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Big Jails and Big Costs:



The Individual and Collective Costs of Over-Incarceration in New Orleans

Voices from the People Most Impacted by Over-incarceration

November 2006

Introduction

For many years New Orleans has had the distinction of being both the city with the highest murder rate in the United States¹ and with the highest jail incarceration rate in the world, incarcerating people at more than twice the rate of other cities of comparable size.² A county jail is meant to serve primarily as pre-trial detention for those within the jurisdiction considered flight risks or dangers to public safety. New Orleans, with the average of 820 prisoners per 100,000 residents³ has the highest incarceration rate in the world. At the same time, we are victimized by violence at an alarming rate. In the summer of 2005, before the Hurricane interrupted the steadily climbing death toll, the city's crime rate was on the incline and the murder rates were back to being the nations' worst.⁴ After the hurricane, citizens became so concerned by a rash of murders that the city ordered a juvenile curfew and invited supplemental policing from the National Guard.⁵ However, this massive jail system and high crime rates do not go hand in hand as one assume. The vast majority of people behind bars in New Orleans are charged with crimes like public drunk or spitting on the sidewalk. Sixty percent of people in the jail were being held for misdemeanor offenses – making Orleans Parish Prison (OPP) a multi-complex, small city of 3,000 – 8,000 used almost entirely for the warehousing of low-level offenders.⁶

Although the practice of holding thousands of New Orleans residents in OPP for misdemeanor offenses was not making the city any safer, it did come at great economic cost. The cost of the parish jail has tripled in the last decade, rising from \$22.5 million to more than \$75 million.⁷ With little transparency regarding the assets of the Office of the Criminal Sheriff or how the \$22.39 per diem per inmate was spent, the budget for the Sheriff has nonetheless become one of the largest expenditures of the New Orleans city budget. New Orleans taxpayers are the ones who foot the bill.

Though the majority of the city's criminal justice infrastructure has been severely disrupted by Hurricane Katrina, New Orleans has an opportunity to re-evaluate its public safety priorities. Although a terrible tragedy for the city, the storm has provided an opportunity to rebuild a system that is more effective at improving public safety, and to save and redirect resources for greater efficiency and public safety. Yet, rather than look towards an opportunity for cost-saving reform, the Sheriff's Department appears to be

¹ Adam Nossiter, "New Orleans Crime Swept Away, With Most of the People", New York Times, November 10, 2005.

² Wagner, Peter, Greenburg, and Kajstura in "Rebuilding a Safer New Orleans: Preliminary Research on what is Possible" from the Bureau of Justice Statistics, US Census Bureau and calculations by the authors.

³ Wagner, et al

⁴ Adam Nossiter, *New Orleans Crime Swept Away, with Most of the People*, N.Y. TIMES, November 10, 2005 at A1.

⁵ Gordon Russell. *We're not Going to Take It Anymore', Nagin Vows*, TIMES PICAYUNE June 20, 2006

⁶ Orleans Parish Criminal Sheriff's Office, Analysis of Daily Cost per Inmate, 2003-2006, attached to Letter from Sheriff Marlin N. Gusman to Members of the New Orleans City Council, November 10, 2005.

⁷ Bruce Egler and Frank Donze, "Thomas Residency Vote is Up in the Air", New Orleans Times-Picayune, June 4, 2005.

moving towards the same failed criminal justice policies of the past. With less than half the population of the city prior to the storm, the Sheriff's Department 2007 Budget Proposal requests *an increase* in funding⁸, and the Sheriff has publicly stated his desire to rebuild OPP to 5,000 beds⁹ close to its disproportionate previous size. At a time when the budget of the city is more constrained, the staggering cost to the city of this jail needs to be more closely scrutinized than ever.

Though the majority of the city's criminal justice infrastructure has been severely disrupted by Hurricane Katrina, New Orleans has an opportunity to re-evaluate its public safety priorities. Although a terrible tragedy for the city, the storm has provided an opportunity to rebuild a system that is more effective at improving public safety, and to save and redirect resources for greater efficiency and public safety. Yet, rather than look towards an opportunity for cost-saving reform, the Sheriff's Department appears to be moving towards the same failed criminal justice policies of the past. With less than half the population of the city prior to the storm, the Sheriff's Department 2007 Budget Proposal requests *an increase* in funding¹⁰, and the Sheriff has publicly stated his desire to rebuild OPP to 5,000 beds¹¹ close to its disproportionate previous size. At a time when the budget of the city is more constrained, the staggering cost to the city of this jail needs to be more closely scrutinized than ever.

In previous years, the New Orleans City Council has struggled to get answers on what exactly the city was paying the sheriff's office such exorbitant amounts for. When then sheriff Charles Foti requested \$25M from the city 10 years ago, his single line item budget was no more detailed than the current proposed budget by the sheriff's office¹². At that time, frustrated councilmember (including current Council President Oliver Thomas) expressed reticence to pay the budget requested but felt their hands were tied by a 1990 Consent Decree resulting from a conditions lawsuit lodged by prisoners of Orleans Parish.¹³ Although that suit was meant to protect the rights of OPP inmates, it has functioned as means to block reforms and institutional change. However, the financial agreement that tied the city to paying a specific per diem and lump sum for medical services expired in December of 2005. Further, that agreement has never precluded the city from auditing the sheriff's office, demanding performance standards, placing a cap on the number of prisoners the city will pay to house, or establishing a formal and binding contract with the Sheriff's Office. Thus, because they are tasked with rebuilding the entire justice system and are soon to be free of any previous agreements, New Orleans' City Council has a doubly unique opportunity to make more fiscally responsible public safety decisions.

⁸ 08.10.2006 letter to CAO City of New Orleans from Marlin N. Gusman, Sheriff.

⁹ Sheriff Marlin N. Gusman, quoted in "With Temporary Jail in Place, All Orleans Prisoners to Return" New Orleans Times-Picayune, October 31, 2006.

¹⁰ 08.10.2006 letter to CAO City of New Orleans from Marlin N. Gusman, Sheriff.

¹¹ Sheriff Marlin N. Gusman, quoted in "With Temporary Jail in Place, All Orleans Prisoners to Return" New Orleans Times-Picayune, October 31, 2006.

¹² Cooper, Christopher. Times Picayune 11.08.94 "FOTI'S ANSWERS ON FINANCES FALL FLAT WITH CITY COUNCIL"

¹³ *ibid*

Survey on Detention: A One Week “Snapshot” of People Under Control of the Office of the Orleans Parish Criminal Sheriff:

In recognition of both the fiscal and social costs of continuing to fund Orleans Parish Prison without a real assessment of how the money is spent and its need, Safe Streets/Strong Communities sought to collect the information about the jail’s level of functioning that has been so inaccessible in previous budget hearings. Based on a one-week survey of people who are currently in jail or who have been recently released (this research yields insight into the heretofore underreported realities of OPP. A formal internal assessment of the Sheriff’s office would require open sharing of information from the Sheriff’s Office, the only agency that really knows who’s in jail, for what, how long and at what costs. Our study cannot be and is not intended to be a conclusive assessment of the jail population. However, the survey results can provide an important snapshot into who is currently under control of the Orleans Parish Criminal Sheriffs Office and for what the \$28 million budget request is about to be spent. We offer this information as invaluable to the city as it continues the critical job of prioritizing our scarce city dollars.

Methodology:

For a one-week between November 4 and November 11, 2006, Safe Streets/Strong Communities surveyed people who are either currently being held prisoner by Orleans Parish or who have been prisoners of Orleans Parish in the last ten months. Our surveys were conducted primarily on the phone, as our office receives over one hundred phone calls a week from people seeking basic information about their charges and upcoming court dates. The remaining surveys were conducted during exit interviews with people being released from OPP, and by phone interview to people who have been inside the jail any time between January and November 2006. Our sample size was just over fifty. The data we sought to gather is: 1) Who is in the jail and for what offenses 2) How efficiently are people moving through the system and 3) What are the fiscal costs of detention. Some information was supplemented by data made available on the website of the Orleans Parish Criminal Sheriffs office, as well as other public data. However, it should be noted that there is a glaring lack of transparency and information sharing regarding the population held under the control of the Criminal Sheriff. Given the lack of access to such information, our preliminary survey results in some ways provided the best available lens into the current operations of Orleans Parish Prison.

Survey Findings:

The most notable findings of our survey, outlined in greater detail below, are:

- This systems’ inefficiency and the large number of people in jail for low-level offenses are costing a tremendous amount in taxpayer money. Time in jail also has serious financial implications for the individuals detained, as well as their family and loved ones.

- Lack of communication between criminal justice departments like Probation and Parole, other local law enforcement agencies and the court itself are keeping people in the custody of the Orleans Parish Criminal Sheriffs Office for far longer than is necessary. These are the result of system inefficiency at every stage of the criminal justice system and a startling lack of information between different criminal justice stakeholders. Yet there are also clear inefficiencies that the Sheriff himself could resolve and that fall solely under his jurisdiction.
- The majority of people in Orleans Parish Prison, and under the custody of the Orleans Parish Criminal Sheriffs Office, are in there for non-violent, misdemeanor and drug offenses, many of which could easily be addressed through citation or a summons to appear in court.

More specifically, our survey found that:

Gross inefficiencies in the detention system cause people to both stay in jail longer than necessary and to move through the system at an excessively slow pace.

Twenty percent (20%) of survey respondents did not receive a bond set within 72 hours of their arrest. Despite the fact that it is mandated by law for people to receive a bond hearing within three days of their arrest, 20% of survey respondents had exceeded the time limit set by the law. Although 80% of arrestees in New Orleans qualify as ‘indigent’ and need a public defender, few people’s rights are protected at this stage of arrest because their rights to counsel do not go into effect until 45-60 days after arrest.¹⁴

Eighteen percent (18%) of people interviewed had spent time in jail after their charges were dismissed. After having charges dismissed, there is no reason for people to be held for even one day – although survey respondents reported being held in detention for as long as 36 days after having charges dismissed. While some people are being held due to their Parole or Probation status, they too are being denied due process in the form of a hearing to determine their Probation or Parole status.

25 percent (25%) of respondents had missed at least one appearance in court, meaning that they were not able to reappear until weeks to months later. Sources inside the criminal justice system tell us that the sheriff’s office has a policy of bringing only five people to court each day and anecdotal evidence points to individual court appearances being spaced an average of a month apart. This means that many people are missing court dates because the sheriff’s office is not bringing those in their custody to court and when they miss that court date, many have to languish in jail for another 30 days before their next opportunity for an appearance. At the same time, inefficiencies in the jail and failures of communication mean that people in jail are consistently missing court dates. Of the 25% of respondents who had missed at least one court date, the average dates

¹⁴ Times Picayune, Feb. 11, 2006, “Public Defender Cases in Limbo”

missed was three. Safe Streets attempted to estimate the costs of incarcerating people. Based on the Sheriff's Office calculation of the number of people being held there, we estimate that approximately 2684¹⁵ prisoners are being held pre-trial in New Orleans on November 13, 2006. Multiplied by the per diem amount of \$22.39 for 30 days, we calculated a monthly cost of \$1,802,843.

These three findings have serious implications – both financially and regarding due process rights. Financially, the cost to the city of additional time spent in jail adds up significantly to the city, while the fact that people are being held beyond release date and not having bond hearings in a timely manner is potentially illegal.

The large majority of people in custody of the Orleans Parish Criminal Sheriff's Office are being held for low-level, misdemeanor offenses and non-violent, drug related charges.

Eighty percent (80%) of people surveyed were held on a non-violent offense. Of fifty people interviewed in one week, only ten were being held on a violent offense, with the remainder being held on misdemeanor, or drug and property charges.

Forty percent (40%) of respondents were held on a misdemeanor charge, a charge of probation or parole violation, or because they owed fines and fees. Close to half of all respondents in the snapshot sample were being held on misdemeanor offenses – including public drunkenness, trespassing, first offense marijuana possession, or owing fines and fees.

The costs of holding so many people in jail are staggering – to the individuals being held, their families, and the city.

Of people being held on misdemeanor offenses and on failure to pay fines and fees, the average amount that personal financial losses were reported was estimated at \$4,300. The median financial loss was estimated to be \$1,800. People calculated this figure based on their personal financial losses through loss of employment and wages, loss of housing, and loss of government benefits / assistance. They also calculated the costs to their family left behind such as money for collect calls, commissary food, toiletries and stamps and even items such as linen.

A portion of the financial loss incurred by individuals during their incarceration is for items that the Sheriff is paid by the city to provide. Close to a quarter of respondents (24%) reported that their families had purchased linens and clothing for them during their time in the custody of the Orleans Parish Criminal Sheriff. However, these are items that the City pays the Sheriff to provide, and presumably should be included in the per-diem costs. There is no reason for any family to send in critical items such as linens if the citizens of New Orleans are paying the Sheriff to provide them.

¹⁵ From Sheriff's Office Website <http://stars400.opcsa.org/pubsvr/IM1Q10AK.pgm> calculated by author. NOTE: calculations done by deducting the following categories from total: State Commitment, State Court Order, and Federal. All other categories are presumably pre-trial offenders.

In just a small sampling of the population in jail from Orleans Parish, the financial impact of such a large jail population is clear. For the individuals who are in the jail and their families, incarceration carries a financial burden that for many can potentially drive them deeper into poverty. For the city that is paying the per diem cost of their incarceration, the financial costs are also significant. At the same time, the fact that families are spending money on essential items that are already represented in the Sheriff's budget is a sign of possible fiscal mismanagement, and should be a focus of further study.

For the individuals held in jail, there is a clear perception that financial gain for the Sheriff is a significant factor in their incarceration. When asked the question of why the incarceration rate is so much higher in New Orleans than in the rest of the nation, responses revealed the general sentiment that people were being held in jail for low-level offenses, with money being the incentive. "Trying to make money off of all of us", "Its all about the money", "New Orleans thrives on incarceration – it's a money thing" and "They are stealing our lives for our money" are some of the many answers received.

Conclusion

The results of the preliminary snapshot reveal a jail system that is wasteful, inefficient, and that is holding people for longer periods than is necessary, at great social and fiscal cost to their communities and to the taxpayers of New Orleans. This is not a jail system that improves public safety, but rather one that drains needed resources from the city, that could be better spent on alternatives, diversionary programs, and investment into public safety mechanisms with higher demonstrated success rates than detention. While the results of this snapshot cannot be taken as a comprehensive study of the population under custody of the Orleans Parish Criminal Sheriffs Office, nor of the full range of reforms that could be implemented to improve efficiency, they do reveal both the need for further assessment and some immediate steps that the city could take. By moving forward with both short-term solutions and longer-term planning, the City of New Orleans could immediately move towards reducing fiscal waste, ensuring that people do not continue to be unnecessarily detained in the City of New Orleans, and focusing the use of its arrest and detention powers on those who pose a risk to public safety.

Recommendations

Develop a formal contract between the Sheriff's Department and the City of New Orleans, that includes 1) an assessment of the efficiency of OPP operations and recommendations for cost-saving reforms 2) an assessment of the necessary size, scale and cost to operate an efficient jail in New Orleans and 3) regular audits of the OPSCO budget and assets. There currently is no formal, written contract in existence between the City and the Sheriff's office which spells out exactly what services the Sheriff will provide, what the terms of payment are, or that mandates accountability from either the City or the Sheriff in its compliance. To ensure that the jail is operated efficiently and without fiscal waste, such a contract should be established. It is the norm

for most if not all other services contracted out by the city, and there is no reason that the Sheriff and the city shouldn't come to a comparable agreement. The New Orleans can and should exercise its power of the purse strings by tying funding to performance and efficiency standards.

Invite in an independent expert who can conduct a full assessment of the current OPP population and recommend means to improve the efficiency and operating of the New Orleans detention system. This assessment would include 1) population projections at the short, mid and long term range 2) the necessary jail capacity for the city given these projections 3) an assessment of how to improve jail conditions and programming and 4) what current inefficiencies exist in the system that cause inflation of both the jail population and the cost of running the facility. There are national organizations, such as the Vera Institute for Justice, which are more than equipped to conduct such an assessment, with the full partnership of the Sheriff's Department and the City of New Orleans.

Implement reforms to decrease the number of people being held in OPP. As stated in the report, 60% of OPP's population before Hurricane Katrina was made up of individuals held on attachments, traffic, or municipal charges, such as minor drug possession, parking violations, and public drunkenness. None of these infractions present a significant public safety risk and pre-trial diversion programs, bail reform, and cite and release arrest policies are all examples of possible means by which the city of New Orleans could save money and ensure public safety by reducing the population of people in jail.

Ensure that the New Orleans Police Department fully implement the citation policy for minor traffic violations and misdemeanors, regardless of prior arrest history or police district. While there are numerous ways in which Sheriff Gusman could improve efficiency of Orleans Parish Prison, it is a responsibility of every stakeholder in the criminal justice system to also ensure that their practices are not needlessly wasting taxpayer money with no return to public safety. To that end, with arrest rates being one factor in the size of a jail population, Superintendent Warren Riley must issue and enforce a policy of citing or issuing summonses for minor traffic and misdemeanor offenses instead of arrests, which will save both jail space and city money. Detention in a county jail should be based on the flight risk and level of danger to public safety.