The State of Magistrate Court: 2016-17 Data Collection Period

Court Watch NOLA

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1. Executive Summary

Court Watch NOLA (CWN) is a non-profit organization with the mission of promoting reform in the Orleans Parish criminal court system through civic engagement and courtroom observation. In May 2016, CWN began monitoring Orleans Parish Magistrate Court, where pre-trial release and bail are initially determined for all state felony and misdemeanor cases. For the purposes of this report, CWN volunteers observed Orleans Parish Magistrate Court from May 2016 to May 2017, viewing a total of 1,099 defendants' first appearances. This report explores these first appearances, the people who work in the magistrate court, the bail and bond system, and New Orleans's move towards a stronger, evidence-based pre-trial system. The following is a summary of the CWN observations and recommendations:

Appointment of Orleans Parish Magistrate Court Commissioners

An elected magistrate judge and four commissioners preside over Orleans Parish Magistrate Court. Commissioners are appointed by the twelve elected Orleans Parish District Court judges and the Orleans Parish magistrate judge.[i] There are very few formal requirements a candidate must fulfill to be a commissioner under Louisiana law; there are even fewer rules regulating the process by which a commissioner is chosen. Further, there are no rules protecting the commissioner selection process from conflicts of interest.

- **Recommendation 1:** Orleans Parish Criminal District Court judges should develop written policies and procedures to aid the process of commissioner appointment. These written policies and procedures should be posted on the Orleans Parish Criminal District Court's website and provided to all applicants. These written policies should include a section on how conflicts of interest in the commissioner selection process will be avoided to preserve the integrity of the process. The written policies and procedures should also include a list of qualities sought after in commissioner applicants.

Setting Bail: Ability to Pay

The United States Supreme Court has stated that "since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant."[ii] The American Bar Association further recommends that financial conditions of bail be the result of an individualized decision, considering the special circumstances of each defendant, the defendant's ability to meet the financial conditions, and the defendant's risk of not appearing if released.[iii]

- **Recommendation 2:** The magistrate or commissioners should not have a blanket policy refusing to set bonds below a certain amount for all defendants regardless of individual circumstances. Both Louisiana law and the U.S. Constitution require that the defendant's ability to pay and individualized circumstances always be considered when setting bail.

Setting Bail: Evidence-Based Criteria

As part of the current bail reform movement, pre-trial services (PTS) programs have developed to offer the court evidence-based criteria related to the defendant's likelihood of returning for his or her subsequent court dates and the defendant's likelihood of rearrest. The Vera Institute of Justice (Vera) created the first New Orleans PTS program in 2012. In March 2017, Vera turned the PTS program over to the Orleans Parish Criminal District Court to operate, with supervision from the Louisiana Supreme Court. The City of New Orleans currently funds the program.

- **Recommendation 3:** The City of New Orleans should continue to financially support the Pretrial Services Program operated by the Orleans Parish Criminal District Court. While the program is still developing, it needs strong and careful supervision from the Louisiana State Supreme Court. Pre-trial services program representatives should be required to appear in front of the New Orleans City Council Criminal Justice Committee during budget season. A public process is necessary because the Pretrial Services Program is sustained with city resources.

Setting Bail: The Defendant's Pending Criminal Charges

Pending charges are not as strongly correlated with the defendant's successful return to court for subsequent court dates or the defendant's risk of rearrest, as other factors such as prior criminal history, age, etc.[iv] The criminal district court operated PTS program produces risk scores that are designed to supplement the magistrate judge or commissioner's discretion in deciding pretrial release outcomes. Risk scores examine certain information to determine the defendant's individualized likelihood of returning to court for subsequent court appearances and the defendant's risk of rearrest. It is a national best practice and consistent with the protocol established by the criminal district court operated PTS program, that in determining a risk score, the defendant's pending criminal charges are not overly emphasized.[v] Judges should rely on the totality of a defendant's individualized circumstances, as captured by PTS reports, rather than placing undue emphasis on the defendant's pending charges in making pretrial release decisions.

- **Recommendation 4:** The magistrate judge and commissioners should not overly rely on the defendant's pending criminal charges when determining pretrial release. The exclusive examination of the defendant's pending criminal charges has been shown to be unreliable in determining the defendant's likelihood in returning to court and likelihood of rearrest. The magistrate judge and commissioners' overreliance on defendants' pending criminal charges may impact both the defendant's liberty and the public's safety.

Pre-Trial Supervision

Not all defendants should be required to comply with pre-trial supervision; some defendants should simply be released on their own recognizance (ROR) to return to court for later court dates. Requiring too many low- and moderate-risk defendants to comply with pre-trial supervision (to

meet regularly for check-ins and comply with other program requirements), has been associated with increased rates of rearrest and lower rates of returning to court.[vi] Additionally, pre-trial supervision is only intended to be a condition placed upon defendants released from jail. High bail amounts may prohibit defendants from bonding out of jail, and therefore the magistrate or commissioners should not assign pre-trial supervision to defendants who are unlikely to be able to pay a high bail and will remain incarcerated.

- **Recommendation 5:** The magistrate judge and commissioners should not primarily require low-risk defendants to comply with pre-trial supervision and should consider offering pretrial services supervision to higher risk defendants. It is inefficient and ineffective to overly concentrate pretrial services supervision on low-risk offenders. Pre-trial supervision should not be recommended where the magistrate judge or commissioner requires bail and the defendant is incapable of paying the bail.

Other Pre-Trial Release Conditions

National studies have shown that regular drug testing does not improve rearrest rates or the defendant's likelihood to return to court for subsequent court dates.[vii] In contrast, a regular reminder to the defendant of an upcoming court date provided by pre-trial services staff has been shown to have a positive effect on both rearrest rates and the defendant's likelihood to return to court.[viii]

- **Recommendation 6:** In its reports to the Louisiana Supreme Court, the Orleans Parish Criminal District Court operated pretrial supervision program should report the number of defendants required to comply with drug testing and the number of defendants who receive reminders for upcoming court dates. Pretrial services should also report whether drug tests or reminders improve pretrial outcomes in Orleans Parish Magistrate Court.

Increase the Use of ROR Pilot Project (the Pilot Project)

In May 2017, all Criminal District Court judges gave authorization to the launch of the "Increase the Use of ROR Pilot Project" in Commissioner Jonathan Friedman's court. The only judge who did not sign off on the pilot project was Magistrate Judge Cantrell.[ix] The purpose of the Pilot Project was to release a greater number of lower risk pre-trial defendants. The Pilot Project ran from May 27, 2017 to August 31, 2017.[x]

- **Commendation 1:** CWN commends all the Orleans Parish Criminal District Court judges, along with Commissioner Jonathan Friedman, for authorizing the Pilot Project to be launched in Commissioner Friedman's court. While it can be disconcerting to try new approaches to criminal justice in a high stakes environment, New Orleans cannot afford to continue approaching issues of public safety and criminal justice in a haphazard way. Bail should be decided based on evidence-based risk assessments that keep public safety in consideration, and not based on wealth-based discrimination.

Right to Counsel

In Orleans Parish Magistrate Court's first appearances, the right to counsel is guaranteed.[xi] If counsel is to be effective, it must also be free of judicial control.[xii] CWN observers have observed Magistrate Judge Cantrell setting bail on unrepresented defendants. CWN observers have observed Magistrate Judge Cantrell limiting public defenders to only a few minutes to speak to each defendant before the public defender is expected to argue pre-trial release and bail. CWN has observed that when Magistrate Cantrell determines that "time is up" for the confidential attorney-client conversation, he will order the deputy sheriff to open the door of the attorney-client booth and order the defendant to leave, thus abruptly ending the 'confidential' attorney-client conversation.

- **Recommendation 7:** The right to counsel should be respected in Orleans Parish Magistrate Court. All defendants should be represented by counsel at first appearances. Orleans Public Defenders should be allowed to represent defendants for first appearances only where the defendant has no attorney present in court. Magistrate Judge Cantrell should provide sufficient time in his courtroom for confidential attorney-client consultations prior to bail arguments.

2. Introduction

Court Watch NOLA (CWN) is a non-profit organization with the mission of promoting reform in the Orleans Parish criminal court system through civic engagement and courtroom observation. CWN volunteers monitor for transparency, efficiency, procedural fairness and violations of constitutional law, victim rights, ethics rules and Louisiana law. For ten years, CWN volunteers have monitored felony cases in Criminal District Court. In May 2016, CWN began monitoring Orleans Parish Magistrate Court, where pre-trial release and bail are initially determined for all state felony and state misdemeanor cases.

Indisputably, bail, bond, and pre-trial release impacts the disposition of criminal cases, defendants' welfare, victim safety, and the safety of the public. Over fifty years ago, Attorney General Robert Kennedy commented on bail in New Orleans, and his remarks can be heard in the words of many experts today. In his 1964 testimony before the Senate Judiciary Committee, Attorney General Robert Kennedy said:

> "A 1962 American Bar Association survey of felony cases showed high percentage of pre-trial detention in New Orleans, Detroit, Boston, San Francisco and Miami…. The main reason for these statistics is that our bail setting process is unrealistic and often arbitrary…Plainly, our bail system has changed what is a constitutional right into an expensive privilege. It is expensive not only to the individual, but also to society...Such costs alone

> should be a matter of widespread attention. What should impart even greater urgency to our attention is the human cost, and that is incalculable."[xiii]

This report explores first appearances in Orleans Parish Magistrate Court, those who work in the magistrate court, the bail and bond system, and New Orleans' move toward a stronger evidence-based pre-trial system. The target audience for this report is the general community; this report is meant to be a guide to Orleans Parish Magistrate Court, some of its functions and some of CWN's concerns with magistrate court. Upcoming reports will explore additional functions of Orleans Parish Magistrate Court, beyond first appearances.

3. Methodology

CWN collected the observations of 166 volunteers to create this report. All observers participated in a two-day training before they began independent observations, and some received refresher trainings. A physical data collection tool was used to record the data in the courtroom, and later the observers entered this data into an on-line database using Survey Monkey survey development cloud-based software.

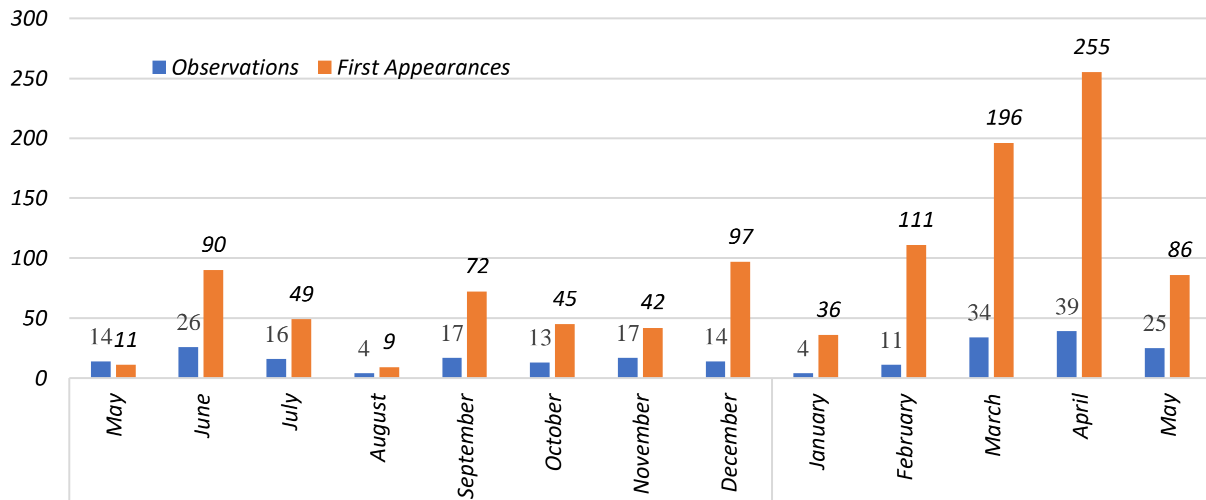
Data was collected from May 2016 to May 2017. In 2016, there were 124 court session observations, during which 430 defendants' first appearances in court were observed. In 2017, there were 110 court observations, during which 669 defendants' first appearances in court were observed. The data was exported to Excel, then cleaned and analyzed in Statistical Package for the Social Sciences version 20 (SPSS v20).

When observing court, CWN volunteers used a data collection tool that covered a wide variety of information, drawing primarily from the CWN volunteers' in-court observations, and from the official court docket of cases heard. The court docket was consistently provided upon request to CWN volunteers by the clerk of court. The data encompassed in this report and collected by the CWN volunteer is both quantitative and qualitative in nature. The data collection tool was modified and updated for 2017. This updated version was implemented in January 2017. Due to these changes, the 2016 and 2017 data are not always comparable; where applicable, this is noted in the report. In December 2016, Orleans Parish Magistrate Court began to hear state misdemeanor charges in addition to the state felony charges it had traditionally heard; this should be taken into consideration when comparing findings between 2016 and 2017. CWN observers saw more defendants in 2017 than they did in 2016. In 2016, there was an average of 3.8 first appearances per observed court session, and in 2017, there was an average of 6.1 first appearances per observed court session. Again, where applicable, this is noted in the report.

Figure 1 shows the number of court session observations (hereafter referred to as "observations"), and the number of first appearances observed during those court session observations. Some court observations may not have involved any first appearances and instead involved other court business, such as was the case for some court observations in May 2016.

Figure 1

Number of Court Sessions & First Appearances Observed per Month, May 2016-May 2017



Source: CWN observation data (n = 234 observed court sessions that included 1,099 first appearances).[xiv]

4. The Main Functions of Magistrate Court and Those Who Preside over It

4.1 The Main Functions of Magistrate Court

4.1.1 Determining Probable Cause

Within forty-eight hours of being arrested in Orleans Parish on state misdemeanor or state felony charges, a criminal defendant has the right to a probable cause determination,[xv] and within seventy-two hours, a defendant has the right to be brought to court for the appointment of counsel.[xvi] Both probable cause and pre-trial release are determined by the Orleans Parish magistrate judge or an Orleans Parish commissioner after hearing arguments from both the prosecution and the defense.

The magistrate judge or commissioners found that at least one charge had no probable cause in 8% of observed first appearances.

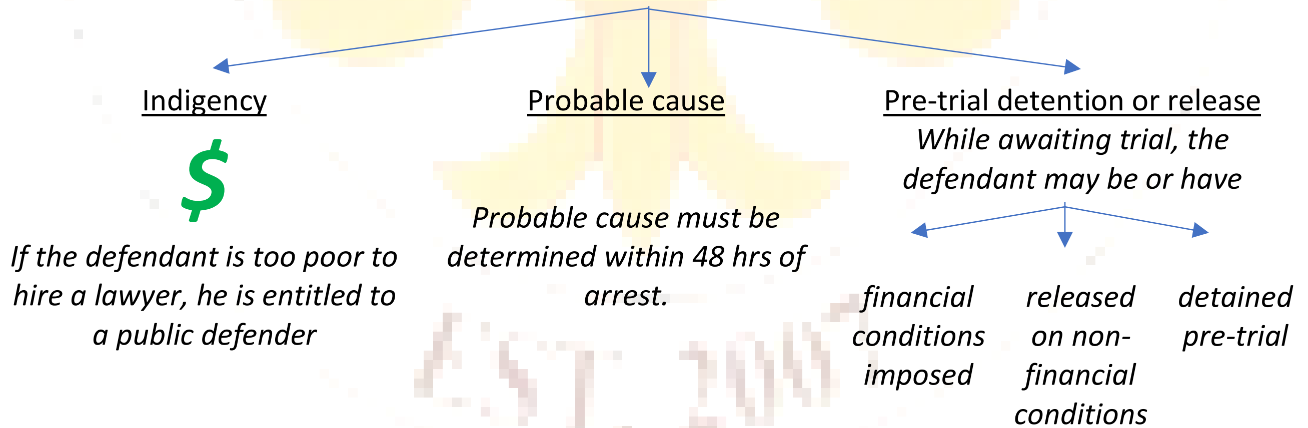
In Orleans Parish during this "first appearance," the magistrate or the commissioner will determine whether probable cause exists for the defendant's arrest.[xvii] Probable cause amounts to more than a bare suspicion but less evidence than would justify a conviction."[xviii] Where no probable cause is found for any of the crimes the defendant is alleged to have committed, the

defendant must be released from jail without bail to return to court for a subsequent appearance if the prosecution requires it.[xix]

4.1.2 Deciding to Detain or Release

Pretrial detention or release is usually determined at the defendant's first appearance in front of the magistrate court. Typically, the magistrate judge or a commissioner determines the amount of bail required for release, and the defendant is released only if he or she pays that amount and agrees to certain behavioral conditions. The magistrate judge or the commissioner can also agree to release the defendant without requiring the defendant pay cash bail, or can release the defendant based on the requirement the defendant abide by certain non-financial conditions. When the magistrate or commissioner releases a defendant without requiring the defendant pay cash bail, it is referred to as Release on own Recognizance (ROR). The magistrate judge or commissioner will make release determinations after hearing arguments from the prosecution and the defense and after receiving information from the pre-trial services program on the likelihood of the defendant returning to court for subsequent court appearances and the defendant's risk of being rearrested if released. If the defendant, the defendant's family, or the defense attorney telephones a judge, magistrate judge or a commissioner, the judge, magistrate judge, or commissioner may set bail or release the defendant straight from the jail without the defendant appearing in magistrate court for his or her first appearance at all.

Figure 2



4.1.3 Types of Bail Bonds

There are several types of bond by which a defendant can secure pretrial release from jail. The magistrate, commissioner, or Louisiana law may limit the type of bond[xx] that can be used to secure pre-trial release. They include:

1. Commercial surety bonds- for which a defendant pays a nonrefundable premium to a commercial bondsman,[xxi] usually twelve percent of the total bond amount through a down payment or payment plan;[xxii]
2. Bail with a cash deposit- bail 100% of which will be paid with cash, a cashier's check, or a money order[xxiii] directly through the sheriff's or the clerk's offices;[xxiv]
3. Secured personal surety bond-requiring approval of the prosecutor's office,[xxv] for which a person posts their house, building, or land[xxvi] with the criminal clerk's office;[xxvii]
4. Unsecured personal surety bond- (also known as a PSBU) for which the magistrate judge or commissioner requires a Louisiana resident to come to the courtroom, sign a document ensuring the defendant returns to court,[xxviii] and pay a $250 non-refundable fee;[xxix] and
5. ROR bond- no money needs to be posted but the defendant must promise to return to court.

For certain offenses, state law prohibits judges from setting a PBSU or an ROR bond, including but not limited to violent crimes, sex crimes, some drug crimes, or crimes involving the discharge of a firearm.[xxx] The defendant may have a bail set on the case if he or she is not charged with a capital offense or is not subject to a contradictory hearing.[xxxi] A magistrate judge or commissioner may require a contradictory hearing after the defendant is arrested for (1) a violent offense against a family or household member or dating partner,[xxxii] (2) a sex offense after being previously convicted of a sex offense, or (3) a capital offense.[xxxiii]

Figure 3

Where Bail Bond Money Goes

*For example, the magistrate judge or the commissioner sets the defendant's bail at **$10,000**.* →	*The defendant does not have $10,000 cash, so he goes to a commercial bail bond agent.* →	**TOTAL COST:** ***If the defendant later pleads or is found guilty, he would have paid $1,244.*** ***If the defendant is later found not guilty or his case is dismissed, he still would have paid $1,229.***
*The defendant must pay the bond agent at least **12%**[xxxiv] of the bail amount (or no less than $120). This is non-refundable, regardless of whether the defendant is later found not guilty or his case is dismissed.[xxxv] Out of the 12%, the bond agent should keep about 9% as a premium.*	*The bond agent then passes the 3% remainder onto the government in the form of fees.[xxxvi]*	*The bond agent also both collects from the defendant and passes onto the government flat fees totaling **$44**: $29 of which is non-refundable, and $15 of which is refundable if the defendant is found not guilty or his case is dismissed.[xxxvii]*
Bond agent gets: $900	**Criminal Court gets:** $180 **Sheriff gets:** $40 **District Attorney gets:** $40 **Public Defender gets:** $40	**Sheriff gets:** $31 **District Attorney gets:** $7 **Public Defender gets:** $2 **Clerk of Court gets:** $2 **Crime Lab gets:** $2

4.1.4 Other Duties in Magistrate Court

In addition to setting bail, the magistrate judge or the commissioner may order the defendant to comply with certain conditions, which may include but are not limited to returning to court for future proceedings, a stay away order requiring the defendant to have no contact with a victim, drug testing, pre-trial supervision or entering a treatment program for substance abuse or violence reduction.[xxxviii]

The magistrate judge or commissioner also determines whether the defendant will be represented by a public defender or will be required to hire a private attorney, which should be based on the defendant's ability to pay[xxxix]

Magistrate court is also where felony cases remain before a bill of indictment or a bill of information is filed.[xl] Since this report relates only to first appearances in Orleans Parish Magistrate Court, the acceptance or refusal of formal felony charges will be discussed in a future report.

4.1.5 New Duties: State Misdemeanor Cases

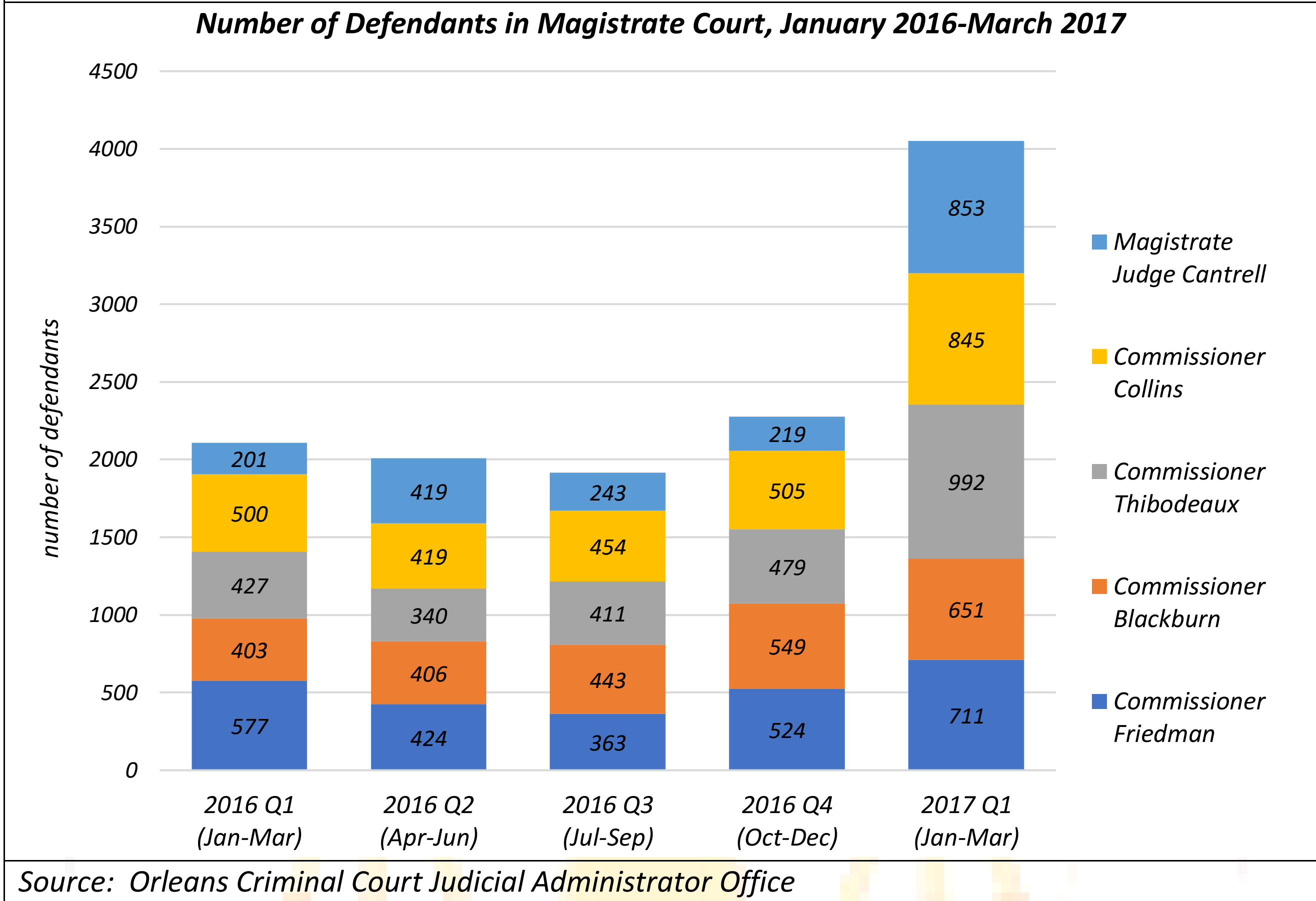
On November 17, 2016, the City of New Orleans reduced the district attorney's annual budget by $600,000.[xli] The District Attorney's Office was not given notice that its budget would be reduced. Five days later, citing the budget cut, the district attorney announced that all state misdemeanor cases would be transferred to Orleans Parish Magistrate Court from the New Orleans Municipal Court, where state misdemeanors had been heard for the last four years. This move would allow the District Attorney's Office to save money by removing its attorneys from Municipal Court.[xlii] A state misdemeanor is any offense which is not punishable by hard labor or by death under state law.[xliii] The district attorney's office began the transfer of state misdemeanors to magistrate court twenty-six days after the district attorney's budget was cut.[xliv]

Some who worked in the criminal justice system expressed concern whether the magistrate court system could efficiently handle the influx of state misdemeanor defendants. It was reported that more than eight hundred defendants had previously received summons tickets each year in lieu of arrest and detention when state misdemeanor cases were heard in municipal court.[xlv] Some worried that because Orleans Parish Magistrate Court lacked a mechanism to receive cases by summons, that jail numbers might increase because defendants would be incarcerated and released more slowly through magistrate court than they had been in municipal court.[xlvi] Some victim groups were concerned there was not enough money to track violent misdemeanors in Magistrate Court.[xlvii]

A further issue was that while commissioners can set bail on state misdemeanor cases,[xlviii] commissioners are unable to preside over state misdemeanor trials or plea agreements. Only Magistrate Judge Cantrell, who presides over five shifts a week in magistrate court, has jurisdiction to preside over state misdemeanor pleas and trials. In September 2017, to decrease the workload Magistrate Judge Cantrell and his staff faced, the Criminal District Court issued an order that defendants who had recently been arrested and incarcerated pre-trial would not be allowed into Magistrate Judge Cantrell's court if they were not booked, processed and made ready for transport by a specific earlier cutoff period.[xlix]

As shown in Figure 4 below, the Orleans Parish Magistrate Court saw over 4,052 defendants between January and March of 2017, as compared to 2,108 defendants between January and March of 2016, a 92% increase in defendants seen by the magistrate or a commissioner in magistrate court.[l] While the original transfer of state misdemeanor cases from magistrate court to municipal court in 2011 took approximately four months of planning and coordination between agencies,[li] the return of the state misdemeanors took a total of 26 days from the announcement of the budget cut to implementation of the transfer.[lii] CWN observers have seen magistrate court and the Orleans Public Defenders staff struggle to handle the sudden influx of cases in 2017.

Figure 4



Source: Orleans Criminal Court Judicial Administrator Office

4.2 Commissioner Selection

As mentioned above, a magistrate judge and four commissioners preside over Orleans Parish Magistrate Court. The Orleans Parish magistrate judge is Harry Cantrell. He was elected in a general election by the citizens of Orleans Parish in 2013 (and began serving as magistrate judge in 2014) after previously serving as an Orleans Parish Magistrate Court commissioner.[liii] Magistrate judges are elected every six years.[liv] The four commissioners currently serving in Orleans Parish Magistrate Court are Commissioner Robert Blackburn (appointed in 2010), Commissioner Jonathan Friedman (appointed in 2010), Commissioner Albert Thibodeaux (appointed in 2014), and Commissioner Brigid Collins (appointed in 2016).

The four commissioners are chosen and appointed by the twelve elected Orleans Parish District Court judges and the Orleans Parish magistrate. Commissioners are appointed for six years, after which they must be reappointed to continue acting as a commissioner.[lv] Commissioners may remain practicing attorneys but are prohibited from practicing criminal law.[lvi] In addition to their duties in court, the magistrate judge and the commissioners are on call on the weekend and/or at night to sign arrest and search warrants. Commissioners are subject to the same duties as judges[lvii]

and thus should (but are not required to) recuse themselves in a proceeding in which the commissioner's impartiality might reasonably be questioned.[lviii]

4.2.1 Lack of Requirements, Rules and Procedures for the Selection Process

There is only one requirement under Louisiana law for a person to be considered for a commissioner position: the applicant must have practiced law in Louisiana for at least five years.[lix] Although it is not required by Louisiana law, as of 2016, Orleans Parish Criminal District Court has made additional requirements for commissioner candidacy. The candidate must: live in Orleans Parish, be admitted to the Louisiana State Bar for eight years, be an attorney in good standing with the Louisiana State Bar, and be at least thirty years of age.[lx]

There are even fewer rules regulating the process by which the commissioners are chosen. Louisiana law provides that the twelve criminal district judges and the magistrate judge should sit en banc to appoint commissioners.[lxi] Neither Louisiana law nor the Orleans Parish District Court have yet written any rules or procedures about how the appointment process should be conducted. Applicants are simply directed to send a letter of interest and a résumé to Human Services.[lxii] This sharply contrasts with the 95-page manual published by the federal courts to inform the public of the procedure used to select federal magistrates.[lxiii]

4.2.2 The Danger of Conflicts of Interest

Likewise, there are no rules protecting the commissioner selection process from conflicts of interest and no rules allowing for transparency in the selection process. Although the Orleans Parish Criminal District Court has made additional requirements of commissioner candidates, judges have not yet written any rules or procedure regulating the process through which commissioners are chosen. While Orleans Parish Criminal District Court judges and the Magistrate judge should recuse themselves in a legal proceeding in which the judge's impartiality might reasonably be questioned,[lxiv] no such requirement is made of judges in the non-criminal case context of choosing commissioners.

CWN does not question the qualifications of individual sitting commissioners. Instead, CWN is concerned that without written rules or a protocol relating to conflict of interest, the process by which the criminal district court judges chose commissioners could fall victim to the pressures that criminal district court judges regularly face. The criminal district court judges and magistrate judge who appoint the commissioners are all elected by the voters of Orleans Parish. Typically, a criminal district court judicial candidate will be obligated to raise over $150,000[lxv] to run a competitive campaign. To raise this amount, judicial candidates have individual donors and/or Political Action Committees (PACs) that donate to their campaign.[lxvi] Raising campaign funds can put judges in a difficult situation. Criminal defense attorneys, bail bondsmen, and other individuals who work in the criminal justice system, and who will appear in front of the judge if the latter is successfully elected, will donate to the judge's judicial campaign.[lxvii] This is a difficult situation for all judges elected in Orleans Parish. Campaign contributions introduce the risk that judges may

feel pressure to provide some quid pro quo for the campaign contributions they receive from those who regularly do business with their court.[lxviii] According to the American Bar Association:

> "Of particular concern to the bar is the common practice whereby candidates to judicial office, especially in partisan political contests, accept significant amounts of money in the form of statutorily-permitted campaign contributions from parties whose interests regularly come before the court, or from lawyers who practice before the court."[lxix]

CWN is not recommending the elimination of judicial elections. However, it is a fact, as long as the practice of judicial elections persists, judges will continue to be required to raise campaign money, and such funds are often received from those who do business with the court.

One of the criminal district court judges' duties that should be securely protected from conflict of interest is the appointment of Orleans Parish Magistrate Court commissioners. Considering the challenging work of balancing public safety and individual liberty, it is important that commissioner candidates be chosen from the most qualified applicants, unaffected by conflicts of interest or politics. Thus, judges should have procedures, rules, and/or protocols to ensure their actions in choosing the best commissioner candidate be as free as possible from the potential conflict that the judges may have with the candidate, the candidate's family, or the candidate's business partners.

4.2.3 Models for the Selection Process

Other jurisdictions offer Orleans Parish a model for ensuring the integrity of the commissioner selection process. Many jurisdictions appoint judges, magistrates, or commissioners with the aid of a merit commission or a panel chosen for the specific purpose of selecting qualified candidates.[lxx] In some jurisdictions, merit commission members are elected, and in others they are appointed by state bar leaders, judges, governors, mayors, or other public leaders. Sometimes, the process is opened to the public, allowing the public to inform the merit selection committee about the quality of individual candidates.[lxxi]

It is essential that specific ethical guidelines be adopted so that conflicts of interest can be avoided. The benefits of standard, written procedures cannot be underestimated.[lxxii] According to the Model Judicial Selection Provisions drafted by the American Judicature Society, "The use of written, uniform rules reassures the public and potential applicants that the process is designed to treat all applicants equally and to nominate the best qualified persons."[lxxiii]

Rules should explicitly address situations that pose a conflict of interest to those choosing the commissioner, such as when a judge's campaign contributor is an applicant, or when the applicant's boss or family member pose a conflict of interest for the judge involved in the selection.[lxxiv] Some jurisdictions have introduced specific provisions requiring those that choose the commissioner to disclose personal, business or, professional relationships the person has with

the applicant and demand recusal for close relationships. In addition, there are jurisdictions that have a requirement of impartiality in selecting nominees.[lxxv] Districts that have such conflict of interest provisions include Alaska, Florida, Hawaii, Idaho, Missouri, Nebraska, Rhode Island, Tennessee, and the federal district courts.[lxxvi] Other states have adopted rules regarding specific criteria to be uniformly used in voting for, evaluating, investigating and interviewing applicants.[lxxvii]

Where written rules are not provided by Louisiana law, the Criminal District Court judges should take it upon themselves to write rules to ensure a more transparent process. According to the Model Judicial Selection Provisions published by the American Judicature Society, "If written ethical and procedural rules don't exist, they should be written and adopted by those involved in the selection process.[lxxviii]

Criminal district court judges have imposed additional requirements for commissioner applicants in Orleans Parish, not required by Louisiana law; this is a constructive move. Criminal district court judges should make additional requirements of themselves to ensure commissioners are chosen in a manner free of conflict of interest. CWN is concerned that without written rules or a protocol relating to conflict of interest, the process by which criminal district court judges choose commissioners could fall victim to the pressures of electoral politics. If the public is not given assurances that the commissioner selection process is free from conflicts of interest, the public will have less confidence in the proceedings of Orleans Parish Magistrate Court and less confidence in the commissioners presiding over Orleans Parish Magistrate Court. Ethical procedures should guide commissioner selection so that both candidates and the public are assured of the transparency and integrity of the process.

- **Recommendation 1: Orleans Parish Criminal District Court judges should develop written policies and procedures to aid the process of commissioner appointment. These written policies and procedures should be posted on the Orleans Parish Criminal District Court's website and provided to all applicants. These written policies should include a section on how conflicts of interest in the commissioner selection process will be avoided to preserve the integrity of the process. The written policies and procedures should also include a list of qualities sought after in commissioner applicants.**

5. Bail Reform and Pretrial Services

5.1 The Constitutional Discussion

Various jurisdictions across the country have begun to change their courts' approaches to pre-trial detention and the money-bail system. To fully understand the context of bail reform, we look to provisions of the United States Constitution ("U.S. Constitution").

The Eighth Amendment of the U.S. Constitution states that "Excessive bail shall not be required, nor excessive fines imposed."[lxxxix] In *Stack v. Boyle*,[lxxx] the United States Supreme Court (U.S. Supreme Court) defined excessive bail as bail "set at a figure higher than an amount reasonably calculated" to "assure the presence of the accused."[lxxxi] The Court stated that "since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant."[lxxxii] Additionally, the Court noted that the "traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction."[lxxxiii]

The U.S. Supreme Court has found that the jailing of an individual based on the individual's inability to pay money implicates equal protection principles and the fundamental fairness required by the Fourteenth Amendment of the U.S. Constitution.[lxxxiv] An equal protection analysis is triggered when people similarly situated are treated differently.[lxxxv] In *Bearden v. Georgia*,[lxxxvi] the Supreme Court invalidated the automatic revocation of an indigent defendant's probation on the basis of non-payment of a fine, explaining that to "deprive [a] probationer of his conditional freedom simply because, through no fault of his own he cannot pay [a] fine...would be contrary to the fundamental fairness required by the Fourteenth Amendment."[lxxxvii]

Due process principles govern the circumstances under which any person can be deprived of their liberty.[lxxxviii] Due process has both a substantive component and a procedural one.[lxxxix] Substantive due process "forbids the government to infringe upon certain "fundamental" liberty interests, unless the infringement is narrowly tailored to serve a compelling state interest.[xc] In *United States v. Salerno,*[xci] the U.S. Supreme Court reiterated that a liberty interest is implicated in pre-trial detention, stating "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[xcii] Thus, any system providing for pretrial detention must be narrowly tailored to a compelling government interest used to justify detention. Where that substantive requirement is met, procedural safeguards designed to balance public and private interests and to minimize the risk of error must also be satisfied.[xciii] In *Turner v. Rogers*,[xciv] a case involving unpaid child support obligations, the Court held that jailing a defendant without inquiring into his financial status violated the Due Process Clause.[xcv] The U.S. Supreme Court noted that certain procedures, taken together, can create "safeguards" that can "significantly reduce the risk of an erroneous deprivation of liberty" in the nonpayment context.[xcvi] These safeguards include: (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay.[xcvii]

Local courts across the country have taken *Stack*, *Bearden, Salerno, Turner,* and related rulings and applied their principles to ensure the constitutionality of pretrial release proceedings.[xcviii] For example, to ensure liberty constraints are narrowly tailored to serve the compelling government interest, local courts have made an inquiry into each defendant's ability to pay bail.[xcix]

Bail must be individualized to the defendant to serve the legitimate purpose of incentivizing the defendant to return to court as required.[c] Under the American Bar Association's standards, money bail may be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's subsequent appearance in court proceedings. The American Bar Association further recommends that financial conditions (of bail) be the result of an individualized decision, considering the special circumstances of each defendant, the defendant's ability to meet the financial conditions, and the defendant's risk of not appearing if released.[ci]

- **Recommendation 2: The magistrate or commissioners should not have a blanket policy refusing to set bonds below a certain amount for all defendants regardless of individual circumstances. Both Louisiana law and the U.S. Constitution require that the defendant's ability to pay and individualized circumstances always be considered when setting bail.**

5.2 Pre-Trial Services

Pre-trial services (PTS) programs have developed as a part of the bail reform movement to offer the judge and the court constructive information related to each defendant's individualized likelihood of returning to court for subsequent court adjournments and the defendant's risk of rearrest (risk to public safety). The first PTS program was created by the Vera Institute of Justice in New York City in 1961.[cii] The most recent national survey in 2009 found over 300 jurisdictions with pretrial service programs, but that number has also grown substantially since the time of the study. For example, from 2012 to 2014 six states adopted legislation to create state wide pretrial services program.[ciii] PTS programs tend to have several main functions:

- First, PTS programs usually screen arrested defendants individually in jail before the defendant's first appearance in court to obtain general background such as employment status, residence information, education level, substance abuse history, mental health history, family ties, financial condition, criminal history, etc. [civ]
- Next, PTS programs may verify the information they collect by, for example, calling an employer, school, or a parent.[cv] Staff may also conduct a criminal history check to determine, for instance, whether the defendant has any pending warrants that would show a history of the defendant failing to return to court for subsequent court dates.[cvi] In fact, all Louisiana PTS programs are required by law to verify background information.[cvii]
- A risk assessment using the information above is conducted, producing a score calculated to reflect the likelihood the defendant will return to court if released for future court dates and the defendant's risk of rearrest.[cviii] After the risk score is determined, the score is provided to the court, district attorney, and the defendant's attorney.[cix]
- Equipped with information provided by PTS, the court then reaches one of three conclusions: (1) the defendant can be released ROR from jail without conditions; (2) the risk is so high and cannot be mitigated that the defendant must be detained without bail; or (3) the defendant can be released only under certain conditions imposed upon the defendant (including money bail in some systems). Most of these conditions operate on a continuum

of liberty restrictions from the most minor, such as monthly phone calls with a pretrial services agency, to more restrictive, such as electronic monitoring or house arrest.[cx]

- The defendant's compliance with the imposed pre-trial release condition is monitored by PTS program staff. Failure to comply with conditions can result in a return to jail. PTS program staff usually provide court date reminders in the form of telephone calls or texts.[cxi] Pre-trial services staff also regularly review the status of detained defendants to determine if there are any changes to the defendant's circumstances that might enable the conditional release of the defendants.[cxii]

5.2.1 The History of Pre-Trial Services in New Orleans

The Vera Institute of Justice (Vera) created the first PTS program in New Orleans under the umbrella of the Criminal Justice Leadership Alliance. The program is based on the research and experience from other jurisdictions but, according to those in the Alliance, tailored to the specific criminal justice processes and infrastructure of New Orleans. The Criminal Justice Leadership Alliance was comprised of representatives of the Mayor's Office, the City Council Criminal Justice Committee, the Orleans Parish Criminal District Court judges, the District Attorney's Office, the Orleans Public Defenders, the New Orleans Police Department, the Orleans Parish Sheriff's Office, and the Criminal District Court Clerk's Office.[cxiii]

The Vera PTS program began screening criminal defendants in New Orleans in February 2012. Like other PTS programs, pre-trial services screeners determined the defendant's risk of failing to return to court for subsequent court dates and risk of rearrest based on a series of factors, including but not limited to the defendant's employment status, living situation, and criminal history. The program also assessed the defendant's need for drug or mental health treatment, conducted an indigency screening for the Orleans Public Defenders, and conducted an initial diversion screening for the Orleans Parish District Attorney.[cxiv]

When Vera PTS started, risk scores were provided to the magistrate judge and all the commissioners to assist them in their bail determinations.[cxv] Due to Vera's limited financial capacity, only the magistrate judge was allowed to use PTS supervision as a condition of the defendant's release.[cxvi] Despite the limited use of PTS supervision, according to city officials, the program quickly led to a reduction of those detained on higher bail.[cxvii]

Yet, in January 2013, a quorum of criminal district judges initially voted to bar Vera's PTS from the courthouse before shifting course and calling on Vera "to prove its success."[cxviii] According to news reports, judges saw the City's funding of the PTS program as a direct hit on their budget.[cxix] In 2014, after an initial time period of using Vera PTS supervision, Magistrate Judge Harry Cantrell began to refuse PTS program reports for defendants and prohibited defendants' PTS program reports from being included in the defendants' case files.[cxx] In September 2014, Magistrate Cantrell signed an order barring the inclusion of Vera's pre-trial services reports into any magistrate court case file, including not only cases in his court, but the case files for all defendants in all four of the commissioners' courts. A week later, the Orleans Parish Criminal

District Court judges rescinded Magistrate Judge Cantrell's order barring the PTS reports from being placed in a defendant's file where the defendant's first appearance was heard by one of the four commissioners.[cxxi] After the order was rescinded, Cantrell continued to bar Vera's PTS program reports from entering into the files of any defendants who were specifically in front of his court.[cxxii] Later in December 2015, commissioners were allowed to use PTS supervision as a condition of the defendant's release.[cxxiii]

In 2014, the National Institute of Corrections did an assessment of Vera's PTS and labelled the program as "solid," because 95% of assessed defendants who were released on low bond or on a nonfinancial bond returned to court for subsequent court dates, and 96% of those defendants were not charged with a new criminal offense while on pretrial release.[cxxiv] However, the National Institute of Corrections Project Team also found that the magistrate judge and commissioners were "not currently utilizing the program."[cxxv] In fact because of the reluctance of some judges, the Vera PTS program was not used as much as it was intended.[cxxvi]

Ideally, a PTS risk instrument is validated, whereby independent evaluators assess individual risk determinations (whether a defendant is considered low, moderate, or high risk) and compare those risk determinations with actual results (e.g., whether the defendant who was considered low-risk went on to commit additional crimes) to determine the accuracy of the risk determinations.[cxxvii] The Vera PTS risk instrument was never validated although it was assessed by the National Institute of Corrections, a process distinct from validation. In assessing the New Orleans PTS risk instrument, the National Institute of Corrections stated, "*When* [Emphasis added] it is determined that there is a sufficient number of completed assessments with dispositions, the criminal justice system should move forward with the validation of its risk assessment and make adjustments based on the outcome of the validation study.[cxxviii] Validation is difficult if not impossible without a strong sample demonstrating that judges took the risk scores into consideration when determining pretrial release.[cxxix] In addition, validation is expensive. The prices for PTS risk instrument validation range from $15,000 to well over $100,000 depending on several factors such as the strength of the data sample.[cxxx]

5.3 Arguments for and against Bail Reform

National and local supporters of bail reform may differ in the outcome they hope to achieve. Some, do not support eliminating bail altogether but instead would like to shift to greater dependence on PTS programs, use of unsecured bond, or eliminating bond for profit.[cxxxi] Other bail reform advocates support elimination of money bail altogether.[cxxxii] Bail reform advocates have included government officials,[cxxxiii] community advocates,[cxxxiv] judges,[cxxxv] defense attorneys,[cxxxvi] district attorneys,[cxxxvii] victim advocates,[cxxxviii] and law enforcement.[cxxxix] For instance, in February 2017 the International Association of Chiefs of Police, wrote a report contending bail has "little or no bearing on whether a defendant will return to court and remain crime-free."[cxl] Law enforcement, district attorneys, and victim advocates have both actively supported and actively opposed bail reform, depending on the jurisdiction. In Houston, for example, while there are some officials opposed to bail reform, such as the State Attorney General, both the Harris County District

Attorney and the Sheriff have recently sided with the plaintiffs in a May 2016 class action lawsuit seeking to overturn the misdemeanor money bail system.[cxli] Additionally, in New Orleans, the Orleans Parish District Attorney has both helped design pre-trial services and politically supported the program.[cxlii]

In New Orleans, there has been recent litigation between those who advocate for and those who oppose bail reform. In April 2017, a local bondsman sued Vera in state court over Vera's refusal to turn over thousands of risk assessments under a public records request that the bondsman submitted in February 2016. In filing the suit, the bondsman stated that he aimed to prove the Vera assessments were "very, very dangerous."[cxliii] There was litigation in the opposite direction in June 2017 in which the Southern Poverty Law Center (SPLC) sued a bail company, its insurer, and a private pretrial ankle monitoring company. The complaint alleged collusion between the insurer and the provider of electronic ankle monitors to charge defendants twice as much money as initially requested in their agreement. The SPLC complaint also alleged that bounty hunters employed by the bail companies in the suit were guilty of kidnapping and extortion.[cxliv] Then in June 2017, the Roderick and Solange MacArthur Justice Center and Civil Rights Corps filed a federal lawsuit against Orleans Parish Magistrate Judge Harry Cantrell alleging that Cantrell has routinely violated the constitutional rights of pre-trial arrestees by imposing excessive bail amounts without consideration of the person's ability to pay. The complaint alleged that Cantrell "routinely states that he will not consider imposition of non-financial alternative conditions of release" and that he does not set bond lower than $2,500.[cxlv] The complaint also alleged that Magistrate Judge Cantrell has a conflict of interest because he routinely refuses to allow defendants nonfinancial conditions of release or to set affordable cash bonds (where the defendant's family or friends pays the money directly to the Court), and the Court receives a percentage fee every time a defendant posts through a bail bondsman[cxlvi]

The major arguments of bail reform advocates are listed below:

- <u>Constitution</u>- Many advocates argue that pretrial defendants are jailed simply because they lack the financial means to post a bail payment and that to be jailed on the basis of wealth violates the equal rights and due process protections guaranteed under the U.S. Constitution[cxlvii]
- <u>Dangerous defendants are released when they can post bail</u>- Advocates question whether we are safer as a community when those who can pay bail are released, no matter the danger they pose to their victims or their community at large, while others remain incarcerated simply because they cannot pay bail when they pose less danger or no danger at all.[cxlviii] In New Orleans, advocates often point to convicted murderer Telly Hankton to underline the point that we are no safer under a cash bail system. Hankton was arrested for a May 2008 murder but could pay the commercial surety bond for his $1 million bail. After he paid his cash bail and was released he was rearrested for murder again in June 2009. Police found a total of 59 shell casings at the scene of the second murder. Hankton went on to be convicted of four murders in total.[cxlix] In addition to the murders, Hankton may have also made violent threats against the Mayor, the District Attorney, and an Assistant District

Attorney, along with allegedly ordering a truck to be driven through the front door of the District Attorney's Office.[cl]

- Even short jail stays can have adverse effects- One study found that defendants detained 2 to 3 days are 1.39 times more likely to engage in new criminal activity than defendants released within a day; those detained 31 or more days are 1.74 times more likely to be arrested for new criminal activity. Generally, as the length of pretrial detention time increases, so does the likelihood of recidivism.[cli] Studies have also shown that those who remain in pretrial detention for longer than 24 hours and are then released are less likely to reappear as required compared to otherwise similar defendants who are detained for less than 24 hours.[clii]
- Often those detained at the pre-trial stage are charged with nonviolent offenses- As of July 2017, 57% of jail inmates in Orleans Parish were detainees awaiting trial on felony or misdemeanor charges.[cliii] Defendants arrested on victimless state felony charges such as drug offenses were detained in the Orleans Justice Center an average of 120 days if they were unable to afford bail during the first half of 2017.[cliv]
- Wrongful Conviction- Unnecessary bail can also lead to wrongful conviction. Recent studies have identified a causal link between pretrial detention and adverse case outcomes.[clv] In one study, examining felony and misdemeanor cases in Philadelphia between September 2006 and February 2013, pretrial detention was associated with a 13% increase in the defendant being convicted which was "largely explained by an increase in guilty pleas among defendants who otherwise would have been acquitted or had their charges dropped."[clvi] In Harris County, Texas, out of 375,000 misdemeanor cases filed between 2008 and 2013, detained defendants were 25% more likely than released defendants to plead guilty.[clvii] Additionally, pre-trial detention can impede a defendant from gathering exculpatory evidence and can make confidential communication with attorneys more difficult.[clviii] Wrongful conviction can lead to unsafe communities, with the real perpetrator no longer investigated but free to roam the streets.[clix]
- Racial Disparities- Studies have shown that Black and Hispanic defendants are more likely to be detained pretrial than white defendants and less likely to be able to post money bail as a condition of release.[clx] Because pretrial detention has such a profound effect on later-in-the-case outcomes, racial disparities in the application of cash bail may reinforce or exacerbate larger inequalities in rates of incarceration.[clxi]

Not surprisingly, on both a national and a local level, the most vocal opponents of bail reform are those in the bail industry. As one bailsman in New Jersey stated, bail reform in his state has "decimated their business…there is no way we can keep a business and pay our employees to come in if there is no business."[clxii] Bail companies with storefronts in the community take on the risk of paying the actual bond to the court and do so by asking for a proportion of the bail up front or by setting up a payment system with the defendant or the defendant's family where regular payments are expected. These small commercial bail businesses are supported by much larger global companies that secure the risk for the smaller company in case the defendant cannot be found and the full bail amount is forfeited to the court. Though there are more than 25,000 bail-bonds companies across the United States, only about ten insurers are responsible for underwriting the

bulk of the $14 billion in bonds that are issued each year.[clxiii] Nationally, the bail industry brings in around $2 billion in profit a year[clxiv] with the percentage of defendants released on commercial sureties increasing nationally from 24% to 42% between 1994 and 2004.[clxv] The bail industry lobbies in presidential and congressional elections, and can often play an influential role in city council, mayoral, gubernatorial, judicial and district attorney races.[clxvi]

The major arguments of bail reform opponents are listed below:

- Cost- Opponents of bail reform point out that any program in which the courts assume the risk of a criminal defendant returning to court is costly. The bail industry argues that private industry is better situated to bear that cost instead of the government and that government does not have the infrastructure to enforce collections.[clxvii] It is true that the costs of establishing and maintaining a pre-trial services program can be expensive. Start-up and operational costs can be counterbalanced in the long-run by savings that flow from decreased detention and improved pretrial outcomes, such as less crime being committed.[clxviii]
- Bail is Financing the Larger System- Another argument made by opponents is that the current system helps fund important services such as court maintenance, public defender's offices and district attorney's offices (see figure 3)[clxix] Opponents argue that without a money bail system, the community must find alternative approaches to fund these services and benefits. In New Orleans, finding a better way to fund the courts and its actors has already been the subject of various lawsuits[clxx] and campaigns.[clxxi]
- Pretrial Risk Assessments are Imperfect Predicters- Opponents of the Vera PTS program point to the release of Akein Scott. Scott was considered a risk score 3 low-risk defendant by the Vera pre-trial services program. Magistrate Judge Cantrell set bail on Scott without examining the Vera pre-trial services risk score or requiring pre-trial services supervision. Scott had a $15,000 bond set on the criminal charge that the district attorney's office formally accepted.[clxxii] After remaining in jail for approximately two months,[clxxiii] Scott's family or friends went to a commercial bail provider, paid the bail amount and was released. Twelve days later, Scott went on to be one of three shooters in the Mother's Day shooting that resulted in 19 injuries.[clxxiv] After the shooting, the Vera PTS risk instrument was changed to include a heavier weight in the risk score analysis for pending gun charges.[clxxv] Deb Cotton, the worst injured victim of the shooting and an outspoken advocate, argued that the Akein Scott case should not be an obstacle to larger bail reform.[clxxvi]
- Racial Disparities- Opponents to bail reform and PTS programs argue that African-Americans are more likely to be considered higher risk compared to white defendants and are thus less likely to be released pre-trial by a judge.[clxxvii] Opponents to bail reform point to former United States Attorney General Eric Holder's testimony related to potential racial bias in risk instruments.[clxxviii] Holder's concern over racial bias in risk instruments was specifically reserved for risk instruments used in sentencing, not pre-trial detention;[clxxix] a practice not recommended by this report. Evidence, however, does show that poorly designed pre-trial risk assessments that rely on risk factors that are not race neutral can

perpetuate racial bias already found in the larger criminal justice system. Some say a risk assessment developed using rigorous research methods with a focus on race neutrality can ensure a risk assessment is free of predictive bias.[clxxx] Other experts argue that it is impossible to rid pretrial service assessments of the systematic bias found in the larger criminal justice system.[clxxxi]

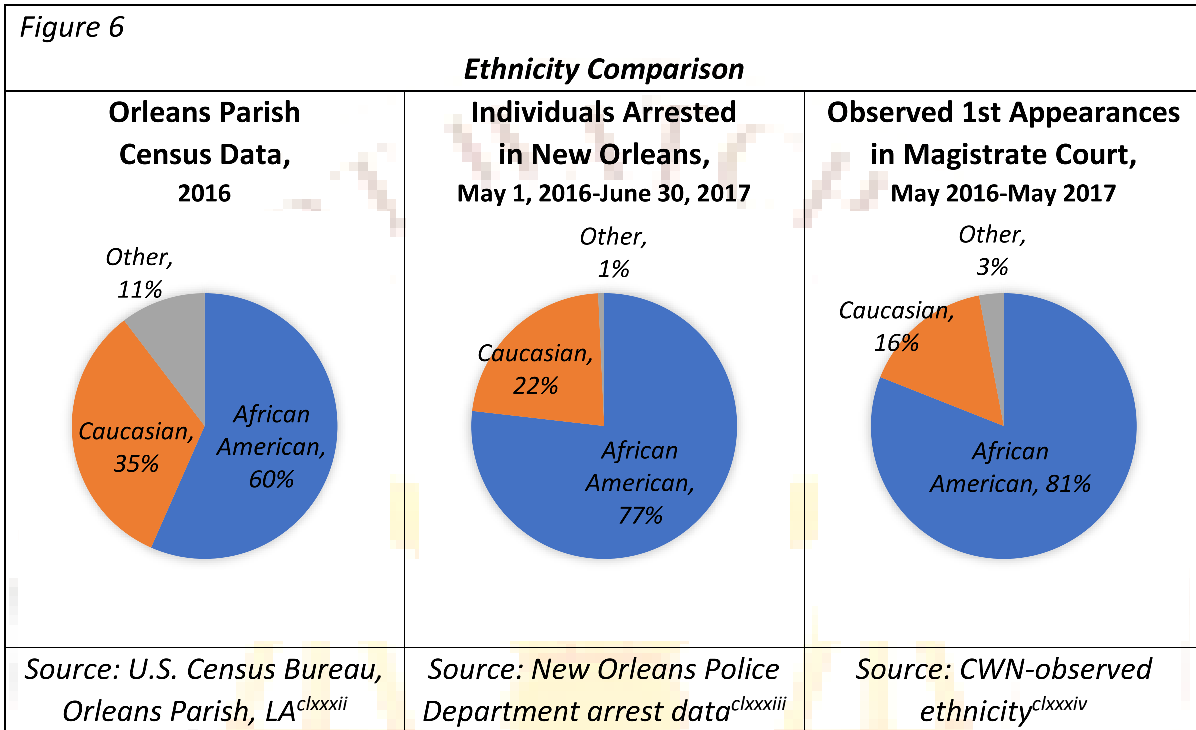


Figure 6 compares the ethnicity of New Orleans residents, the ethnicity of those arrested by law enforcement, and the ethnicity of those defendants observed by CWN observers in magistrate court first appearances. This data shows an overrepresentation of arrests and first appearances for African Americans as compared to the census data for Orleans Parish. Orleans Parish is about 60% African American, but 77% of arrests and 81% of observed first appearances were African American. This data also shows an overrepresentation of first appearances (3%) for those in the "other" category, that includes Hispanics, Asians, Native American, and unknown ethnicities [clxxxv] as compared to the percentage (1%) of Hispanics, Asians, American Indians, Native American, and unknown ethnicities who were arrested by law enforcement. One possible explanation for this overrepresentation in magistrate court first appearances is that more Caucasian defendants either have their charges dropped before they appear in magistrate court or they are arrested on municipal charges and not state charges. Municipal charges are not heard in magistrate court. Another possible reason is that Caucasian defendants may have had a lawyer, friend or family member call the judge and release the defendant directly from the jail, instead of the defendant having gone through first appearances in magistrate court.

5.4 Status of Bail Reform and Pre-Trial Services in New Orleans

In January 2017, New Orleans embraced municipal misdemeanor bail reform. This bail reform does not directly affect Orleans Parish Magistrate Court but should be mentioned as it relates to the subject of larger bail reform in New Orleans. Municipal misdemeanors are criminal offenses adopted by the New Orleans City Council and signed by the mayor (as compared to state crimes passed by state representatives and signed by the governor). Such misdemeanors are punishable by a fine not exceeding $500.00, or by imprisonment for not more than six months, or by both such a fine and penalty.[clxxxvi] Municipal cases are all heard in New Orleans Municipal Court which is a distinct court from Orleans Parish Magistrate Court. This bond reform adopted in January 2017 allows the release without bail of most defendants charged with municipal misdemeanors.[clxxxvii]

In March 2017, Vera turned the PTS program over to the Orleans Parish Criminal District Court for operation and to the Louisiana Supreme Court for supervision. This hand-over happened after years of concerted planning between Vera, the City of New Orleans, and the Louisiana Supreme Court. Orleans Parish is the first parish whose PTS program will be overseen by the Louisiana Supreme Court, but the Louisiana Supreme Court is currently working to expand PTS to other parishes throughout the state.[clxxxviii] In 2017, the criminal district court operated PTS program hired a director after an internal search was conducted; the director was chosen after only two candidates applied.[clxxxix] Under an agreement between all actors,[cxc] the Orleans Criminal District Court was required to provide regular fiscal and programmatic reports to the Louisiana Supreme Court and it is the Orleans Criminal District Court that is in charge of day to day activities of the PTS program.[cxci] While those fiscal and programmatic reports are accessible to the public by public records request, the Criminal District Court's PTS program is not required to make public presentations in front of New Orleans City Council like other government programs or agencies that receive city funding.

- **Recommendation 3: The City of New Orleans should continue to financially support the Pretrial Services Program operated by the Orleans Parish Criminal District Court. While the program is still developing, it needs strong and careful supervision from the Louisiana State Supreme Court. Pre-trial services program representatives should be required to appear in front of the New Orleans City Council Criminal Justice Committee during budget season. A public process is necessary because the Pretrial Services Program is sustained with city resources.**

At the time of this report, the new criminal district court operated PTS program was using the same risk assessment tool which was used by Vera.[cxcii] However, soon the program will shift to a risk assessment tool designed by the Arnold Foundation.[cxciii] According to the Arnold Foundation, its risk instrument was created after looking through the data of over 1.5 million cases drawn from more than 300 United States' jurisdictions to identify the factors that are the best predictors of whether a defendant will commit a new crime or fail to return to court.[cxciv] The Arnold Risk Instrument is in use statewide in Arizona, Kentucky, Iowa, Rhode Island, Utah, and New Jersey,

and in approximately thirty local jurisdictions.[cxcv] In Kentucky, use of the Arnold Foundation's risk assessment tool led to an increase in pretrial release, higher court appearance rates, and fewer crimes committed by people on pretrial release, according to the Foundation.[cxcvi] The arrest rate for people released before trial fell from 10% to 8.5%, representing a 15% decrease in overall pretrial crime.[cxcvii] While the Arnold Foundation risk tool has been validated for certain jurisdictions after it has been put to use, it will not have been validated yet for New Orleans when New Orleans first uses the risk tool since a large enough sample will be required before validation.[cxcviii]

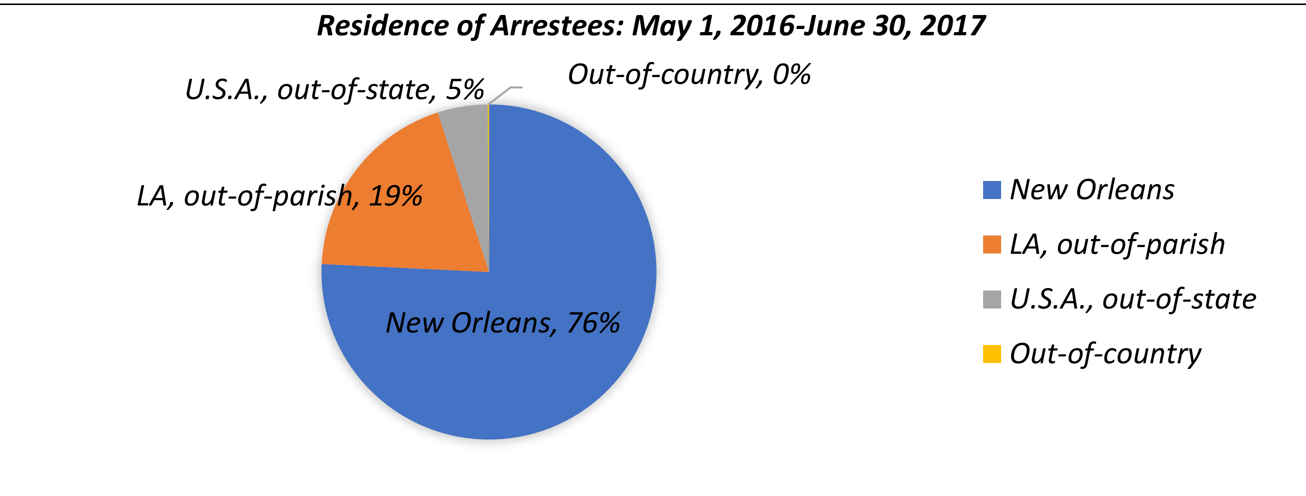
5.4.1 Judicial Considerations Voiced for Setting Bail

Like the Vera program before it, the Criminal District Court operated PTS program has adopted procedures designed to weigh the proper factors used to determine the defendant's risk of failing to return to court and risk of rearrest. PTS risk scores aim to supplement the magistrate judge or commissioner's discretion in deciding pretrial release outcomes but not replace it.[cxcix] It is national best practices and consistent with the protocol established by the criminal district court-operated PTS program to not overly emphasize the pending criminal charges for which the defendant is arrested. This reflects best practices since the defendant is considered innocent of any pending charges, and pending charges are not as strongly correlated with the defendant's successful return to court for subsequent court proceedings or risk of rearrest as other factors such as prior criminal history, age, etc.[cc] The magistrate judge and commissioners should rely on the totality of a defendant's individualized circumstances, as captured by PTS reports, rather than placing undue emphasis on the defendant's pending charges in making pretrial release decisions.

Residence, for example, is ideally one of the factors considered by a judge in his or her individualized pre-trial release determination.[cci] Research has found that residents have a lower risk of fleeing the jurisdiction than individuals residing outside of the city or the state where the court is located.[ccii] The chart below indicates that most individuals (76%) arrested in Orleans Parish by law enforcement agencies reside in New Orleans, and another nineteen percent reside in other Louisiana parishes.[cciii]

EST. 2007

Figure 5



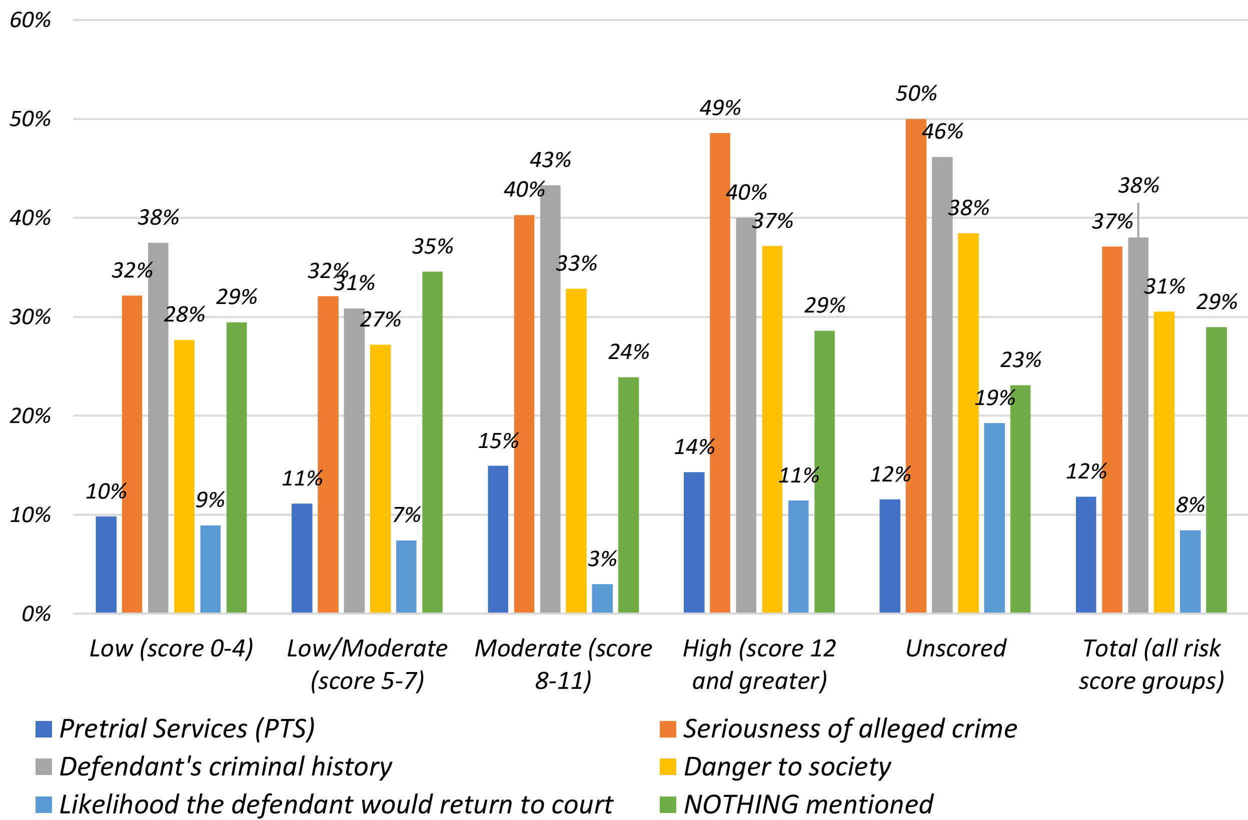
Source: New Orleans Police Department (n = 30,930).[cciv]

CWN observers have recorded factors which the magistrate or a commissioner has publicly mentioned while setting bail on a defendant. While there are surely factors in every case which the magistrate judge or commissioner considers while setting bail but does not explain in open court, CWN observations offer a snapshot of the rationale for pre-trial release decisions. Some of the more popular considerations mentioned by the magistrate or a commissioner in determining pre-trial release decisions or bail include the defendant's PTS report, the seriousness of the alleged offense, the defendant's criminal history, the potential danger to society if the defendant is released on bail, and the likelihood that the defendant may return for subsequent court dates.

Figure 7 outlines the considerations that the magistrate judge and the four commissioners verbally mentioned in court while setting bail. "Pretrial Services (PTS)" as used in Figure 7 means that the magistrate judge or commissioner mentioned in court that he or she considered the PTS report for individual defendants while setting bail. The most commonly discussed factors include the seriousness of the alleged crimes, the defendant's criminal history, and the danger to society. The magistrate judge or commissioner did not mention anything on the record in 29% of the observed first appearances. Although one of the two purposes of bail is the likelihood that the defendant will return to court, it was mentioned in only 8% of observed first appearances.

Figure 7

Considerations Mentioned by Magistrate/Commissioner when Setting Bail by Risk Category, January-May 2017



Source: CWN observation data (total n = 321)[ccv]

- **Recommendation 4: The magistrate judge and commissioners should not overly rely on the defendant's pending criminal charges when determining pretrial release. The exclusive examination of the defendant's pending criminal charges has been shown to be unreliable in determining the defendant's likelihood in returning to court and likelihood of rearrest. The magistrate judge and commissioners' overreliance on defendants' pending criminal charges may impact both the defendant's liberty and the public's safety.**

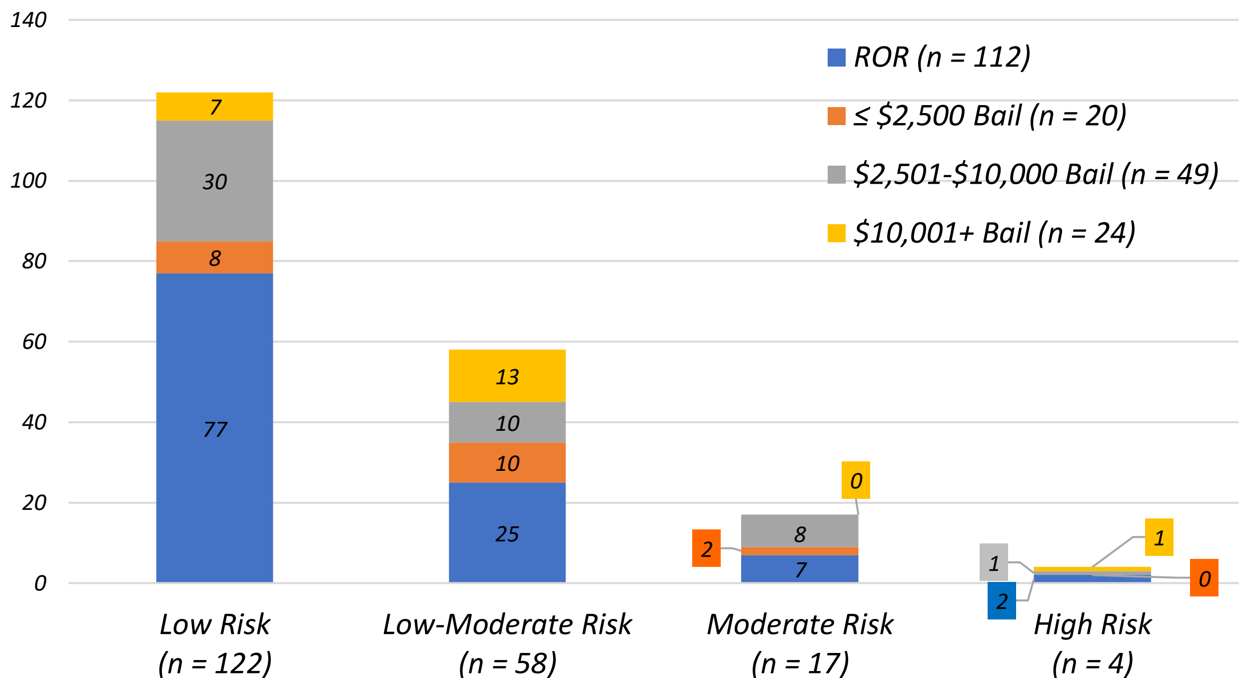
5.4.2 Required Pre-trial Conditions

The criminal district court operated PTS program, like Vera's PTS program, has adopted procedures designed to promote the release of defendants with the least restrictive conditions that will not negatively impact public safety. According to the adopted protocol for the Criminal District Court's PTS program, "In deciding pretrial release, a presumption in favor of pretrial release on a simple promise to appear (i.e. release on recognizance) shall apply to all persons arrested and charged with a crime." Using the least onerous conditions is also supported by

research. Over-supervising lower-risk defendants during the pretrial period has been associated with the defendant being more likely to have been rearrested and less likely to return to court for subsequent court dates.[ccvi] If a low-risk defendant is required to frequently come to court to meet with pre-trial services as part of the requirements of pre-trial supervision, the conditions become a part-time job in themselves. This may be time better spent in school, at work or with the defendant's family. Studies have shown the defendant is less likely to comply with such rigorous requirements.[ccvii] Regular supervision meetings for moderate- and high-risk defendants, however, have been shown to be beneficial. A 2013 study by the Arnold Foundation found that moderate-to high-risk defendants in Kentucky who were regularly supervised were more likely to appear in court and less likely to be rearrested.[ccviii] Controlling for relevant variables, moderate-risk defendants who were supervised missed court dates 38% less frequently than unsupervised defendants.[ccix] Supervised high-risk defendants missed court appearances 33% less often.[ccx]

As shown in Figure 8, between March 2017 (when Orleans Criminal District Court began to operate the PTS program) and August 2017, 122 low-risk (Risk Category 1) defendants were required to comply with PTS supervision, compared to 58 low-moderate risk defendants (Risk Category II), and only 17 moderate risk defendants (Risk Category III) were required to comply with PTS supervision. Of concern, 83% of defendants placed under supervision had bail amounts over $10,000 but were low- and low/moderate-risk defendants.[ccxi] These findings show that contrary to best practices, that lower risk defendants have been required to comply with pre-trial supervision and that moderate- and moderate- to high-risk defendants have largely not been given the opportunity to be supervised by PTS supervision. This chart also shows that low-risk defendants although they are required to comply with pre-trial supervision are still detained with higher bail (i.e. 45% percent of low-risk defendants were required to pay over $10,000 in bail), making release difficult and compliance with PTS supervision impossible.

Figure 8



Source: New Orleans Pretrial Services (PTS) Monthly Reports

Pre-trial supervision is intended to be a condition placed upon defendants who are released. High bail amounts may prohibit defendants from bonding out of jail and therefore it is ineffective for the magistrate judge or a commissioner to assign PTS supervision to incarcerated defendants; PTS supervision is meant for released defendants. PTS monthly reports indicate that from March to August of 2017, eleven defendants in the low- and low/moderate-risk categories who had been placed under supervision were not released from jail at all, presumably because they were unable to make bail.[ccxii]

- **Recommendation 5: The magistrate judge and commissioners should not primarily require low-risk defendants to comply with pre-trial supervision and should consider offering pretrial services supervision to higher risk defendants. It is inefficient and ineffective to overly concentrate pretrial services supervision on low-risk offenders. Pre-trial supervision should not be recommended where the magistrate judge or commissioner requires bail and the defendant is incapable of paying the bail.**

The Criminal District Court's PTS program does not include in its reports to the Louisiana Supreme Court the number of defendants required to take drug tests or the number of defendants who receive reminders for upcoming court dates. The criminal district court operated PTS program also does not include in its reports whether either drug tests or reminders improve pretrial outcomes.

A national study suggests that drug testing has increased considerably as a condition of pre-trial release from 75% cases in 2001 to 90% cases in 2009.[ccxiii] Yet the studies examining the effectiveness of drug testing have all found that drug testing fails to improve pretrial outcomes, even when courts subject defendants to increasingly severe sanctions for noncompliance.[ccxiv] As one expert has contended, “Because defendants seem to fail to abide by drug testing conditions regardless of the sanctions imposed, programs that use drug testing and impose sanctions for noncompliance are setting defendants up to fail.”[ccxv]

In contrast, regular reminders of an upcoming court date given by pre-trial services staff to defendants has been shown to have a positive effect.[ccxvi] In a Nebraska based study, it was found that a reminder to the defendant decreased the failure to appear rate from 12.6% to 9.7%.[ccxvii] In a similar study conducted in Lafayette Parish, Louisiana, reminder calls were made to defendants with arraignment hearings, misdemeanor pretrial and trial dates, felony pretrial and traffic court dates. Court appearance rates for all court dates increased from 48% to 62%.[ccxviii]

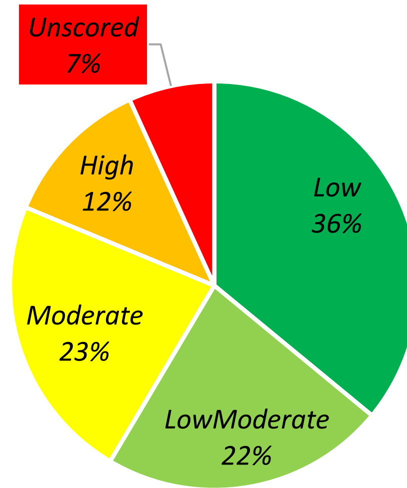
- **Recommendation 6: In its reports to the Louisiana Supreme Court, the Orleans Parish Criminal District Court operated pretrial supervision program should report the number of defendants required to comply with drug testing and the number of defendants who receive reminders for upcoming court dates. Pretrial services should also report whether drug tests or reminders improve pretrial outcomes in Orleans Parish Magistrate Court.**

5.4.3 Pre-trial Risk Scores and how Risk Scores Affect Bail

The New Orleans PTS program provided CWN the PTS risk scores for interviewed felony defendants from May 1, 2016 to May 31, 2017. As previously stated, risk scores relate to the risk of whether the defendant will return to court for subsequent proceedings and the risk the defendant will be rearrested. As seen in Figure 9, between May 2016 and May 2017, 36% of defendants who had a first appearance in magistrate court were considered low risk for failure to return to court and low risk of being rearrested.[ccxix] Figure 9 shows that the biggest category of felony defendants in magistrate court first appearances are considered low risk. The smallest risk category of defendant seen in magistrate court first appearances are those defendants who are “unscored” meaning defendants who are arrested on very serious charges (first- and second-degree murder, aggravated rape, and armed robbery with a firearm) and where a score is not assigned.[ccxx]

Figure 9

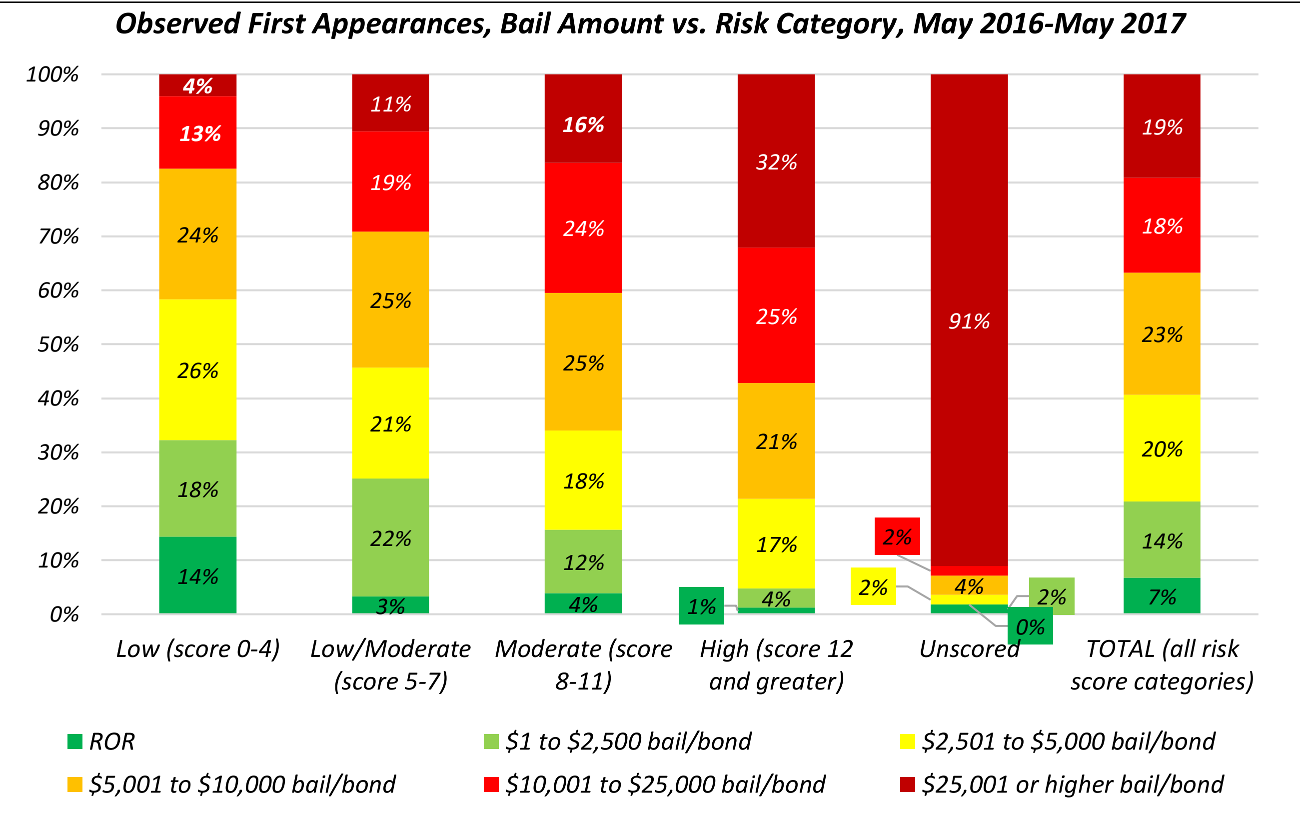
Prevalence of Risk Score Categories for Defendants with Felony Charges, May 2016-May 2017



Source: New Orleans Pretrial Services (PTS) (n = 5,297).[ccxxi]

Figure 10 shows the relationship between the pre-trial risk score categories and the bail (or ROR) set during the defendants' first appearance. Again, certain defendants received an "unscored" risk score category due to the seriousness of their alleged offenses (e.g., second-degree murder, aggravated rape, or armed robbery). The "unscored" risk score category means defendants who are arrested on very serious charges (first- and second-degree murder, aggravated rape, and armed robbery with a firearm) and where a score is not assigned.[ccxxii]

Figure 10



Source: CWN observation data (total n = 667)[ccxxiii]

As seen in Figure 10, there is a strong relationship between bail and the risk score: the higher the risk, the more often a defendant received a higher bail amount; the lower the risk, the more often the defendant received a lower bail amount or was released on his or her own recognizance. However, the relationship is not absolute. For example, 17% of those with low risk scores still had a bail greater than $10,000. At the other end of the spectrum, 22% of defendants with high risk scores had a bail of $5,000 and lower.

Data provided during a public meeting of the Jail Population Management Subcommittee (JPM) of the Criminal Justice Council and CWN data show a similar trend, both indicating that the median bond amount for defendants in the lowest risk category is decreasing: from $7,500 in 2016, to $6,500 in the first quarter of 2017, and $6,000 in the second quarter of 2017.[ccxxiv] CWN data (from those first appearances observed by CWN volunteers) for the median bond amount for defendants in the lowest risk category was $5,000 from May to December 2016 (n = 111), remained at $5,000 in the first quarter of 2017 (n=62), and showed a small decrease to $4,250 in the period analyzed during the second quarter (April, May) (n=50).[ccxxv]

The data shows that the magistrate and commissioners are increasingly setting lower bail for low risk defendants and increasingly setting higher bail for higher risk defendants. However, as stated above a sizable percentage (17%) of low risk defendants still had a bail greater than $10,000 and

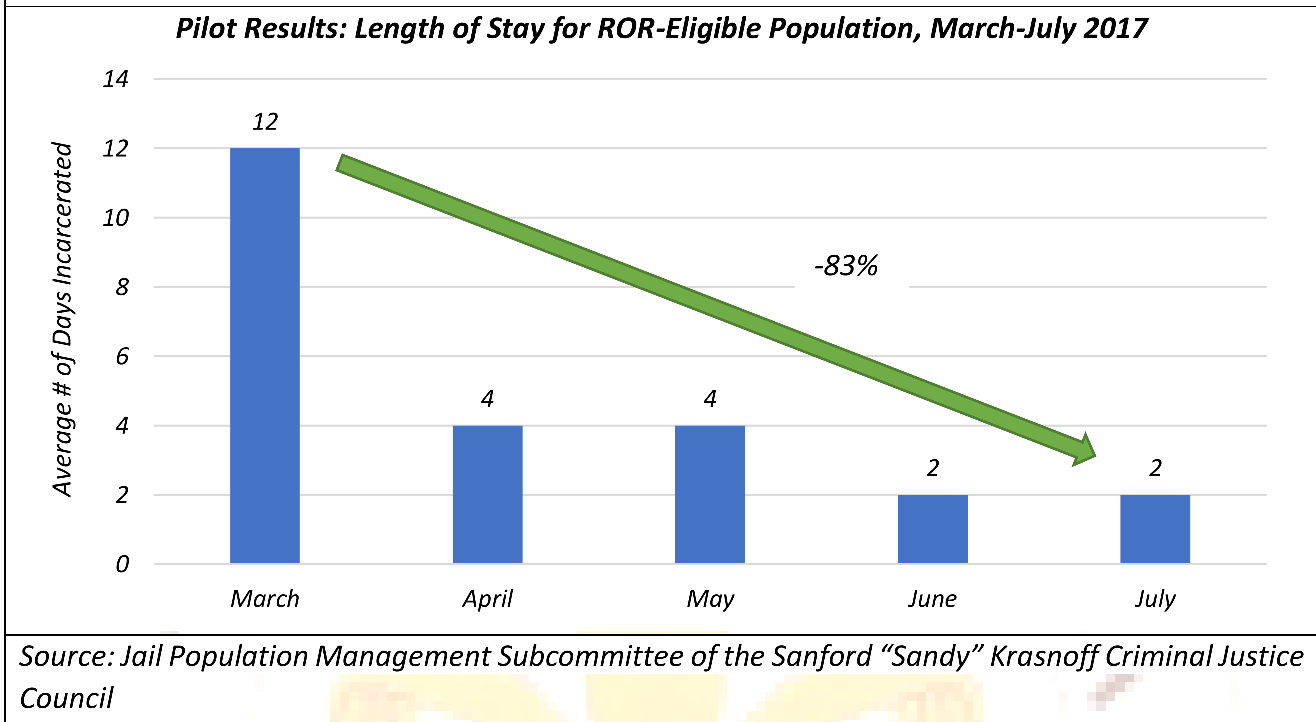
a sizeable percentage (22%) of high risk defendants still had a bail of $5,000 and lower including release. These results show that the magistrate and the commissioners should be attentive to PTS risk scores to ensure they better correlate risk with pretrial release decisions.

5.4.4 Increase the Use of ROR Pilot Project (the Pilot Project)

In 2016, the City of New Orleans was provided a $1.5 million grant by the MacArthur Foundation to be part of the MacArthur Safety and Justice Challenge.[ccxxvi] As part of the grant, the City of New Orleans was expected to implement a comprehensive set of strategies to reduce the jail population in Orleans Parish with a target 21% reduction of the average daily jail population, or 340 people, by mid-2019.[ccxxvii] Since late summer 2016, the "Jail Population Management Subcommittee" has overseen the implementation of all MacArthur Foundation Safety and Justice Challenge projects. The members of the Jail Population Management Subcommittee include: the Orleans Parish District Attorney's Office; the New Orleans Police Department; the Mayor's Office; the City Council; the Orleans Parish Criminal District Court; Magistrate Judge Cantrell; Louisiana Probation and Parole; the Department of Corrections; the City of New Orleans' Chief Administrative Office; Orleans Public Defenders; the Orleans Parish Sheriff's Office; the City Attorney's Office; the New Orleans Municipal Court; and three community representatives.[ccxxviii] In May 2017, all Criminal District Court judges consented to the launch of a "Increase the Use of ROR Pilot Project" in Section M5 of Orleans Parish Magistrate Court[ccxxix] as part of the MacArthur Foundation's Safety and Justice Challenge.[ccxxx] The only judge who did not sign off on the ROR project was Magistrate Judge Cantrell.[ccxxxi] This project was overseen by the Jail Population Management Subcommittee.

The Pilot Project was aimed at releasing a greater number of lower risk pre-trial defendants. The Pilot Project ran from May 27, 2017 to August 31, 2017[ccxxxii] and was piloted in Commissioner Jonathan Friedman's courtroom (M5) with his permission. In fact, Commissioner Friedman has said that he began to follow the protocol a bit earlier than the target start date, starting in April 2017.[ccxxxiii] During the Pilot, Commissioner Friedman maintained judicial discretion to decide pre-trial release conditions for all cases in front of his court, but he was encouraged to release lower risk defendants on their own recognizance (ROR) where permitted by Louisiana law. Where the defendant was low-risk for release but Louisiana law did not permit the defendant to be RORed (due to the defendant's pending criminal charges) the commissioner was encouraged to set a nominal bail that the defendant could readily pay in cash. Commissioner Friedman could also order the defendant to be supervised by the criminal district court operated PTS program.[ccxxxiv]

Figure 11



Source: Jail Population Management Subcommittee of the Sanford "Sandy" Krasnoff Criminal Justice Council

As seen in Figure 11, in March prior to the start of the Pilot Project, participating defendants who were eligible to be RORed were detained for an average of twelve days.[ccxxxv] The eligible population's average stay decreased to four days in the first two months of the Pilot and ultimately decreased to two days in June and July.[ccxxxvi] The average length of stay for ROR- and Pilot-eligible defendants therefore decreased by 83%.[ccxxxvii] The Pilot Project also measured whether defendants released through the Pilot were less likely to return to court for subsequent court dates or more likely to be arrested while released, as compared to the average rates in magistrate court during that time period. The failure to appear rate across all five sections of magistrate court from April to July of 2017 was 9.6%, or 125 defendants out of a total 1,304 defendants. The failure to appear rate in Commissioner Friedman's courtroom was similar at 9.5%, or 19 defendants out of a total 201 defendants who failed to appear for scheduled court.[ccxxxviii] The rearrest rate across all five sections of magistrate court from April to July of 2017 was 2.9%, or 38 defendants out of a total 1,304 defendants were rearrested, and the rearrest rate in Commissioner Friedman's courtroom was slightly higher at 4.5%, or 9 defendants out of a total 201 defendants were rearrested.[ccxxxix] Given these results, in October 2017, the criminal district court has rolled out the initiative in the other commissioners' sections of magistrate court.[ccxl]

It is every judge's nightmare to release a defendant who goes on to commit a violent crime. Not only is the judge later blamed for that crime spree with his or her photo in the paper right next to the released and rearrested defendant, but also the judge will often feel trauma as a result of any damage or pain caused to a victim.[ccxli] Judges are often unaware of the many defendants who navigate the adjudication process without problems during pretrial release. The feedback that does occur is mainly negative (the media will soundly criticize release decisions when one has gone

wrong). This situation rarely occurs but encourages defensive decision making.[ccxlii] Not surprisingly then, judges can become risk averse in determining bail.[ccxliii] Where there is evidence the defendant poses danger to public safety, that defendant should not be released on bail. Where there is evidence the defendant does not pose a danger to public safety and he or she will return to court, the defendant should be released and where necessary pre-trial conditions should be imposed. Judges must fully embrace factors outside of the pending criminal allegations for which the defendant has been arrested. It takes courage for a judge to change his or her mindset to take into consideration pretrial release tools such as risk levels, and let the judge's bail decisions be guided by risk levels instead of instinctive apprehension. As Chris Christie, the New Jersey Governor, said of his own state's bail reform efforts,

> "For six years, I was the United States Attorney for New Jersey, the chief federal law enforcement officer of the state. No one can say that I am "soft on crime." My career has been dedicated to trying to put bad people in prison. But we need to be smart about how we use prison. I hope other states can build on New Jersey's experience, ushering in bail reform to keep violent offenders off the streets and give nonviolent offenders a chance to reclaim their lives. These changes will ensure that decisions about whether to detain someone pretrial are made based on real public safety threats and not on whether a defendant is rich or poor. They enhance the administration of justice and keep our citizens safe."[ccxliv]

Thus, while Orleans Parish is still moving to embrace its pre-trial services program and bail reform, judges should be commended for embracing different tools such as risk determinations and PTS program monitoring. This is especially the case since this process may feel different and dangerous to judges.[ccxlv] In fact, many would argue that we as community have an influential role in supporting those judges that embrace a smarter more effective way to determine pre-trial release.[ccxlvi]

- **Commendation 1: CWN commends all the Orleans Parish Criminal District Court judges, along with Commissioner Jonathan Friedman, for authorizing the Pilot Project to be launched in Commissioner Friedman's court. While it can be disconcerting to try new approaches to criminal justice in a high stakes environment, New Orleans cannot afford to continue approaching issues of public safety and criminal justice in a haphazard way. Bail should be decided based on evidence-based risk assessments that keep public safety in consideration, and not based on wealth-based discrimination.**

6. Right to Counsel

6.1 The Constitutional Discussion

CWN regularly monitors magistrate court for right to counsel violations. The Sixth Amendment of the U.S. Constitution, the Louisiana Constitution, and the Louisiana Code of Criminal Procedure all guarantee the right to counsel.[ccxlvii] The U.S. Supreme Court has held that the right to counsel attaches at the defendant's initial appearance before a judicial officer, where the magistrate judge informs the defendant of the charges against him or her and determines the conditions for pretrial release by which the defendant must abide.[ccxlviii] Once the right to counsel attaches, the accused must have counsel present at any critical stage.[ccxlix] A critical stage is defined as a proceeding between an individual and agents of the state that amounts to trial-like confrontations at which counsel would help the accused "in coping with legal problems or meeting his adversary."[ccl] The constitutional right to counsel at first appearance is also secured by Article I § 13 of the Louisiana Constitution, which provides that every person is entitled to counsel at "each stage of the proceedings" against him.[ccli] Louisiana Criminal Procedure dictates that "the accused in every instance has the right to defend himself and to have the assistance of counsel… his counsel shall have free access to him, in private, at reasonable hours."[cclii]

6.2 Lack of Counsel at Bail Hearings

CWN has become concerned with several right to counsel problems witnessed in magistrate court in the 2016 and 2017 period of observation. Specifically, CWN has observed the absence of counsel during bail "argument" and has observed bail decisions made without defense counsel present. This happens when the magistrate judge has determined the defendant is not poor enough to require a public defender and the defendant has not yet hired a private attorney who is present in court. First appearances often occur only hours after arrest, before the defendant or the family members can retain counsel. Additionally, it is often difficult to contact an attorney or even friends and family from inside of the jail, especially if the defendant is unexperienced with the criminal justice system.[ccliii] Being arrested and forced to face a deputy sheriff there to constrain you, a prosecutor arguing incriminatory facts you are alleged to have committed, and a magistrate judge who is silencing you while deciding how much money you will have to pay to be released, all without an attorney present can only be described as terrifying. It is for this simple reason that a constitutional right to counsel exists at bail hearings where the prosecution is present. As one expert states,

> "Many unrepresented detainees speak without knowing the appropriate words to say to improve their chances for pretrial release. Others remain silent after hearing a judge warn that their words may be used against them at trial. Hearings move quickly and may conclude in a moment or two, despite the severe collateral consequences to detainees of remaining in jail and

> risking “lost wages, worsening physical and mental health, possible loss of custody of children, a job, or a place to live.”[ccliv]

The U.S. Supreme Court has stated, “certain pretrial events . . . may so prejudice the outcome of the defendant’s prosecution that, as a practical matter, the defendant must be represented at these events to enjoy genuinely effective assistance at trial.”[cclv] The bail hearing at first appearances in Orleans Parish Magistrate Court represents one of these critical pretrial events where the defendant must be represented.

How can the court remedy this constitutional rights deprivation? There is a simple solution, in fact it is a solution employed by all four commissioners in Orleans Parish Magistrate Court. To preserve a defendant’s right to counsel and not force a defendant to stand in front of the court without an attorney during bail argument, the Orleans Public Defenders have offered to represent all defendants who are without an attorney in court, for first appearances only.[cclvi] Although the Orleans Public Defenders have offered to represent these defendants for first appearances only (after which the defendant would be required to hire a private attorney), Magistrate Judge Cantrell has chosen to not permit this process in his court.[cclvii] CWN has personally observed Magistrate Judge Cantrell regularly determine bail while a defendant has no attorney present, stating that he has all the information he needs to determine bail and does not need to hear from an attorney on the matter. When Orleans Public Defenders (OPD) have represented defendants in requesting a reduction in their bond amounts, OPD has been successful in reducing the defendant’s bonds in 48% of bond review cases during the first half of 2017.[cclviii] If some judges honor the right to counsel, while other judges do not, this makes for an uneven, haphazard type of justice, where constitutional rights are afforded depending on the judge in front of whom the defendant appears.

At least 4% of observed first appearances in Magistrate Judge Cantrell’s courtroom involved an unrepresented defendant.

At no point does any Louisiana statute expressly state that public defenders are forbidden from representing or consulting with non-indigent defendants. The Louisiana Constitution provides that a public defender is required “if [the defendant] is indigent;”[cclix] thus, indigence is a sufficient condition for court-appointed representation rather than a necessary condition for that representation.[cclx] Likewise, the portions of the Louisiana Revised Statutes dealing with public defense do not expressly exclude the possibility of public defenders representing the non-indigent- solely for first appearances.[cclxi] Public defenders may choose to provide representation or consultation and, there is no provision forbidding public defenders from doing so. It is also clear that non-indigent defendants have the same right to counsel as indigent defendants. As Michael Tartaglia a staff attorney from the Sixth Amendment Project states,

> “Non-indigent defendants have at least the same rights under the Sixth Amendment as indigent defendants. While the Supreme Court has never

explicitly stated that the rights are identical, it is clear that where the right to counsel exists, it exists for all people, regardless of their income."[cclxii]

6.3 Judicial Interference with the Right to Effective Assistance of Counsel

CWN has also had occasion to observe the judicial obstruction of OPD attorneys' access to their clients. It is important to note, that the Sixth Amendment right to counsel is not satisfied simply with the appointment of counsel. The U.S. Supreme Court has established that the right to counsel means the right to "effective counsel."[cclxiii] Effective right to counsel means that a defense attorney is able to subject the prosecution's case to 'meaningful adversarial testing.'[cclxiv] Where a defense attorney is obstructed from putting a prosecution's case to meaningful adversarial testing, then the adversary process itself is presumptively unreliable.[cclxv]

Equally important, the counsel must be free of state court control to be effective. Specifically, a public defender cannot be placed in a position where he or she is under the regular administrative control of a judge. For example, judges can deny motions but cannot systematically deny a public defender from effectively representing his or her client. As the U.S. Supreme Court stated in *Polk County v. Dodson*,"

> "First, a public defender is not amenable to administrative direction in the same sense as other employees of the State. Administrative and legislative decision undoubtedly influence the way a public defender does his work. State decisions may determine the quality of his law library or the size of his caseload. But a defense lawyer is not, and by the nature of his function cannot be, the servant of an administrative superior."[cclxvi]

According to best practices written by the National Legal Defenders Association[cclxvii] and later adopted by the Administrative Office of the United States Courts,[cclxviii] defense attorneys must obtain certain key information from the defendant at first appearance to make an adequate bail argument and begin an investigation into their case. In order to offer the magistrate or commissioner a statement of factual circumstances and a proposal concerning conditions of release, a public defender must gather information that includes but is not limited to: community ties; health; education; armed service record; criminal record; medical needs; ability to meet financial conditions of release; verification contacts; facts pertaining to the charges against the defendant; improper police or prosecutorial conduct; any evidence that must be preserved; evidence of the defendant's competence to stand trial; and any possible witnesses who should be located.[cclxix] At the first appearance, the defense attorney should also inform the defendant of his or her rights and provide key information relating to future court proceedings.[cclxx] All this cannot be completed if the defense attorney is limited by the judge to an insignificant amount of time to speak with the defendant.

CWN volunteers have observed Magistrate Judge Cantrell interfering with OPD's ability to effectively represent a defendant numerous times. CWN has not found right to counsel problems

of this type in any of the commissioners' courts. CWN observers have personally observed Magistrate Judge Cantrell informing public defenders they have only five minutes to speak to each defendant; at times Magistrate Judge Cantrell has decreased that time limit to two minutes. CWN observers have observed an hour glass in Magistrate Judge Cantrell's court, notifying public defenders that when the sand empties out of one side of the hour glass, that means the time allotted for the attorney-client confidential conversation is over. CWN has observed that when Magistrate Cantrell determines that "time is up" for the confidential attorney-client conversation, he will order the deputy sheriff to open the door of the attorney-client booth and order the defendant to leave, thus abruptly ending the 'confidential' attorney-client conversation.

- **Recommendation 7: The right to counsel should be respected in Orleans Parish Magistrate Court. All defendants should be represented by counsel at first appearances. Orleans Public Defenders should be allowed to represent defendants for first appearances only where the defendant has no attorney present in court. Magistrate Judge Cantrell should permit appropriate and adequate confidential attorney-client consultations prior to bail arguments.**

7. Acknowledgements

CWN thanks its 2017 volunteers and donors,[cclxxi] who were generous with their time and resources, and without whom this report would not have been possible. CWN thanks the Judicial Administrator's Office of the Criminal District Court, the Louisiana Supreme Court, the Mayor's Office of Criminal Justice Coordination, the Municipal Court Clerk of Court, the New Orleans Police Department, the Orleans Parish District Attorney's Office, the Orleans Public Defenders, and the Vera Institute of Justice for providing hard data for this report. CWN also thanks the Sixth Amendment Center for providing legal research for this report.

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[i] Ken Daley, *Attorney, Former Prosecutor Brigid Collins named Orleans Parish Magistrate Commissioner*, THE TIMES-PICAYUNE (Feb. 3, 2016), http://www.nola.com/crime/index.ssf/2016/02/attorney_former_prosecutor_bri.html.

[ii] *Id.*at 5.

[iii] *Pretrial Release*, A.B.A. Sec. Pub. Crim. Just. (2015). https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk.html (Last visited Sept. 22, 2017). Standard 10-5.3. (e) Release on financial conditions.

[iv] *Public Safety Assessment: Risk Factors and Formula*, LAURA AND JOHN ARNOLD FOUND 3, *available at* http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf. Although the current pre-trial risk assessment gives stronger weight to factors such as age and criminal history over current pending charges, itself was criticized for overemphasizing pending charges in its risk assessment.

[v] *Public Safety Assessment: Risk Factors and Formula*, LAURA AND JOHN ARNOLD FOUNDATION 3, *available at* http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf. (Although the current pre-trial risk assessment gives stronger weight to factors such as age and criminal history over current pending charges, itself was criticized for overemphasizing pending charges in its risk assessment.)

[vi] *Pretrial Risk Assessment*, PRETRIAL Jus. Inst., *available at* http://www.pretrial.org/solutions/risk-assessment/ (Last visited Sept. 17, 2017); *Public Safety Assessment: Risk Factors and Formula*, LAURA AND JOHN ARNOLD FOUNDATION 3, *available at* http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf (Last visited Sept. 17, 2017).

[vii] *Id.*

[viii] *Pretrial Services & Supervision*, PRETRIAL Jus. Ctr. for Cts., *available at* http://www.ncsc.org/Microsites/PJCC/Home/Topics/Pretrial-Services.aspx (Last visited Sept. 17, 2017).

[ix] Meeting with Calvin Johnson (May 25, 2017 at 4:00 pm).

[x] Email from Sarah Schirmer, Criminal Justice Policy Advisor, Mayor's Office Of Criminal Justice Coordination to Simone Levine, Executive Director Court Watch NOLA (Sept. 19, 2017 07:10cst) (on file with author).

[xi] It enables counsel to argue in favor of a lower bond or fewer restrictions on an arrestee's liberty. And it allows for an initial exchange of information between an accused and counsel, so that counsel may begin investigating charges and may provide legal advice to an accused. Having counsel present also provides for a more just adversarial proceeding, as the accused has counsel to defend against the arguments made by the representative of the District Attorney's office present at first appearances.
[xii] *Polk County v. Dodson*, 454 U.S. 312, 321 (1981).
[xiii] Testimony by Attorney General Robert F. Kennedy, Bail Legislation before the subcommittees on constitutional rights and improvements in Judicial Machinery of the Senate Judiciary Committee, DEPT. OF JUSTICE (Aug. 4, 1964), https://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-04-1964.pdf.
[xiv] Three observations (that included fifteen defendants who appeared for first appearances) took place on January 4, 2017 using the 2016 data collection tool. These January 2017 observations are categorized under the month of January in Figure 1 but are included in all other figures and charts as part of the 2016 data.
[xv] LA. Code Crim. Proc. Ann. art.230.2 A (2009).
[xvi] LA. Code Crim. Proc. Ann. art.230.1 A (2011).
[xvii] LA. Code Crim. Proc. Ann. art.232 (2016); LA. Code Crim. Proc. Ann. art.230.2 A (2009).
[xviii] *Probable Cause*, Black's Law Dictionary (8th ed. 2004).
[xix] LA. Code Crim. Proc. Ann. art.230.2 (B)(1).
[xx] *State v. Parker*, 546 So. 2d 186 (La. 1989). There are some that have argued that the magistrate or commissioner does not have a right to limit the type of bond by which the defendant pays bail
[xxi] LA. Code Crim. Proc. Ann. art.321 (2016).
[xxii] Bond Information, ORLEANS PUB. DEFENDERS, http://www.opdla.org/what-we-do/legal-resources/103-bond-information (last visited Aug. 13, 2017).
[xxiii] LA. Code Crim. Proc. Ann. art. 326 (2011).
[xxiv] Bond Information, ORLEANS PUB. DEFENDERS, http://www.opdla.org/what-we-do/legal-resources/103-bond-information (last visited Aug. 13, 2017).
[xxv] Interview with Jon Wool, Director, Vera New Orleans, (Sept. 7, 2017).
[xxvi] LA. Code Crim. Proc. Ann. art.323 (2016).
[xxvii] Bond Information, ORLEANS PUB. DEFENDERS, http://www.opdla.org/what-we-do/legal-resources/103-bond-information (last visited Aug. 13, 2017).
[xxviii] LA. Code Crim. Proc. Ann. art. 324.
[xxix] Bond Information, ORLEANS PUB. DEFENDERS, http://www.opdla.org/what-we-do/legal-resources/103-bond-information (last visited Aug. 13, 2017); Interview with Commissioner Jonathon Friedman (The ROR bond us usually used instead of the PBSU in Orleans Parish Magistrate Court as the $250 PBSU fee is considered an impediment to release).
[xxx] LA. Code Crim. Proc. Ann. art.321 C (2016) (Crimes for which a defendant cannot be released on his personal undertaking or with an unsecured personal surety include: A crime of violence as defined by R.S. 14:2(B); A felony offense, an element of which is the discharge, use, or possession of a firearm; A sex offense as defined by R.S. 15:541 when the victim is under the age of thirteen at the time of commission of the offense and less than ten years have elapsed between the date of the commission of the current offense and the expiration of the maximum sentence of the previous conviction; R.S. 14:32.1 (vehicular homicide); R.S. 14:35.3 (domestic abuse battery); R.S. 14:37.7 (domestic abuse aggravated assault); R.S. 14:40.3 (cyberstalking), if the person has two prior convictions for the same offense; R.S. 14:44.2 (aggravated kidnapping of a child); R.S. 14:46 (false imprisonment); R.S. 14:46.1 (false imprisonment while the offender is armed with a dangerous weapon); R.S. 14:87.1 (killing a child during delivery); R.S. 14:87.2 (human experimentation); R.S. 14:93.3 (cruelty to persons with infirmities), if the person has a prior conviction for the same offense; R.S. 14:98 (operating a vehicle while intoxicated), if the person has a prior conviction for the same offense; R.S. 14:102.1(B) (aggravated cruelty to animals); R.S. 14:102.8 (injuring or killing of a police animal); R.S. 14:110.1 (jumping bail); R.S. 14:110.1.1 (out-of-state bail jumping);Violation of an order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, LA. Child. Code Ann. art.1564 et seq. (1992), LA. Code Civ. Proc. Ann. art.3604 (2011) and LA. Code Civ. Proc. Ann. art.3607.1 (2011), or LA. Code Crim. Proc. Ann. art.30 (2016), LA. Code Crim. Proc. Ann. art.320 (2011), and LA. Code Crim. Proc. Ann. art.871.1; and the production, manufacturing, distribution, or dispensing or the possession with the intent to produce, manufacture, distribute or dispense a controlled dangerous substance in violation of R.S. 40:966(B), 967(B), 968(B), 969(B), or 970(B) of the Uniform Controlled Dangerous Substances Law, LA. R.S. 40.961). LA. Code Crim. Proc. Ann. art.321 D (2016). (Where the defendant is rearrested on a new felony while charged with an open felony case, there is a legal presumption that the defendant cannot be released on an ROR or PBSU bond.)
[xxxi] LA. Code Crim. Proc. Ann. art.313 A (2) (2016). (If the magistrate or commissioner requires a contradictory hearing, the hearing is held within five days of the determination of probable cause. At the contradictory hearing, the court determines whether bail should be set or the defendant should be held without bail pending trial).
[xxxii] LA. Code Crim. Proc. Ann. art.313 A (2) (2016) (These offenses include domestic abuse battery, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon upon the defendant's family member, as defined in R.S. 46:2132 or upon the defendant's household member as defined in R.S. 14:35.3, or upon the defendant's dating partner, as defined in R.S. 46:2151).
[xxxiii] LA. Code Crim. Proc. Ann. art.313 (2016).
[xxxiv] It is alleged in new civil litigation filed by the Southern Poverty Law Center that some bond companies are charging 13% of the bail amount in violation of the law.
[xxxv] Mathilde Laisne, Jon Wool, and Christian Henrichson, *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans,* Vera Institute of Justice, (p. 27, fn 13, January 2017). (Although the statutes set the premium to be paid at 12 percent (La. R.S. §22:1443 (2015)) and the fee to be paid at 3 percent (La. R.S. §22:822(A)(2)(2015)), defendants in New Orleans are routinely charged 13 percent, out of which bail agents pay 3% in government fees and retain 10%. This infographic illustrates the statutory premium and not the alleged accepted practice in Orleans Parish).
[xxxvi] LA. R.S. §22:822(A)(2) (2015); LA. R.S. §13:1381.5(B)(2) (2015).
[xxxvii] LA. R.S. §13:5599 (2015); LA. R.S. §15:85.1 (2015).

[xxxviii] LA. Code Crim. Proc. Ann. art.320 B (2016).
[xxxix] LA. Code Crim. Proc. Ann. art.230.1 (2011).
[xl] LA. Code Crim. Proc. Ann. art.383 (2011), LA. Code Crim. Proc. Ann. art.384 (2016).
[xli] Greg Larose, *New Orleans City Council approves 2017 budget, with more and less for criminal justice*, THE TIMES-PICAYUNE (Nov. 17, 2016), http://www.nola.com/politics/index.ssf/2016/11/new_orleans_city_council_appro_18.html (Last visited Sept. 17, 2017).
[xlii] John Simerman, *1,000 misdemeanor defendants could be shifted from criminal to municipal court*, THE TIMES-PICAYUNE (July 6, 2011). http://www.nola.com/crime/index.ssf/2011/07/1000_misdemeanor_defendants_co.html (last visited Sept. 17, 2017).
[xliii] LA. Code Crim. Proc. Ann. art.933 (2016).
[xliv] Meg Gatto, *DA wants to move cases from municipal to criminal court*, FOX 8 NEWS (Nov. 23, 2016) http://www.fox8live.com/story/33784887/da-wants-to-move-cases-from-municipal-to-criminal-court (Last visited Sept. 2, 2017); Simerman, supra note xxxiii, THE TIMES-PICAYUNE (July 6, 2011). http://www.nola.com/crime/index.ssf/2011/07/1000_misdemeanor_defendants_co.html (last visited Sept. 17, 2017).
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[xlvi] Simerman, *supra* note xxxvi.
[xlvii] Phone Interview with Mary Claire Landry, Director, Family Justice Center (Sept. 14, 2017).
[xlviii] LA Rev Stat §13.1346 (D).
[xlix]Ken Daley, *Orleans Judges Clash Over Magistrate Court Authority*, THE TIMES-PICAYUNE (Sep. 11, 2017), http://www.nola.com/crime/index.ssf/2017/09/orleans_judges_clash_on_sherif.html (last visited October 5, 2017).
[l] This statement and the graph below were created by data provided by the Orleans Criminal Court Judicial Administrator Office.
[li] Interview with Jon Wool, Director, Vera New Orleans, (Sept. 7, 2017).
[lii] Email from Jon Wool, Director, Vera New Orleans to Simone Levine, Executive Director Court Watch NOLA (Sept. 19, 2017, 0:9:59cst) (on file with author).
[liii] HARRY CANTRELL, http://www.harrycantrelljudge.com/ (Last visited Sept. 3, 2017).
[liv] *Orleans Parish Criminal District Court*, LEAGUE OF WOMEN VOTERS OF NEW ORLEANS, http://www.lwvno.org/ooparju_crct.html (Last visited Sept. 3, 2017).
[lv] Ken Daley, *Attorney, Former Prosecutor Brigid Collins named Orleans Parish Magistrate Commissioner*, THE TIMES-PICAYUNE (Feb. 3, 2016), http://www.nola.com/crime/index.ssf/2016/02/attorney_former_prosecutor_bri.html.
[lvi] LA Rev Stat § 13:1347 (E).
[lvii] LA Rev Stat § 13:1347 (A).
[lviii] *See* Code of Judicial Conduct, https://www.lasc.org/rules/supreme/cjc.asp (Canon 3C) (Last visited Sept. 3, 2017).
[lix] LA Rev Stat § 13:1347 (C).
[lx] Criminal District Court, Parish of Orleans, Office of the Judicial Administrator Notice of the Magistrate 2 Application posted January 8, 2016 at 2pm (on file with author).
[lxi] LA Rev Stat § 13:1347 (C).
[lxii] Criminal District Court, Parish of Orleans, Office of the Judicial Administrator Notice of the Magistrate 2 Application posted January 8, 2016.
[lxiii] THE SELECTION, APPOINTMENT, AND REAPPOINTMENT OF UNITED STATES MAGISTRATE JUDGES, Judges Information Series No. 2 (Magistrate Judges Division Office of Judges Programs Administrative Office of The United States Courts March 2010).
[lxiv] *See* Code of Judicial Conduct, https://www.lasc.org/rules/supreme/cjc.asp (Canon 3C) (Last visited Sept. 3, 2017).
[lxv] Candidate's Report, *available at* http://ethics.la.gov/CampaignFinanceSearch/LA-49086.pdf (Last visited Sept. 3, 2017). CWN researched three out of the 13 elected criminal district and magistrate court judges and found that all candidates raised more than 150,000 for political campaigns that occurred post 2013.
[lxvi] *Id.*
[lxvii] *Id*. CWN's research showed that all sitting Orleans Parish Criminal Court judges and the magistrate had received money from private defense attorneys and/or bail bondsmen that CWN had witnessed appearing in front of the same sitting judge.
[lxviii] Robert Tobin, CREATING THE JUDICIAL BRANCH: THE UNFINISHED REFORM (1st Ed., 1999) 40.
[lxix] Maurice Chammah, *Donations to Judicial Campaigns Spur Ethics Worries*, THE TEXAS TRIBUNE (Mar. 26, 2016), http://www.texastribune.org/2013/03/26/donations-judicial-campaigns-spur-ethics-worries/; footnote found in Paul Cambria, *Donating to Judicial Campaigns: Ethical and Practical Implications for Attorneys*, LIPSITZ GREEN SCIME CAMBRIA LLP, http://firstamendmentlawyers.org/articles/2014_2_1101materials.pdf.
[lxx] These jurisdictions include, but are not limited to: Alaska, California, Florida, Hawaii, Idaho, Maryland, Missouri, Nebraska, Rhode Island, Tennessee, and the federal district courts. A merit commission or panel can consist of a combination of lawyers and nonlawyers.
[lxx] Attorneys members can advise on the needs of the court and the professional qualifications of applicants. Non-attorney members have useful links to the community when screening and investigating applicants, and their non-legal perspective lends the process credibility and legitimacy in the eyes of the public.
[lxxi] Judicial Recusal Procedures: A Report on the IAALS Convening, 7 (June 2017), *available at* http://iaals.du.edu/sites/default/files/documents/publications/judicial_recusal_procedures.pdf.
[lxxii] MODEL JUDICIAL SELECTION PROVISIONS, THE AM. JUDICATURE SOCIETY (Revised 2008).
[lxxiii] *Id.* at 6.
[lxxiv] *Id.*
[lxxv] *Id.*at 4.
[lxxvi] *Id.*
[lxxvii] *Id.*
[lxxviii] *Id.*at 6. A copy of the rules should be given to all applicants and made available to the public on request, by posting on a court website, distributing through the media, or disseminating in a manner best suited to the jurisdiction. Several states post their written rules on state court websites.

[lxxix] U.S. Const. amend. VIII.
[lxxx] *Stack v. Boyle,* 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3, (1951).
[lxxxi] *Id*.
[lxxxii] *Id.*at 5.
[lxxxiii] *Id*.
[lxxxiv] *Griffin v. Illinois*, 351 U.S. 12, 19 (1956); *see also*, *Williams v. Illinois*, 399 U.S. 235, 241 (1970).
[lxxxv]*Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (Harlan, J., dissenting).
[lxxxvi] *Bearden v. Georgia*, 461 U.S. 660 (1983).
[lxxxvii] *Id.*at 673. Bearden was made applicable to bail or bond in the Fifth Circuit Court of Appeals Case, Pugh v. Rainwater and subsequent cases. See Pugh v. Rainwater, 572 F.2d 1053, 1056-57 (5th Cir. 1978) (en banc); see also Rodriguez v. Providence Cmty. Corr., Inc., 155 F. Supp. 3d 758, 768 (M.D. Tenn. 2015) (Sharp, C.J.); Walker v. City of Calhoun, Georgia, Civ. No. 15-170, 2016 WL 361612 at 11 (N.D. Ga. Jan. 28, 2016), vacated on other grounds; Evans v. Martin, 682 Fed. App'x 721 (11th Cir. 2017); Jones v. City of Clanton, Alabama, Civ. No. 15-34, 2015 WL 5387219 at *2 (M.D. Ala. Sep. 14, 2015); Cooper v. City of Dothan, Alabama, Civ. No. 15-425, 2015 WL 10013003 at 2 & n.2 (M.D. Ala. June 18, 2015); Pierce v. City of Velda, Missouri, Civ. No. 15-570, 2015 WL 10013006 at 1 (E.D. Mo. June 3, 2015). Some have argued that since bail discriminates based on a wealth-based classification, the court's level of constitutional scrutiny toward the bail system should be less strict. See e.g. Brief for Defense at 11, Odonnell v. Harris County Texas, et al., No. 4:16-cv-01414 (November 09, 2016). However, the U.S. Supreme Court has consistently rejected this approach and held that strict judicial scrutiny is warranted where a wealth-based classification causes a deprivation of liberty. See San Antonio School District v. Rodriguez, 411 U.S. 1, 20 (2973); Pugh v. Rainwater, 572 F.2d 1053,1197 (5th Cir. 1978) (*en banc*); see also Bearden v. Georgia, 461 U.S. 660 (1983); Tate v. Short, 401 U.S. 395 (1971).
[lxxxviii] *Morrissey v. Brewer*, 408 U.S. 471, 481 (1982).
[lxxxix] *Carey v. Piphus*, 435 U.S. 247, 259 (1978).
[xc]*Reno v. Flores,* 507 U.S. 292, 301-02 (1993).
[xci] *U.S. v. Salerno*, 481 U.S. 739 (1987).
[xcii] *Id.*at 755.
[xciii] *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *See also US v Salerno*, 481 U.S. 739, 751-52 (1987).
[xciv] *Turner v. Rodgers*, 387 S. C. 142 (2011).
[xcv] *Id*.
[xcvi] *Id.*at 2519.
[xcvii] *Id.*at 250.
[xcviii] *Moving Beyond Money: A Primer on Bail Reform*, Harv. Crim. Just. Pol'y. 8 (2016), http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf.
[xcix] *Id.*at 10.
[c] *Id.*at 12.
[ci] *Pretrial Release*, A.B.A. Sec. Pub. Crim. Just. (2015). https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk.html (Last visited Sept. 22, 2017). Standard 10-5.3. (e) Release on financial conditions.
[cii]Manhattan Bail Project- Official Court Transcripts, VERA INST. OF JUST (Oct.1961- Jun.1962), https://storage.googleapis.com/vera-web-assets/downloads/Publications/manhattan-bail-project-official-court-transcripts-october-1961-june-1962/legacy_downloads/MBPTranscripts1962.pdf (Last visited Sept. 18th, 2017).
[ciii] *Pretrial Services and Supervision*, Pretrial Just. Ctr. For Cts., http://www.ncsc.org/Microsites/PJCC/Home/Topics/Pretrial-Services.aspx. (These states include Colorado, Hawaii, Nevada, New Jersey, Vermont and West Virginia).
[civ] *Pretrial Release*, A.B.A. Sec. Pub. Crim. Just. (2015). https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk.html (Last visited Sept. 22, 2017). Standard 10-4.2. (g) (i)-(vi).
[cv] TARA BOH KLUTE & LORI EVILLE, NEW ORLEANS PRETRIAL SERVICES- AN ASSESSMENT OF THE NEW ORLEANS PRETRIAL SERVICES PROGRAM NATIONAL INSTIT. OF CORRECTIONS TECH. ASSISTANCE (No. 13C1066) 8.
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[cvi] *Pretrial Services Program Implementation: A Starter Kit*, PRETRIAL JUST. INST. 7 (2009), https://www.pretrial.org/download/pji-reports/Pretrial%20Services%20Starter%20Kit%20-%20PJI%202010.pdf.
[cvii] LA. Code Crim. Proc. Ann. art.317 (2016).
[cviii] *Pretrial Services Program Implementation: A Starter Kit*, PRETRIAL JUST. INST. 8 (2009), https://www.pretrial.org/download/pji-reports/Pretrial%20Services%20Starter%20Kit%20-%20PJI%202010.pdf.
[cix] *Id*.
[cx] Isami Arifuku and Judy Wallen, *Racial Disparities at Pretrial and Sentencing and the Effect of Pretrial Services Programs*, THE PUBLIC WELFARE FOUNDATION 16 (2012), https://www.pretrial.org/download/research/Racial%20Disparities%20at%20Pretrial%20and%20Sentencing%20and%20the%20Effects%20of%20Pretrial%20Services%20Programs%20-%20NCCD%202013.pdf.
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[cxii] *Id.*at 10.
[cxiii] *New Orleans Pretrial Services*, LA Jud. C. (2012), http://www.lajudicialcollege.org/wp-content/uploads/2012/10/5-New-Orleans-Pretrial-Services.pdf (Last visited Sept. 18, 2017).
[cxiv] *Id*.
[cxv] *Id*.
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[cxvii]Matthew Fraser, *Councilmember Guidry Announces Release of the National Institute of Corrections (NIC) Report on the New Orleans Pretrial Services Program*, NEW ORLEANS CITY COUNCIL (2014), http://www.nolacitycouncil.com/content/display.asp?id=54&nid=%7B6E077D92-E13D-4C93-B552-966112D4B7EA%7D (Last visited Sept. 18, 2017). City officials estimated that by 2014, pre-trial services had saved the City of New Orleans nearly 1.9 million a year in avoided jail costs.

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[cxxii] Phone Conversation with Sarah Schirmer, Criminal Justice Policy Advisor, Mayor's Office of Criminal Justice Coordination (Aug. 21st, 2017).

[cxxiii] Interview with Jon Wool, Director, Vera New Orleans Meeting with Jon Wool (Sept. 7th, 2017).

[cxxiv] KLUTE & EVILLE, *supra* note xcix.

[cxxv] *Id.*at 12.

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[cxxxi] Cherise Fanno Burdeen, *A Pivotal Moment in the Movement for Pretrial Justice*, PRETRIAL JUST. INST. (Jun. 14, 2017), http://www.pretrial.org/pivotal-moment-movement-pretrial-justice/. (Last visited Sept. 1, 2017).

[cxxxii] Inside America's For-Profit Bail System Vice (2016).

[cxxxiii] Joseph R. Biden Jr. et al, *Solutions: American Leaders Speak Out on Criminal Justice*, BRENNAN CTR. FOR JUST. (2015), *https*://www.brennancenter.org/sites/default/files/analysis/Solutions_American_Leaders_Speak_Out_On_Criminal_Justice.pdf.

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[cxlvi] *Id*.

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[clii] *Id.*at 7.

[cliii] Sanford "Sandy" Krasnoff Crim. Jus. Council Jail Population Management Subcommittee Meeting Handout, p. 4 (Aug. 25, 2017). System Level Trends: Changes in Jail Population Composition.

[cliv] *Id.* at p. 17. Expedited Arrest to Arraignment: Average LOS [length of stay] for eligible population that remains detained for entire pre-trial period.

[clv]*Moving Beyond Money*, supra note lxxxix at 22.

[clvi] Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, U. O PA. LAW SCH. 26 (January 8, 2017), *available at* https://www.law.upenn.edu/cf/faculty/mstevens/workingpapers/Stevenson%20Job%20Market%20Paper%20Jan%202016.pdf.

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[clviii] Stevenson, supra note cl at 6.

[clix] *Moving Beyond Money*, supra note lxxxix at 29.

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[clxii] Michaelangelo Conte, *Bail Reform is Killing Our Business, Bail Bondsmen Say*, JERSEY J. (Jan. 11, 2017), http://www.nj.com/hudson/index.ssf/2017/01/nj_bail_reform_leaves_bail_bondsmen_in_a_tight_spo.html (Last visited Aug. 9, 2017).

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[clxvi] Theodore Hamm, *Bail Reform, and Bail Industry Donations, in Brooklyn DA Race*, CITY LIMITS (Jul. 26, 2017), http://citylimits.org/2017/07/26/bail-reform-and-bail-industry-donations-in-brooklyn-da-race-spotlight.

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[clxxi] Mathilde Laisne et al., *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, VERA Inst. OF Jus. (Jan. 2017), https://www.vera.org/publications/past-due-costs-consequences-charging-for-justice-new-orleans (Last visited Sept 16, 2017).

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[clxxiii] Akein Scott, Mag # 537802, No. 515708, (OPSO May 8, 2013) first op. (May 5, 2013), surety bond filed (May 8, 2013) (Last visited Sept. 16, 2017).

[clxxiv] *Low Risk rank for Akein Scot, Mother's Day Shooting Suspect, Called Into Question*, THE TIMES PICAYUNE (May 18, 2013), http://www.nola.com/crime/index.ssf/2013/05/mothers_day_shooting_suspect_w_1.html (Last visited Sept. 11, 2017).

[clxxv] Meeting with Jon Wool (September 7, 2017 at 10am).

[clxxvi] *Criminal Justice Committee Meeting Agenda*, CITY OF NEW ORLEANS (Sept. 19, 2016, 11:30 am), http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=2449&meta_id=341344 (Last visited Sept. 16, 2017). *See* minute 2:52:07-2:56:36.

[clxxvii] Julia Angwin et al., *Machine Bias*, PROPUBLICA (May 23, 2016), https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing (Last visited Aug. 18, 2017).

[clxxviii] *Id.*

[clxxix] Marie VanNostrand, Ph.D., *Pretrial Risk Assessment—Perpetuating or Disrupting Racial Bias?*, PRETRIAL Jus. Inst. (Dec. 6, 2016), http://www.pretrial.org/pretrial-risk-assessment-perpetuating-disrupting-racial-bias/ (Last visited Sept. 17, 2017).

[clxxx] Marie VanNostrand, Ph.D., *Pretrial Risk Assessment—Perpetuating or Disrupting Racial Bias?*, PRETRIAL Jus. Inst. (Dec. 6, 2016), http://www.pretrial.org/pretrial-risk-assessment-perpetuating-disrupting-racial-bias/ (Last visited Sept. 17, 2017).
[clxxxi] Brian A. Jackson et al., *Future-Proofing Justice*, PRIORITY CRIM. JUST. NEEDS INITIATIVE 3 (2017), https://www.ncjrs.gov/pdffiles1/nij/grants/250507.pdf (Last visited Sept. 17, 2017).
[clxxxii] U.S. Census Bureau, Orleans Parish, LA population est. July 1, 2016: 391,495.
[clxxxiii] Data includes arrests made in Orleans Parish by all law enforcement agencies. Email from Lt. Chris Lea, New Orleans Police Department, to Veronica Bard, Program Director Court Watch NOLA (September 25, 2017, 12:27 pm) (on file with author). n = 30,930 (May 1, 2016-June 30, 2017.)
[clxxxiv] CWN observation data (n = 1,099 observation first appearances), May 2016-May 2017.
[clxxxv] CWN combined the following ethnicities listed by the U.S. Census Bureau, New Orleans Police Department arrest data, and CWN observations: Asian, Hispanic, Native American, and Unknown ethnicities.
[clxxxvi] Mun. Code Crim. of New Orleans, Sec. 54-25.
[clxxxvii] Mun. Code Crim. of New Orleans, Sec. 54-23. (Bail. Municipal Court judges are not required to automatically release defendants on charges of municipal misdemeanor assault, criminal trespass, disturbing the peace, cruelty to animals, and criminal damage to property. In cases of Battery, Illegal Carrying of Weapons, Impersonating a Peace Officer or Domestic Violence, the defendant is detained until the initial appearance hearing, which must be held no later than twenty-four hours after the arrest. Where a judge is concerned the defendant may flee or the defendant poses an imminent danger to any other person or the community, the judge is not required to release a defendant but must impose the least restrictive non-financial release conditions, and any bond cannot exceed $2,500. If the defendant does not have the ability to pay, the court may not set a non-financial release condition that requires fees or costs to be paid by the defendant).
[clxxxviii] Meeting with Royce Duplessis, Special Counsel – Research and Development Louisiana Supreme Court and Ken Barnes Special Counsel – Pretrial Services (Aug. 16, 2017 at 2:00 pm).
[clxxxix] Email Rob Kazik, Judicial Administrator to Simone Levine, Executive Director Court Watch NOLA (Sept. 29, 2017), 14:03cst) (on file with author).
[cxc] Memorandum of Understanding between the City of New Orleans, the Louisiana Supreme Court and Orleans Criminal District Court, (Effective Date Oct. 17, 2016) (on file with author).
[cxci] Louisiana Supreme Court Pretrial Services Program, Manual of Policies and Procedures (March 2017) (on file with author).
[cxcii] Phone Conversation with Sarah Schirmer August 21, 2017 9:15 am.
[cxciii] Louisiana Supreme Court Pretrial Services Program, Manual of Policies and Procedures (March 2017) (on file with author).
[cxciv] *Public Safety Assessment*, LAURA AND JOHN ARNOLD FOUND., *available at* http://www.arnoldfoundation.org/initiative/criminal-justice/crime-prevention/public-safety-assessment/ (Last visited Aug. 20, 2017).
[cxcv] *Id.*
[cxcvi] *Id.*
[cxcvii] *Id.*
[cxcviii] Email from Virginia Bersch, Deputy Director of National Implementation, Criminal Justice, the Arnold Foundation (Sep 29, 2017 16:47CST)(on file with author).
[cxcix] Brian A. Jackson et al., *Future-Proofing Justice*, PRIORITY CRIMINAL JUSTICE NEEDS INITIATIVE 26, 27 (2017), https://www.ncjrs.gov/pdffiles1/nij/grants/250507.pdf (Last visited Sept. 17, 2017).
[cc] *Public Safety Assessment: Risk Factors and Formula*, LAURA AND JOHN ARNOLD FOUND 3, *available at* http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf. Although the current pre-trial risk assessment gives stronger weight to factors such as age and criminal history over current pending charges, itself was criticized for overemphasizing pending charges in its risk assessment.
[cci] Mona J.E. Danner, Ph.D. et al., *Risk-Based Pretrial Release Recommendation and Supervision Guidelines: Exploring the Effect on Officer Recommendations, Judicial Decision-Making, and Pretrial Outcome* (2015), http://luminosity-solutions.com/site/wp-content/uploads/2014/02/Risk-Based-Pretrial-Guidelines-August-2015.pdf (Last visited Sept. 28, 2017).
[ccii] *Id.*
[cciii] Arrest data includes arrests made in Orleans Parish by all law enforcement agencies. Email from Lt. Chris Lea, New Orleans Police Department, to Veronica Bard, Program Director Court Watch NOLA (September 25, 2017, 12:27 pm) (on file with author). CWN's observed first appearance data showed a similar trend. In 2017, 73% of the observed first appearances were defendants whose residence was in New Orleans.
[cciv] Email from Lt. Chris Lea, New Orleans Police Department, to Simone Levine, Executive Director Court Watch NOLA (August 24, 2017, 1:49pm) (on file with author). Includes 729 homeless individuals. Individuals who were rearrested during the time period may have been counted multiple times. In 2017, CWN found that 73% of the observed first appearances involved defendants whose residences were located in New Orleans.
[ccv] n for low = 112; n for low/moderate = 81; n for moderate = 67; n for high = 35; n for unscored = 26. Data include only observed first appearances with a value for bail amount data (or ROR) and a risk category. Considerations included in the data collection tool, but rarely observed (<5%) are excluded from the graph, including the defendant's work or school, defendant's family or social obligations, defendant's residence, defendant's drug or alcohol abuse, protective or stay-away order, or a catch-all "other" consideration.
[ccvi] *Pretrial Risk Assessment*, PRETRIAL Jus. Inst., *available at* http://www.pretrial.org/solutions/risk-assessment/ (Last visited Sept. 17, 2017); *Public Safety Assessment: Risk Factors and Formula*, LAURA AND JOHN ARNOLD FOUND. 3, *available at* http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf (Last visited Sept. 17, 2017).
[ccvii] *Moving Beyond Money*, supra note lxxxix at 18.
[ccviii] *Pretrial Criminal Justice Research*, LAURA AND JOHN ARNOLD FOUND, *available at* https://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf (Last visited Sept. 11, 2017).
[ccix] *Id.*
[ccx] *Id.*

[ccxi] *Id.*
[ccxii] New Orleans Pretrial Services Monthly Reports (Mar.-Aug. 2017).
[ccxiii] *Moving Beyond Money*, supra note lxxxix at 18 (2016).
[ccxiv] *Id.*
[ccxv] *Id.*
[ccxvi] *Pretrial Services & Supervision*, PRETRIAL Jus. Ctr. FOR Cts., *available at* http://www.ncsc.org/Microsites/PJCC/Home/Topics/Pretrial-Services.aspx (Last visited Sept. 17, 2017).
[ccxvii] Mitchel N. Herian and Brian H. Bornstein, *Reducing Failure to Appear in Nebraska: A Field Study*, Neb. Pub. Pol. C. (2010) at 12.
[ccxviii] Holly Howat, Craig J. Forsyth, Raymond Biggar & Samantha Howat Pages, *Improving Court-Appearance Rates through Court-Date Reminder Phone Calls* (Jan 5, 2016), 77-87.
[ccxix] Email from Royce Duplessis, Special Counsel – Research and Development (former), Supreme Court of Louisiana to Veronica Bard, Program Director Court Watch NOLA (June 20, 2017, 5:09 pm) (on file with author).
[ccxx] Email from Mathilde Laisne, Senior Program Associate to Simone Levine, Executive Director Court Watch NOLA (October 6, 2017, 9:25am) (on file with author).
[ccxxi] Email from Royce Duplessis, Special Counsel – Research and Development (former), Supreme Court of Louisiana to Veronica Bard, Program Director Court Watch NOLA (June 20, 2017, 5:09pm) (on file with author). The distribution of the risk score groups (low risk, low/moderate risk, moderate risk, high risk, unscored) is similar in the CWN-observed first appearances to the full risk score database. 20 "unknown" scores excluded from the analysis.
[ccxxii] Id.
[ccxxiii] n for low = 223; n for low/moderate = 151; n for moderate = 153; n for high = 84; n for unscored = 56. Analysis is of cases that have bail amounts (or ROR, set at $0) and have a pretrial risk score.
[ccxxiv] Sanford "Sandy" Krasnoff Crim. Jus. Council Jail Population Management Subcommittee Meeting Handout, p. 13 (Aug. 25, 2017). Increase Public Defender Representation at 1st Appearance: Median Bond Amount (Risk Levels I and II).
[ccxxv] Sanford "Sandy" Krasnoff Crim. Jus. Council Jail Population Management Subcommittee Meeting Handout, p. 15 (Aug. 25, 2017). System Level Trends: Changes in Jail Population Composition. Safety Rate (% defendants not rearrested nor failed to appear during pretrial period).
[ccxxvi] *New Orleans Selected to Receive $1.5M Grant from the John D. and Catherine T. MacArthur Foundation*, SAFTEY AND JUSTICE CHALLENGE (Apr. 13, 2016), http://www.safetyandjusticechallenge.org/2016/04/new-orleans-selected-receive-1-5m-grant-macarthur-foundation-implement-plan-reduce-jail-population/ (Last visited Sept. 17, 2017).
[ccxxvii] Memorandum from Commissioner Calvin Johnson, *supra* note ccx.
[ccxxviii] Sanford "Sandy" Krasnoff Jail Population Management Subcommittee Meeting Agenda, Crim. Jus. COUNCIL (Aug. 25, 2017), *available at* https://www.nola.gov/getattachment/Criminal-Justice-Coordination/Criminal-Justice-Council/JPM-5-23-Meeting-Minutes.pdf (Last visited Sept. 17, 2017).
[ccxxix] Meeting with Calvin Johnson (May 25, 2017 at 4:00 pm).
[ccxxx]Memorandum from Commissioner Calvin Johnson, Mayor's Office of Criminal Justice Coordination (May 19, 2017).
[ccxxxi] Meeting with Calvin Johnson (May 25, 2017 at 4:00 pm).
[ccxxxii] Email from Sarah Schirmer, Criminal Justice Policy Advisor, Mayor's Office of Criminal Justice Coordination to Simone Levine, Executive Director Court Watch NOLA (Sept. 19, 2017 07:10cst) (on file with author).
[ccxxxiii] *Id.*
[ccxxxiv] Memorandum from Commissioner Calvin Johnson, *supra* note ccx (If the commissioner set an ROR and the defendant had a hold (for a probation violation, failing to return to court, etc.), the ROR release did not affect the hold. Where the defendant had another open felony case in criminal district court, the commissioner was encouraged to set an appropriate bond instead of releasing the defendant).
[ccxxxv] *Id.*
[ccxxxvi] *Id.*
[ccxxxvii] *Id.*
[ccxxxviii] *Id.*
[ccxxxix] *Id.*
[ccxl] *Id.*
[ccxli] Ronald Kessler, *I Set a Defendant Free and Got Blamed When He Raped Someone*, THE MARSHALL PROJECT (Aug. 31, 2017), https://www.themarshallproject.org/2017/08/31/i-set-a-defendant-free-and-got-blamed-when-he-raped-someone#.WWnvsbaBC (Last visited Sept. 7, 2017).
[ccxlii] John S. Goldkamp and E. Rely Vilcica. Judicial Discretion and the Unfinished Agenda of American Bail Reform: Lessons from Philadelphia's Evidence-Based Judicial Strategy 118, 127 (2009).
[ccxliii]Jim Bronskill, *Trudeau Government Studies Options to Fix 'Broken Bail' System*, CANADIAN PRESS (Feb. 22, 2017), http://www.huffingtonpost.ca/2016/02/22/trudeau-government-studies-options-to-fix-broken-bail-system_n_9288352.html (Last visited Sept. 7, 2017).
[ccxliv]Joseph R. Biden Jr. et al, *Solutions: American Leaders Speak Out on Criminal Justice*, BRENNAN Ctr. FOR Jus. 23 (2015), *https*://www.brennancenter.org/sites/default/files/analysis/Solutions_American_Leaders_Speak_Out_On_Criminal_Justice.pdf.
[ccxlv] Biden, supra note ccxxvi.
[ccxlvi] Marcia Johnson and Luckett Anthony Johnson, *Bail: Reforming Policies to Address Overcrowded Jails, the Impact of Race on Detention, and Community Revival in Harris County, Texas*, NORTHWESTERN J. OF LAW & Soc. Pol'y. 82 (2012), http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1080&context=njlsp (Last visited Sept. 7, 2017).
[ccxlvii] U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."); La. Const. Ann. art. I, § 13 (1974) ("At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment."); La. Code Crim. Proc. Ann. art.230 (2011) ("The person arrested has, from the moment of his arrest, the right to procure and confer with counsel."); La. Code Crim. Proc. Ann. art.511 (2016) ("The accused in every instance has the right . . . to have the assistance of counsel.").

[ccxlviii] *Brewer v. Williams*, 430 U.S. 387, 399 (1977). (The constitutional right to counsel attaches at or before the first appearance, and the first appearance is a proceeding at which the presence of counsel is constitutionally required. The United States Supreme Court has held that the Sixth Amendment right to counsel attaches at "the initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information, or arraignment."); *United States v. Gouveia*, 467 U.S. 180, 188 (1984) (quoting Kirby v. Illinois, 406 U.S. 682, 689 (1972)).

[ccxlix] *Rothgery v. Gillespie County*, 554 U.S. 191, 212 (2008).

[ccl] *United States v. Ash*, 413 U. S. 300, 312, 313 (1973); *see also Massiah v. United States*, 377 U. S. 201 (1964).

[ccli] La. Const. art. I § 13. As with the federal constitutional right to counsel, the Louisiana Supreme Court has held that "a person's right to the assistance of counsel guaranteed by Article I, § 13 attaches no later than the defendant's initial appearance or first judicial hearing." *State v. Hattaway*, 621 So.2d 796, 800, 801 (La. 1993) (overruled on separate grounds by State v. Carter, 94-2859 (La. Nov.27, 1995), 664 So.2d 367); *see also State v. Jackson*, 27, 855 (La. App. 2 Cir. Apr. 3, 1996), 672 So.2d 215, 221 ("A person's right to the assistance of counsel attaches as early as his custodial interrogation and no later than the defendant's initial court appearance or first judicial hearing at the 72-hour mandated time.") (emphasis in original).

[cclii] LA. Code Crim. Proc. Ann. art.511 (2016).

[ccliii] Phone interview with anonymous source Orleans Parish Criminal Court employee, (Sept. 29, 2017).

[ccliv] *Don't I Need a Lawyer: Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing*, CONST. PROJECT® NAT' RIGHT TO COUNSEL COMMITTEE 26 (Mar. 2015), https://constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL_3.18.15.pdf (Last visited Sept. 22, 2017).

[cclv] *United States v. Ash*, 413 U. S. 300, 309–310 (1973).

[cclvi] Meeting with Derwyn Bunton, Chief District Defender, Orleans Public Defenders; Danny Englebert, Chief of Trials, Orleans Public Defenders; and Collin Reingold, Special Litigation Director, Orleans Public Defenders (May 15, 2017).

[cclvii] Meeting with Orleans Parish Magistrate Harry Cantrell (Feb. 22, 2017).

[cclviii] Sanford "Sandy" Krasnoff Crim. Jus. Council Jail Population Management Subcommittee Meeting Handout, p. 14 (Aug. 25, 2017). Institutionalize Bond Reviews: % bond reviews that result in lowered bond or ROR.

[cclix] La. Const. art. I, § 13.

[cclx] Similarly, an indigent defendant at an arraignment must be provided with an attorney before he or she pleads, but the statute again phrases indigence as a sufficient condition. La. Code Crim. Proc. Ann. art.513 ("When a defendant states under oath that he desires counsel but is indigent, and the court finds the statement of indigency to be true, before the defendant pleads to the indictment, the court shall provide counsel to the defendant . . .").

[cclxi] *See* La R.S. 15:142 (A); La. R.S. 15:143 (8) (defining a public defender as "an attorney employed . . . or under contract . . . to provide legal counsel to an indigent person in a criminal proceeding.").

[cclxii] Email Michael Tartaglia, Counsel Sixth Amendment Center to Simone Levine, Executive Director Court Watch NOLA (Sept. 14, 2017 4:10 pm) (on file with author).

[cclxiii] *McMann v. Richardson*, 397 U.S. 759 (1970); *See Reece v. Georgia,* 350 U. S. 85, 350 U. S. 90 (1955); *Glasser v. United States,* 315 U. S. 60, 69-70 (1942); *Avery v. Alabama,* 308 U. S. 444, 446 (1940); *Powell v. Alabama,* 287 U. S. 45, 57 (1932).

[cclxiv] *United States v. Cronic*, 466 U.S. 648, 659 (1984).

[cclxv] *Id.*

[cclxvi] *Polk County v. Dodson*, 454 U.S. 312, 321 (1981).

[cclxvii] *Performance Guidelines for Criminal Defense Representation (Black Letter)*, Nat'l. LEGAL AID & DEFENDER Ass'n, *available at* http://www.nlada.org/defender-standards/performance-guidelines/black-letter.

[cclxviii] *National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations*, NLADA (Oct. 2015), https://www.fd.org/sites/default/files/cja_resources/federal-adaptation-of-nlada-performance-guidelines-for-criminal-defense-representatives_0.pdf. Federal Adaptation of National Legal Aid and Defender Association (NLADA) Performance Guidelines for Criminal Defense Representations1 Adopted by the Defender Services Advisory Group.

[cclxix] *Id*. Guideline 2.2 Initial Interview.

[cclxx] *Id.*

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