

# Racial Disparity in Marijuana Policing in New Orleans

JULY 2016

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## FROM THE DIRECTOR OF THE NEW ORLEANS OFFICE

New Orleans’s criminal justice system—as in localities throughout the country—is enormous, consuming the lion’s share of our municipal budget to the detriment of other core government functions. The police department and the jail are the biggest consumers. Historically, police and jail budgets have expanded as the number of people arrested and detained has increased. But in recent years, those budgets have grown even as significantly fewer people have been arrested and detained.

Although it is now widely understood that increasing arrests and detention is not the most effective strategy to maximize public safety and promote justice, we also must understand how best to apply criminal justice resources. The city must set objectives for what our systems of safety and justice can reasonably achieve and what must be done outside the justice system in community health and other spheres. Then the city can deploy its police and jail resources in a way that meets public safety goals and aligns with our common determination to foster a just and fair society.

At the front end of the system, it is not the number of police officers that matters so much as how they are deployed. Does deployment focus on preventing and responding to violence and other serious threats to community safety? Are these decisions made with the intention of building trust in those communities most affected by violence? Are policymakers getting the greatest safety and justice return on residents’ investment in policing? Every community must persistently ask and revisit these questions.

New Orleans has made much progress in narrowing and focusing its use of arrest and detention. The number of arrests and crime overall is down—although our homicide rate remains devastatingly high—and the number of people New

Orleans jails is significantly lower than five and 10 years ago, even if the rate is still higher than in almost any other U.S. city.

But as this report shows, racial disparity remains stubbornly high in the city's police responses to marijuana-possession offenses. Eighty-five percent of those arrested for marijuana-related offenses (not including distribution) are black, even though black people make up roughly 60 percent of the population. The disparity is even greater among those arrested for felony marijuana possession: 94 percent of arrestees are black.

Fortunately, the New Orleans City Council passed an ordinance earlier this year allowing police to charge a municipal misdemeanor for what is a felony marijuana possession under state law, enabling them to issue a summons, and lowering penalties dramatically. But the city continues to deploy resources toward policing marijuana possession—resources that deliver low or possibly negative public safety returns and create some harm—while the New Orleans Police Department struggles to respond quickly to matters of community safety. And the city is investing those resources in a way that adversely and disproportionately impacts black residents.

We hope this report helps focus policymakers on the imperative to rethink how New Orleans and other jurisdictions use police and jail resources to invest only in strategies that promise and deliver safety and justice.



Jon Wool  
Director, Vera New Orleans Office

## ABOUT VERA NEW ORLEANS

In 1961, the Vera Institute of Justice embarked on its first project: reforming the bail system in New York City, which at the time granted liberty pretrial based primarily on ability to pay. Since then, Vera has served as an independent, nonpartisan, nonprofit center for justice policy and practice nationwide and has offices in four U.S. cities.

In 2006, Vera came to New Orleans at the request of James Carter, then a City Councilmember. Carter saw an opportunity for the city to reduce unnecessary detention and thus change its approach to fostering public safety. As a city in recovery, New Orleans could not fiscally or morally afford its pre-Katrina level of jail incarceration.

Not unlike New York in the 1960s, almost all people arrested in New Orleans were detained pretrial because they could not afford to pay a commercial bond. In partnership with government and community leaders, Vera New Orleans launched the city's first comprehensive pretrial services program in April 2012. The program uses an empirical risk-assessment tool to help judges make objective, informed decisions about who should be released and who should be detained during the period between arrest and resolution of a case.

For almost 10 years, Vera New Orleans has been a nexus for initiatives that advance forward-thinking criminal justice policies. Vera works with its partners to build a local justice system that embodies equality, fairness, and effectiveness in the administration of justice. Using a collaborative data-driven approach, Vera New Orleans provides the high-quality analysis and long-range planning capacity needed for the city to articulate and implement good government practices.

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# Introduction

There is a growing conversation across the United States about arrest practices that cause disproportionately high numbers of black Americans to face harsh consequences in the justice system. Events in Ferguson, Baltimore, Chicago, and throughout the country have highlighted the critical role that police practices play in a system's racial equity or inequity. More broadly, black people are arrested at significantly higher rates than are other racial and ethnic groups in the United States.<sup>1</sup> Compounding this problem are high rates of pretrial incarceration, and this means racial disparity in arrests leads to severe consequences that overwhelmingly affect the black population, even for relatively minor offenses.

Disparities are especially dramatic in drug cases, which cause disproportionately large numbers of black residents to enter the criminal justice system, frequently facing long pretrial detention (and often long prison terms after sentencing). Arrests for marijuana-related crimes in particular have been scrutinized nationwide. A large portion of the population has recognized marijuana as minimally harmful and some states have legalized its use. But people arrested for marijuana-related offenses are disproportionately black.<sup>2</sup> Because self-reported data indicates that people of different races in this country use marijuana at approximately the same rate, the disparity in arrests and justice-system involvement for the black population is alarming.<sup>3</sup>

These disparities are striking in New Orleans, a majority-black city that incarcerates people at a rate that until recently led all U.S. cities.<sup>4</sup> Although black New Orleanians are just less than 60 percent of the population, they make up almost 90 percent of people detained in the local jail. Furthermore, in Louisiana, the consequences of a marijuana conviction can be severe. Even though a recently enacted statute has reduced some penalties for marijuana-possession offenses, repeated convictions remain punishable by multiyear prison terms under the state code.<sup>5</sup>

With broad community support, the mayor's office and the New Orleans City Council have made concerted efforts in recent years to reduce the city's jail population. One important step was to decrease custodial arrests—when police take defendants into custody and book them into the jail—for minor offenses, including misdemeanor possession of marijuana. Police now typically issue a summons in lieu of making an arrest. This practice changed in mid-2011 as the result of two city ordinances—one in 2008 encouraging summonses for municipal offenses (misdemeanors set out in the city code) and another in late 2010 creating a municipal offense for first possession of marijuana.<sup>6</sup>

Most recently, in March 2016, the city council enacted an ordinance that creates misdemeanor municipal offenses that are parallel to each state marijuana-possession offense—misdemeanor or felony—with penalties substantially lower than those for the corresponding state statutes. (See “Data and Terminology” on page 8 for an explanation of how “possession” and “arrest” are defined in this report.)

## Statutory changes affecting marijuana-possession offenses in New Orleans and Louisiana

- **2008** City enacts an ordinance encouraging the use of summonses for municipal offenses.
- **2010** City creates a municipal first-possession marijuana offense.
- **2015** State amends the marijuana code to make second-possession marijuana a misdemeanor.
- **2016** City creates municipal offenses parallel to all state possession offenses but with reduced penalties.

These measures have succeeded at keeping a large number of defendants out of jail for a first-offense possession charge, but they do not address the other negative consequences of involvement in the criminal justice system due to a marijuana arrest, repercussions that include obstacles to finding or keeping a job, securing affordable housing, gaining access to government benefits, and exercising the right to vote. These effects disproportionately burden black New Orleanians. The next step for the police and other system actors is to address these adverse racial impacts. This report presents marijuana arrest data—including summonses and custodial arrests—by race, discusses the impact of reforms New Orleans authorities have undertaken, and identifies remaining issues and possible solutions based on efforts in other jurisdictions. The reforms so far are having a meaningful impact on people facing justice-system involvement as the result of marijuana possession, but some of the adverse consequences of marijuana policing remain unaddressed.

Various factors can contribute to the observed racial disparity in marijuana arrests, not all of which indicate discriminatory policing. Although it is critical to understand the causes of this disparity, it is also clear that the aggregate racial impact, regardless of its causes, seriously harms the city of New Orleans as a whole—and black individuals, families, and communities in particular.

# The scope of the problem

Historically, New Orleans has arrested people at rates that are significantly above the national average for a city its size.<sup>7</sup> In 2014 and 2015, between out-

## DATA AND TERMINOLOGY

The data in this report comes from Vera’s analysis of New Orleans Police Department (NOPD) arrest data unless otherwise noted. In light of the shift in mid-2011 toward issuing summonses for marijuana offenses whenever possible, Vera analyzed data from January 2010—two years before the shift—through 2015—the most recent data available at the time of analysis. When presenting averages or other specific measures, the report provides date ranges.

Unless otherwise noted, the data for marijuana-related offenses includes all cases for which marijuana possession or possession with intent to distribute was the most serious charge at arrest. Thus, cases were excluded from the analysis when a person’s charges included a crime of violence, a felony charge for another drug or distribution of marijuana, an alleged parole violation, or a local open bench warrant (an arrest warrant issued for failing to appear in court or similar reasons).<sup>8</sup> Cases with additional charges involving a weapon were also excluded, except in circumstances in which weapons possession would not have been a crime if not for the presence of marijuana. The data for persons arrested for a first-possession marijuana offense—whether by summons or custodial arrest—excludes anyone who also had any concurrent felony or DWI charge.

The data for marijuana-possession offenses includes simple possession—whether charged as a misdemeanor or felony—unless otherwise noted. Under Louisiana state law, first-time marijuana possession was the only misdemeanor marijuana offense during the period covered in this report. (The statutory change that went into effect in June 2015 designated second- and sometimes third-possession offenses of small quantities of marijuana as misdemeanors rather than felonies, but the data in this report is from the period preceding this change.) In 2010, New Orleans enacted a municipal ordinance that created a first-possession marijuana offense with penalties mirroring those in the state statute. To analyze



first-possession marijuana charges, the data combines municipal offenses and state misdemeanor offenses. Possession with intent to distribute, regardless of quantity, was a felony during the period covered by the data in this report. (See pages 6 and 7 for details about New Orleans municipal code changes in March 2016.)

Unless otherwise noted, this report primarily uses the term “arrest” to refer to a custodial arrest and the term “summons” for the issuance of a summons (technically a form of arrest) by police, allowing arrestees to appear in court on a certain day without being taken into custody.

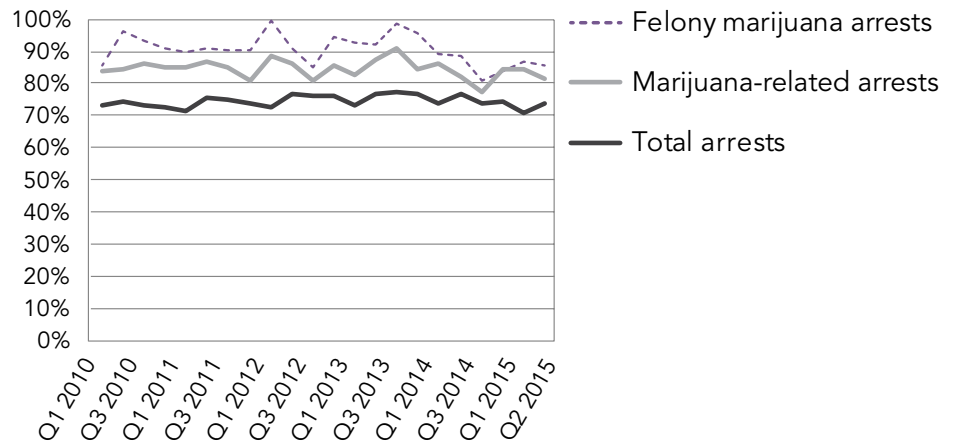
standing warrants and new offenses, NOPD made 1,625 arrests per month, on average. Every month, an average of 53 people were taken into custody for marijuana-related offenses, including possession and possession with intent to distribute. Of these 53 individuals, 40 were arrested for possession offenses. Thirty-one of those 40 people, on average, were taken into custody for misdemeanor marijuana possession and spent an average of five days in jail before their case was resolved. The other nine people—arrested for felony possession offenses—spent an average of 14 days in jail pretrial.

The total number of people the New Orleans Police Department charges with a marijuana-related offense, however, includes those who receive summonses and is thus much higher, at 132 people per month. Although those who receive summonses are not initially detained pretrial, their involvement in the criminal justice system increases the likelihood of detention in the future. For example, many people who receive a summons for a municipal offense fail to appear for their first court dates and have a warrant issued for their arrest. Others are subject to warrants later in the process, often for failing to come to court to make a payment of the fines and fees they owe after conviction. (For more about this topic, see page 12; “Summons Policy: Minimizing Pretrial Costs” on page 14; and “Remaining Challenges” on page 19). The prosecution of marijuana cases also contributes to the high volume of cases in the municipal and criminal district courts, to say nothing of the disruptive effects that involvement in the justice system has on people who are charged and on their communities.

Policing practices contribute to the detention of excessively high numbers of black people in New Orleans. The police arrest black people at disproportionately high rates compared to others, particularly for marijuana offenses, despite similar rates of marijuana use. And although they make up approximately 60 percent of the population, black New Orleanians account for roughly 75 percent of all arrests and 85 percent of arrests for marijuana-related offenses.<sup>9</sup> Thus, not

only are black people in the city more likely than others to be taken into custody overall, their arrest rates for marijuana charges are even more disproportionate than for other charges. (See Figure 1.)

**Figure 1: Percentage of arrests involving black New Orleanians, 2010 through mid-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

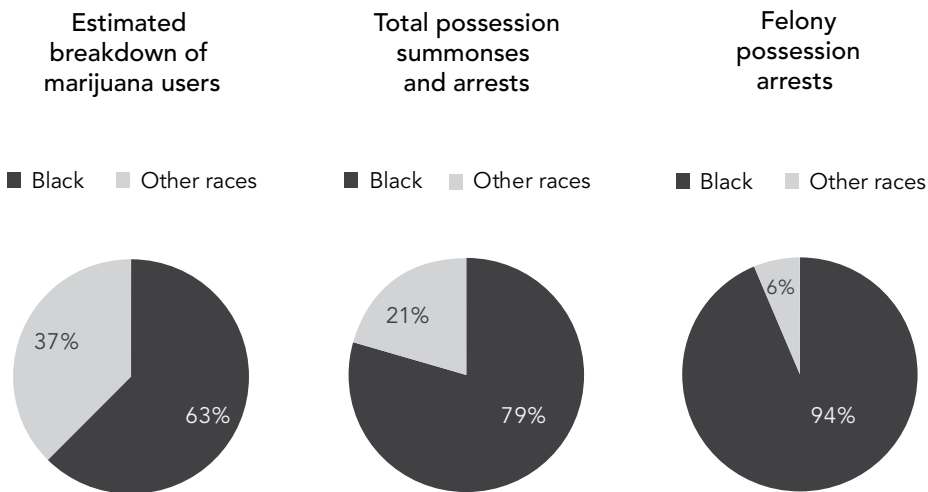
Most strikingly, black New Orleanians are disproportionately arrested for felony marijuana possession (any second or subsequent marijuana possession, excluding a charge of possession with intent to distribute), representing 94 percent of the people arrested for this type of charge.<sup>10</sup> This means that almost all of the people who face the most severe consequences for marijuana charges are black. Although the use of summonses in lieu of arrest is relatively race-neutral among those who are subject to a police response, there is severe racial disparity in arrests—especially for felonies. That is, among those who are subject to a police response for marijuana—a group that is disproportionately black overall—black people are no less likely than others to get a summons but are much more likely to be arrested for a felony. (See “Summons Policy: Minimizing Pretrial Costs” on page 14.)

Whether a police officer decides to charge someone with a misdemeanor or a felony marijuana offense has serious consequences. Under state law, summonses are not authorized for felony marijuana offenses, but only for misdemeanors. Furthermore, people charged with felony possession are less often released without financial conditions and tend to be given higher bail.

The racial disparity in police responses to marijuana possession is particularly alarming because self-reported data nationwide suggests that people

use marijuana at close to the same rates across racial and ethnic groups. Based on this data and adjusting for the racial demographics of New Orleans, one would expect black people to make up about 63 percent of those summoned or arrested for marijuana-possession offenses in the city if police responses were racially proportionate.<sup>11</sup> The actual percentage, however, is significantly greater: in addition to the discrepancies described above, black New Orleanians account for about 79 percent of summonses and arrests for marijuana possession (including misdemeanors and felony arrests for repeat possession of marijuana, but not including possession with intent to distribute; see Figure 2.)

**Figure 2: Estimated marijuana use, possession arrests, and summonses in New Orleans, by race, 2012 through mid-2015**



*Note: The estimated racial breakdown of marijuana users in New Orleans was calculated based on national self-reported use percentages from the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2013, adjusted for racial demographics in New Orleans.<sup>12</sup> Analysis of total possession summonses and arrests and felony possession arrests excluded arrests for possession with intent to distribute, given that this offense does not necessarily reflect these arrestees' personal use.*

*Source of New Orleans data: Vera Institute of Justice analysis of New Orleans Police Department data.*

# Costs of marijuana summonses, arrests, and prosecution

Marijuana possession is typically not a threat to public safety and, as noted above, has been decriminalized and even legalized in some jurisdictions. By contrast, involvement in the criminal justice system can have far-reaching adverse consequences for people and for the city of New Orleans. Taxpayers—as well as defendants and their families—shoulder the costs of marijuana policing and its consequences.

The city government incurs considerable costs by pursuing marijuana charges, particularly when defendants are incarcerated. It costs New Orleans \$113 per day to jail a defendant and these costs are rising due to the mandate of a jail consent decree (an agreement overseen by a federal court, in effect since 2012, to provide constitutional conditions of confinement).<sup>13</sup> In 2014 and 2015, marijuana-possession charges accounted for 280 jail bed days per month, with 152 of those bed days representing people who had misdemeanor marijuana charges. Any detention not necessary to advance public safety makes it more difficult to achieve the city's goal of normalizing its jail incarceration rates. Even with recent reforms (see page 14), current marijuana policing practices impede those goals and divert resources from addressing the city's public safety problems.

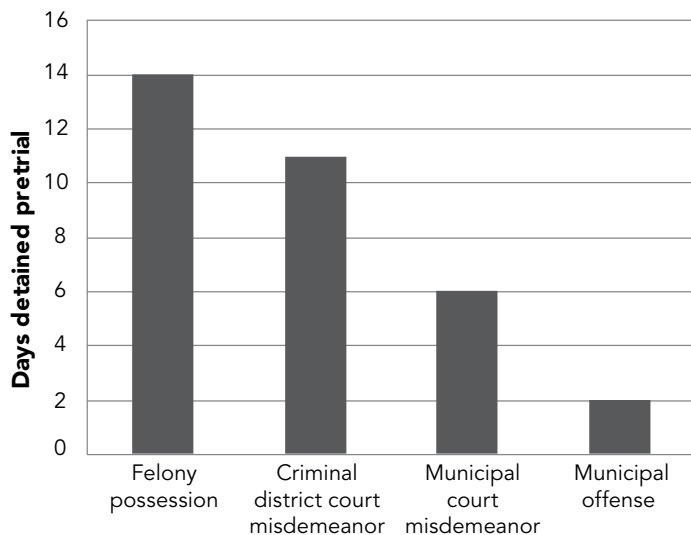
Although it is less expensive to process cases through a summons than an arrest, a criminal case entails costs even when the summoned defendant is not later incarcerated. Processing marijuana charges requires resources from the police department, the courts, the prosecutor, and the public defender. Given the scarcity of city resources, time and money could be allocated to more pressing needs in the criminal justice system.

The impact on defendants and their families and communities is even more dramatic. Most obviously, people arrested for marijuana offenses face the same types of direct financial costs that anyone involved in the criminal justice system encounters. A financial bond is often set for those who are taken into custody. If so, unless they can pay the entire amount of the bail in cash, they must secure a commercial bail-bond and pay the accompanying fees to be released from jail—and the bond and fees are not refundable even if people are not prosecuted or are prosecuted and not convicted. Also, pretrial defendants with marijuana charges are often required to submit to drug testing—and sometimes substance-use assessments and treatment—as a condition of release. They are frequently required to pay for these services themselves. Then, if convicted, defendants face the obligation of paying fines, fees, and court costs. Even a first-possession marijuana offense can involve a fine of several hundred dollars. All of these burdens fall disproportionately on indigent defendants, for whom a few hundred dollars in fines and fees can be insurmountable—and nonpayment may lead to incarceration.

For those who are detained in the jail, many other problems arise. As mentioned earlier, New Orleans’s jail is under a consent decree for unconstitutional conditions—and the jail remains unsafe for inmates. They are exposed to violence and health risks, which are particularly acute for those who already have mental health or other medical conditions.

Both detention and court attendance can have a negative impact on the stability of a defendant’s life. People may lose their jobs because they miss work, particularly if they are detained, but also potentially due to multiple court appearances. The need to find transportation and ensure child care during court appearances are other examples of the costs imposed on defendants and their families. Recent research by the Arnold Foundation found that even short periods of pretrial detention in the United States—as little as two days—contribute to worse trial outcomes, harsher sentences, increased likelihood of rearrest before trial upon release, and increased recidivism rates among those who are convicted.<sup>14</sup> With five days being the average length of detention in New Orleans in 2014 and 2015 among those arrested only for a misdemeanor first-possession marijuana offense, there is sufficient time to increase the risk of negative outcomes and destabilize a defendant’s life (see Figure 3).

**Figure 3: Average pretrial length of stay for marijuana possession in New Orleans, 2014-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

Note: A criminal district court misdemeanor is a state misdemeanor offense heard in the criminal district court.

What's more, if convicted, people face a wide range of possible consequences. Although obstacles to employment, housing, voting (if convicted of a felony), and obtaining government benefits most directly affect defendants and their immediate families by increasing economic vulnerability and instability, these effects also take a toll on the broader community. The repercussions of disproportionate arrest and prosecution for marijuana offenses are significant, particularly in light of the minimal risk of societal harm that marijuana use poses. These consequences exacerbate socioeconomic racial disparities for black New Orleanians and their communities.

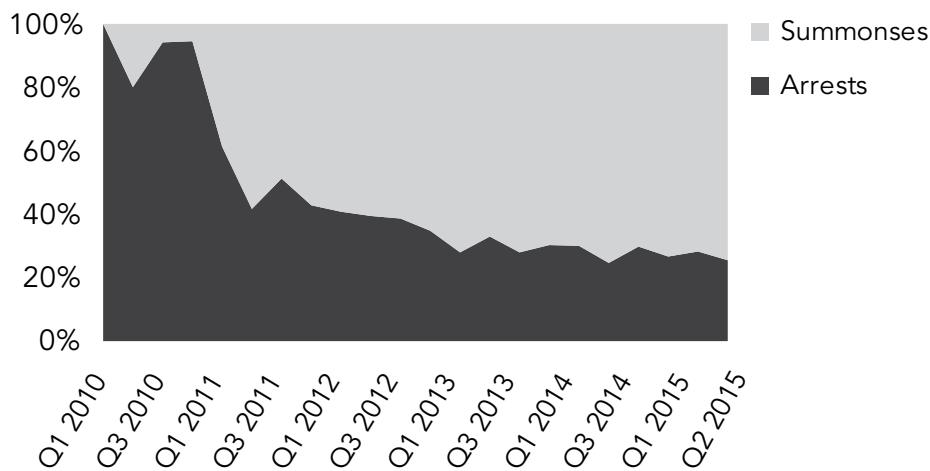
## Marijuana policing reforms

In the past six years, New Orleans has made a number of reforms to reduce the negative impact of some marijuana arrests. The reforms include legislative directives promulgated by the city council and changes in practice carried out by the police department and district attorney. The following section describes these reforms and their impacts, in order of their implementation.

### SUMMONS POLICY: MINIMIZING PRETRIAL COSTS

Local government entities in New Orleans have recognized the damaging effects of inequitable marijuana policing and have attempted to minimize them. In 2010, the Orleans Parish District Attorney began prosecuting first-offense possession of marijuana cases in the municipal court rather than in the criminal district court, enabling the police to issue summonses for these cases rather than making arrests. By the end of 2010, the New Orleans City Council created a municipal offense for first-offense marijuana possession, at which point NOPD adopted the policy of using the municipal charge whenever possible. Because police officers are required by ordinance to issue summonses in lieu of making arrests for municipal offenses in the absence of special circumstances, the intention was to dramatically decrease the number of people detained pretrial for possession of marijuana. This policy has been largely successful, with summonses issued in approximately 70 percent of eligible cases. (See Figure 4.)

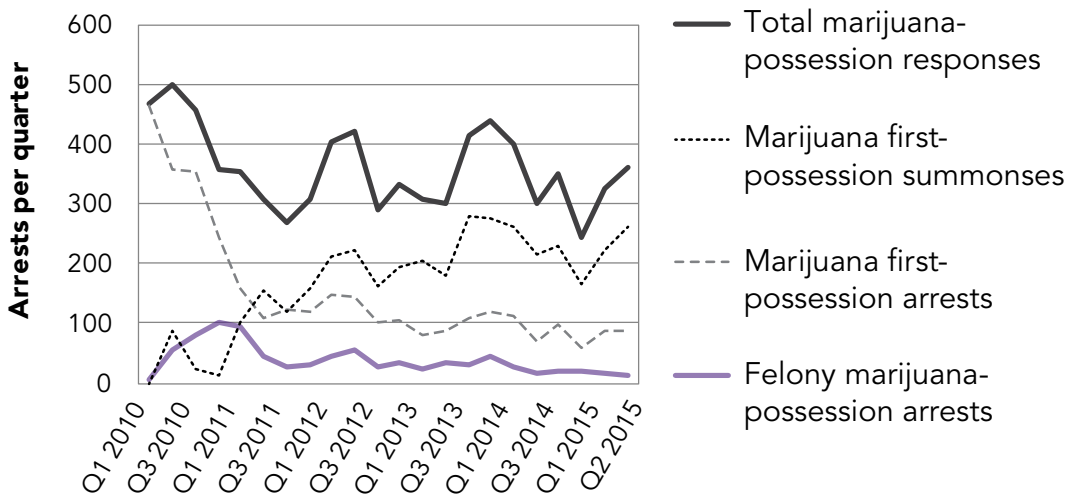
**Figure 4: First-possession marijuana offenses in New Orleans, by police response, 2010 through mid-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

Furthermore, as the use of summonses increased, the number of arrests for marijuana-related offenses declined. (See Figure 5.) From 2012—shortly after the use of summonses for all municipal offenses became the norm in New Orleans—through 2015, the jail population decreased significantly, although it is unknown to what extent that is attributable to the increased use of summonses for marijuana and other misdemeanor offenses.<sup>15</sup>

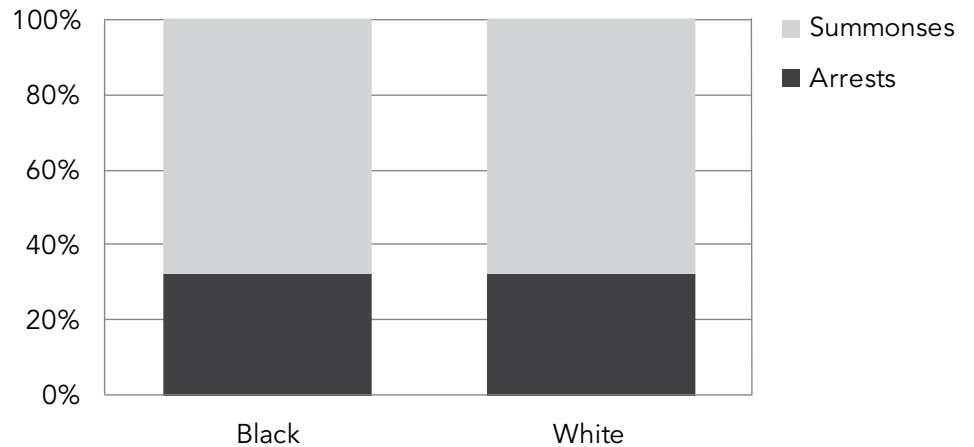
**Figure 5: New Orleans police responses to marijuana-related offenses, 2010 through mid-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

Promisingly, the data since 2012 shows that police in New Orleans have issued summonses to black people and others at similar rates for offenses eligible for a summons, notwithstanding the racially disproportionate rate of police responses to marijuana overall. (See Figure 6.)

**Figure 6: New Orleans police responses to first possession of marijuana, by race, 2012 through mid-2015**

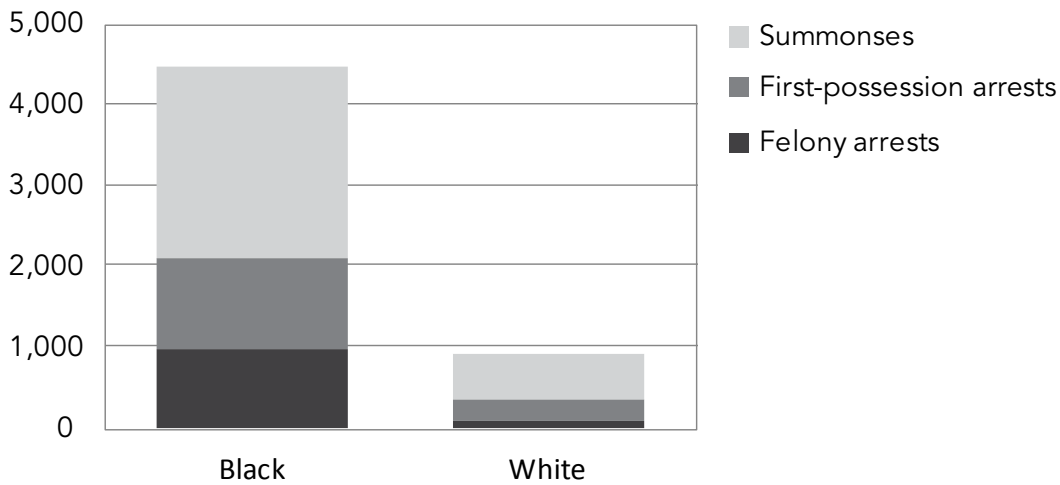


*Source: Vera Institute of Justice analysis of New Orleans Police Department data.*

Although the summons policy and practice have substantially reduced the number of people detained pretrial for marijuana possession, the dramatically higher marijuana-related arrest rate for black New Orleanians means that policing practices continue to have an outsize impact on the black population in several ways. First, even with the majority of people receiving summonses for misdemeanors, the number of black individuals who are arrested for a first-possession offense remains skewed. Second, the high number of police responses to black people for marijuana-related offenses—whether they receive a summons or are arrested—leads to many people ultimately being detained for failure to appear in court or to pay required fines and fees. Finally, the markedly high number of black New Orleanians arrested for felony marijuana charges—for which summonses are not allowed—means that many people will be detained pretrial and, if convicted, may face prison sentences and the accompanying consequences of a felony conviction. Figure 7 shows the average number of marijuana summonses and arrests, broken down by race.



**Figure 7: New Orleans police responses to marijuana offenses, by type and race, 2012 through mid-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

## RECENT REFORMS: ADDRESSING FELONY MARIJUANA OFFENSES

As described earlier, the New Orleans City Council recently enacted an ordinance that takes additional steps to address the damaging consequences of marijuana policing. The ordinance creates municipal offenses for all marijuana-possession crimes, including the repeat possession crimes that constitute felonies under state law but excluding charges of possession with intent to distribute. It also provides for solely financial penalties, with a maximum \$100 fine for a fourth or subsequent violation. The ordinance thus provides police officers with an option other than what state law dictates.

To the extent that officers use the municipal option, the March 2016 ordinance will have two main effects. When charging under the revised municipal code, police will be authorized and in fact encouraged to issue summonses to people charged with repeat marijuana possession, even for conduct that would be a felony if charged under state law. The code also decreases penalties and removes the possibility of incarceration sentences for all defendants charged with marijuana possession.

This is likely to have a positive impact on the local jail population and ease the adverse effects of pretrial detention. As noted, in 2014 and 2015 an average of nine people were arrested in New Orleans every month for felony marijuana-possession offenses and were detained an average of 14 days pretrial. Relying on summonses for people charged with repeat marijuana possession should also mitigate some of the racial disparity that derives from inequitable ma-

marijuana policing. Because more than 90 percent of those arrested for felony marijuana possession are black, a considerable number of black marijuana arrestees have been ineligible for summonses. The new ordinance should result in fewer black New Orleanians facing unemployment, financial insecurity, and threats to their health and safety because of pretrial detention.

This is particularly important because the inability in the past to charge a misdemeanor for what state law defines as felony marijuana possession created an additional penalty for people arrested for subsequent possession offenses, a largely disproportionate number of whom are black. The threat to public safety does not dramatically increase because someone is caught with marijuana two or three times as opposed to once. Thirty-five percent of those arrested for felony marijuana possession in 2014 and 2015 were subsequently charged by the district attorney only with misdemeanor possession or had their cases refused altogether. Although the prosecutor ultimately brought misdemeanor charges against many of these defendants, those who came in on felony arrests spent an average of seven days in jail before trial while those initially charged by the police with misdemeanors typically received summonses.

Similarly, the importance of reduced penalties cannot be overstated. Felony marijuana-possession offenses carry strict penalties: up to eight years in prison and a \$5,000 fine for a fourth or subsequent possession conviction, even if the prosecutor does not charge the defendant under the state habitual offender law. Even misdemeanor marijuana possession charged under state law—though it rarely results in people serving jail sentences post-conviction in New Orleans—can lead to fines of several hundred dollars and probation or diversion obligations, as well as a criminal conviction. These consequences hit poor, disproportionately black defendants especially hard.

## IN PROCESS: ADDRESSING POSSESSION WITH INTENT TO DISTRIBUTE

Not surprisingly, people arrested for possession with intent to distribute marijuana face lengthier pretrial detention than those charged simply with possession. In New Orleans, defendants arrested for intent to distribute are charged in criminal district court and—under state law—cannot be issued a summons in lieu of a custodial arrest or be released on their own recognizance; they also tend to be given a higher bail than people charged with felony marijuana possession. As a result, per 2014-2015 data, they spend an average of 18 days in jail pretrial. Whether a police officer arrests someone for possession or for possession with intent to distribute therefore shapes the person's pretrial experience, and the criteria for making this decision appear to be unclear or inconsistent. Seventeen percent of defendants arrested for possession with intent to distribute marijuana in 2014 and 2015 had a judge find no probable cause for the intent to distribute charge, although probable cause was typically found for possession. And in 37 percent of these cases, the prosecutor ultimately charged

only marijuana possession or declined to prosecute altogether. To address these concerns, the mayor's office and NOPD plan to reexamine officers' practices for charging possession with intent to distribute and to set guidelines for quantity and other circumstances for determining intent.

## Remaining challenges

The policies the City of New Orleans has changed so far show an admirable effort to minimize the detrimental consequences of marijuana policing, especially given the way it affects black communities. The 2016 marijuana ordinance specifically references the racial disparity in felony arrests as part of its legislative justification. But although summonses and reduced sentences are meaningful steps forward, they do not address all of the negative consequences of racially disparate arrest practices, which still have costs for the city and for defendants and their families. Inequities in arrests and prosecutions will continue unless policies, practices, ordinances, and statutes continue to change.

Processing a summons-initiated criminal case may take fewer police resources than arrest but still requires time and personnel of a department that has often struggled to carry out its critical functions. Likewise, the use of summonses does not eliminate the costs associated with the resulting court proceedings, including enforcement of the sentences imposed.

Perhaps more significantly, marijuana convictions (whether initiated by summons or arrest) impose costs on defendants that are disproportionate to the harms resulting from marijuana possession. No matter how much the maximum penalty is reduced by ordinance, any marijuana prosecution has repercussions stemming from state and federal law. Drug convictions have a range of serious consequences, and the various fees and court costs assessed at conviction and beyond can have an ongoing impact on poor defendants, even when the fine for the offense is relatively low.

Leaving aside the aftermath of a conviction, involvement in the criminal justice system increases the risk of adverse consequences, including incarceration. One of the most significant of these involves failures to appear in court. According to New Orleans Municipal and Criminal District Court data, 52 percent of the people summoned or arrested for marijuana possession in 2014 and 2015 failed to appear at least once during the proceeding, including after conviction for a failure to appear for a payment hearing. Regardless of the reason for the failure to appear, the resulting arrest warrants mean that people will spend time in jail because they missed a court date in a marijuana matter, despite New Orleans officials' efforts to minimize detention for marijuana-possession offenses.

The policies the city has implemented do a great deal to diminish some consequences of marijuana arrests that fall disproportionately on black New Orleanians, but these are differences in magnitude rather than in kind; the underlying disparity in marijuana arrests remains intact. Future policies should strive to address these differences and make policing practices more equitable.

# Alternative approaches to marijuana policing

New Orleans should continue to mitigate the harms, including racial disparities, of marijuana policing. Lawmakers might consider decriminalization, perhaps by using a civil citation for marijuana possession instead of a summons or criminal arrest, as is done in Massachusetts and Philadelphia. They might empower police officers to refer people possessing marijuana to a center that provides services to address substance use. Or the city might continue with summonses but mandate that no detention may occur as the result of conviction or the failure to pay or appear for payment. The city's leaders should at least determine the causes for the racially disparate outcomes of current policing practices. Regardless of the details of the approach taken, the goal should be to minimize the resources expended on and harms arising from marijuana policing.<sup>16</sup>

## Conclusion

Given the growing national momentum to reduce incarceration, it makes sense to limit the use of jail—where mass incarceration begins—whenever safely possible. By rethinking policing approaches to marijuana possession, which poses negligible public safety risk, jurisdictions can move toward their goals of decreasing jail and prison populations as they help minimize the disruptive consequences for individuals, their families, and their communities.

Racially disparate outcomes in marijuana policing contribute to the harms within the criminal justice system in New Orleans and likely in other jurisdictions throughout the country. The city has made much progress in alleviating these harms. But system actors must continue to understand the reasons black New Orleanians are disproportionately affected and take the necessary steps to eliminate race-based impacts in the criminal justice system.



## ENDNOTES

- 1 Brad Heath, "Racial Gap in U.S. Arrest Rates: 'Staggering Disparity,'" *USA Today*, November 19, 2014, <https://perma.cc/R8LR-W5PC>.
- 2 American Civil Liberties Union, *The War on Marijuana in Black and White* (New York: ACLU, 2013).
- 3 *Ibid.*, 66.
- 4 Allison Plyer, Elaine Ortiz, Ben Horwitz, and George Hobor, *The New Orleans Index at Eight* (New Orleans: The Data Center, 2013), <https://perma.cc/9V6S-Q6GX>. Based on data from the Bureau of Justice Statistics, "QuickFacts: New Orleans" (Washington, DC: U.S. Census Bureau, 2010), <https://perma.cc/82YF-UB8R> and the Orleans Parish Sheriff's Office's "Daily Inmate Count," 2015 (document on file).
- 5 Act 295; La. Rev. Stat. § 40:966(E). A third offense of possession of marijuana remains a felony with a prison sentence of up to two years. The act also reduces the penalty for first possession of marijuana, limits the time period in which misdemeanor possession can be the basis for a multiple-offense felony charge, and reduces the maximum penalties for felony possession.
- 6 New Orleans Municipal Code §§ 54-28, 54-505.
- 7 New Orleans Office of Inspector General, *City of New Orleans Arrest and Detention Policies for Non-Violent Misdemeanors and Traffic Offenses* (New Orleans: OIG, 2011), 7-8, <https://perma.cc/FRB8-NFZL>.
- 8 Crimes of violence are defined by statute in La. Rev. Stat. § 14:2.
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# Acknowledgments

The authors would like to acknowledge the collaborative assistance of the Mayor’s Office of Criminal Justice Coordination and of senior officials in the New Orleans Police Department for being thought partners in the preparation of this report and for being open to new approaches to marijuana policing and other practices. We also acknowledge our partnership with the office of Susan Guidry, chair of the City Council Criminal Justice Committee, which has worked independently to analyze and act on disparate marijuana policing. We are grateful as well to Councilmembers James Gray and Jason Williams, both of whom have publicly raised their concerns about racially disparate marijuana policing in public meetings of the council. And we recognize the painstaking work of the New Orleans Office of Inspector General to bring to light the need to focus police resources in the most effective ways.

Our work is inspired by the many New Orleans community groups that bring to light the issues we address—and without whom positive change would be neither well informed nor likely to take place.

The authors are grateful for the excellent work that Jules Verdone did in editing this report.

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### Suggested Citation

Meghan Ragany, Rose Wilson, and Jon Wool. *Racial Disparity in Marijuana Policing in New Orleans*. New York: Vera Institute of Justice, 2016.

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