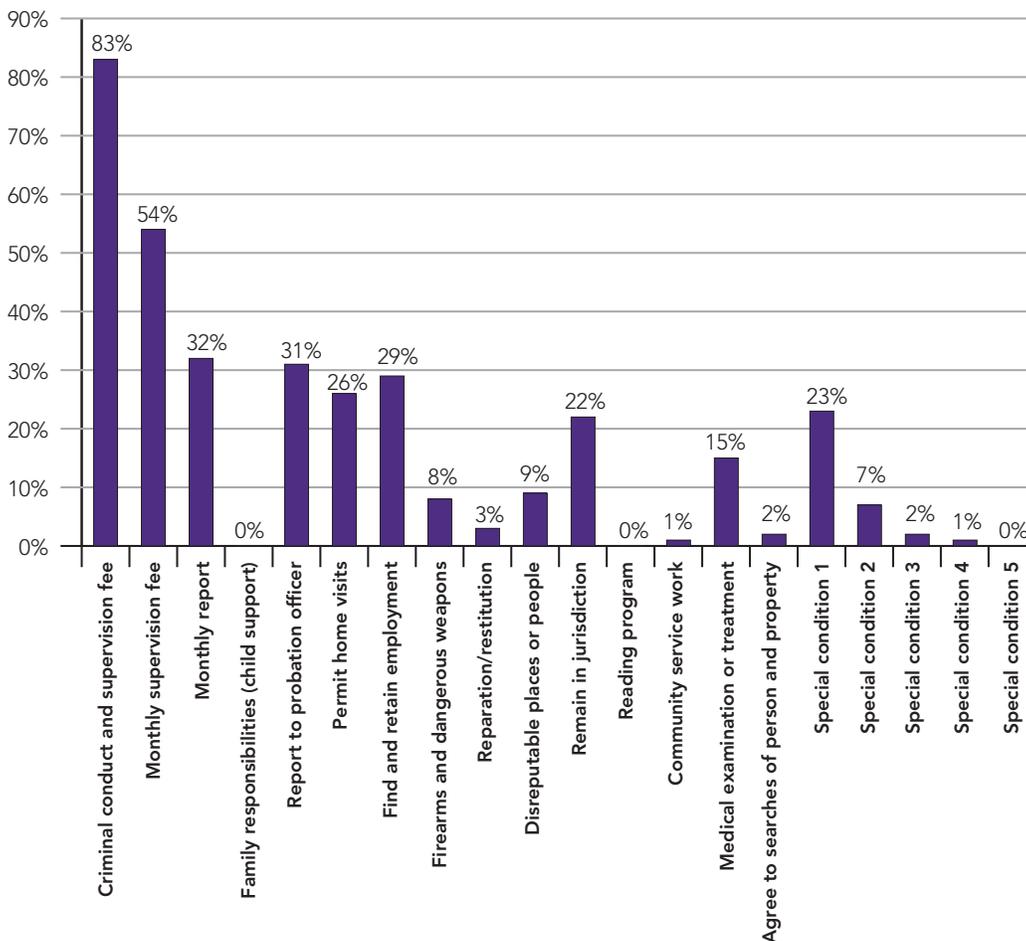
Among the 2012 subset studied, 38 percent of probationers with new charges were released because the charges were refused for prosecution, 2 percent were released because they were found not guilty of the new charges, and 14 percent were released because they were sentenced to a non-incarceration sentence or to time served. Thirty-nine percent had their hold lifted and were able to await adjudication in the community. This group was detained for 91 days on average before release.

## PROBATIONERS ARE OFTEN DETAINED FOR TECHNICAL VIOLATIONS

As Figure 5 shows, 83 percent of probationers detained in OPP were alleged to have violated supervision in 2012 by engaging in criminal conduct or failing to pay a supervision fee.<sup>27</sup> Other commonly used bases were failure to report to probation officer and failure to find employment. (As Figure 5 shows, the data reported combines criminal conduct and failure to pay the supervision fee.)

Various technical violations can trigger detention, and though they might not always be the primary reasons for detention, the practice is problematic, indicating that pre-adjudication detention is not reserved solely for situations presenting significant risk to public safety.

Figure 5: Alleged violations of probationers classified as “active offenders” in 2012



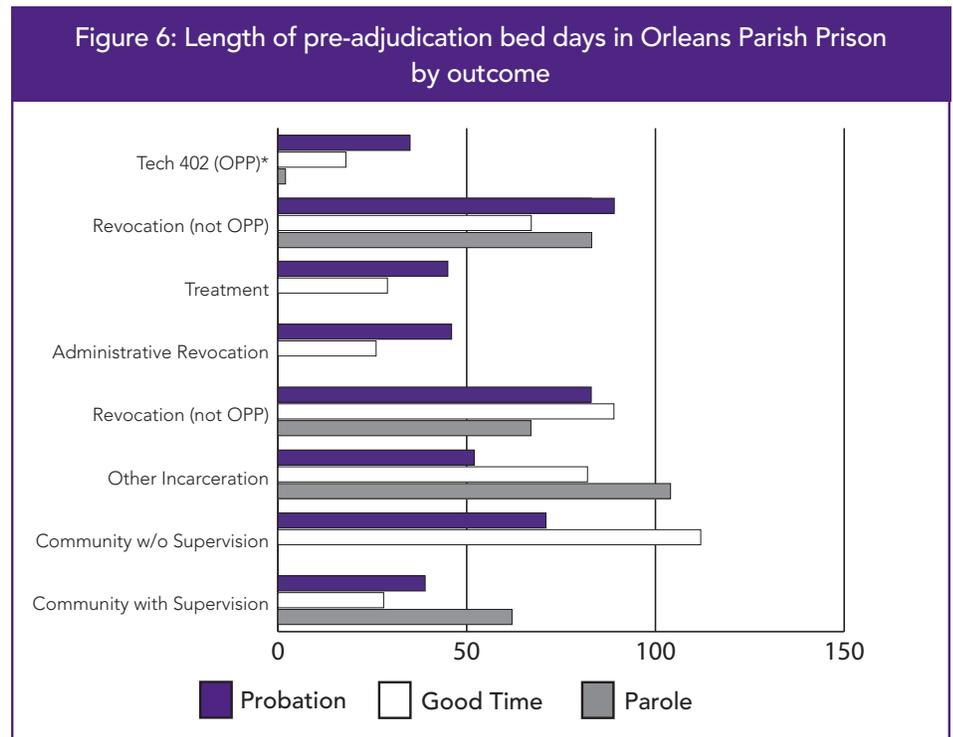
In the case study (see “Data Sources” on page 9) of probationers who returned to supervision, among those people for which the court record shows evidence of technical violations only, 47 percent had an alleged failure to appear—usually for a probation hearing in court—and 44 percent had a failure to pay court-imposed fines and fees. In cases in which defendants failed to appear, it was unclear whether detention was triggered by the supervising court or by the probation officer. But when defendants failed to pay court-imposed fines and fees, the supervising court apparently triggered detention. It is important to note that failure to pay court fines and fees is typically not a violation of probation, as such payment is usually not a condition of probation (as distinct from payment of restitution and probation fees).

Although the length of stay for alleged technical violations in the case study was shorter than for new charges, it was still significant, with 50 days of detention on average for an alleged failure to appear and 24 days for a failure to pay court-imposed fines and fees.

### THE AVERAGE LENGTH OF STAY IN JAIL WAS 89 DAYS

Even when pre-adjudication detention is considered necessary, it may be over-used if supervisees are detained for lengthy periods while they await a disposition by the court or parole board.

As Figure 6 illustrates, the length of pre-adjudication detention in 2012 varied greatly across outcome types and substantially across supervision types. In probation cases, no outcome group had an average detention of 30 or fewer days, the statutory time frame during which the judge is to set a hearing.<sup>28</sup> A number of outcome groups had average detention times two or three times the 30-day standard.



\*Tech 402 is a short jail sentence (no longer than 90 days) for a first technical violation.

These lengthy detention stays can be explained in part by the practice of delaying the violation proceedings until there is adjudication in the new case. This practice and its associated length of stay emphasize the need for a careful consideration of the strict necessity of detention. Indeed, a judge might have set a low bond for the supervisee for the new charge, but a probation or parole detainer is responsible for holding the supervisee in jail.

For New Orleans probationers who returned to supervision in the community after detention in 2012, those with new charges were detained significantly longer (84 days on average) than those with technical violations (38 days on average).

Overall, supervisees are detained for lengthy periods, which greatly contributes to the jail population and associated costs. This suggests that the process to adjudicate violations should be revisited to respect supervisees' rights to swift and fair justice and pre-adjudication liberty in the absence of substantial risk.

## Recommendations

Vera's analysis revealed the widespread use of detention for alleged probation and parole violators in the New Orleans jail and identified several circumstances in which detention was not appropriate. Given that the guilt of alleged violators has not been established, system actors should consider detention a carefully limited option for this group of people. Decisions to detain must balance immediate public safety concerns with the long-term negative effects of detention on the supervisee's success.

Although based on New Orleans data, Vera's analysis identifies ways in which jail detention is overused that should be scrutinized elsewhere, especially in jurisdictions that are struggling with high local incarceration rates. The recommendations below provide a practical guide for jurisdictions to address detention issues for alleged probation and parole violators. Although not transposable to every jurisdiction, overall these recommendations support a more evidence-based and limited use of detention by system actors, a potentially universal theme.

### REDUCE THE USE OF INITIAL DETENTION

Success under supervision is best achieved through officers' responses to violation behaviors through swift and certain sanctions and affirmative responses to compliant behavior. Because pre-adjudication detention is lengthy and outcomes uncertain, it is likely to have detrimental effects on supervisees instead of encouraging compliance or achieving public safety goals. Research indicates that even short periods of detention can disrupt pro-social and protective behaviors and activities in the community and increase the risks of additional criminal behavior.<sup>30</sup> For these reasons, Vera recommends the following:

*Decisions to detain must balance immediate public safety concerns with the long-term negative effects of detention on the supervisee's success.*

*System actors should work together to develop common procedures for requesting or declining initial detention.*

- > Local criminal courts and departments of probation and parole should promote the use of swift and certain responses by maximizing the use of administrative sanctions as allowed by statute. Probation and parole officers can use a range of options to respond to technical violations while encouraging compliance and avoiding unnecessary revocation proceedings and associated detention. This would also promote public safety, as minor violations could be addressed immediately instead of building up to detention and possible revocation to prison. Possible sanctions should include increased supportive programming if needed and available.
- > Conditions set at the time of sentencing or parole release should be limited to forbidding those behaviors—or ordering affirmative actions—that have a direct correlation to the person’s crime and circumstances.
- > Detention decisions should be made on a case-by-case basis and guided by individual circumstances. (In New Orleans, where detainers are routinely filed when a supervisee is booked on a new charge, no guidelines exist to help officers make this decision and it is unclear what factors, if any, contribute to such decisions.) Probation and parole offices should develop guidance for the use of detention when a supervisee is arrested on new charges. These guidelines should list relevant individual factors to guide the detention decision, such as the person’s risk level, compliance history, and the nature of the allegations.

### REVIEW THE DETENTION STATUS OF ALLEGED VIOLATORS ROUTINELY

Once the initial decision is made to detain an alleged violator, it should be revisited on a regular basis to avoid needlessly lengthy stays. Prompt probable-cause determination hearings are recommended in probation cases and, when the court finds probable cause, judges should consider whether detention is strictly necessary to protect public safety. Monthly status hearings are also recommended, to revisit the detention decision, and any compelling public safety reasons for detaining supervisees.

### COORDINATE ROLES WITHIN THE JURISDICTION

System actors should work together to develop common procedures for requesting or declining initial detention when appropriate for probationers with new felony charges. In New Orleans, the Department of Public Safety and Corrections should review internal procedures and encourage officers to seek the parole board’s involvement in detention decisions and strictly limit officers’ direct use of detention in parole cases to emergencies.

## IMPROVE EFFECTIVENESS OF PROCEEDINGS FOR PROBATION CASES

Local courts, after discussions with all relevant system actors, should adopt goals for the time between arrest and disposition of violations in all probation violation cases in which detention is deemed necessary. When these targets are not met, there should be a strong presumption that detention is not appropriate and, in fact, counterproductive.

## IMPROVE DATA COLLECTION AND INFORMATION SHARING

It is important to put in place the necessary data collection to measure and track the use of detention for alleged violators of probation and parole. In jurisdictions where mechanisms do not exist, they should be developed to promptly notify all parties about the arrest of a probationer or parolee to ensure that swift action can take place with counsel prepared and present.

## Conclusion

To rectify the overuse of detention for alleged probation and parole violators in New Orleans, key system actors (judges, the Division of Probation and Parole, and the Committee on Parole) will need to continue their collaborative efforts and recognize the importance of detention decisions for affected people and the criminal justice system as a whole. All system actors will need to commit to a more evidence-based and limited use of detention, which is within their discretionary power to enact. The role of the City of New Orleans's Office of Criminal Justice Coordination will be instrumental in maintaining momentum, coordinating efforts, and holding system actors accountable.

As policymakers throughout the United States look for ways to safely reduce their use of jails, alleged probation and parole violators who are awaiting adjudication in jail present a key opportunity to rethink detention practices. This group of detained people needs to be examined in jails across the country to determine whether detention is overused, as it is in New Orleans. To use detention more judiciously, system actors need guidance about how to manage alleged violators in the community without resorting to detention. Often even simple changes in policies and practices at the local level can yield significant results, not only in terms of reducing the jail population but also in improving the lives of people under community supervision.

*To use detention more judiciously, system actors need guidance about how to manage alleged violators in the community without resorting to detention.*

## ENDNOTES

- 1 Orleans Parish Sheriff's Office, *Daily Inmate Count* (New Orleans, LA: OPSO, 2012). This figure is based on a total cost of \$50 per inmate per day and includes a \$24.39 per inmate per day reimbursement from the state's Department of Public Safety and Corrections for alleged parole violators detained on technical violations (estimated at 20 percent of all alleged violators detained in OPP). Note that a 2014 statute now provides for partial reimbursement (\$12.19 per inmate per day) for alleged parole violators detained on new charges beyond 14 days: See LA. REV. STAT. ANN. § 15:824 (B) (1)(e) (2014). The City of New Orleans now would bear an \$8.3 million cost per year if population levels remain constant.
- 2 For jail population data, see William J. Sabol and Todd D. Minton, *Jail Inmates at Midyear 2007* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2008). For residency population data, see U.S. Census Bureau Population Estimates Program, Postcensal Vintage 2009 estimates.
- 3 Nadiene Van Dyke, Jon Wool, and Luceia LeDoux, "Criminal Justice Reforms," in *Resilience and Opportunity, Lessons from the U.S. Gulf Coast after Katrina and Rita*, edited by Amy Liu, Roland V. Anglin, Richard M. Mizelle Jr., and A Plyer (Washington, DC: Brookings Institution Press, 2011), 64-81.
- 4 Calvin Johnson, Mathilde Laisne, and Jon Wool, *Criminal Justice: Changing Course on Incarceration* (New Orleans, LA: The Data Center, 2015).
- 5 In November 2010, the Mayor's Criminal Justice Working Group passed a resolution pursuant to Executive Order 10-06 stating that if the appropriate criminal justice reforms were implemented, a 1,438-bed facility would be sufficient to meet New Orleans's public safety needs.
- 6 *Jones et al. and United States of America v. Marlin Gusman*, "Consent Judgment," U.S. District Court of the Eastern District of Louisiana filed December 11, 2012.
- 7 Community supervision is a well-researched field with a focus in recent years on effective supervision, alternatives to revocation, and the use of graduated sanctions to respond to violations. Research has not focused on detention prior to adjudication of violations, however. For an overview of research in community supervision, see National Criminal Justice Reference Service, "Parole and Probation," <https://www.ncjrs.gov/App/Topics/Topic.aspx?topicid=17> (accessed October 23, 2015).
- 8 LA. CODE CRIM. PROC. ANN. art. 899 (2014).
- 9 For good-time and parole supervisees, the committee on parole may order the arrest of the supervisee and, upon a finding of probable cause for the arrest, may order his or her detention until adjudication of the violation(s), hence detention is necessary to initiate violation proceedings. See LA. REV. STAT. ANN. §15:574.7 and §15:574.8 (2014).
- 10 LA. REV. STAT. ANN. §15:574.7 C. (2014).
- 11 LA. CODE CRIM. PROC. ANN. art. 899 (2014) and LA. CODE CRIM. PROC. ANN. art. 900 (2014).
- 12 LA. REV. STAT. ANN. §15:574.7 and §15:574.9 (2014); LA. CODE CRIM. PROC. ANN. art. 900 (2014).
- 13 LA. CODE CRIM. PROC. ANN. art. 900 (2014); LA. REV. STAT. ANN. §15:574.7 (2014); and LA. REV. STAT. ANN. §15:574.8 (2014).
- 14 LA. REV. STAT. ANN. §15:574.10 (2014).
- 15 LA. CODE CRIM. PROC. ANN. art. 899.1 (2014); and LA. REV. STAT. ANN. §15:574.7 (2014).
- 16 Eric J. Wodahl, John H. Boman IV, and Brett E. Garland, "Responding to probation and parole violations: Are jail sanctions more effective than community-based graduated sanctions?" *Journal of Criminal Justice*, 43 (2015): 242-250.
- 17 Nathan Lowe and Mary Ann Mowatt, *Effective Responses to Offender Behavior: Lessons Learned for Probation and Parole Supervision* (Lexington, KY: American Probation and Parole Association, National Center for State Courts, The Pew Charitable Trusts, 2013) 3-9. See also Morris L. Thigpen, Larry Solomon, George Keiser, Kermit Humphries, *Responding to Parole and Probation Violations, A Handbook to Guide Local Policy Development* (Washington, DC: National Institute of Corrections, 2001).
- 18 Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention*, (New York, NY: Laura and John Arnold Foundation, 2013) 19-28.
- 19 Orleans Parish Sheriff's Office, *Daily Inmate Count* (New Orleans, LA: OPSO, 2012). The total population in OPP includes prisoners sentenced by the state Department of Public Safety and Corrections, who are often held in the local jail.
- 20 The Office of Inspector General found that the city spent at least \$48 per inmate per day in recent years. See New Orleans Office of Inspector General (2013): *Inspection of Taxpayer/City Funding to Orleans Parish Sheriff's Office in 2011*. This average cost is expected to rise as the city and sheriff implement the federal consent decree and reach constitutional standards of confinement in OPP. In early 2015, senior administration officials estimated the per inmate daily cost to be at least \$70. Note that to realize the savings associated with a reduction in detention would depend on many other factors, such as reductions in staffing.
- 21 For calculations, see endnote 1.
- 22 Peggy McGarry et al., *The Potential of Community Corrections to Improve Communities and Reduce Incarceration* (New York, NY: Vera Institute of Justice, 2013) 26.
- 23 For the effects of jail detention, see Ram Subramanian, et al., *Incarceration's Front Door: The Misuse of Jails in America*, (New York, NY: Vera Institute of Justice, 2015) 12-18.
- 24 Experts for the city attempted to quantify the number of alleged violators housed in OPP, but did not address the appropriateness of detention in these cases. James Austin, president of the JFA Institute and a consultant to the City of New Orleans, found that about 400 people are detained in OPP on any given day in pre-adjudication status for alleged probation or parole violations. See James Austin, Wendy Ware, and Roger Ocker, *Orleans Parish Prison: Ten-Year Inmate Population Projection* (Denver, CO: The JFA Institute, 2010).
- 25 According to the internal procedures of the Division of Probation and Parole's New Orleans District, only the most serious violations (falsifying drug test, serious/violent misdemeanor activity, felony activity, failure to comply with previous sanctions, absconding, etc.) include detention as an appropriate sanction.
- 26 For probation, the specific conditions of supervision that someone is accused of violating are recorded in a written form sent to the court and saved in a computer system separate from the general probation and parole database. This rendered any cross-reference analysis involving specific alleged violations impossible. Further, in the data provided for this report, there was no similar information for good-time and parole supervisees.

- 27 Figure 5 reports information for probationers who were classified as "active offenders" in 2012. The information provided is structured in such a way that isolating individual reasons for detention is not possible. Notably, a violation for criminal conduct and one for failure to pay a fee are merged into one violation and officers are not required to report the existence of pending charges separately from allegations of criminal conduct. Officers can report violations that involve criminal conduct in the absence of new formal charges instituted by the police department or prosecutor. Officers also routinely select multiple violations, complicating this analysis further. Similar information does not appear to be tracked by the Division for alleged good-time and parole violators.
- 28 LA. CODE CRIM. PROC. ANN. art. 900 (2014).
- 29 McGarry et al., 2013, 3-9.
- 30 Lowenkamp, VanNostrand, and Holsinger, 2013, 19-28.



# Acknowledgments

The authors would like to thank the Louisiana Department of Public Safety and Corrections, Division of Probation and Parole, their data analysis team, and the New Orleans District of the Division of Probation and Parole, for providing the data that made this report possible and for their practical insight into the difficult work of assisting and supervising people on probation and parole.

We would also like to thank the judges of the Orleans Parish Criminal District Court and staff at Orleans Public Defenders and the Orleans Parish District Attorney's Office for their insight into current court practices.

We are grateful for the excellent work of Jules Verdone, Patricia Connelly, Mary Crowley, David Hanbury, and Erika Turner in planning, editing, and designing this report.

The conclusions drawn in this report are those of the authors alone.

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### Suggested Citation

Mathilde Laisne, Stephen Roberts, and Jon Wool. *Detention of Alleged Probation and Parole Violators in Orleans Parish Prison*. New York, NY: Vera Institute of Justice, 2015.

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