

# **Performance of the New Orleans Criminal Justice System 2003-2004**

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A Research Report by  
The Metropolitan Crime Commission

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New Orleans, Louisiana





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## PREFACE

This follow-up to a 2002 MCC report<sup>1</sup> analyzing the performance of the New Orleans criminal justice system finds a court system that sends an increasingly low percentage of defendants to prison for violent and serious crimes; and, a system that is increasingly overwhelmed with defendants prosecuted for misdemeanor offenses. In short, our criminal justice system fails to put violent and repeat offenders behind bars. An analysis of a representative sample of cases adjudicated at Criminal District Court (CDC) from October 2003 through September 2004 finds that:

- Only 5% of all convictions in CDC were for violent offenses<sup>2</sup>.
- Sixty percent (60%) of all convictions in CDC were for misdemeanor offenses, 47% for misdemeanor drug possession or possession of drug paraphernalia, essentially making CDC a misdemeanor court.
- Two out of three (67%) convictions were for simple drug possession.
- Only 7% of those arrested by the NOPD in 2003-2004 were eventually sentenced to prison, a 41% decrease in the incarceration rate since 1999-2000.
- The CDC judges are less likely than judges in other jurisdictions to incarcerate individuals convicted of felony offenses, particularly drug distribution.

The recent spike in violent crime in New Orleans is arguably the direct result of the increasing failure of our criminal justice system to convict and incarcerate serious and repeat offenders.

As will be shown in this report, the New Orleans criminal justice system also performs poorly in comparison with other jurisdictions across the country. It is little wonder then that crime is a top public concern, and that New Orleans ranks fifth “most dangerous” among U.S. cities with populations of 100,000 to 499,000 and eighth “most dangerous” overall.<sup>3</sup>

In order for New Orleans’ criminal justice agencies to gain control of serious crime, put serious offenders behind bars, and for citizens to feel safe, the arrest, conviction, and sentencing outcomes outlined above must be improved dramatically. Central to turning this faltering system around is harnessing the resources of the New Orleans Police Department (NOPD) and the District Attorney’s (DA’s) Office early on in the preparation of criminal cases.

The legal standard required for arrest is “probable cause”, but the prosecution must have “proof beyond a reasonable doubt” in order to prosecute a case and obtain a conviction. The evidence gap between these

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<sup>1</sup> *Analysis of the Processing of State Felony and Misdemeanor Charges in New Orleans: Arrest Through the Billing Decision*; Metropolitan Crime Commission; August 2002

<sup>2</sup> Violent offenses include homicide, rape, robbery, and felony and misdemeanor assault and battery charges

<sup>3</sup> *11<sup>th</sup> Annual America’s Safest (and Most Dangerous Cities)*; Morgan Quitno; November 22, 2004

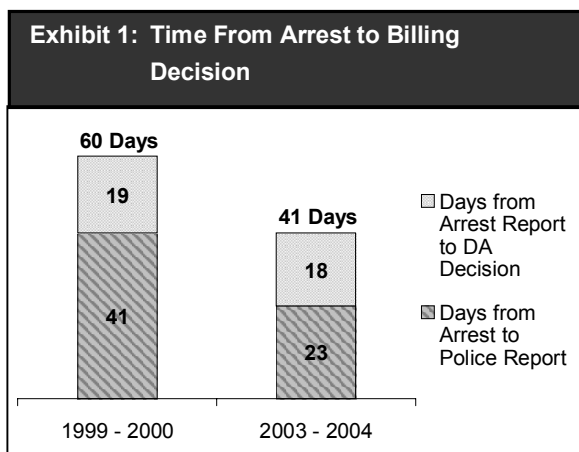
legal standards can and must be closed by engaging police and prosecutors in a team effort with the ultimate goal of putting together the strongest possible cases against defendants charged with serious crimes. Building this sort of synergistic relationship will require substantial and sustained improvement in existing levels of system coordination and integration of resources.

The case screening process, which includes the preparation of arrest reports by the NOPD and the DA’s Office deciding what charges, if any, to bring against a defendant (i.e., billing decision), is a critical juncture in the criminal justice system. This is the point at which the NOPD and the DA’s Office come together to discuss specific criminal cases, exchange views and information, make informed billing decisions, and lay the foundation for successful prosecutions.

The case screening process presents the optimum opportunity for the NOPD and the DA to coordinate and integrate their activities and resources, with the jointly held goal of getting violent, serious, and repeat offenders off the street and behind bars. It is a process that should be designed to improve the investigative and arrest report-writing skills of inexperienced police officers and enable inexperienced prosecutors to understand the true nature of police work and build the strongest possible cases against serious offenders.

Most importantly, as the focal point of NOPD-DA interaction, the screening process, can serve as the foundation for creating a culture of cooperation between the NOPD and the DA’s Office, rather than the adversarial and counterproductive relationship that has long existed between these agencies.

This report finds, however, that the case screening system in New Orleans continues to present structural barriers that inhibit a more effective and integrated working relationship between the NOPD and DA’s Office, particularly arresting officers and the Assistant District Attorneys (ADA’s) in the Screening Division. These barriers are emblematic of an overall lack of coordination and cooperation throughout the criminal justice system.



Attaining a level of inter-agency coordination and integration that substantially improves the performance of the New Orleans criminal justice system is an achievable goal. In fact, a comparison with baseline performance data presented in the initial report (**Exhibit 1**) shows that a significant reduction in case processing time was achieved during the three-year period between reports.

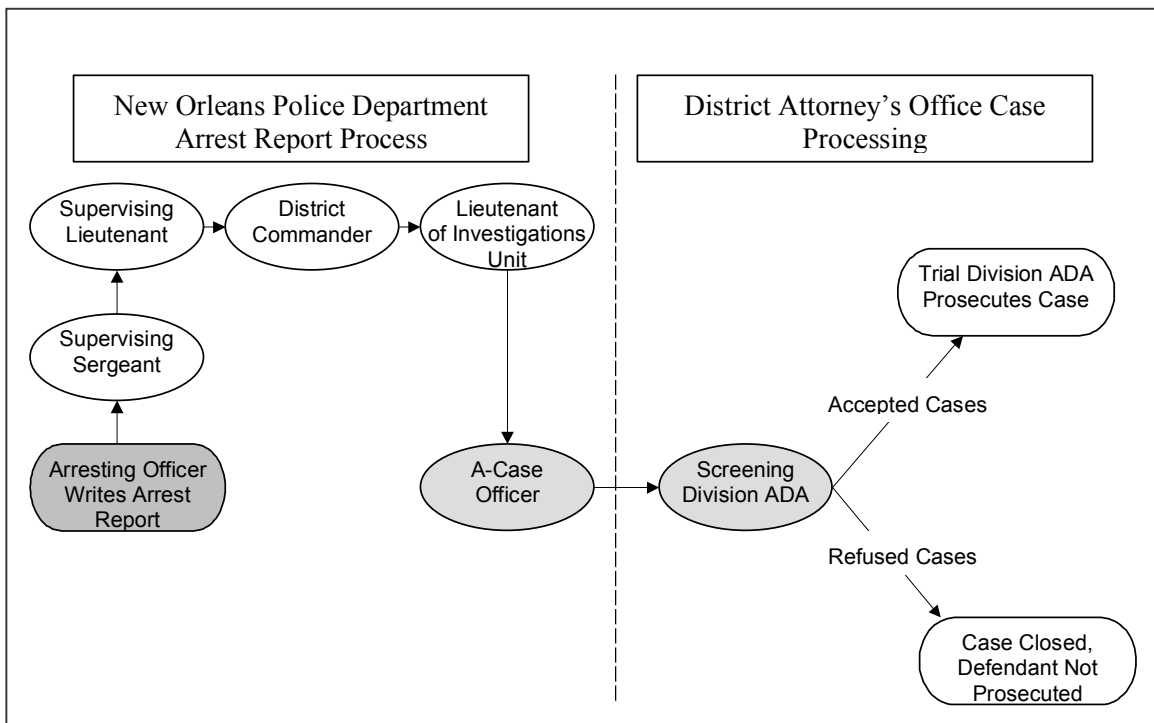
As a result of the processing time reduction, the

number of defendants released from jail under Article 701<sup>4</sup> declined from approximately 600 in 1999-2000 to about 180 in 2003-2004. These improvements were the result of a joint decision by a new police chief and DA to solve a specific problem. Because of this joint effort, case processing time was reduced sharply and the number of “701” releases was reduced by 70%. This level of effective communication must not only be sustained, but also increased, and brought to bear on a broad array of justice system issues in order to successfully combat crime in New Orleans.

### The Current Case Screening Process

New Orleans is divided into eight police districts, each with two A-Case officers who are assigned the specialized task of organizing and presenting arrest reports for presentation to the DA’s Screening Division staff for a billing decision. NOPD policy allows five days from the date of arrest for the completion of arrest reports. Drug and homicide cases, which are handled directly by the Narcotics and Homicide Divisions, are exceptions to this process.

The diagram below depicts the process by which arrest reports are reviewed in the police districts and then transmitted to the Screening Division of the DA’s Office for a screening decision.



As can be seen, arrest reports move up the chain of command from the arresting officer for review and are then passed down to the A-Case officer, who as noted, hand carries the reports to the DA’s Office for a

<sup>4</sup> Article 701 of the Code of Criminal procedure requires that individuals arrested and jailed for a felony offense must be formally charged with a crime within 60 days or be released from jail.

screening decision. When the reports are considered complete, a “buck slip” is attached by the A-Case officers indicating the cases are ready for presentation to the DA’s Screening Division. It should be noted that the presentation of arrest reports by the A-Case officers to screening ADA’s, which may occur from several days to several weeks after the arrest, usually marks the first contact between NOPD and DA personnel regarding these cases. ***Also of note in the diagram of the screening process is the lack of systematic, direct communication between arresting officers and the ADA’s in the Screening Division who make billing decisions.***

The unofficial midpoint in the arrest to billing process is the ADA screeners’ “receiving” of the cases presented by the A-Case officers. Issuing a “receipt” for a case means the ADA deems the police report to be in order and is acceptable for formal review to determine if sufficient proof exists for prosecution.

The “buck slip” attached to each arrest report is completed by an ADA upon making a screening decision and returned to the police district where the arrest was made. On the “buck slip,” the ADA indicates whether or not a case is accepted or refused, and, if refused, the reason for refusing the case. The buck slip, which according to district personnel is in many instances not returned to the districts for weeks or months after an arrest has been made, is the way that the DA’s Office provides feedback to officers regarding their arrest reports.

As shown in the diagram, there are substantial organizational barriers that mitigate the transfer of critical case information from NOPD Officers to ADA’s. The current system may serve the purpose of enabling the delivery of arrest reports to the DA’s Office during regular business hours; however, it precludes the opportunity for productive communication between ADA’s and arresting officers that could improve case outcomes in several important ways:

- NOPD officers have been criticized over the years by both A-Case officers and DA’s Office personnel for poorly written and incomplete police reports. Routine face-to-face interaction between arresting officers and ADA screening staff can only improve the quality of these reports and the outcomes of criminal cases.
- Arresting officers may know details about a crime and arrest that are important to ADA’s that are not known by A-Case officers. The opportunity to ask specific questions that may be important for the prosecution is lost when A-Case officers alone submit arrest reports to the DA’s Office.
- The delay in receiving written feedback on refusals also prevents arresting officers from fully understanding why a report is refused, and both agencies miss an opportunity to work together to develop arrest reports that have the greatest opportunity for successful prosecution.

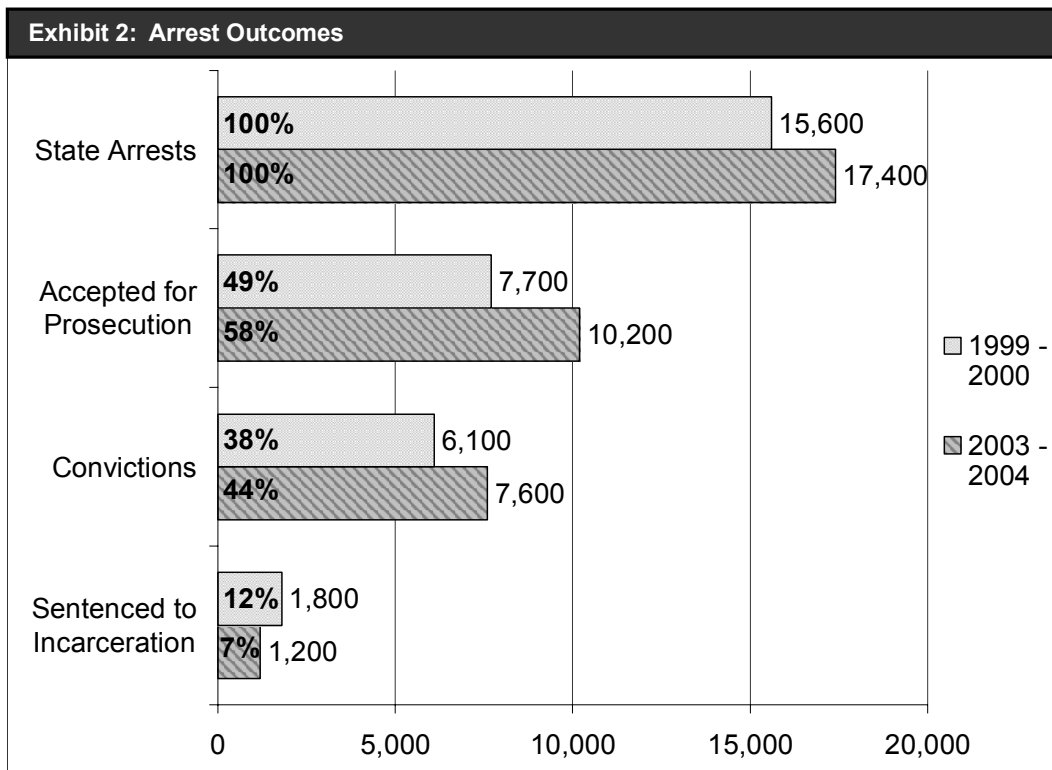
Re-designing the case screening process to include direct communication between arresting officers and DA’s screening staff would likely reduce the 42% charge refusal rate, increase the number of convictions for serious offenses, and result in a higher incarceration rate.

The following sections provide data that document the failure of our justice system agencies to put violent and serious offenders behind bars, identify the reasons for this failure, and provide recommendations for improving the outcomes of the New Orleans criminal justice system.

## OUTCOME OF CRIMINAL CASES IN NEW ORLEANS

### Arrest to Conviction

**Exhibit 2** below shows the overall trends in the outcomes of arrests for violations of state criminal statutes in 1999-2000 compared with 2003-2004. Results are presented for critical stages of the criminal justice process: arrest, prosecution, conviction, and sentencing.



What this chart makes clear is that while more individuals were arrested, prosecuted, and convicted in 2003-2004, *fewer individuals were actually incarcerated.*

- The incarceration rate<sup>5</sup> fell substantially from an already low 12% of those arrested in 1999-2000 to 7% in 2003-2004, a decrease of 41%.

<sup>5</sup> Incarceration is defined as being sentenced to spend time in prison or jail in addition to any time spent in jail awaiting final case disposition or prior to securing release on bond

- Despite the increased number of arrests, accepted cases, and convictions in 2003-2004, a projected 600 fewer individuals were sentenced to jail/prison and taken off the street by the New Orleans criminal justice system than in 1999-2000.

Only 16% of the individuals that were *convicted* of a state offense during the study period were given a jail sentence, while the balance of those convicted, approximately 6,500 offenders, were returned to the community on probation. Due to the heavy caseloads handled by Louisiana’s probation officers, little meaningful supervision is provided to probationers that can prevent their continued criminal behavior. The lack of an effective probation system underscores the urgent need to convict and sentence to prison those individuals who commit violent and serious offenses in New Orleans.

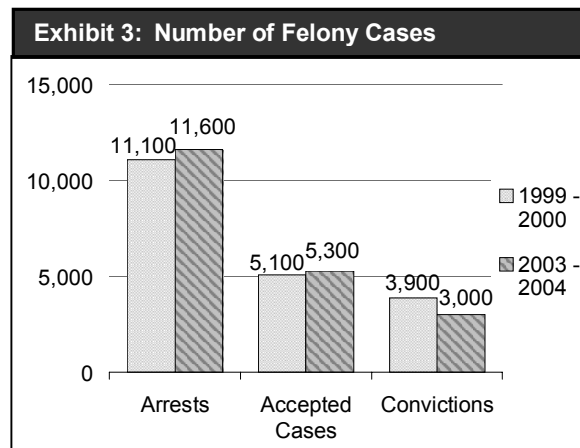
### Decreasing Severity in Charges at Conviction

As shown in **Exhibit 2** above, a significant increase in the number of convictions in 2003-2004 was more than offset by a sharp drop in the incarceration rate. This section presents data that show that a main reason for the reduced rate of incarceration in 2003-2004 was a substantial reduction in the severity of charges at arrest, billing, and conviction.

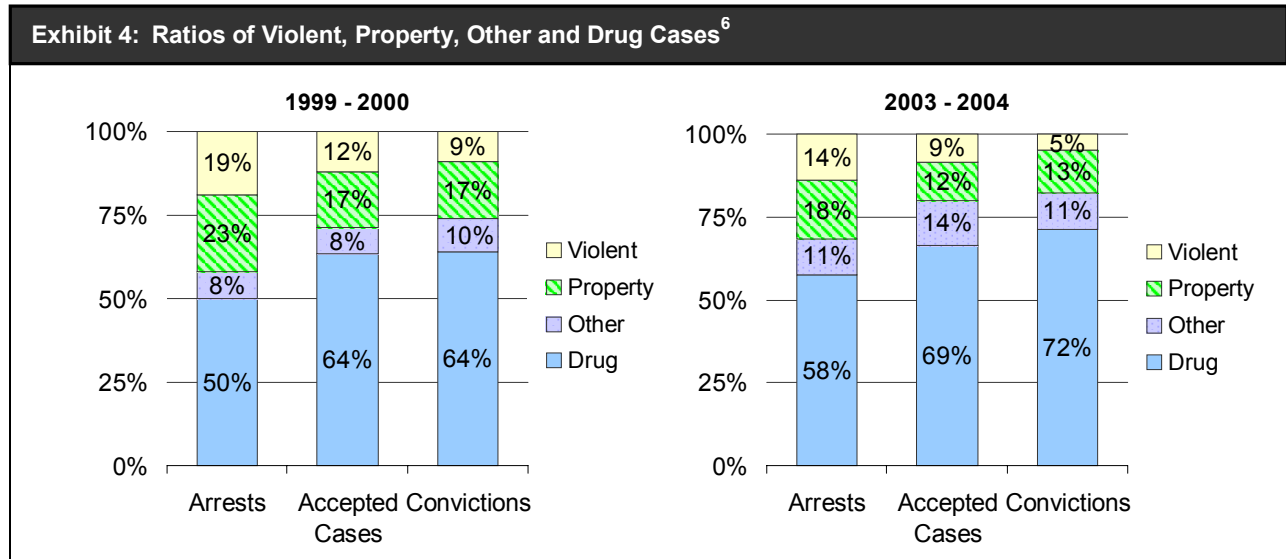
The reduction in felony convictions, which led to a reduced number of incarcerations, is clearly depicted in **Exhibit 3**. As can be seen, even though the number of felony cases accepted for prosecution increased in 2003-2004, the actual number of felony convictions dropped by 23% since 1999-2000.

Although 68% of arrests are for felony offenses, felonies comprise only 40% of convictions. There are several underlying reasons for the general weakening in the severity of charges adjudicated at CDC:

- A low acceptance rate of 39% for violent offenses, which are offenses most likely to lead to incarceration
- A high charge acceptance rate of 64% for drug possession offenses, which are offenses that rarely result in incarceration
- A four-fold increase in the rate of plea bargaining, up from 1% of arrests in 1999-2000 to 4% in 2003-2004
- An increased dismissal rate of 7%, up from 4% in 1999-2000



**Exhibit 4** below shows the collective impact of these factors on the survival rate of different types of charges as the cases move from arrest through conviction. Clearly depicted is the large increase in the percentage of drug cases and the diminishing percentage of violent offenses at all stages of the process—arrest, prosecution (billing), and conviction. Although this trend is notable during both study periods, it became even more pronounced in 2003-2004.



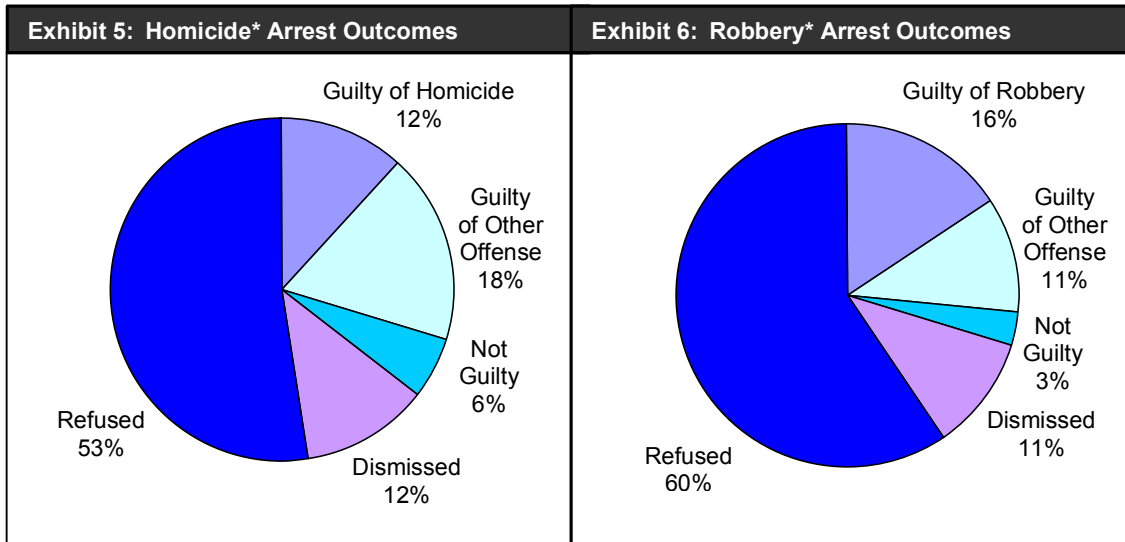
- In 1999-2000, 64% of all convictions were for drug offenses – 56% for drug possession and 8% for drug distribution. In 2003-2004, drug charges rose to 72% of all convictions, 67% for drug possession and 5% for drug distribution.
- In 2003-2004, a total of 47% of all convictions were for either misdemeanor possession of marijuana (33%) or possession of drug paraphernalia (14%). By comparison, 25% of all convictions from the previous study were for first offense possession of marijuana and less than 1% were for possession of drug paraphernalia.
- *Violent offenses comprise only 5% (3% felony, 2% misdemeanor) of all convictions during the current study period, compared to 9% from the prior study.*

**Comparison of Final Dispositions for Selected Charges**

**Exhibit 4** above shows the outcomes of *offense types* as a percentage of total arrests, accepted cases, and convictions, and it demonstrates the lessening in the severity of charges from arrest to conviction as the prevalence of drug offenses increases.

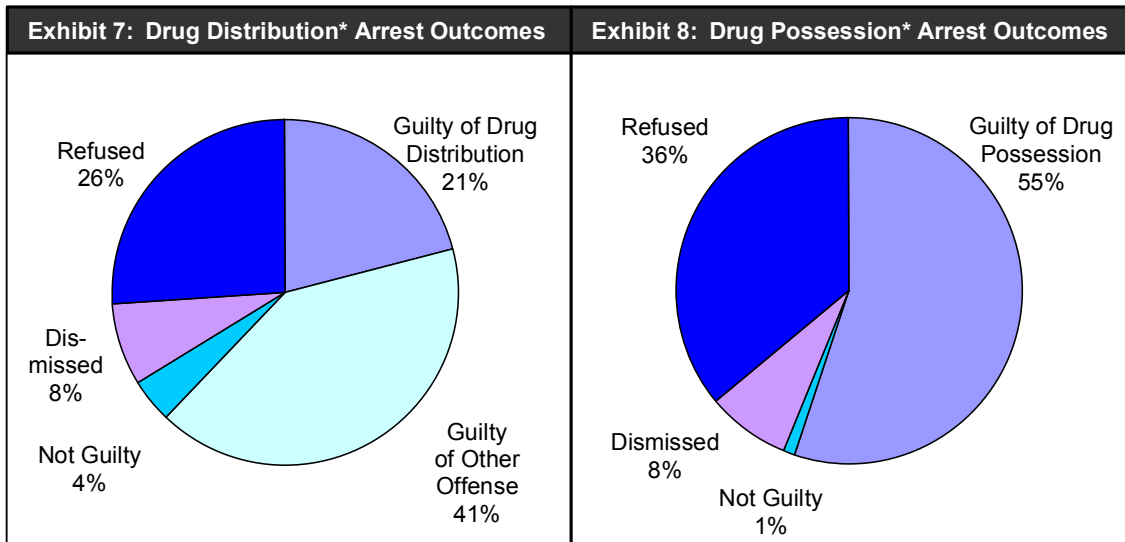
<sup>6</sup> Violent offenses include homicide, rape, robbery, and felony and misdemeanor assault and battery charges. Property crimes include burglaries, thefts, fraud, and possession of stolen property. “Other” offenses include crimes such as prostitution, weapons offenses, trespassing, etc. Drug offenses include drug distribution, drug possession, and possession of drug paraphernalia.

Exhibits 5, 6, 7 and 8 below also demonstrate the weakening in charge severity by focusing on selected *specific offenses* and contrasting the final dispositions for the more serious offenses of homicide, robbery and drug distribution with the less serious offense of drug possession. As is shown, the percentages of homicide, robbery, and drug distribution arrests that actually result in convictions for those charges represent only a small percentage of each of these offenses when compared with drug possession cases.



\* Includes homicide, attempted homicide, and principal to commit homicide charges

\* Includes robbery and attempted robbery charges



\* Includes drug distribution, attempted drug distribution, and possession with intent to distribute charges

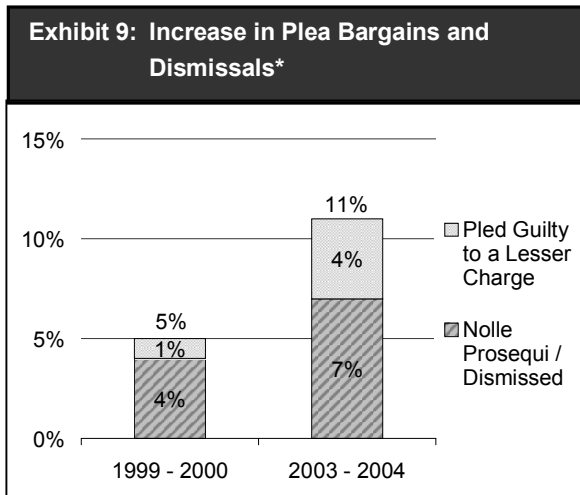
\* Includes drug possession, possession of drug paraphernalia, and attempted drug possession charges

- Most notable is the fact that only 12% and 16%, respectively, of those arrested for homicide and robbery are eventually convicted of those offenses. By comparison, 55% of the individuals arrested for drug possession are later convicted of that offense.

- The low 12% homicide conviction rate is the result of a 53% refusal rate for these cases and the dismissal (nolle prosequi) of an additional 12%. Another quarter (24%) of homicide defendants are either prosecuted for a lesser offense (18%) or found not guilty (6%).
- The primary reason for the extremely low robbery conviction rate is that 60% of all robbery cases are declined for prosecution by the DA’s Office. In addition, 11% of robbery cases are later dismissed and 11% of defendants prosecuted for robbery are convicted of lesser offenses, usually assault and/or theft.
- Regarding drug distribution cases, while only 26% of drug distribution charges are refused, 41% of those charged with distribution are prosecuted for the less serious charge of drug possession, and an additional 12% of cases were later dismissed or the defendants were acquitted.
- In contrast to the more serious charges presented, 55% of drug possession defendants are successfully prosecuted for their original arrest charges.

**Increased Dismissals and Plea Bargaining**

Significant increases in the number of dismissals combined with plea-bargaining also contribute to the decreasing incarceration rate. **Exhibit 9** below compares current and past figures for case dismissals and rates of plea-bargaining.



\* A cross reference to District Attorney annual reports from both study periods verifies the increase in plea-bargaining and dismissals

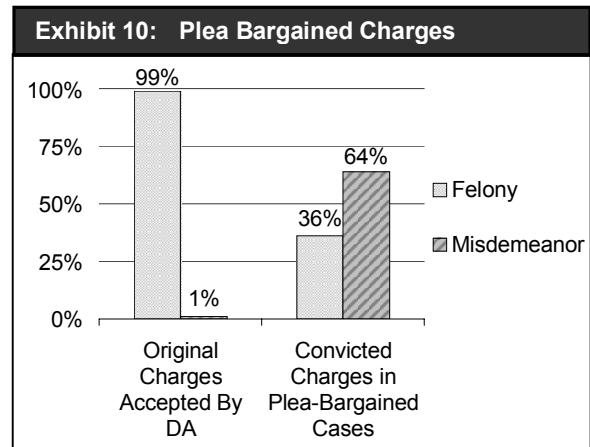
As shown in **Exhibit 9**, the percentage of arrests concluding in case dismissal increased from 4% to 7% between the study periods.<sup>7</sup> Overall, 6% more defendants had their cases either dismissed or plea-bargained in 2003-2004 compared to 1999-2000.

In cases involving plea-bargaining, the District Attorney prosecutes a defendant for one charge and then later allows the defendant to plead guilty to a lesser offense. Approximately 4% of all arrests in 2003-2004 ended in plea bargaining agreement.

Although this percentage may seem small, it represents a four-fold increase in the plea-bargaining rate over the 1999-2000 study period.

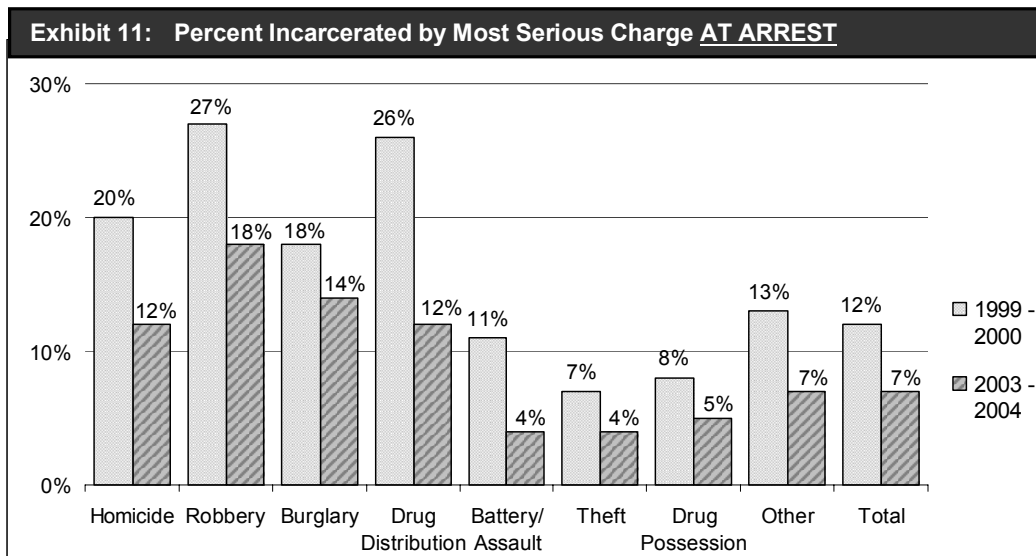
<sup>7</sup> There are legitimate reasons for cases to be dismissed (e.g., witness ceases cooperation), but an examination of the reasons for dismissals was not included in the scope of this research.

In most cases, the lesser offenses in plea-bargaining cases carry much lighter sentences. **Exhibit 10** presents information on cases plea-bargained by the DA’s Office during the study period. As it shown, 99% of cases that were plea-bargained were for felony offenses, while only 1% of convictions in these cases were for a misdemeanor charge. As a result of the plea-bargaining process, however, only 36% of plea-bargained cases led to felony convictions. Misdemeanor convictions are much less likely to result in incarceration (see **Exhibit 13**). In addition, any future criminal convictions are less likely to result in incarceration if a defendant does not have a prior felony conviction. Of the 36% of plea bargain cases that do result in felony convictions, many represent significant reductions in the severity of the penalty associated with the original charges. For example, defendants accused of being a felon in possession of a firearm, which under state law has a minimum 10-year prison sentence, are allowed to plead guilty to attempted possession of a firearm and receive substantially lesser sentences. In other cases, defendants being prosecuted for drug distribution are allowed to plead guilty to simple drug possession, which usually results (see **Exhibit 12**) in a probated sentence.



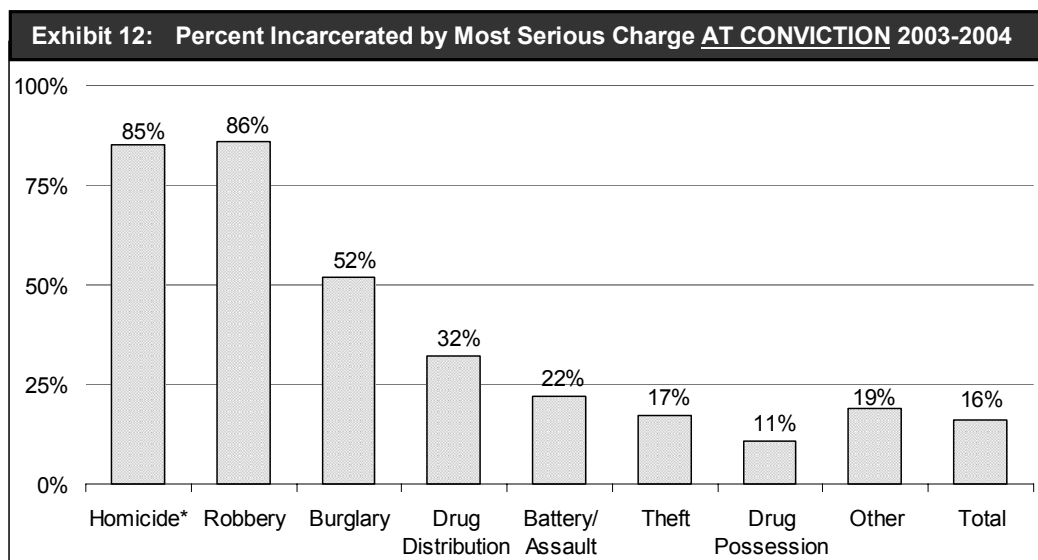
### Declining Incarceration Rates

The relevance of these outcomes to the declining incarceration rate – and getting individuals who commit violent and serious crimes off the street and behind bars – is shown in **Exhibit 11** below. The percentage of individuals who were arrested and later incarcerated declined for each of the offenses shown in 2003-2004 compared with 1999-2000.



- Arrests for violent offenses have become substantially less likely to result in incarceration since the 1999-2000 study period. Only 12% of homicide arrests resulted in incarceration in 2003-2004, compared to 20% in 1999-2000. Eighteen percent (18%) of 2003-2004 robbery arrests ended in sentences of incarceration, down from 27% in 1999-2000. And, battery and assault incarceration rates fell from 11% to 4% in the two study periods.
- The incarceration rate for drug distribution arrests also decreased significantly. Incarceration for drug distribution arrests fell by more than half, from 26% in 1999-2000 to 12% in 2003-2004.

**Exhibit 12** below presents the percentages of individuals who were sentenced to incarceration *when convicted* of the types of offenses shown. This Exhibit underscores the importance of a maximum, cooperative effort by the NOPD and the DA’s Office to make the strongest possible case against those charged with violent and serious offenses and obtaining convictions for those crimes.



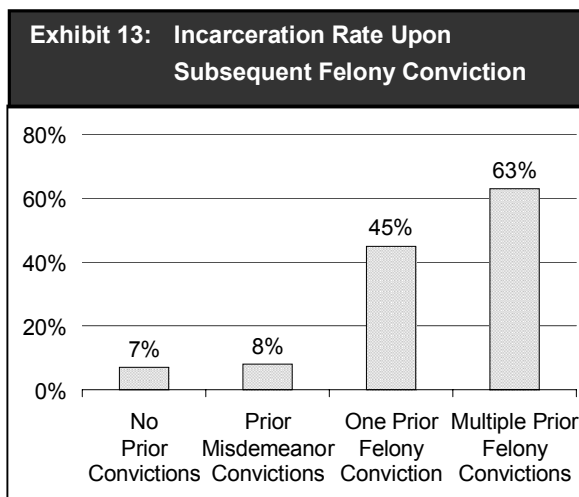
\* Homicide incarceration rate is based on homicide convictions during the study period per District Attorney information

- Only a combined 13% of the individuals convicted of theft (17%), “other”(19%), and drug possession (11%) offenses in 2003-2004, including felony drug possession, were sentenced to jail or prison. Most importantly, these three offenses make up 70% of all offenses at the time of arrest and 84% of all convictions.
- By comparison, individuals convicted of homicide (85%), robbery (86%), and burglary (52%) have a greatly increased chance of receiving a jail or prison sentence. These more serious offenses, however, make up only 10% of arrests and only 4% of all convictions.
- A surprising finding of the study is that *only 32% of the individuals convicted of drug distribution during the study period received a jail or prison sentence* compared with a 52% incarceration rate during 1999-2000. The reason for the low incarceration rate for drug distribution appears to be

the frequent use of Louisiana Revised Statute 13:5304 and guilty pleas under Code of Criminal Procedure Article 893. State Revised Statute 13:5304, enacted in 1997, allows judges with the concurrence of the prosecution, to sentence individuals convicted of drug distribution to probation if they enter a drug court treatment program. Code of Criminal Procedure Article 893 was modified in 2001 to enable judges to suspend incarceration sentences for drug distribution convictions if it “appears that the best interest of the public and defendant will be served.”<sup>8</sup> Prior to these legislative actions, a drug distribution conviction required a mandatory minimum five-year prison sentence.

### Effect of Criminal History

When examining the impact that criminal history has on a defendant’s likelihood of being sent to prison or jail, it appears likely that incarceration rates will continue to be low or decline if action is not taken to strengthen conviction charges. **Exhibit 13** below shows the percentage of defendants who, when convicted of a felony, are incarcerated based upon their criminal histories at the time of arrest<sup>9</sup>. As it illustrates, prior felony convictions have a substantial impact on a defendant’s likelihood of being incarcerated.



- Offenders with one prior felony conviction have a 45% likelihood of being incarcerated when convicted of another felony.
- Sixty-three percent (63%) with multiple felony convictions are incarcerated for subsequent felony convictions.
- Comparatively, only 7% of convictions against people with zero convictions and 8% with past misdemeanor convictions are incarcerated.

Incarceration rates that are tied so closely to criminal histories underscore the importance of obtaining felony convictions. The high misdemeanor conviction rate in Criminal District Court means that both current and future arrests are unlikely to lead to jail or prison sentences. Consequently, the revolving door of criminals back onto the streets is unlikely to improve without a higher felony conviction rate.

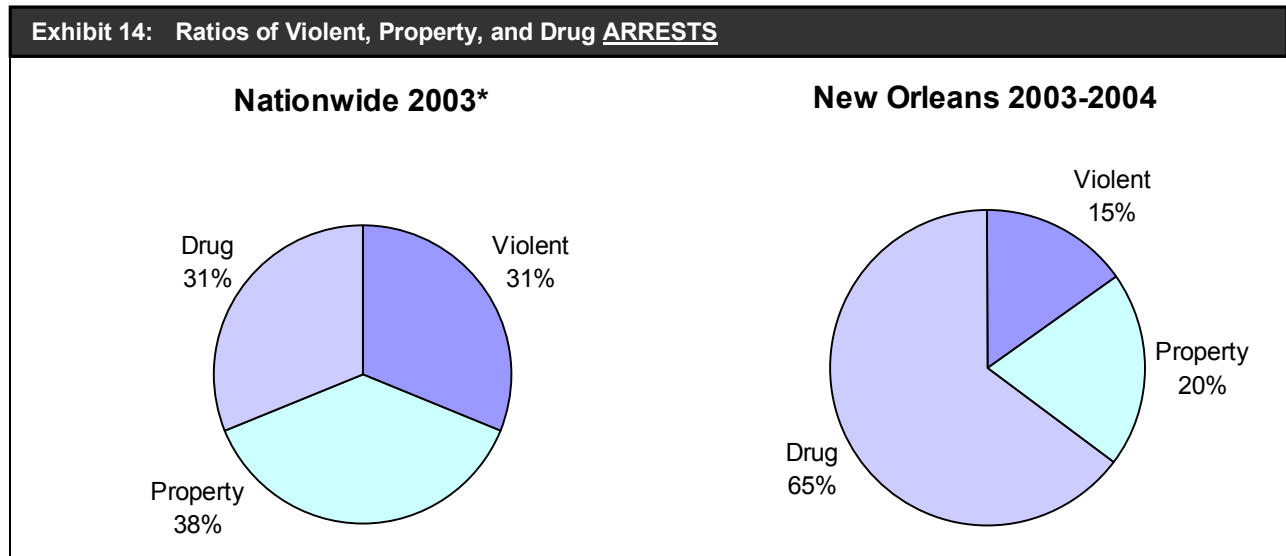
<sup>8</sup> Source: Louisiana Code of Criminal Procedure, Chapter 2, Article 893

<sup>9</sup> Due to limitations in the MCC’s access to information, criminal histories reflect only convictions since 1988 in Orleans Parish for state offenses.

## National Comparisons

The New Orleans criminal justice system demonstrates stark differences in its response to crime compared to state courts nationwide. Of particular note are the comparatively high arrest and prosecution rates for drug offenders, coupled with significantly lower incarceration rates for drug offenders.

**Exhibit 14** below uses Federal Bureau of Investigation (FBI) arrest statistics to illustrate the differences in the percentage of violent, property, and drug arrests made by the NOPD compared to arrests in police jurisdictions nationwide.

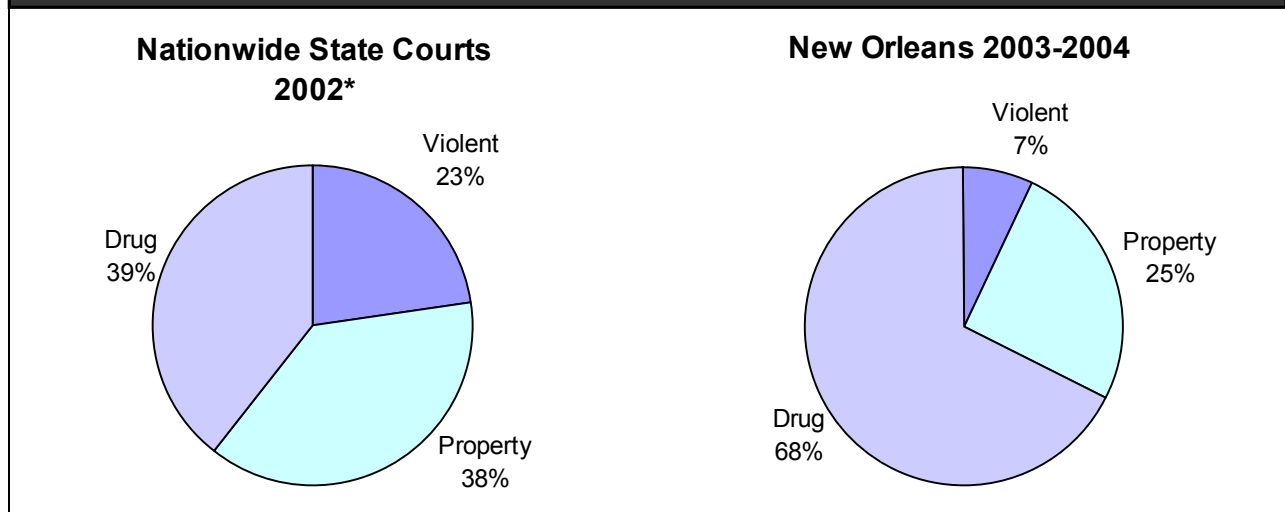


\* Source: *Crime in the United States, 2003*; Federal Bureau of Investigation; October 27, 2004

- When looking at the categories of violent, property, and drug offenses, the NOPD shows an atypical focus on drug offenses and makes twice as many drug arrests compared to national figures. For the offenses shown, 65% of New Orleans arrests are for drug offenses while the national rate is 31%.
- Nationwide, arrests for violent offenses make up 31% of the three offense categories shown compared to 15% in New Orleans. The NOPD is arresting individuals for violent offenders at less than half the rate of jurisdictions nationwide.

**Exhibit 15** on the following page presents the ratio of *felony convictions* for violent, property, and drug crimes in New Orleans compared to a nationwide study of state courts conducted by the Bureau of Justice Statistics. This exhibit is not a direct comparison to arrest data presented in Exhibit 14, because it includes only felony cases. However, it does clearly demonstrate that New Orleans shows a significantly higher percentage of drug convictions compared to other state courts.

**Exhibit 15: Percentages of Felony, Violent, Property, and Drug CONVICTIONS**

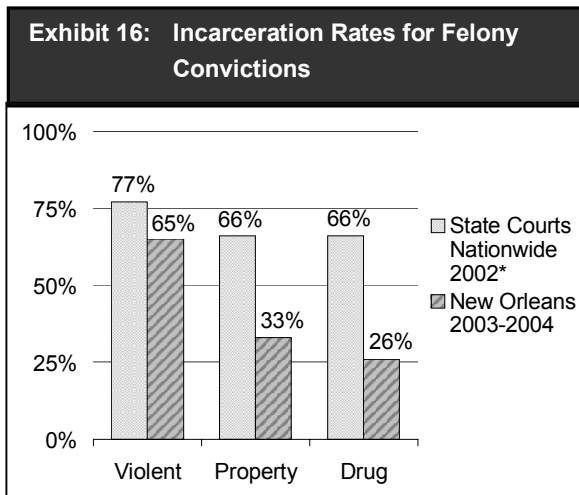


\* Source: *Felony Sentences in State Courts, 2002*; Bureau of Justice Statistics, December 2004

- Nationwide, violent offenses make up 23% of felony convictions for the three offense categories shown, a rate over three times that of New Orleans (7%).
- As presented in **Exhibit 15**, more than two-thirds (68%) of felony convictions in CDC are for drug offenses, compared to a national average of 39%. The disproportionate percentage of drug convictions is attributable to a high percentage of drug offenses at arrest (58%), high refusal rates (61%) for violent offenses, and a high acceptance rate (64%) for drug possession charges.

The judges of CDC sentence felons to incarceration far less often than other state courts. **Exhibit 16** below compares the incarceration rate for felony violent, property, and drug crime offenders in CDC to state courts nationwide. As shown, *CDC judges in New Orleans demonstrate an apparent reluctance to incarcerate individuals convicted of felony offenses.*

- CDC judges incarcerate people convicted of violent felonies in 65% of all cases compared to a rate of 77% nationwide. While this 65% incarceration rate is close to the national level, far fewer convictions in CDC are for violent felony offenses compared to state courts nationwide (see **Exhibit 15**).
- For felony property convictions, CDC judges show an incarceration rate (33%) that is half the national rate of 66%.



\* Source: *Felony Sentences in State Courts, 2002*; Bureau of Justice Statistics; December 2004

- The incarceration rate for felony drug convictions in CDC is only 26% (25% for possession, 32% for distribution) compared to a national incarceration rate of 66% (62% for possession, 68% for distribution).

The low overall incarceration rate may be attributed in part to the fact that Louisiana’s habitual offender law was seldom invoked during the study period. Louisiana Revised Statute 15:529.1, the “habitual offenders” law, enables prosecutors to pursue substantially longer criminal sentences for felony convictions when a defendant has a criminal record that includes at least one prior felony conviction. During the study period, a projected 1,400 individuals with at least one prior felony conviction were convicted of another felony, but only an estimated 100 offenders received longer incarceration sentences under the habitual offenders statute.

Previous sections of this report demonstrate the New Orleans criminal justice system’s extremely low rate of incarceration, which is the result of high numbers of drug possession arrests, a high rate of drug offense convictions, and low rate of incarceration for drug convictions. This section of the report illustrates how far the New Orleans’ criminal justice system deviates from outcomes of criminal cases in jurisdictions nationwide. The high rate of drug arrests and prosecutions, and the CDC judges’ comparatively infrequent use of incarceration, all contribute to a justice system that sends increasingly fewer criminals to jail and has markedly different outcomes compared with jurisdictions nationwide.

## CONCLUSIONS AND RECOMMENDATIONS

In its initial report issued in August 2002, the MCC found a substantial lack of coordination and communication between the NOPD and the DA's Office and a lack of integration that contributed to extremely low conviction and incarceration rates compared with jurisdictions nationwide. The continuing lack of collaboration and integration of effort between the NOPD and the DA's Office is echoed in the recently released assessment of the operations of the DA's Office completed by Linder and Associates<sup>10</sup>.

Although, as noted, improved coordination has bolstered performance in some areas, the system remains broken, as the number of individuals arrested and prosecuted for violent and serious crimes, and the number of individuals incarcerated and removed from the street for these offenses has declined markedly in recent years.

The diminishing number of arrests and convictions for crimes of violence and serious felony offenses, combined with an increase in misdemeanor arrests and convictions, resulted in a 7% incarceration rate in 2003-2004, a 41% decrease over the past three years. In fact, felony convictions dropped from 65% of all convictions in 1999-2000 to 40% of convictions in 2003-2004. With misdemeanor offenses now making up 60% of all convictions, *Criminal District Court has essentially evolved into a misdemeanor court*. The top priority of the NOPD and the DA's Office, therefore, must be a substantial increase in the number of arrests and convictions of those offenders responsible for committing violent and serious offenses in New Orleans.

Although most of the arrests and convictions in New Orleans involve drug charges for which few are incarcerated, law enforcement officials frequently assert that drug use and sales are the leading causes of violent and serious crime in the community. The recent arrest on armed robbery charges of a New Orleans man with two prior convictions for simple possession of crack cocaine supports this assertion. For in addition to the armed robbery arrest and two prior drug convictions, over the past nine years this individual was arrested at least 44 times, including 12 times for homicide and six times for drug distribution but with no convictions.

This individual's criminal record demonstrates a strong link between drug-involved offenders and violent crime. Further, it documents the repeated failure of all components of our criminal justice system to remove a dangerous offender from the community, underscoring the urgent need for the NOPD, the DA's Office, and CDC to mount a collaborative and integrated effort to target violent, serious, and repeat offenders.

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<sup>10</sup> *Toward a Fully Integrated Criminal Justice System*, Linder & Associates, May 19, 2005

The recommendations presented below are varied but focus on the same goal: increasing the incarceration rate for violent and serious offenders in New Orleans.

**Recommendation 1: Arresting Officers, following review at the district level, should submit cases directly to Assistant District Attorney screening personnel for felony violent, felony property, and drug distribution arrests as well as arrests involving individuals with multiple prior felony convictions.**

The negative impact of the lack of integration between the NOPD and DA's Office is nowhere more apparent than in the case screening process, during which criminal cases against violent and serious offenders may be won or lost. The current system was put in place in the 1980's and little has changed since then.

The dynamics of the current screening process, which brings A-Case officers and screening attorneys together for the purpose of making cases against criminal suspects, must be overhauled. Of greatest importance is designing a new system that systematically brings *arresting officers and ADA's face to face* to discuss specific, priority cases and to develop strategies that target violent and serious offenses and repeat felony offenders.

The replacement of A-Case officers with arresting officers and relevant investigators in the presentation of robbery, drug distribution, felony property cases, and cases involving repeat felony offenders should be of great benefit to both NOPD and DA personnel, and lead to stronger cases and higher conviction rates for the most serious offenses. Increased interaction and communication between ADA's and NOPD officers will enable both police and prosecutors to gain a better appreciation for one another's work and engender greater cooperation between the two agencies as they work together at multiple levels to combat crime in New Orleans.

The MCC recommends that ADA's in the Screening Division be assigned to specific police districts and meet with officers *in their district stations* at least two days per week. A-Case Officers can still perform their role of compiling arrest reports and also serve as facilitators in scheduling meetings between arresting officers and ADA's. NOPD officers have been criticized over the years by both A-Case officers and DA's Office personnel for poorly written and incomplete police reports. Routine face-to-face interaction between arresting officers and ADA screening staff can only improve the quality of these reports and the outcomes of criminal cases. Additionally, bringing the ADA's to the NOPD district stations will prove highly educational to inexperienced young attorneys and create a presence in the police districts that reinforces the interdependent roles of the NOPD and DA's Office.

In the 2003-2004 study period, there were approximately 1,500 arrests for violent felonies, 2,300 felony property arrests, and 1,300 drug distribution arrests in the eight police districts. Excluding drug possession arrests (which already have high prosecution rates), an additional 300 individuals with felony convictions were arrested by district police officers. If the NOPD and DA's Office make

a commitment to put arresting officers face to face with ADA's to build the best possible case in these 5,400 arrests (31% of all arrests), they will simultaneously target the most serious offenses and build a more effective and integrated criminal justice system.

**Recommendation 2: The NOPD should videotape the interrogation of suspects in all cases involving violent felonies and habitual offenders.**

According to DA records, 86% of refusals for cases involving violent felonies were caused by problems with witnesses or victims. Greater use of videotaped interrogations with suspects will bolster victim and witness identifications and will likely result in higher conviction and incarceration rates.

Videotaped statements have the benefit of verifying police officer testimony and proving that a confession has not been coerced. Cases with videotaped confessions will be stronger and encourage better cooperation from victims and witnesses. For similar reasons, the NOPD and DA are having great success obtaining convictions in drug distribution cases by videotaping many undercover drug buys. That is, the credibility of police officers in these cases is supported by videotape and not simply the testimony of arresting officers.

All police districts have the equipment and space to immediately begin videotaping interviews. One concern expressed to the MCC is that cases in which there is no videotaped statement will appear weak or non-credible if videotaping is not used consistently. Given the volume of arrests, it is impractical to obtain videotaped statements for all arrests. Therefore, targeted cases should include felony violent and felony property offenses, which represent 3,800 cases or only 22% of all arrests. The NOPD can establish a standard operating procedure (SOP) regarding videotaping statements that will provide concrete guidelines establishing the mandatory, limited, and manageable use of videotaping to generate greater success in these targeted criminal cases.

**Recommendation 3: The District Attorney's Office, in cooperation with the NOPD and the Criminal Sheriff's Office, should implement a comprehensive program that prioritizes the prosecution of violent felonies and habitual offenders.**

It has been widely documented that a small percentage of criminals commits a disproportionately large number of crimes in a community. The District Attorney has recently established a "Code 6" program staffed with two ADA's and three NOPD detectives to prosecute defendants with serious criminal histories.

In a "Code 6" or habitual offender's program, experienced prosecutors both screen and prosecute cases involving arrested subjects with two or more felony convictions. Based upon information collected for this report, approximately 3,400 career criminals were arrested during the one-year study period. The MCC respectfully recommends that the District Attorney increase the size of the "Code

6” program to include 8-10 prosecutors who will collectively prosecute the 400 cases per year that have the greatest likelihood of removing New Orleans’ most prolific criminals from the streets for extended periods of time.

In order to maximize the success of the “Code 6” program, the MCC respectfully suggests the following support from other agencies:

- The Orleans Parish Criminal Sheriff’s Office should continue to work with the DA’s Office and NOPD to identify arrested subjects with two or more felony convictions upon their booking into jail.
- The New Orleans City Council should provide the funding needed to staff the “Code 6” program with highly experienced prosecuting attorneys. Competitive annual salaries of \$80,000 to \$100,000 would be required to attract and retain high quality, experienced prosecutors. The MCC recommends that the City Council provide \$600,000 in funding for three consecutive years to support the salary of ten “Code 6” program prosecutors and make continued funding contingent upon demonstrated program effectiveness.
- The NOPD, as stated previously, should ensure that arresting officers and investigators work together to present the strongest possible “Code 6” cases to the DA’s Office for prosecution. The MCC recommends that the NOPD assign at least one experienced investigator to work with each prosecutor assigned by the DA to the “Code 6” program.

Of great importance, “Code 6” attorneys can serve as mentors for less experienced attorneys. Additionally, the vertical prosecution approach, in which the same attorneys screen and prosecute cases, will lessen the workload currently burdening the Screening and Trial Divisions in the DA’s Office.

**Recommendation 4: The NOPD and District Attorney’s Office should measure their success based on the percentage of arrests that result in convictions.**

Currently, the NOPD measures its success based on numbers of reported crimes and numbers of arrests, and the DA’s Office measures its success based on the number of prosecutions that result in a conviction. In calculating their success rates, however, both the NOPD and the DA’s Office simply ignore the fact that 49% of the criminal charges made at the time of arrest are later refused (42%) or dismissed (7%). Ignoring charges that are later refused or dismissed when calculating success has the effect of doubling the calculated success rate and presenting distorted information to the citizens of New Orleans.

The ultimate measure of the success of our criminal justice system is the percentage of arrests that lead to a conviction, *including those charges that are later refused or dismissed*. Refusals and dismissals are not successful outcomes, either for the NOPD or the DA’s Office. The MCC respectfully suggests that the NOPD and the DA’s Office adopt this measure of success that more

accurately reflects their performance, *and assume joint responsibility for turning arrests into convictions.*

In order for our criminal justice system to work more effectively, the NOPD and DA's Office must embrace their interdependence in meeting the mutual goal of improving the safety of the citizens of New Orleans. Including arrest to conviction information as an integral part of the NOPD's COMSTAT process and the DA's Office's measures of its own performance would be a major step toward the acceptance of joint responsibility by these agencies for reducing crime in New Orleans.

To further this process, the MCC suggests that the DA's Office begin attending police district COMSTAT meetings, weekly COMSTAT meetings at NOPD headquarters, and monthly New Orleans Neighborhood Police Anti-Crime (NONPAC) meetings held in every district. The NOPD already has plans to send officers and members of its leadership to meetings in the DA's Office that measure and monitor prosecutorial success.

**Recommendation 5: Criminal District Court Judges should substantially increase the number of drug dealers sent to jail.**

On July 27, 2004, Travis Scott, who had four prior convictions for drug possession, pled guilty to heroin distribution and was sentenced to probation and allowed to participate in CDC's drug court program under Louisiana's drug court law (RS 13:5304). Ten months later, on May 22, 2005, Scott was arrested for second-degree murder.

Judges sentence only 32% of those convicted for drug distribution to prison or jail, compared to a nationwide incarceration rate of 68%<sup>11</sup> for selling drugs. Far too many drug dealers are being placed on probation and returned to the community rather than sent to prison. The MCC believes strongly that sending a majority of convicted drug dealers to prison, instead of back to the community, will have a significant impact on crime in New Orleans.

**Recommendation 6: Increase compensation for Assistant District Attorneys and officers of the New Orleans Police Department.**

Both the NOPD and DA's Office report problems with recruiting and retaining personnel. DA Eddie Jordan reports an annual turnover rate of 50% since taking office.

In the city of Kenner, police have an annual starting salary of \$32,000 and the Louisiana State Police have an annual salary of over \$31,000 compared to the NOPD's starting salary of \$29,900. Jefferson Parish ADA's have an annual starting salary of \$40,000, and New Orleans City Attorneys receive

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<sup>11</sup> *Felony Sentences in State Courts, 2002*; Bureau of Justice Statistics; December 2004

more than \$50,000 annually. By comparison, Orleans Parish ADA's have starting salaries of \$30,000 per year.

The MCC asks that the Mayor and City Council work together to increase compensation for both police officers and ADA's to a level that is competitive with surrounding parishes and other jurisdictions in the region. Increased compensation will help these agencies attract and retain quality employees and create a more stable work force for the DA and Chief of Police to combat crime in New Orleans.

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At its most basic, the problem documented in this report is the failure of our justice system to convict and imprison the violent, serious, and repeat offenders in our community, and the result is violence that appears to be spiraling out of control. The MCC fully recognizes that the recommendations presented in this report do not address the core causes of crime, problems that include high poverty rates, an insufficient public education system, and a culture of violence. The solutions to these underlying problems are well beyond the scope of the criminal justice system. We believe, however, that these recommendations provide a realistic framework for a collaborative, integrated effort by the NOPD, the DA's Office, and the courts to successfully target violent, serious, and repeat offenders.

The MCC encourages the NOPD, the District Attorney's Office, and the courts to coordinate the implementation of any new crime control strategies, such as the application of new technology, special police operations, office restructuring, and court-based rehabilitative programs (e.g., drug courts). For it is critically important to understand that overlaying a fundamentally disjointed criminal justice system with independently created special projects and strategies will not bring about the depth of change needed to turn the tide on crime.

The MCC is not suggesting that all or a majority of arrests should ultimately lead to incarceration. Rather, the MCC believes that agencies within the criminal justice system can better coordinate their efforts and focus resources on removing the most dangerous criminals from the streets. Louisiana has the highest per capita incarceration rate in the country, and it is only with the greatest reverence for public safety that the MCC advocates increased incarceration for violent and repeat offenders.

The concerted and integrated actions of the police, the prosecution and the courts, with the support of the community, will be required to substantially improve the outcomes of our criminal justice system and reduce the growing level of violence in the community. The recommendations presented in this report, which seek to integrate the efforts of these agencies, can have a significant impact on crime by focusing the resources of our criminal justice system on the violent offenders, habitual criminals, and drug dealers that fuel the cycle of violence in New Orleans.

## APPENDIX I: METHODOLOGY

MCC researchers took a representative 10% sample of all arrests made from October 1, 2003, through September 30, 2004. The sample included a total of 1,735 arrests and has error rate of plus or minus 2.23% at a 95% confidence level. The sample was drawn from the daily dockets of Magistrate Court cases, which are prepared by the Orleans Parish Criminal Sheriff's Office (OPCSO) and maintained by the Clerk of Court's Office. These cases sample from all individuals arrested in New Orleans on state felony and misdemeanor charges.

For each arrest, the MCC captured information about the three most serious charges at arrest and the outcomes of the most serious charge prosecuted. Information about the timing from arrest to billing decision to case disposition was also collected. In regard to defendants, demographic data and conviction histories were recorded. These data were obtained from records maintained by the Clerk of Court's Office and Criminal District Court's information system maintained by the OPCSO. The New Orleans District Attorney's (DA) Office also furnished several reports to supplement the information for each arrest in the sample. Additionally, the DA's Office furnished reports on homicide convictions and diversion program cases for the MCC to examine in its analysis of the criminal justice system. The data collected were compiled in a database for analysis using SPSS software.

Information provided in this report on NOPD and the DA's Office arrest and screening policies and procedures were obtained through interviews with personnel from these and other agencies. From the New Orleans Police Department, the MCC met with the Chief of Police, the Chief Operations Officer, all eight District Commanders, A-Case Officers, and several Lieutenants and Sergeants who joined in discussions with District Commanders. DA's Office personnel met with by the MCC include the District Attorney, the Chief of Screening, the Director of Technical Services, Executive Assistant District Attorney, and Screening Assistant District Attorneys.

**APPENDIX II: ACKNOWLEDGEMENTS**

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