DETENTION OF ALLEGED PROBATION AND PAROLE VIOLATORS IN ORLEANS PARISH PRISON

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Executive Summary

New Orleans's high local detention rate and the rising associated costs create a pressing need to review the city's detention practices. Of the sub-populations that make up significant portions of the jail's inmates, detained probationers and parolees accused of violating condition(s) of their supervision stand out in scale. This report measures the use of detention for this population in 2012, identifies areas where detention might not be used appropriately, and recommends practice changes to safely reduce this population and the associated costs.

In 2012, the use of detention for alleged probation and parole violators resulted in an average of 503 people detained in OPP in this status on any given day, representing roughly 19 percent of the total jail population (including DPS&C sentenced prisoners).[1] This use of detention cost the city over $8.8 million that year.[2]

Most supervisees are young, black, and male. This demographic group is statistically more likely to be detained and more likely to be detained longer than other demographic groups.

This report concludes that detention of alleged violators appears to be over-used for four main groups:

- Supervisees who, after adjudication of their alleged violations, are released to the community or receive non- or low-incarceration sentences (treatment, alternative detention centers, and short incarceration sentences) after adjudication.
- Supervisees detained for alleged technical violations—often of multiple conditions—such as failure to report to the supervising officer accompanied by failure to pay supervision fees.
- Supervisees 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.
- Supervisees in all circumstances who are detained for lengthy periods of time.

This report identifies detained probationers who are returned to supervision as a high opportunity group that warrants detailed study, particularly in the following situations:

- Probationers with certain new charges, such as drug possession, who present an opportunity for reduced detention due to both their high number and long length of stay.
- Probationers detained for new charges that were later refused.
- Probationers detained for lengthy periods of time before their probation hold is lifted.

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[1] Alleged probation and parole violators represent 27 percent of the 2012 local jail inmates when excluding DPS&C sentenced prisoners.

[2] 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 DPS&C for alleged parole violators detained on technical violations. 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).

- Probationers detained only for technical violations, who are being held primarily for failures to appear in court and failures to pay fines and fees imposed by the court.

Finally, this report recommends the following practice changes to address the overuse of detention for this population:

- 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 probation violators.
- Improve the effectiveness of violation proceedings for probation cases by improving communication among system actors and setting and monitoring target timelines for adjudication of violations for detained probationers.
- Reduce pre-adjudication detention in the New Orleans jail by transferring alleged parole violators without new local felony charges to DPS&C facilities and alleged probation violators supervised in other parishes without new local felony charges to the jail of their parish of supervision.
- Ensure that data regarding the use of detention for alleged probation and parole violators is accurately and thoroughly collected, shared, monitored, and analyzed.

Introduction

After numerous meetings and presentations of information, city officials, justice system experts, and community leaders determined that 1,438 beds in Orleans Parish Prison (OPP) would be appropriate to address the public safety needs of our community.[3] With a current jail population of roughly 1,800 and a local detention rate more than double that of the national urban average, New Orleans is using detention beyond its needs. In addition, the city is facing the daunting cost of bringing the troubled local jail, OPP, in line with constitutional standards per a federal consent decree. In this context, city leaders have begun to focus on who is detained in OPP and the drivers of detention for various jail sub-populations in an effort to right-size the jail. The size and length of stay of the sub-population of alleged probation and parole violators make it a critical group to examine.

The Detention Decision. The decision to jail a probationer or parolee suspected of violating the conditions of his or her supervision is mostly discretionary. When a supervisee is suspected of committing a violation, probation and parole officers, their supervisors, judges, and members of the committee on parole, depending on the supervisee's status, can decide to arrest the person, issue a detainer, or refuse bail. Louisiana law does not require detention for a supervisee awaiting adjudication of a violation and authorizes other responses to violation behavior short of initiating revocation proceedings.[4] Discretion is only limited when officers seek revocation for an alleged parole violator, as detention is the only statutorily-authorized trigger for violation proceedings.[5]

In New Orleans, supervisees are routinely detained in OPP while they wait for a hearing on the alleged violation(s). The use of such detention has little if any apparent relationship to whether or not alleged violators will be sanctioned if the violation is upheld. As this report indicates, many detention episodes result in a return to supervision. Decision-makers have the discretion to use detention or not as appropriate, from the decision by the probation and parole officer to arrest someone or place a hold on them, to final adjudication and whether or not detention should be maintained until then (by the judge or committee on parole). Given this level of discretion, analyzing the use of pre-adjudication detention is primarily a study of the practices of these decision-makers.

The Impact of Detention. There is no definitive research demonstrating that holding alleged probation and parole violators in jail has an impact on recidivism. However, there is evidence that incarceration when used as a sanction (post-adjudication) is no more effective in reducing

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[3] 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.

[4] Louisiana law allows, but does not require, pre-adjudication detention for probationers, who can be summoned to court to answer for alleged violations rather than arrested (*see* LA. CODE CRIM. PROC. ANN. art. 899 (2014)).

[5] For good time and parole supervisees, there is no summons process: the supervising authority—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 revocation proceedings (*see* LA. REV. STAT. ANN. §15:574.7 and §15:574.8 (2014).

recidivism than community-based sanctions.[6] In addition, a growing body of research shows that responses to violations are most effective when they are swift and certain.[7] Per these findings, the lengthy detention of alleged violators is unlikely to produce any public safety benefits.

In addition, deprivation of freedom has dramatic implications for individuals and for public safety. As with pretrial detention, detention of probationers and parolees can greatly destabilize supervisees, 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.[8] Further, the impact on communities and the financial cost to the city of over-detention are very significant. For these reasons, practitioners should consider detention as an option of last resort, given that supervisees' guilt has not been established. Decisions that affect detention must carefully balance immediate public safety concerns and the need for intervention with the potential for long-term negative effects on the supervisee's success and on public safety.

The Report. This report combines data and practice analysis to measure the use of pre-adjudication detention for probationers and parolees and whether such use was necessary, that is, limited to cases in which detention was needed to achieve a specific public safety goal.[9] It identifies areas of opportunity to safely reduce the use of detention and recommends practice changes to reduce costs and improve public safety and just results.

Although this report is based on data from 2012, current jail population trends and criminal justice practices suggest that this population continues to be detained at a high rate and for lengthy periods of time today.[10] We hope that this study will provide the information that criminal justice agencies and city leaders need to address overuse of detention for this sub-population and implement collaborative, safe, and fiscally efficient solutions.

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[6] Wodahl, Boman, Garland (2015): "Responding to probation and parole violations: Are jail sanctions more effective than community-based graduated sanctions?" Journal of Criminal Justice, 43, pp 242-250 (2015)..

[7] Lowe, Mowatt (2013): "Effective Responses to Offender Behavior: Lessons Learned for Probation and Parole Supervision," American Probation and Parole Association, National Center for State Courts, The Pew Charitable Trusts, pp. 3-9. *See also* Thigpen, Solomon, Keiser, Humphries (2001): *Responding to Parole and Probation Violations, A Handbook to Guide Local Policy Development*, National Institute of Corrections.

[8] Lowenkamp, VanNostrand, Holsinger (2013): "The Hidden Costs of Pretrial Detention," Laura and John Arnold Foundation.

[9] This report is based primarily on data provided by the Louisiana Department of Public Safety and Corrections, Division of Probation and Parole, supplemented with data from the Criminal District Court.

[10] As of November 12, 2014, there were 425 inmates in OPP detained on an alleged probation and parole violations, which is 20 percent of a total of 2,122 inmates.

Background

Probation. Probation is the form of community supervision applied when the sentencing judge imposes a suspended prison sentence. It is served under the supervision of the Department of Public Safety and Corrections (DPS&C). An individual sentenced to probation can be made to serve the entire suspended prison sentence if found in violation of his or her probation conditions and the suspension is revoked by the sentencing judge.[11] Louisiana law limits eligibility for probation sentences based on the types of committed offenses and past criminal convictions (see sidebar).[12] Probationers are supervised by probation officers who ensure compliance with the various conditions of supervision and keep the sentencing judge informed. The sentencing judge is the ultimate supervising authority: after sentencing, the judge may monitor progress, address compliance issues as they arise, or revoke probation and execute the prison sentence, in case of violation(s).[13]

Probation Eligibility

- No prior felony conviction or after the first or second conviction for a non-violent offense.
- After a third felony conviction with the District Attorney's consent.
- Example of offenses commonly punished by probation:
  - Possession of drugs
  - Possession with intent to distribute marijuana
  - Simple burglary
  - Theft or possession of stolen things
  - Battery

Parole and Good Time. Parole allows persons sentenced to prison to serve the last portion of their sentence in the community under supervision of the DPS&C. To be granted parole, prisoners must be eligible based on the nature of their offense and criminal history and the committee on parole must approve their request for parole (see sidebar).[14] As with probation, parole officers are responsible for the day-to-day supervision of parolees and report suspected violations to the committee. The committee is also the ultimate supervising authority once parole is granted: it monitors the supervisee's compliance with conditions of supervision and sanctions the parolee in case of violation. For the most serious violations, the committee on parole can revoke a supervisee's parole and require incarceration for the remaining term of the prison sentence.[15] If a parolee is convicted of a new felony while on parole, parole revocation is mandatory.[16]

Parole Eligibility

State prisoners become eligible for parole after serving between 25 and 85 percent of their sentence, depending on:

- The number of felony conviction(s)
- The nature of the offense(s)
- The prisoner's age
- The prisoner's disciplinary record

Not eligible for parole: prisoners sentenced to life in prison or for certain violent crimes such as armed robbery.

[11] LA. CODE CRIM. PROC. ANN. art. 899 and art. 901 (2014).

[12] LA. CODE CRIM. PROC. ANN. art. 893 (2014).

[13] LA. CODE CRIM. PROC. ANN. art. 900 (2014).

[14] LA. REV. STAT. ANN. §15:574.4 and §15:574.4.1 (2014).

[15] LA. REV. STAT. ANN. §15:574.9 (2014).

[16] LA. REV. STAT. ANN. §15:574.10 (2014).

Good time allows state prisoners to serve the last portion of their prison sentence under community supervision, once they have accumulated sufficient "good time" credits for good behavior or completing programming in prison, as provided by law.[17] The supervision and violation processes for good time are identical to those for parole.[18] Good time release is more common than parole as it is not subject to the discretion of the committee on parole.

Technical Violations

- Failure to pay supervision fees
- Failure to report as required
- Unemployment or failure to seek employment
- Associating with known felons or persons involved in criminal activity
- Positive drug test
- Misdemeanor activity
- Travel out of state without permission
- Failure to enroll in or comply with treatment

Violation Process. Probationers and parolees are required to abide by a number of rules while they are under supervision. If a probationer or parolee is suspected of having violated one or several of these conditions of supervision, the probation or parole officer may take action to address the violation. Practitioners distinguish alleged commission of a new felony offense (or "new charge") from when the supervisee allegedly failed to comply with a condition of supervision ("technical violation", see sidebar for examples). Depending on the nature of the violation, officers may take action themselves, seek revocation, or request other action from the sentencing judge or from the committee on parole (for probation or good time/parole, respectively).[19] Since 2011, if previously authorized by the judge or committee and if the supervisee consents and admits to the violation, officers can directly impose administrative sanctions in case of a technical violation (see next page's sidebar for range of sanctions), without the judge's or committee's involvement.[20] In all circumstances of alleged violations, supervisees are entitled to a violation hearing before the sentencing judge or committee on parole at which they can contest the allegations.[21]

Pre-Adjudication Detention. If a supervisee is arrested for committing a new crime, the practice in New Orleans is for the police department to notify the Division of Probation and Parole.[22] Within 24 hours, probation or parole officers usually make a decision whether or not to issue a detainer, which places a hold on the defendant, preventing him or her 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 either through financial or non-financial bond. In probation cases, the

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[17] LA. REV. STAT. ANN. §15:571.3 and §15:571.4 (2014).

[18] LA. REV. STAT. ANN. §15:571.5 (2014).

[19] LA. CODE CRIM. PROC. ANN. art. 900 and art. 901 (2014). LA. REV. STAT. ANN. §15:574.9 and §15:574.7 (2014).

[20] Short jail stays used as administrative sanctions are also routinely spread out over several weekends to allow supervisees to maintain employment and other obligations while serving a short jail sanction. LA. CODE CRIM. PROC. ANN. art. 899.1 (2014). LA. REV. STAT. ANN. §15:574.7 (2014).

[21] LA. REV. STAT. ANN. §15:574.9 and §15:574.7 (2014).

[22] Note that DPS&C is also notified when a supervisee is fingerprinted through the Integrated Automated Fingerprint Identification System (AFIS) and when supervisees are booked into the jail.

probation and parole officer can trigger violation proceedings whether the supervisee is detained or not. Note that supervisees are not always detained in the parish in which they are being supervised. For example, probationers and parolees supervised in Jefferson Parish can be charged with committing a crime in New Orleans and detained in Orleans Parish Prison.[23] Depending on bed availability, alleged violators can also be detained in a different parish jail, even in the absence of new charges in that parish.

In case of alleged technical violations, the officer can request—or the judge or committee can order—the issuance of an arrest warrant.[24] Note that in probation cases, the supervisee could also be summoned to appear in court to address any alleged violation without being arrested.[25] Officers also have arrest powers in cases of emergency, if they have reasonable cause to believe a supervisee has violated or is about to violate a condition of supervision.[26] In all cases when detention is triggered by police or probation and parole officers, the judge or committee must make a determination whether there was probable cause for the arrest.[27]

For both new charges and alleged technical violations, the judge or committee on parole has the authority to lift the hold placed on a supervisee and order him or her released on bail.[28] In the case of new charges, this release order does not affect detention in the new case, as the supervisee may remain detained on a financial bond on the new criminal charge.

Practices. As in every jurisdiction, practices in New Orleans are instrumental in the use of detention. We mention some of these practices here.

- **Working Relationships between Decision-Makers**: The roles played by the various decision-makers can vary widely. Some sentencing judges are more involved in the day-to-day supervision of probationers while

Available Sanctions

Judge or Committee (if defendant is eligible)

- Reprimand and warning
- Intensified supervision
- Added conditions
- Community Rehabilitation Center (up to 6 months): "Administrative Revocation"
- Substance abuse treatment
- Revocation
- Intensive incarceration program followed by drug division probation program
- Up to 90 days revocation for first technical violation: Act 402
- Extended period of supervision

Probation and Parole Officers

- Travel restriction
- Written reprimand
- Increased reporting frequency
- Increased drug testing
- Treatment/services referrals
- Administrative hearing
- Request warrant, arrest

If administrative sanctions are authorized and supervisee consents

- Community service work
- Ordered services or treatment
- Day reporting center
- Curfew
- Electronic monitoring
- Jail sanctions (1-10 days)

[23] Although we have no data for the scope of this issue in 2012 a one-day snapshot in late 2014 shows that 20 percent of alleged probation violators detained in OPP had no Orleans Parish probation case.

[24] LA. REV. STAT. ANN. §15:574.7 (2014). LA. CODE CRIM. PROC. ANN. art. 899 (2014).

[25] LA. CODE CRIM. PROC. ANN. art. 899 (2014).

[26] LA. CODE CRIM. PROC. ANN. art. 899 (2014). LA. REV. STAT. ANN. §15:574.8 (2014).

[27] Id.

[28] LA. CODE CRIM. PROC. ANN. art. 899(C) (2014). LA. REV. STAT. ANN. §15:574.7 (2014).

others rely on the probation officers' supervision and recommendations regarding non-compliance. In addition, each actor's preference and relationship to others can greatly impact proceedings. For example, an officer's likelihood to initiate revocation proceedings can be encouraged by the judge's past decisions that were consistent with the officer's recommendation. Similarly, a judge might be more inclined to follow the recommendations of a probation officer he or she has worked with in the past. In some instances, this can create a circular decision making process whereby violation proceedings are more likely to be instituted and harsher sanctions imposed.

- **Use of Administrative Sanctions:** Administrative sanctions have been allowed by statute since 2011 and provide the authority to officers to respond directly to violations—without the involvement of the committee or judge. They offer a set of swift and certain sanctions proportional to the seriousness of the violation. In Orleans Parish, their use is limited in probation cases, as most judges have not authorized officers to employ administrative sanctions. This significantly reduces the probation officers' options when facing a violation, especially when the violation is fairly minor, and increases the use of detention and full-blown revocation proceedings. However, the committee on parole authorizes the use of administrative sanctions in all parole cases.

- **Routine Detainers for New Charges:** When a defendant is booked on a new charge, it is the practice in Orleans Parish for the Division of Probation and Parole to file a detainer, preventing the defendant from being released. There is no clear guideline to help the officers make this decision and it is unclear what factors, if any, are guiding such decisions. In addition, the District Attorney's office, as a matter of internal policy, files a rule to revoke for all supervisees arrested on new felony charges.

- **Deferred Adjudication:** When a supervisee is arrested on new felony charges it creates a situation in which the supervisee has two open cases, usually with two judges: the sentencing judge ruling on the violation and the judge ruling on the new felony charges. This can create inefficiency and delay as the defense seeks to resolve both cases in tandem. Notably, revocation proceedings are frequently delayed until there is a disposition in the new case, leading to lengthy detention periods when the initial decision to detain is not reconsidered.

A. Scope of the Phenomenon

This section measures the extent of the use of detention prior to adjudication of alleged probation and parole violations. To do so, the number of affected people is measured in four different ways: 1) the number of alleged probation or parole violators *detained at some point* in 2012 in OPP, 2) the average *static* number of alleged violators in OPP in 2012, 3) the *percentage* of supervisees who were detained for an alleged violation in 2012, and 4) the number of alleged violators whose admission to OPP was in 2012.

1. Impact on the Jail of Detaining Probation and Parole Supervisees

In 2012, 2,073 probationers or parolees jailed for alleged violations consumed 184,328 bed days in OPP (see Figure 1).[29] 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. Many were jailed after being arrested for new charges and were prevented from posting bail on the new charges because probation or parole officers filed detainers, requiring their continued detention. Others were jailed for alleged technical violations of their conditions of supervision. Probationers occupied 61 percent of the bed days of all detained supervisees, followed by those on good time release (36 percent) and those on parole (2 percent). This breakdown is representative of supervisees in Orleans Parish with 61 percent of supervisees on probation and 39 percent on good time or parole release.[30]

Figure 1: Alleged Probation or Parole Violators Detained in OPP at Some Point in 2012

Supervision Type	Individuals	Bed Days	Percentage of Bed Days	Daily Avg. Alleged Violators in OPP
Probation	1,217	113,171	61.4%	309
Good Time	848	66,738	36.2%	182
Parole	42	4,419	2.4%	12
Total Supervisees	**2,073*	*184,328*	*100%*	*503*

*Some individuals were under more than one type of supervision at different times during the year, thus the total number of supervisees is less than the sum.

As shown in Figure 2, detaining large numbers of alleged probation and parole violators has a substantial impact on the jail population at OPP.[31] Throughout the year, between 280 and 350 probationers, 170 and 200 good time supervisees, and about a dozen parolees were detained in OPP on any given day in 2012. On average, 503 people under community supervision were in OPP for alleged violations, which represented 19 percent of the total jail population (when including DPS&C sentenced prisoners).[32]

The practice of detaining alleged violators in OPP inflates the jail population and imposes a significant cost to the city. Using an estimated daily per inmate cost of $50, pre-adjudication

[29] Figure 1 includes individuals who were admitted to OPP for alleged violations prior to 2012 but whose stay in jail extended to 2012. For admissions for alleged violations in 2012, see Figure 4.

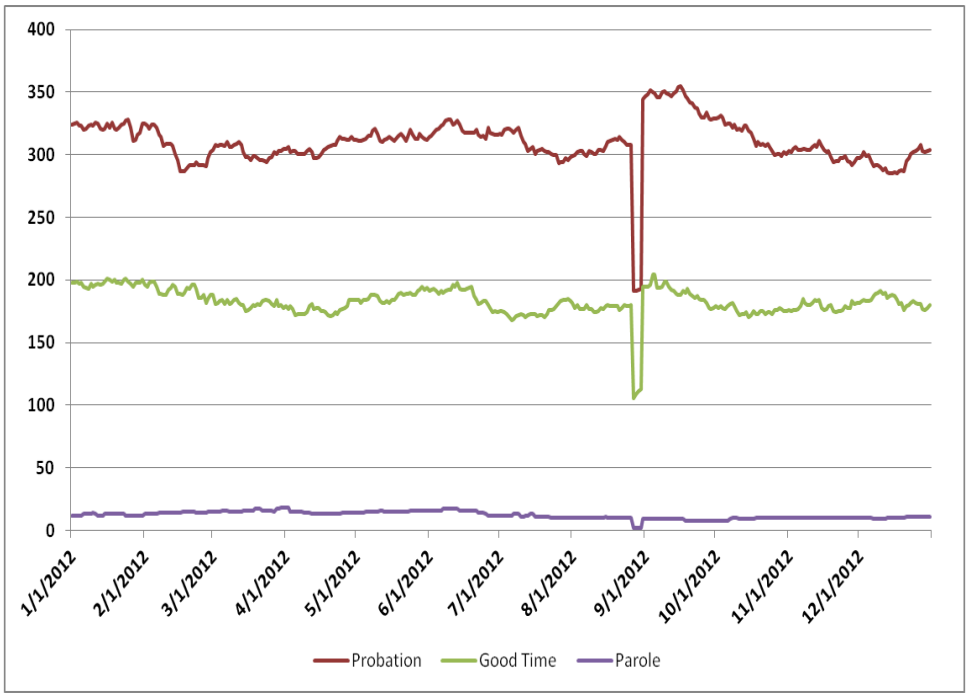
[30] Based on conversation with DPS&C senior staff, April 21, 2015.

[31] The drop at the end of August reflects the evacuation of OPP in advance of Hurricane Isaac.

[32] Total jail population based on Daily Inmate Counts averages from the Orleans Parish Sheriff's Office.

detention of alleged parole and probation violators cost roughly $9.2 million in 2012.[33] Although DPS&C started reimbursing part of those costs for alleged good time and parole violators in recent years, most of this cost ($8.8 million in 2012) is borne by the City of New Orleans and therefore by city taxpayers.[34]

Figure 2: Static Number of Alleged Violators in OPP in 2012[35]



Finding: In 2012, on an average day, 503 supervisees alleged to have violated the conditions of their supervision were detained in OPP.

[33] The Office of Inspector General found that the city spent at least $48 per inmate per day in recent years. *See* 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. Indeed, 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.

[34] This calculation is based on the understanding that DPS&C paid a per diem of $24.39 per inmate per day for alleged parole and good time violators jailed on technical violations (estimated at 20 percent of all alleged violators detained in OPP). In addition, since 2014, DPS&C reimburses local jails at the rate of $12.19 per day for alleged parole and good time violators detained on new charges for more than 14 days: *see* LA. REV. STAT. ANN. §15:824(B)(1)(e) (2014). Under this new regime, the City of New Orleans would bear an $8.3 million per year cost if population levels remain constant.

[35] The drop in September 2012 is due to Hurricane Isaac evacuations.

2. Effect of Detention on Probation and Parole Supervisees

The practice of detaining alleged violators affects a significant number of the people supervised in Orleans Parish. 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 3). On average, probationers and good time supervisees spent six to seven percent of their time under supervision in jail.

Figure 3: Percentage of Supervisees Who Were Detained for an Alleged Violation in 2012

	Supervision		Detention		Detention/Supervision Ratio	
Supervision Type	**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%

Figure 4 shows the number of admissions to OPP for violations in 2012 for those supervised in the community and the number of days for which they were held until the adjudication of the violation. If the 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 conditions imposed on release.

Figure 4: Alleged Violators Admitted to OPP 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

Finding: Between 20 and 24 percent of supervisees were detained at some point in 2012.

Before analyzing the triggers and outcomes of detention, it is crucial to identify both the individual and supervision characteristics of those detained. This could reveal trends that might explain why detention is so widely used.

3. The Composition of the Detention Population

This section examines the demographics of alleged probation and parole violators, specifically their sex, race, and age. This report does not attempt to find causality between race, age, or sex, respectively, and pre-adjudication detention of alleged violators. In addition, there is no evidence of policies, protocols, or guidelines providing for the use of demographic factors in detention decision-making. Nevertheless, it is important to explore the demographic characteristics of those detained in order to understand the detained population and, possibly, the reasons for the high use of detention. Further, correlations between detention and demographic characteristics may suggest that certain groups are statistically more likely than others to be subject to certain responses, such as detention, and thus may inform practice changes.

Figure 5: Supervised and Detained Populations by Race and Sex

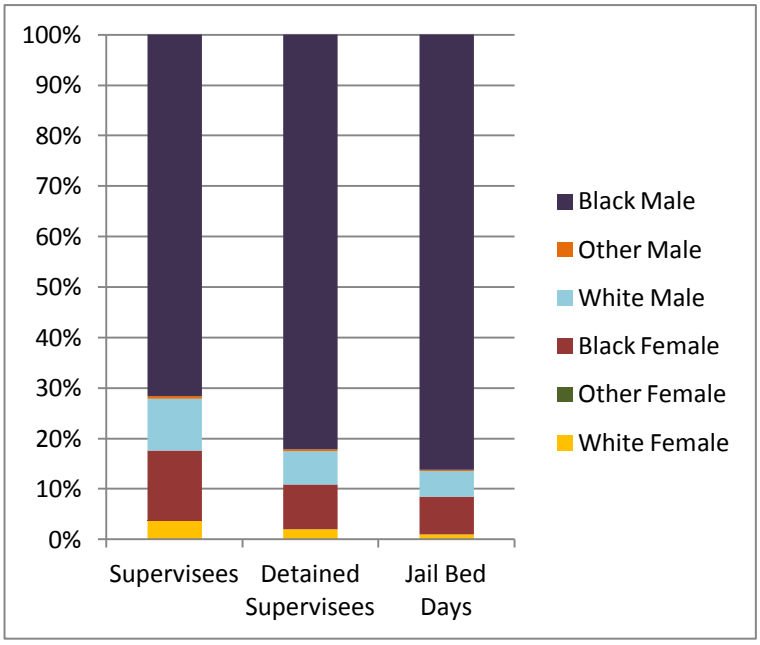
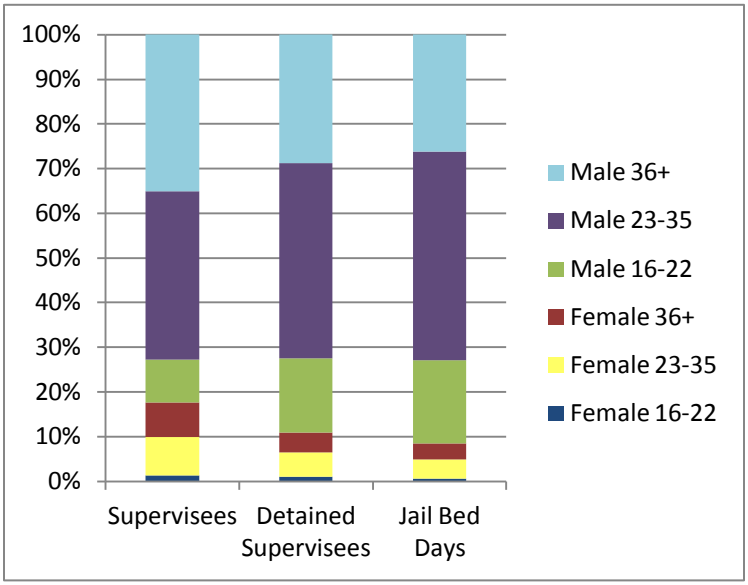


Figure 5 shows that the vast majority of people on probation, good time release, and parole in New Orleans are black males (over 72 percent). Black females are the second biggest group, representing 14 percent of supervisees, and white males the third at 10 percent. This is similar to statewide trends in probation and parole supervision.[36]

Black males are disproportionately likely to be detained in the jail on violations, and they consume a disproportionately high number of bed days. Although black males are 72 percent of those under supervision, they represent 82 percent of those who are detained and 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 while only 14 percent of white males do. All other subgroups have disproportionately fewer jail stays and represent smaller percentages of jail bed days compared to the size of the supervised population.

[36] Based on conversation with DPS&C senior staff, April 21, 2015.

Figure 6: Supervised and Detained Populations by Sex and Age



As Figure 6 shows, there is a similar over-representation in detention of males in the 16-35 year old age groups.

Males 23-35 years old represent 38 percent of supervisees, but they represent 44 percent of those detained and 47 percent of the aggregate time spent in jail. Similarly, 16-22 year old males represent 10 percent of supervisees, but 17 percent of the detained population and 19 percent of the time spent in jail. All other sex and age subgroups show disproportionately fewer detention stays and represent smaller percentages of jail bed days compared to the size of the supervised population..

One in four black male supervisees and close to a third of male supervisees between the ages of 16 and 35 were detained in 2012. This indicates that detention is more likely to affect certain demographic groups, namely young black men.

Although there is significant disparate racial impact indicated here, there is no indication of racially biased intent. A more in-depth analysis, comparing demographic groups of supervisees in similar circumstances (same risk level, same alleged violations), would be needed to reveal whether these statistical patterns are consistent with supervisees' individual circumstances or the result of unconscious or conscious biases towards certain demographic groups.

Finding: Young black male supervisees are statistically more likely to be detained than other demographic groups.

4. Dispositions following detention

The data used in this report does not reveal the detailed reasons a probationer or parolee was detained in OPP, whether for an arrest on a new charge or for a technical violation of supervision conditions. However, the outcomes of the detention period reveal valuable information about the use of detention. Figure 7 shows detention outcomes, especially whether the supervisee received an incarceration sanction or was sent back to supervision. The figure shows the number of detentions in 2012 for each outcome and the average number of pre-adjudication days spent in OPP.

Figure 7: Outcomes of the Detention Period and Days Spent in OPP

	Probation		Good Time		Parole	
Outcomes	**Admissions**	**Days**	**Admissions**	**Days**	**Admissions**	**Days**
Community w/Supervision	456	39	281	28	15	62
Community w/o Supervision	31	71	22	112		
Other Incarceration	65	52	49	82	4	104
Revocation (not OPP)	19	83	5	89	1	67
Admin. Revocation	33	46	8	26		
Treatment	10	45	7	29		
Unclear	9	52	1	113		
No Release (OPP)/Missing	58	459	13	463	3	396
Revocation (OPP)	306	114	319	79	12	105
Tech 402 (OPP)	54	35	97	18	1	2
Total/Weighted Avg.	*1041*	*87*	*802*	*78*	*36*	*107*

The two most common outcomes across all supervision types are release to the community under supervision and revocation. Releases to the community include supervisees who only have technical violations or those who have new felony charges and are released on those charges through a refusal, dismissal, posting of a pretrial bond, or a non-incarceration sentence. Probationers who were eventually released to the community under supervision served an average of 39 pre-adjudication detention days in OPP in 2012. Good time parolees served an average of 28 days prior to release.

About a third of those detained are revoked but remain in OPP, at least for the beginning of their DPS&C incarceration (see "Revocation (OPP)" line in Figure 7). This group is detained for long periods prior to revocation, especially probationers (114 days on average) and parolees (105 days on average).

The longest average stays are for the "No Release" group. These are detainees who were still in OPP pre-adjudication at the time we received the data in October 2013, 10-22 months after they entered the jail in 2012, or for whom the release information was missing from the data. The number of people in this group is not large but the length of stay of this group is not reliable due to the missing data.[37]

Finding: The two most likely outcomes of pre-adjudication detention are return to the community with supervision and revocation.

[37] In the available data, a number of supervisees who were detained in OPP in 2012 appeared to remain in detention at the time this analysis was compiled. Other sources indicated that some of them had actually been released or transferred and that their release information was simply missing from the data. This group appeared to have very lengthy stays in OPP but this was at least in part the result of the missing release data.

Alleged violators are detained at a high rate in New Orleans, inflating the local jail population and affecting a substantial part of the supervised population, especially young black male supervisees. In most cases, adjudication of the violations does not lead to revocation or an incarceration sanction. This report will next explore whether pre-adjudication detention is appropriate in these cases.

B. Appropriateness of Detention and Areas for Improvement

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 chances of recidivism.[38] Such administrative sanctions, if used appropriately, promote more effective supervision through the use of swift, certain, and gradual responses to violations. However, detaining alleged probation and parole violators *before* adjudication—that is, before a sanction is imposed—has damaging effects at two levels. First, it inflates the jail population and increases costs for the city. Second, it puts probationers and parolees at risk of harm from unnecessary incarceration in OPP, destabilizes their lives, and increases their likelihood of committing future crimes. At such human and financial costs, measuring the number of affected individuals is insufficient.[39] Rather, the inquiry should focus on the appropriateness of detention in these cases. Although a determination of appropriateness in any one case requires an individual examination of all relevant factors, one can identify certain factors in groups of cases that indicate detention might not have been appropriate or was excessively long. This section focuses on three such factors: (1) detention outcomes, (2) the nature of the alleged violation, and (3) the length of pre-adjudication stay. Each factor identifies areas of opportunity where detention might have been over-used.

1. Detention Outcome is Non- or Low-Incarceration

Pre-adjudication detention should be used when it is necessary to protect public safety and should be avoided in circumstances where incarceration is not a likely or appropriate response to the violation after adjudication. Indeed, if the alleged violation is so minor that internal procedures recommend non-incarceration sanctions, detaining the alleged violator before a finding of guilt for this minor violation is problematic.[40] One approach to measuring the appropriateness of detention therefore is to look at the sanctions that were ultimately imposed on supervisees following their detention for alleged violation(s).

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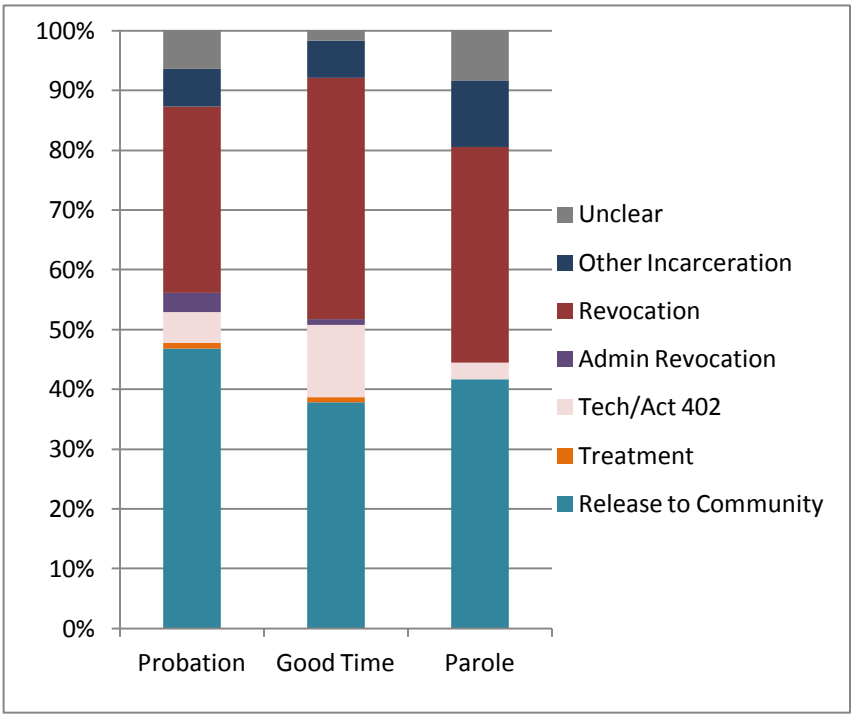
[38] Lowe, Mowatt (2013), pp. 3-9. Vera Institute of Justice (2013), "The Potential of Community Corrections to Improve Communities and Reduce Incarceration," New York, NY, p. 26.

[39] 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 found that about 400 people are detained in OPP on any given day in pre-adjudication status for alleged probation or parole violations.

[40] 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.

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 long term consequences) or it was used as a substitute for post-adjudication sanction to compel behavioral change, thus raising due process concerns.

Figure 8: Detention Outcomes by Supervision Type



As Figure 8 shows, a significant portion of detention events in 2012 resulted in the supervisee being allowed to return to the community. This is the outcome for 47 percent of detained probationers, 38 percent of detained good time supervisees, and 42 percent of detained parolees.[41]

Indeed, a significant portion of detainees are either cleared of the alleged violations or are found guilty of them but the judge or committee determines 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 decision-makers' difficulties in identifying cases in which detention is appropriate. Consequently, we identified the group of detained supervisees who are subsequently released to the community as an area of opportunity (*see below*: Section C).

Generally, if the decision-makers determine that the behavior that led to a violation can be addressed through treatment, one can question the utility of detention prior to adjudication. About one percent of the detained probationers and good time supervisees are sent to a treatment facility after their detention period. Even if a determination is made that a person's substance abuse or mental health condition creates such a risk to the public or to the supervisee that he or she cannot be maintained on community supervision, placement in a treatment facility should be expedited to avoid a destabilizing and counterproductive jail stay for individuals in need of treatment.

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[41] A small number of parolees who were sent to jail for a few days as an administrative sanction might be counted in this population as we were unable to isolate them from alleged violators detained pending a revocation hearing. However, it is our understanding that administrative sanctions were not used for probation cases in New Orleans in 2012 and were just ramping up in good time and parole cases. Therefore, we estimate the number of people detained on these short jail stays to be fairly small.

Even if the ultimate sanction is incarceration in prison or placement in an alternative facility, pre-adjudication detention may be inappropriate. Indeed, if the ultimate sanction is a short incarceration stay—in many instances shorter than the detention period—the necessity of pre-adjudication detention is questionable. Five percent of detained probationers, 12 percent of detained good time supervisees, and three percent of detained parolees are ultimately sentenced to serve a short jail sentence (no longer than 90 days) for a first technical violation ("Tech/Act402" in Figure 8). In addition, three percent of probationers and one percent of good time supervisees detained in OPP are ultimately sent to a community rehabilitation center for no longer than six months ("Admin Revocation" in Figure 8). Both of these sanctions are available only in cases of technical violations. In such cases, the use of pre-adjudication detention, even if shorter than 90 days, might destabilize the supervisee and ultimately increase the threat to public safety initially posed by the violation. Finally, 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.

Finding: A majority of detained violators return to the community after their detention period or receive other non- or low-incarceration sanctions, which may indicate an overuse of pre-adjudication detention.

A number of procedural factors and sanction bargaining practices are influencing these outcomes and could inflate the trends we measured. An analysis of the detailed reasons for detention, especially the nature of the alleged violation, is required to confirm this over-detention trend and identify other areas of opportunity.

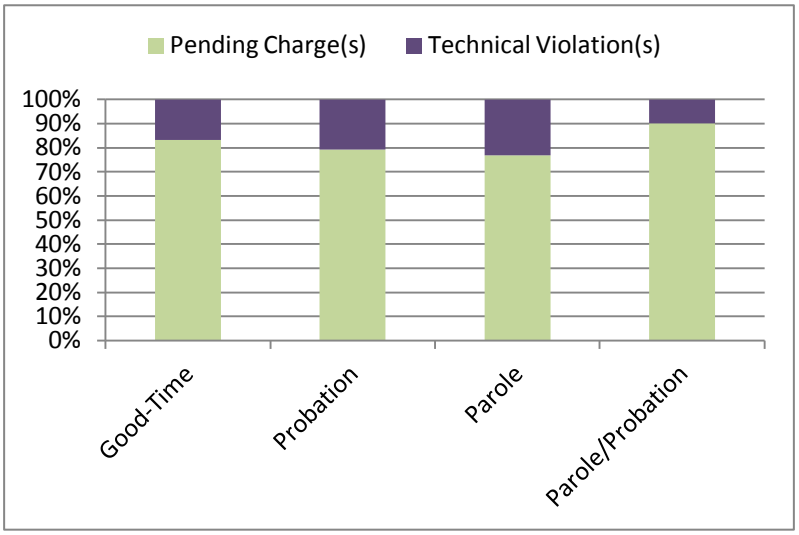
2. The Nature of the Alleged Violation Does not Warrant Detention

In order to understand whether or not deprivation of liberty is necessary, it is critical to discern the reason for the detention. Because of data limitations, we are unable to report on the reasons for detention for the full population of supervisees detained in 2012.[42] We nevertheless provide an analysis based on a one-day snapshot of the status of all supervisees detained in OPP and report on the specific reasons for detention for detained probationers, as available in the data.

Based on information provided by DPS&C for August 26, 2013, 81 percent of those detained had pending charges, that is, they were accused of committing another crime 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. Considering the non-criminal nature of the allegations against them, the necessity of depriving these supervisees of their freedom before a finding of guilt is questionable.

[42] For probation, the specific conditions of supervision that someone is accused of violating are recorded in a written form sent to the court which is then 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.

Figure 9: Alleged Violators Detained on 8/26/13 by Reason



The situation of the 416 individuals with pending charges is more complex. Indeed, in these cases, multiple factors influence detention: a detainer filed by the probation or parole officer, the pre-adjudication detention or release decision, and the pretrial detention or release decision in the new case. But, in these cases both the alleged violation and the pending charges are 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. Rather, there should be a case-by-case determination based on the seriousness of the alleged violations and the risk the individual might pose to public safety.

The tendency shown in this one-day snapshot could be specific to that particular day and not representative of a more general trend. This result should therefore be tested with a longer-term sample.

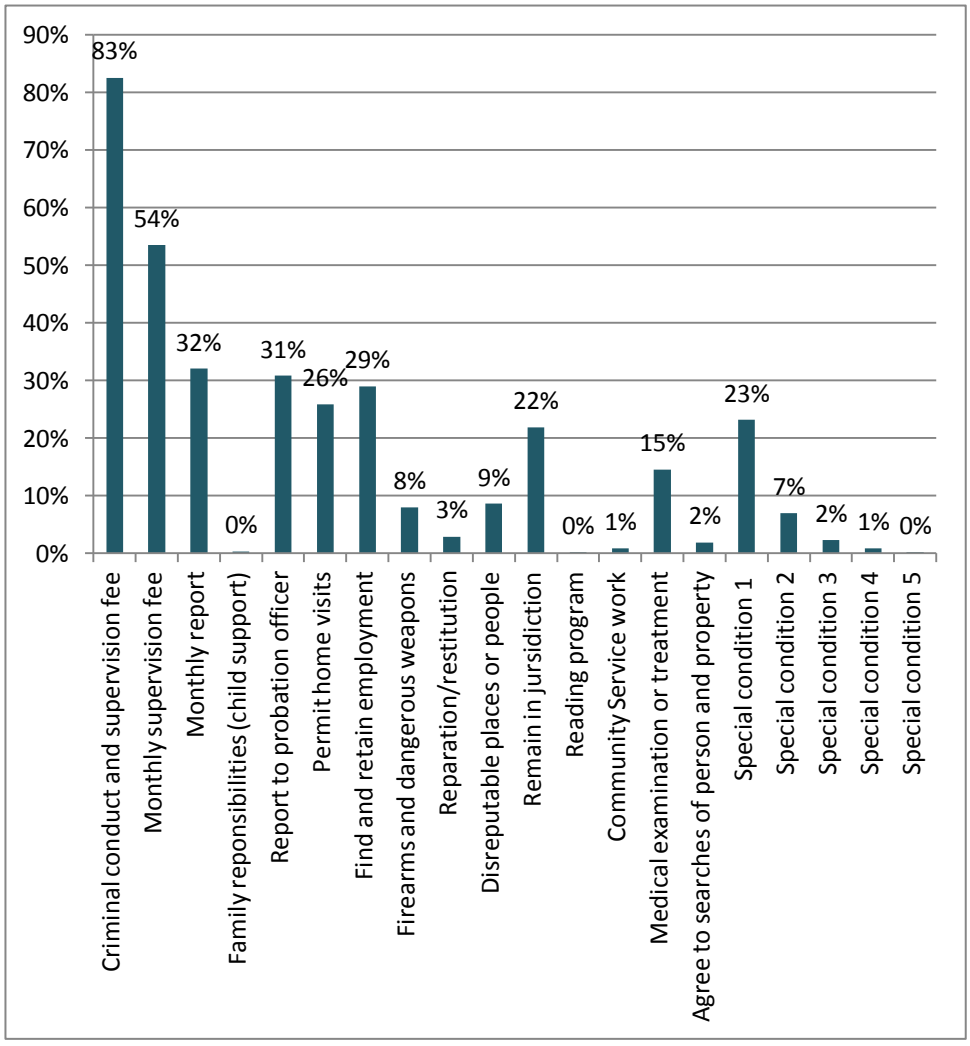
Finding: Pre-adjudication detention is over-used to respond to technical violations and may be over-used to respond to certain allegations of new criminal behavior.

Probation officers list all alleged violations when requesting detention, which makes the task of isolating the precise reason for detention challenging. Nevertheless, certain conditions of probation are used more often than others by officers as the basis for a violation and reason for detention. As Figure 10 shows, 83 percent of detained probationers were alleged to have violated supervision in 2012 by engaging in criminal conduct or failing to pay a supervision fee.[43] The second most-used basis was the alleged failure to pay a monthly supervision fee, cited in 54 percent of violation cases, although it was almost never used as the sole basis for violation. Other

[43] In addition to its database (CAJUN) and the one-day snapshot, the Division of Probation and Parole provided their Lotus Notes data, which is used to keep track of the detainer forms filed by officers. This data enabled us to extract the alleged violations most commonly used by officers when requesting that a probationer be detained. Figure 10 reports that 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, violation for criminal conduct and 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. Indeed, officers can report violations that involve criminal conduct in the absence of new formal charges instituted by the police department of prosecutor. Officers also routinely select multiple violations, complicating this analysis further. Regrettably, similar information does not appear to be tracked by the Division for alleged good time and parole violators.

frequently used condition violations were alleged failures to complete a monthly report (32 percent); failure to report to the officer (31 percent); failure to find employment (29 percent); failure to permit home visits (26 percent); failure to comply with various individualized conditions of supervision (23 percent); and failure to remain within the jurisdiction (22 percent). Technical violations of various kinds are frequently part of the reason for triggering detention. Although technical violations might not be the primary reason for detention in all of these cases, this practice is problematic as it indicates that pre-adjudication detention is not always reserved for situations presenting significant risk. Indeed, pre-adjudication detention should not be used to compel compliance in lieu of a sanction.

Figure 10: Alleged Violations of Probationers Classified as "Active Offenders" in 2012



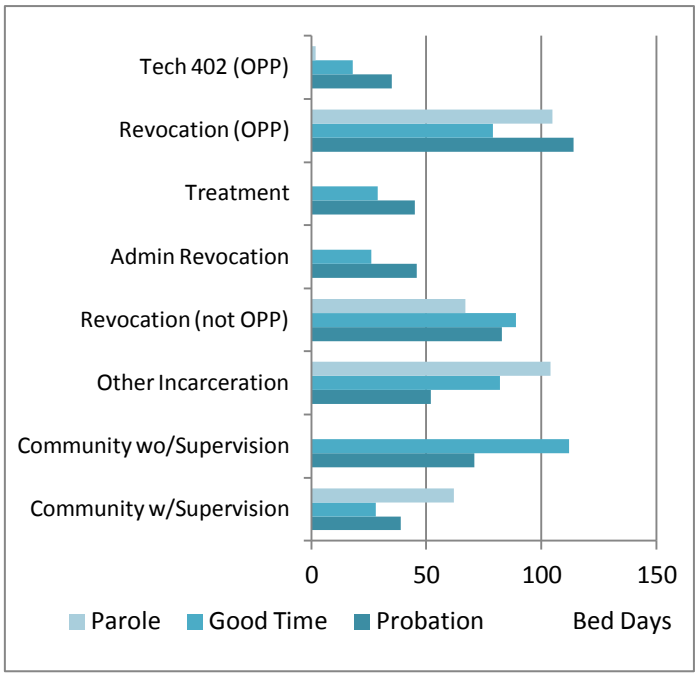
Finding: For probationers, technical violations such as failure to pay a supervision fee or failure to report to the probation officer are often listed as part of the reason for detention.

Even when detention is appropriate—especially when the alleged violations are serious or a long incarceration sentence is deemed appropriate—it needs to be of reasonable length to ensure that defendants are not unnecessarily detained. Hence, the length of time spent in detention needs to be examined.

3. Detention Might be Appropriate but is Lengthy

Even when assuming pre-adjudication detention is necessary for all detained supervisees, detention may nonetheless be over-used if supervisees are detained for lengthy periods of time while they await a determination by the court or committee on parole.

Figure 11: Length of Pre-Adjudication Stay by Outcome



As evidenced in Figure 11, length of pre-adjudication detention varies greatly across outcome types and significantly across supervision types. In probation cases, the statute specifies that if a person is detained, he or she will receive a probable cause hearing within ten days of arrest, although this requirement may be satisfied by affidavit and requires no formal adversarial hearing.[44] At this stage, the violation could be dismissed or the probationer could be released pending disposition. In practice, however, this stage appears to be a formality. Further, the statute requires the judge to schedule an adjudication hearing within 30 days.[45] Although this deadline can be waived by the supervisee, not only is there no outcome group with an average detention period of 30 days or less, but a number of them have average adjudication times two or three times the 30-day standard.

Particularly striking is the average of 112 days that good time supervisees spent in jail in 2012 for alleged violations before being released to the community without supervision. This situation could arise when supervisees are detained pre-adjudication for a lengthy period of time and their supervision period expires while the violation proceedings are pending. This situation could result in supervisees being unsatisfactorily terminated from supervision and ultimately released to the community without supervision. In such cases, the pre-adjudication length of stay—and not the alleged violations themselves—is influencing the outcome of the proceedings.

[44] LA. CODE CRIM. PROC. ANN. art. 899(E) (2014).
[45] LA. CODE CRIM. PROC. ANN. art. 900 (2014).

Overall, these lengthy detention stays can be explained in part by the practice of delaying the violation proceedings when there is a new charge. Indeed, in many such cases, adjudication of the probation or parole violation is intentionally deferred by the defense and the court until there is adjudication in the new case. This practice and the associated length of stay it produces 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 in the new charge but the probation or parole detainer is responsible for holding the supervisee in jail.

The various supervision types have slightly different procedural rules that might influence length of pre-adjudication detention. Notably, good time and parole supervisees can waive their right to a preliminary hearing (which inquires whether there is probable cause that the alleged violation occurred), which might in part explain the shorter length of stays for parolees than for probationers.[46] On the other hand, use of waivers also might inflate the number of detainees. Had there been a preliminary hearing, the decision-maker might have found no probable cause and released the supervisee. The data indicates that 45 percent of good time and parole alleged violators waive their right to a preliminary hearing.[47] Another 33 percent are held pending adjudication of charges, indicating that the revocation proceedings were deferred until adjudication of the new charges.[48]

Finding: Supervisees are detained for 89 days on average with great variation depending on the ultimate outcome of the detention period; the longest detention periods are for supervisees ultimately revoked and those released to the community without supervision.

Overall, supervisees are detained for lengthy periods of time, which greatly contributes to the jail population and associated costs. This suggests that the process to adjudicate violations itself should be revisited to ensure that defendants' rights to swift and fair justice are respected. Despite the identification of several areas of opportunities—non-incarceration outcomes, alleged technical and minor violations, and length of stays across the board—many questions remain unanswered: What kind of new charges do supervisees have? What outcomes do they have? What specific behaviors lead to detention in the first place? These questions are addressed in the following case study focusing on a specific opportunity group: alleged probation violators who are ultimately released to supervision.

C. Opportunity Group Case Study

Probationers present greater opportunity for reducing overuse of detention than other supervision types for two reasons. First, their alleged violations are adjudicated locally, which facilitates data access and practice change. Secondly, the law provides for a fully discretionary use of detention and for sanctions without any pre-adjudication detention. Further, high numbers of probationers returning to supervision after their detention stay is itself an area of opportunity for reduction.

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[46] LA. REV. STAT. ANN. §15:574.8 and . §15:574.9 (2014).
[47] Based on DPS&C's Lotus Notes data for good time and parole supervisees classified as "Active Offenders" in 2012.
[48] Id.

This group was therefore studied further, using information provided by DPS&C, enhanced by manual queries of Criminal District Court data. This section reports on the type of alleged violations of detained probationers who are returned to supervision after adjudication and provides details of the alleged violations (new charges or technical violations).

Of probationers detained in OPP in 2012 and ultimately released to supervision, 28 percent had been arrested in New Orleans on new charges (including both state and municipal charges), which triggered the detention (see Figure 12). Another 36 percent had evidence of technical violation(s) in their court record. For 36 percent of the opportunity group, we could not determine a reason for detention. This is either because the court record did not mention the alleged violation or because the supervising court or the new arrest was in another parish.

As presented in Figure 13, those with new charges were detained significantly longer (84 days on average) than those with technical violations (38 days on average) in 2012.

Figure 12: Opportunity Group's Detention Reason

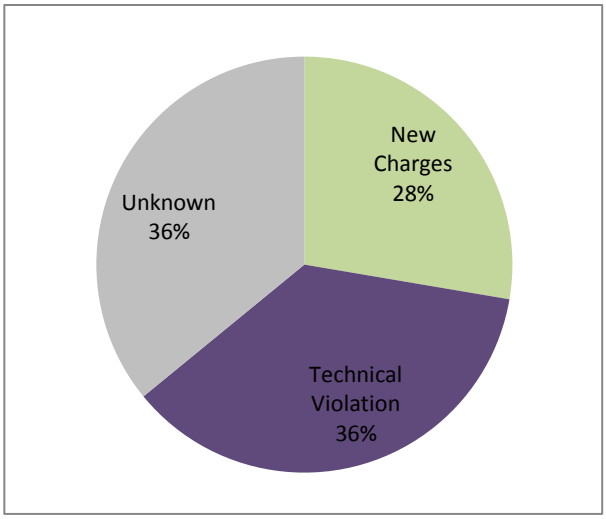
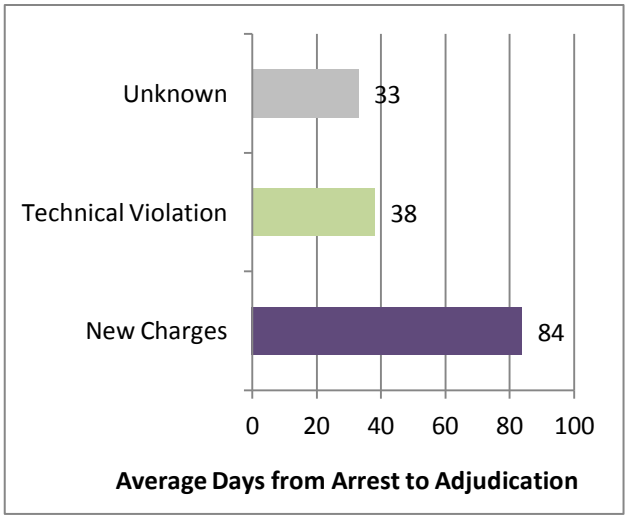


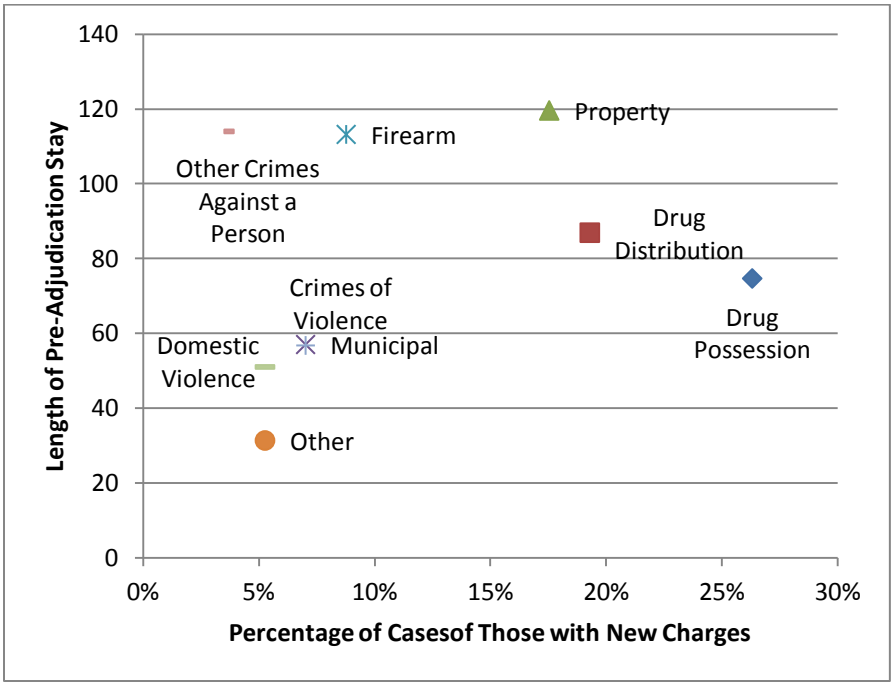
Figure 13: Opportunity Group's Length of Stay by Detention Reason



1. Opportunity Group - Detained on New Charges

For those who had new charges, the appropriateness of the detention depends on the nature of the alleged violation, the outcome of the detention period, and the length of detention, among other factors. Figure 14 presents the most frequent charges and associated lengths of stay to help identify the greatest opportunity for reduction. In 2012, drug possession charges were the most frequent, making up 26 percent of probationers with new charges. Property offense charges took the longest to adjudicate, with 120 days of pre-adjudication detention on average. Note that a small number of probationers were detained for alleged municipal offenses (generally minor misdemeanors punishable by up to six months incarceration, but rarely punished by any incarceration), for 58 days before adjudication on average.

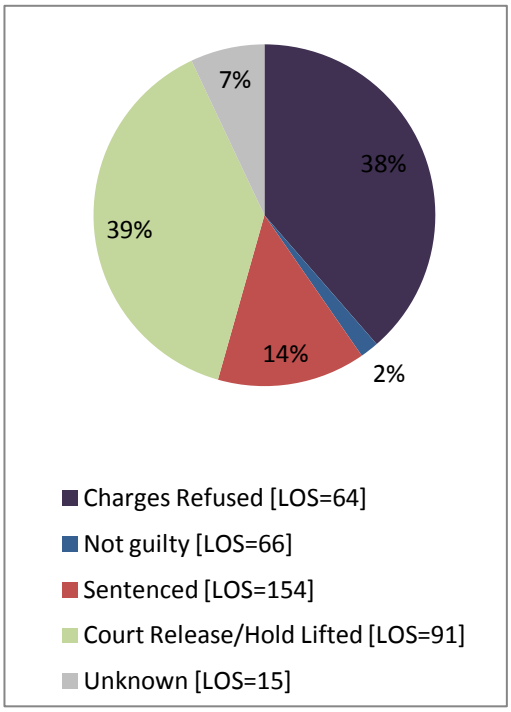
Figure 14: Frequency of Charge Type by Length of Stay



Of those in the opportunity group with new charges, 38 percent were released because their new charges were refused, two 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 time-served. Thirty-nine percent had their hold lifted and were able to await adjudication on community supervision. Interestingly, this latter group was detained for 91 days on average before release. For seven percent of probationers with new charges, the court record is unclear as to the reasons for the probationer's release.

Finding: Detained probationers were held for a variety of new charges, ranging from municipal offenses to crimes of violence. The most common charges were drug and property charges and the longest to adjudicate were property, firearm, and non-violent crimes against a person. Additional areas of over-detention included new charges that were ultimately refused and probationers held for lengthy periods of time before their probation detainers were lifted.

Figure 15: New Charges by Outcome and Length of Stay

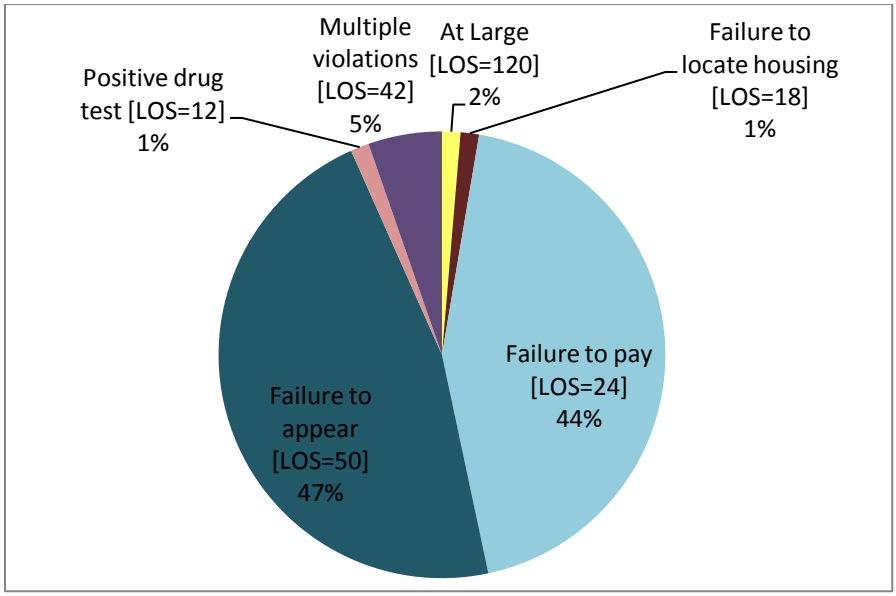


2. Opportunity Group - Detained on Alleged Technical Violations

Of the opportunity group cases in 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 were for a failure to pay court-imposed fines and fees. In cases in which defendants fail to appear, it is unclear whether detention is triggered by the supervising court or by the probation officer. However, in cases in which defendants fail to pay court-imposed fines and fees, the supervising court, sometimes through its collections department, seems to be the trigger of detention. It is important to note that failure to pay court fines and fees is generally not a violation of probation as payment of court fines and fees is generally not a condition of probation (as distinct from restitution and probation fees).

Although the length of stay for alleged technical violations is shorter than for new charges, it remains 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.

Figure 16: Technical Violations and Length of Stay by Type



Finding: Detention is routinely used to detain probationers accused of minor technical violations such as a failure to appear or a failure to pay court fines and fees. This suggests decision-makers use pre-adjudication detention as a punishment for minor violations, raising good practice and due process concerns.

Pre-adjudication detention is not an appropriate sanction for violators. It should only be used if strictly necessary to serve a purpose such as protecting the safety of the public.

Probationers detained for alleged violations who are ultimately released to supervision present an opportunity to reduce the use of pre-adjudication detention without threatening public safety.

The opportunity for reduced detention includes probationers with new charges and those with technical violations. These people fall into four groups: those who are (1) arrested on new but minor charges, (2) initially charged with crimes that are not formally prosecuted, (3) detained for several months before being released to await adjudication in the community, or (4) detained pre-adjudication for a failure to appear in court or a failure to pay court fines and fees. Each of these instances presents an opportunity for system actors to collaboratively explore practice changes that would produce better outcomes and reduce the harm and cost caused by unnecessary pre-adjudication detention.

Summary of Findings

In 2012, high numbers of alleged probation and parole violators were detained in OPP pending the adjudication of alleged violations. This affected between 20 and 25 percent of all people under community supervision in New Orleans, with young black male supervisees being significantly more likely to be detained than other groups. This practice also inflated the local jail population by over 500 people daily in 2012, even though in most cases the alleged violations were resolved without incarceration upon adjudication.

Pre-adjudication detention appears to have been over-used in 2012 in several areas: for alleged violators who were ultimately not sanctioned or received non-incarceration sanctions, for supervisees suspected of technical violations, and for supervisees arrested on new charges for whom the detention decision was reflexive rather than based on individual circumstances. In addition, the average length of pre-adjudication detention of 89 days 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. Among this opportunity group, areas of over-detention include those who are detained on certain new charges that suggest the underlying conduct does not present a risk to public safety, such as drug possession charges, those with new charges that are later refused, and those detained for lengthy periods of time before being returned to community supervision to await adjudication of the alleged violations. Areas of apparent over-detention for those in the opportunity group facing alleged technical violations included routine detention for failures to pay court fines and fees or failure to appear in court.

Recommendations to Reduce Use of Detention

1. Reduce the use of initial detention

Success under supervision is best achieved through officers' responses to all violation behavior through the use of swift and certain sanctions and affirmative responses to compliant behavior.[49] 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. The research literature indicates that even short periods of detention can disrupt pro-social and protective patterns and activities in the community and increase the risks of additional criminal behavior. For this reason, we recommend that:

a. The Criminal District Court and DPS&C continue to promote the use of swift and certain sanctions by maximizing the use of administrative sanctions as allowed by statute. This would facilitate the use of a range of options for probation and parole officers to respond to violations while encouraging compliance and avoiding unnecessary revocation proceedings and associated pre-adjudication detention. In addition, it would 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.

b. 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 individual's crime and circumstances. DPS&C officers should recommend these to the sentencing judge or committee on parole following a review of the individual's case.

c. DPS&C revise their internal procedures and include as a new standard that pre-adjudication detention generally should be considered only in cases in which the officer is seeking revocation. In some instances, public safety or effective supervision may require detention even when revocation is not sought. DPS&C should develop written guidelines describing in detail the decision-making process with respect to detention.

d. In probation cases, officers limit the use of detention to instances when it is strictly necessary to protect public safety. To help officers make this determination, internal guidelines should be developed that include the following: 1) A presumption that pre-adjudication detention is not appropriate in cases of technical violations, and 2) 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, including probable cause for the violation or new charge, the supervisee's risk level, the supervisee's compliance history, the nature of the allegations, the nature of the sanction sought (including whether or not the sanction carries significant incarceration time), the potential disruptive effects of detention

[49] Lowe, Mowatt (2013).

on the supervisee, and the effect detention could have on the supervisee's chances of success in future supervision (potential for loss of employment, housing, income, etc.).

e. The New Orleans District of the Division of Probation and Parole, the District Attorney's office, and the Criminal District Court coordinate to develop common procedures to request or decline initial detention when appropriate in probation cases with new felony charges (following the recommendations outlined in 1.d., above), including by defining the role of each actor.

f. In parole and good time cases, DPS&C revisit internal procedures to encourage officers to seek the committee on parole's involvement in the detention decision and strictly limit officers' direct use of detention—by arresting a supervisee or requesting that NOPD arrests a supervisee—to instances when an emergency exists, as prescribed by law.

2. Routinely Review Detention Status of Probationers

Once the initial decision to detain a probationer prior to adjudication is made, it should be revisited on a regular basis to avoid prolonging detention beyond what is necessary. We recommend:

a. The institution of probable cause determination hearings in open court for all probationers detained for alleged violations, to be held within 48 hours of arrest, giving 24 hours notice to attorneys. During those hearings and when the court finds probable cause, the court also should consider whether detention is strictly necessary to protect public safety and, if not, allow the supervisee to await adjudication under supervision of DPS&C.

b. The institution of monthly status hearings in open court for all probationers detained on alleged violations (including both those with technical violations and pending charges) to revisit the detention decision. Unless compelling public safety reasons exist to maintain detention, probationers should be allowed to await adjudication under supervision of DPS&C.

3. Improve Effectiveness of Proceedings in Alleged Probation Violation Cases

When detention is involved, delay in the adjudication of alleged violations not only prolongs detention, it also renders potential sanctions less effective and risks destabilizing supervisees who might otherwise be successful in supervision. We recommend that:

a. Probationers arrested on new charges have their cases allotted to the judge supervising probation for adjudication of both the new charges and the probation

violation, as is done in a number of other Louisiana parishes.[50] If no change is made to the allotment rule and the two-judge rule continues to be applied, these two judges should coordinate as the proceedings develop.

b. The Criminal District Court, after discussions with all relevant actors, adopts goals for the time between arrest and disposition of violations in all probation violation cases in which detention is deemed necessary. We recommend the setting of the following goals: 1) 30 days from arrest to adjudication of the violation in probation violation cases involving new felony charges, unless the court has compelling reasons to delay the proceedings, such as awaiting disposition of the new charges at the request of defense counsel; 2) 15 days from arrest to adjudication of technical violations. When these targets are not met, there should be a strong presumption that detention is not appropriate and, in fact, counterproductive.

4. Prioritize the Use of OPP Beds for Alleged Violators with New Orleans Charges

We recommend that:

a. If there is probable cause to detain an alleged good time or parole violator until adjudication of the alleged violation, and if these alleged violations do not include New Orleans felony charges, promptly transfer the supervisee to a DPS&C facility.

b. If an alleged probation violator who is supervised by a court in another parish, and if those violations do not include New Orleans felony charges, promptly transfer the supervisee to the jail of the parish where his or her probation violation will be adjudicated.

5. Improve Data Collection and Information Sharing

The data as recorded by DPS&C did not allow for a complete analysis of the reasons for detention of alleged violators. We recommend that:

a. DPS&C include in their database the exact alleged violation, using a detailed list of all conditions that were allegedly violated. In addition, the list of conditions routinely used should be revised to include a flag for new pending felony charges (separate from suspicions of criminal conduct), a field should be created to add a list of these charges, and conditions allegedly violated should be listed individually—notably, criminal conduct and failure to pay should be separated. All this information should be saved historically, as opposed to overwritten with new information, so that it is accessible for past violations as well as for current ones.

[50] The rules of the 1st, 4th, 14th, 20th and 26th Judicial Districts provide that when a probationer is arrested on new felony charges, these new charges are allotted to the section of court ruling over the probation case. See Louisiana Supreme Court, Appendix 14.0A to Rule No: 14.0: System of Random Allotment of Criminal Cases.

b. DPS&C, Criminal District Court, the District Attorney's Office, and Orleans Public Defenders work collaboratively to improve information sharing processes. Notably, mechanisms should be developed to promptly notify all parties of the arrest of a probationer or parolee to ensure that swift action can be taken with counsel prepared and present.