

# DWI Case Processing

Arrest, Prosecution, and Adjudication of  
Misdemeanor DWI Offenses

Final Report • June 24, 2015



**OIG** NEW ORLEANS OFFICE OF  
INSPECTOR GENERAL

E. R. Quatrevaux, Inspector General

OFFICE OF INSPECTOR GENERAL  
CITY OF NEW ORLEANS



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INSPECTOR GENERAL

June 24, 2015

Re: Evaluation of DWI Case Processing: Arrest, Prosecution, and Adjudication of Misdemeanor DWI Offenses

I certify that the inspector general personnel assigned to this project are free of personal or other external impairments to independence.

A handwritten signature in blue ink, appearing to read "E.R. Quatrevaux", located below the certification text.

E.R. Quatrevaux  
Inspector General

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The Office of Inspector General of the City of New Orleans (OIG) evaluated Driving While Intoxicated (DWI) case management at Traffic Court in Orleans Parish from arrest through prosecution, sentencing, and case closing. The goal of this evaluation was to examine how the New Orleans Police Department, the City Attorney's Office, and Traffic Court managed DWI cases, and whether arrests, prosecutions, adjudication, and probation of DWI cases were in keeping with state laws and professional standards and best practices.

Police, prosecutors, and courts must excel at case management and collect the data necessary to target efforts in order to reduce alcohol-related crashes. However, at every step of the process, the prosecution and adjudication of DWI cases at Traffic Court illustrated basic failures of legal standards and a wide gulf between local practices for handling drunk driving cases and national best practices.

Drunk driving is a serious public safety threat. In 2011 alcohol-related crashes accounted for 42 percent of all fatal vehicle accidents in Louisiana, and the state's impaired driving fatality rate is higher than the national average. Groups such as the National Highway Traffic Safety Administration (NHTSA) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA) recommend that states follow best practices in policing and adjudication to tackle the problem and protect public safety. Behavioral research suggests that these efforts should be targeted at the highest risk offenders, meaning repeat offenders and those who are extremely drunk behind the wheel.

Evaluators reviewed paper case files from Traffic Court, prosecutors, and probation officers for a random sample of 80 DWI cases from the first half of 2012 to assess record-keeping and what transpired in a case. Evaluators also analyzed electronic case management records of all DWI cases recorded in Traffic Court's system from 2007 through 2012 for a larger view of trends, and examined a spreadsheet of all open DWI cases going as far back as the system would allow. Evaluators further reviewed correspondence between the Law Department and the District Attorney's Office about potential felony case transfers from 2010 through 2013.

This report includes the following major findings.

- NOPD did not use the latest techniques to fight drunk driving and generate evidence for prosecutors.
- NOPD, OPSO, and Traffic Court did not have adequate controls over the transfer of DWI records from one agency to another, making it impossible to know if every arrest resulted in a docketed case in Traffic Court. The lack of internal controls left the process vulnerable to errors and abuse.
- Traffic Court had 14,635 open DWI cases dating as far back as the 1980s. It was impossible to tell if the cases had been adjudicated, raising the question of whether drivers were ever sanctioned for their crime.
- City attorney prosecutors had no formal screening process for DWI cases, leaving them unprepared to enforce the city's interest in cases. Police citations determined what charges would be brought in a case.
- City attorney prosecutors reached plea bargains to resolve most DWI cases without having standards for prosecutorial discretion; in those plea deals, second-offense sentences occurred in less than 2 percent of DWI cases, city attorneys downgraded high-BAC readings in 84 percent of high BAC cases and reduced charges to reckless operation occurred in one in five cases. City attorney files also lacked documentation to support the decision to plea.
- In the sample of 80 cases, 16 percent of city attorney files did not contain rap sheets, and city attorneys provided insufficient documentation to the District Attorney's Office when attempting to transfer potential felony DWI cases to Criminal Court. As a result, the rate of rejections increased from 9 percent in 2010 to 37 percent in 2012.
- Traffic Court and OPSO removed key information from their databases when handling expungements; making it impossible to analyze DWI case data.
- Defendants did not always complete probation at Traffic Court, often with no consequences.
- Probation officers did not have the work space or communications tools necessary to perform their jobs supervising offender work on DWI

sentences, and the Court did not safeguard the privacy of client records containing sensitive information.

Based on these findings, the report makes the following recommendations related to DWI case management.

- NOPD should adopt advanced techniques for fighting drunk driving and generating evidence for prosecutors to use in court. It should start a “No Refusal” program to reduce the number of people who decline breath tests, it should train some officers as certified Drug Recognition Experts to fight drug-impaired driving, and it should make DWI arrest video available to prosecutors.
- NOPD, OPSO, and Traffic Court should institute controls over the transfer of DWI records between agencies, and city attorneys should receive notification of DWI arrests from police so that they can verify that all DWI arrests become cases at Traffic Court.
- Traffic Court should develop a system to monitor when cases have been open for a long time to ensure that cases are adjudicated, reach closure, and that offenders fulfill their obligations to the Court.
- City attorneys should begin research immediately on DWI cases and make charging decisions and initiate prosecution by filing bills of information.
- The Law Department should develop written policies to guide prosecutorial discretion; city attorneys should document the reasons for and terms of plea bargains in prosecutorial files.
- The Law Department should track DWI convictions, DWI charge reductions, and downgrades of high-BAC cases.
- The Law Department should create a training manual and standard forms to help legal assistants deliver the information that the District Attorney’s Office needs to prosecute felony DWI cases; legal assistants should be formally trained and supervised; and the Law Department should track potential felony DWI cases to monitor trends and identify any problems with transfers as they arise.

- Traffic Court, NOPD, and OPSO should only omit personal identifying information in their databases so that the entire universe of data can be used for statistical analysis.
- Traffic Court should require defendants to complete the terms of probation ordered by the Court.
- Traffic Court should give probation officers private work spaces in which to confer with probationers and the training and communications tools to provide effective oversight. It should also develop a policy for managing private records and provide secure storage for documents containing sensitive information.

The apprehension and prosecution of drunk drivers and the management of DWI cases are critical public safety functions. Based on a preponderance of evidence, evaluators concluded that the community of professionals responsible for protecting the public from drunk drivers adopted a lax approach to the task: DWI cases moved through a system that did not distinguish between more serious and less serious cases or between the first-time offender and the repeat offender with a high BAC. The agencies responsible for providing this essential public service should embrace the recommendations in this report in order to improve the efficiency and effectiveness of DWI case processing and ensure the safety of the driving public.

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## I. OBJECTIVES, SCOPE, AND METHODOLOGY

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The Office of Inspector General of the City of New Orleans (OIG) evaluated the management of Driving While Intoxicated (DWI) cases in Orleans Parish from arrest through prosecution, sentencing, and case closing. The objective of this evaluation was to assess whether the New Orleans Police Department, the Law Department, and Traffic Court conducted arrests, prosecutions, case management, and probation of DWI cases in accordance with state laws and best practice standards.

Evaluators reviewed and analyzed case file data for DWI arrests from the first half of 2012. The review included an examination of Traffic Court's paper case files on a random sample of 20 DWI cases from each of the four divisions of court to get a detailed view of record-keeping and what transpired in a case. Evaluators subsequently requested the same set of files from Traffic Court's probation department and from the Law Department to determine how each agency handled cases and how they documented their work.

Evaluators also examined electronic case management records on all DWI cases filed at Traffic Court from 2007 through 2012. To identify trends in DWI case management and dispositions, evaluators requested a complete list of all open cases at Traffic Court entered in the case management system.

Evaluators attempted to reconcile records of arrests with records of bookings at OPSO and cases filed at Traffic Court in 2012 to evaluate the reliability of procedures for transferring cases and their supporting documents from one agency to another. However, NOPD did not provide a record of DWI arrests, so evaluators obtained handwritten logs of breath tests administered by the Louisiana State Police, the Crescent City Connection police, and the Orleans Parish Sheriff's Office (OPSO) in the first quarter of 2012 as a proxy for the start of DWI cases.

Evaluators also reviewed all correspondence between the Law Department and the District Attorney's Office about potential felony DWI cases from 2010 through 2012 to assess the efficiency of the transfer of potential felony DWI cases between the two offices for prosecution in Criminal District Court.<sup>1</sup>

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<sup>1</sup> For a more detailed list of the data evaluators used in this report, see Appendix E.

Evaluators interviewed officials at NOPD, the non-profit New Orleans Police and Justice Foundation, Traffic Court, the City's Office of Information Technology and Innovation, the Law Department, the District Attorney's Office, the Orleans Parish Sheriff's Office, Louisiana State Police, the Office of Motor Vehicles at the Louisiana Department of Public Safety, the Louisiana Department of Insurance, and the Louisiana Highway Safety Commission. Evaluators also attended a continuing legal education seminar for DWI defense attorneys. In addition, they reviewed training, policies, and procedures at the agencies that played a role in managing DWI cases.

*Detailed list of  
data reviewed by  
evaluators*

For a broader understanding of drunk driving issues, evaluators examined NOPD's contract with the Louisiana Highway Safety Commission for sobriety checkpoints, Louisiana Traffic Records Data reports from 2007 to 2011, research from the National Highway Traffic Safety Administration, and recommendations from the National Transportation Safety Board.

Evaluators also obtained relevant background information, guidelines, standards and best practices developed by professional associations such as the National Center for State Courts, the American Probation and Parole Association, the National District Attorneys Association, the Louisiana District Attorney Association, the American Bar Association, the National College for DUI (Driving Under the Influence) Defense, and the advocacy group Mothers Against Drunk Driving (MADD).

Federal statutes, state laws, and city ordinances governing drunk driving; state rules on court management; and key Louisiana court cases establishing precedents in impaired driving cases provided legal criteria for the evaluation. Scholarly articles on behavioral intervention in DWI cases and drunk driving as a crime provided evaluators with additional context for assessing the practices of local system actors.

This evaluation was performed in accordance with *Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews* and includes findings and recommendations to improve the effective and efficient management of DWI cases in order to reduce DWI recidivism and increase public safety.

In preparing this report, OIG staff members were greatly assisted by city, parish, and state employees who were generous with their time, knowledge, and

expertise. Evaluators are grateful to the many public employees who explained their jobs and offered ideas on how to improve management of DWI cases.<sup>2</sup>

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<sup>2</sup> The release of this report in 2015 coincides with the implementation of a new electronic case management system at Traffic Court funded by the Louisiana Highway Safety Commission. The new computer system should enable court personnel to store and analyze data, evaluate performance, and monitor the court's processes. This report serves as a baseline of the conditions that existed at Traffic Court before the implementation of the new system in late December 2014; the OIG offers the policy, procedure, and process recommendations from this report as additional resources for improving court operations and outcomes.

This report's release also comes as the City has entered contract negotiations with a private technology company to procure an electronic ticket system for the New Orleans Police Department. The system should help law enforcement, prosecutors, and court personnel improve management of Traffic Court's most serious cases and implement many of the recommendations in this report.

## II. INTRODUCTION

**Case Study #1:**<sup>3</sup> A driver was arrested in January 2007 on charges of DWI and hit and run driving. He took the breath alcohol test and exceeded the legal limit, providing prosecutors evidence that he was legally intoxicated. His case was “quashed,” or dismissed.

He was arrested again in February 2012 for DWI, weaving, reckless operation, driving with a suspended license, not carrying a driver’s license, having an expired car registration, having an expired license plate, and failing to signal. This time, he refused to take the breath alcohol test on the Intoxilyzer machine.

He hired a relative of a Traffic Court judge to represent him, and in September 2012, he pleaded guilty to DWI under Article 894.†

The driver then deferred payment on his \$1,000 fine, and in late January 2013, the judge denied a fifth extension of the case and re-set for sentencing in early February. In March, the probation officer reported that the driver came to a meeting reeking of alcohol. The driver had not completed his probation and asked for an extension. According to Traffic Court’s case management system, his request was denied and his probation was terminated unsatisfactorily.

Despite the probation failure, in spring 2013 the defendant began paying \$100 a month toward his fine. In June 2013, he failed to show up to make his next payment. No arrest warrant was issued for failure to appear in court.

When an evaluator asked to see the case file again in 2014 to check on the status of the case, Traffic Court could not find it.

† Article 894 permits the expungement of a misdemeanor DWI.

**T**he above case study illustrates numerous missed opportunities for improving public safety by effectively managing drunk driving cases:

- Despite admissible evidence of drunk driving, the driver’s first offense DWI was not prosecuted, and without a first offense on the record, the driver’s conviction the second time he was arrested was considered a “first offense.”
- The driver was not sentenced until seven months after his arrest.
- Despite the unsuccessful termination of his probation, his failure to pay the court-ordered fine and to appear in court—16 months after his arrest—the court initiated no action.

<sup>3</sup> The case studies in this report are examples from the DWI case files. They are anecdotal and not offered as evidence; rather, they are included as illustrations of the issues raised by the data evaluators examined in the course of conducting research on this project.

- Finally, Traffic Court showed an inability to safeguard court records; when evaluators requested the case file a second time, it could not be located.

These issues are among those examined in this report and underscore the wide gulf between local practices for handling drunk driving cases and national best practices. According to one legal scholar, they also amount to a “pattern of inaction” common in local courts across the country. The professionals the researcher observed in a variety of jurisdictions overlooked these patterns of inaction because they considered the matters before them minor: “Where is the serious stuff?” queried one judge.<sup>4</sup>

### **National Efforts to Curb Drunk Driving**

Driving under the influence of alcohol continues to be a national and local public safety problem. The United States made great strides in making the roads safer from drunk drivers in the 1980s and early 1990s, but progress has stalled. Since 1995 fatal crashes related to alcohol have held steady at about one-third of all crashes. In 2011 the National Transportation Safety Board (NTSB) reported that approximately 31 percent of all fatal crashes around the country involved alcohol-impaired drivers.

DWI is a major public safety issue in Louisiana. In 2011 alcohol-related accidents accounted for 42 percent of all fatal crashes in Louisiana. City and state figures improved in recent years, but progress has been uneven, and the number of local alcohol-related fatalities in Louisiana remains higher than the national average: Louisiana had the third highest impaired driving fatality rate in the nation from 2008 to 2010.<sup>5</sup>

Beginning in the 1980s, state legislatures passed stricter laws to fight drunk driving based on recommendations by the U.S. Department of Transportation and prodded by incentives set by Congress.<sup>6</sup> States lowered the blood alcohol concentration (BAC) threshold for driving under the influence to 0.08, increased

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<sup>4</sup> Amy Bach, *Ordinary Injustice: How America Holds Court* (Henry Holt and Company: New York, NY, 2009). The author spent months observing U.S. courtrooms and interviewing court personnel.

<sup>5</sup> National Transportation Safety Board, *Reaching Zero: Actions to Eliminate Alcohol-Impaired Driving*, NTSB/SR-13/01 (Washington, D.C.: National Transportation Safety Board, 2013), 10-12, accessed November 22, 2013, <http://www.nts.gov/doclib/reports/2013/SR1301.pdf>.

<sup>6</sup> Congress created incentives in 1982 for states to set a BAC of 0.10 as the legal threshold for driving drunk. In 2000 Congress passed new legislation asking states to reduce that BAC threshold to 0.08 by 2004 or risk losing federal highway funding.

penalties for repeat offenders and motorists with BACs at or above 0.15, required driver's license suspensions, and required the use of ignition interlock devices that automatically immobilize vehicles when alcohol is detected on a driver's breath.

**La. R.S.32:667**

**License Suspension**

The National Highway Traffic Safety Administration (NHTSA) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA) encourage states to hold sobriety checkpoints, mount public education campaigns, restrict the use of plea bargaining to reduce DWI charges to lesser non-alcohol related charges, and eliminate programs that allow offenders to erase DWI conviction records or avoid administrative license suspension.

Louisiana has embraced some of these longstanding strategies and is one of only 17 states that requires ignition interlock devices for some first offenders. However, the state does not have an anti-plea bargaining statute, and Louisiana laws allow offenders to expunge DWI convictions.<sup>7</sup>

Recent research sheds new light on the problem of drunk driving and is shaping recommended legal and correctional responses to DWI. DWI statistics support criminologists' finding that "the majority of all DWI episodes are committed by a small group of chronic offenders": 3 percent to 5 percent of all drivers commit 80 percent of drunk driving episodes.<sup>8</sup> Moreover, "identifying this small cadre of persistent drunken drivers is essential to develop effective intervention strategies."<sup>9</sup>

Although DWI has historically been treated as a substance abuse problem, more recent research provides evidence that substance abuse is not the strongest predictor of DWI recidivism.<sup>10</sup> Repeat DWI offenders exhibit criminal characteristics in common with other persistent criminal offenders, and these characteristics are stronger risk factors than the substance-abuse disorders that

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<sup>7</sup> La. C.Cr.P Article 894.

<sup>8</sup> D.A. Andrews and James Bonta, *The Psychology of Criminal Conduct*, 4<sup>th</sup> ed. (New York: Matthew Bender & Co., Inc., 2006), 6, 34: "a small subset of all offenders account for a disproportionate amount of total criminal activity." Also, Matthew De Michele and Nathan C. Lowe, "DWI Recidivism: Risk Implications for Community Supervision," *Federal Probation* 75, no. 3 (December 2011): 2. DeMichele and Lowe list the variables present in multiple DWI offenders: lack of respect for the law and the ability to rationalize criminal behavior, a history of other criminal activity, low educational attainment (suggesting inability to delay gratification, poor work ethic, and low dependability), emotional instability and impulsivity, and a general unwillingness to change.

<sup>9</sup> DeMichele and Lowe, "DWI Recidivism," 2.

<sup>10</sup> *Ibid.*, 4. DeMichele and Lowe conducted an extensive review of recent DWI studies.

cause their incapacitation behind the wheel. Drunk drivers' "behavior is embedded in a larger criminal history."<sup>11</sup> The "antisocial attitudes, values, and beliefs ... learned throughout the life course" enable them to rationalize the acceptability of their violations: drunk drivers lack sufficient restraint and self-control to resist driving while intoxicated.<sup>12</sup>

Recommended national approaches combine efforts to get drunk drivers off the road with delivering "certain, consistent, and coordinated" consequences for driving while intoxicated.<sup>13</sup> Effective DWI sentencing includes revoking driver licenses; immobilizing vehicles; and/or impounding license plates combined with assessment and appropriate treatment, including intensive supervision and closely monitored probation. Effective treatment programs include social learning and cognitive behavioral strategies.<sup>14</sup>

The NTSB responded to the persistent problem of alcohol-related fatalities by releasing a comprehensive vision for fighting drunk driving in May 2013 that reflected recent research, the first such update in 13 years.<sup>15</sup> Successfully executing the new NTSB standards requires all parties working on DWI cases to

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<sup>11</sup> DWI recidivism is similar to other criminal recidivism. Richard A. LaBrie, et al., "Criminality and Continued DUI Offense: Criminal Typologies and Recidivism among Repeat Offenders," *Behavioral Sciences and the Law* 25 (July 2007): 613.

<sup>12</sup> DeMichele and Lowe, "DWI Recidivism," 4. This small percentage of recidivist drunk drivers has developed systems of reinforcement for their actions that make their criminal behavior highly resistant to punishment; there is little to no evidence that "get tough" approaches, including jail time, reduce drunk driving. See also, Marie Claude Ouimet, et al., "Neurocognitive characteristics of DUI recidivists," *Accident Analysis and Prevention* 39 (2007): 734-750; Alan A. Cavaiola, "Comparison of DWI offenders with non-DWI individuals on the MMPI-2 and the Michigan Alcoholism Screening Test," *Addictive Behaviors* 28 (2003): 971-977; Alexander C. Wagenaar, et al., "General deterrence effects of U.S. statutory DUI fine and jail penalties: Long-term follow-up in 32 states," *Accident Analysis and Prevention* 39 (2007): 982-994; James Freeman, Jane Carlisle Maxwell, and Jeremy Davey, "Unraveling the complexity of driving while intoxicated: A study into the prevalence of psychiatric and substance abuse comorbidity," *Accident Analysis and Prevention* 43 (2011): 34-39; and Sandra C. Lapham, et al., "Impaired-driving recidivism among repeat offenders following an intensive court-based intervention," *Accident Analysis and Prevention* 38 (2006): 162-169.

<sup>13</sup> National Highway Transportation Safety Administration and the National Institute on Alcohol Abuse and Alcoholism, *A Guide to Sentencing DWI Offenders*, 2<sup>nd</sup> ed. (Washington, D.C.: National Highway Transportation Safety Administration, 2005), 3. Substance abuse treatment may also be warranted for individuals assessed with substance abuse problems.

<sup>14</sup> Andrews and Bonta, *Psychology of Criminal Conduct*, 229, 283: "Cognitive-behavioral treatments are more effective than other forms of intervention. ...These powerful influence strategies include modeling, reinforcement, role playing, skill building, modification of thoughts and emotions through cognitive restructuring, and practicing new low-risk alternative behaviors over and over again in a variety of high-risk situations until one gets very good at it."

<sup>15</sup> NTSB, *Reaching Zero*.

capture data, analyze it, and make decisions based on an individual offender's case in keeping with practices proven effective in curtailing drunk driving.

These demands present a challenge in New Orleans, where numerous Traffic Court practices reveal a disregard for professional standards and everyday failures of legal process. In order to reduce the incidence of DWIs in New Orleans, police, courts, prosecutors, and probation officers must better coordinate their efforts and improve their ability to manage and prosecute DWI cases reliably, effectively, and timely; identify repeat offenders using proven assessment tools; develop appropriate sanctions and treatment; monitor offenders' compliance with probation terms closely; and respond quickly in response to non-compliance.<sup>16</sup> Moreover, all professionals responsible for the processing of DWI cases must recognize the seriousness of the offense and their role in perpetuating the Court's poor outcomes.

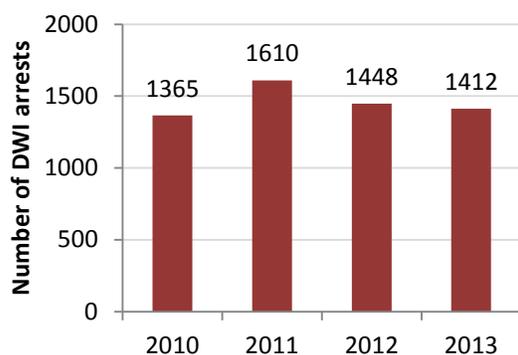
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<sup>16</sup> Ibid.

### III. DWI ARRESTS: NEW ORLEANS POLICE DEPARTMENT

NOPD and Louisiana State Police officers patrolling the Crescent City Connection made an average of 1,459 DWI arrests a year from 2010 through 2013, generating about four new DWI cases per day or 28 new DWI cases per week. DWI cases were a negligible fraction of the traffic citations written in Orleans Parish each year, but they were among the most serious cases processed by Traffic Court.<sup>17</sup>

**Figure 1.** Annual DWI Arrests by NOPD



Source: NOPD

According to the Commander of NOPD’s Special Operations Traffic Division, DWI cases started when a police officer observed erratic, dangerous, or illegal driving. After pulling a car over, the smell of alcohol, the driver’s demeanor, or empty bottles in the vehicle gave the officer reason to suspect the driver had been drinking. In these instances, the officer verified the driver’s identity by looking at his license and ran a cursory background check to determine whether the driver was wanted on an arrest warrant.<sup>18</sup>

Officers then performed a portion of the Standard Field Sobriety Test (SFST) to assess the driver’s coordination and tested the driver’s blood alcohol concentration (BAC) by asking the driver to breathe into the Intoxilyzer

<sup>17</sup> In 2012 DWI traffic citations were 1 percent of the 155,329 citations processed by Traffic Court.

<sup>18</sup> Police also arrest a small number of drivers each year at sobriety checkpoints paid for with federal grant money that covers overtime. Police and traffic researchers say the ultimate purpose of sobriety checkpoints is to remind the public that police are watching for drunk drivers and to motivate people to call a cab if they have been drinking. Law enforcement officials locally and nationally view the deterrence effect of the publicity ahead of the checkpoints to be as important as any resulting DWI arrests.

machine.<sup>19</sup> If the driver failed a few steps of the SFST, the police arrested the driver for DWI and took the driver to NOPD's Special Operations Division Traffic headquarters to complete the rest of the SFST. A driver who refused to take the Intoxilyzer test was automatically arrested.<sup>20</sup>

The arresting officer then brought the motorist to the Orleans Parish Sheriff's Office (OPSO) to be booked on DWI charges and waited with the arrestee until OPSO deputies gathered basic information and the arrestee was officially transferred to the OPSO's custody. The officer gave OPSO deputies the DWI ticket and Intoxilyzer report and returned to duty. Traffic Court also received a copy of DWI tickets from the NOPD.

**FINDING 1. NOPD OFFICERS DID NOT USE PROVEN TECHNIQUES RECOMMENDED BY ORGANIZATIONS SUCH AS THE U.S. DEPARTMENT OF TRANSPORTATION AND THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION TO GENERATE THE EVIDENCE PROSECUTORS NEEDED TO CONVICT DWI DEFENDANTS.**

Law enforcement's role in the prosecution of a case is to develop evidence that provides the basis for charges brought against a defendant. A complete and detailed police report, a carefully completed citation, and the results of the Intoxilyzer test or other evidence are all elements of the officer's testimony and are subject to discovery. The quality of these work products plays a decisive role in whether cases can be successfully prosecuted. However, this evidence cannot stand on its own; officers must attest to these work products in court.

The U.S. Department of Transportation and the National District Attorneys' Association identified several ways in which police forces such as NOPD might better identify drunk drivers and contribute to the successful conviction of drivers arrested for DWI. These methods include creating a forced blood-drawing program to combat breath test refusals, introducing video evidence in court, training officers to identify drug impairment, and systematically capturing DWI

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<sup>19</sup> The Intoxilyzer does not test for drugs; in these cases, the officer makes an arrest based on his observations of impairment and attempts to obtain evidence of possible drug use by getting the driver's consent for a blood or urine test.

<sup>20</sup> Police reported most cases as La. R.S. 14:98(B), or first-offense DWI, because they usually did not have enough information at the scene to ascertain that a motorist had been convicted of another DWI in the past decade. Criminal databases show arrests, but do not always show the results of criminal proceedings. Note: the Legislature changed the DWI law in 2014; first offense DWI is now La. R.S. 14:98.1.

location information and place of last drink data (POLD) to refine patrol assignments.

**NOPD did not implement a No Refusal program for DWI breath tests.** Louisiana has the fourth-highest test refusal rate in the nation, creating obstacles for prosecutors.<sup>21</sup> Nationally, about 22 percent of drivers refuse to take breath tests for alcohol when asked by a police officer. But in Louisiana, 39 percent of drivers refuse breath tests, according to a study by the National Highway Transportation Safety Administration (NHTSA).

An officer's ability to conduct an accurate field sobriety test can be severely limited when a driver denies police the opportunity to gather test results and observations of inebriation.<sup>22</sup> For this reason, the U.S. Department of Transportation recommends that police set up "No Refusal" programs to permit officers to combat the breath-test refusal problem and give prosecutors in communities around the country the evidence needed to obtain convictions. In No Refusal programs, officers request warrants to compel blood tests when drivers refuse to blow into the Intoxilyzer machine. Since 2010 federal transportation authorities have recommended that police departments experiment with implementing forced blood-draw pilot programs or programs limited to holiday weekends.

Jefferson Parish started a No Refusal program in 2010, and the percentage of individuals willing to take the Intoxilyzer increased when faced with the prospect of giving a blood sample. Officials said that the Parish's No Refusal program had not only been instrumental in giving prosecutors the evidence they need for convictions in drunk driving cases, but it had also given them critical evidence of drug use in impaired driving cases.

NOPD planned a pilot No Refusal program in 2012, which was not implemented. The Department's failure to start a No Refusal program resulted in a missed opportunity to increase the number of motorists taking the Intoxilyzer test and

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<sup>21</sup> NHTSA, *Refusal of Intoxication Testing: A Report to Congress*, (Washington, D.C., 2008), 5.

<sup>22</sup> One local defense attorney participating in a continuing legal education seminar on DWI counseled his clients to decline both the Intoxilyzer test and the Standard Field Sobriety test if they were pulled over after they have been drinking. He instructed his clients to speak as little as possible and look down, sit on the curb after being asked to get out of the car, respectfully decline the Intoxilyzer, and ask to be arrested.

denied prosecutors additional evidence they needed to prosecute drunk drivers successfully.<sup>23</sup>

**NOPD did not have a trained and certified Drug Recognition Expert on staff.**<sup>24</sup>

The Drug Recognition Expert (DRE) program provides advanced training and certification in recognizing drug-impaired driving cases. NOPD did not have a certified Drug Recognition Expert on staff during this review; as a result, officers were less able to provide the testimony needed for convictions in drug-impaired driving cases.

According to a 2007 survey by the NHTSA, 16.3 percent of motorists driving on weekend nights tested positive for drugs, and the proportion of fatally injured drivers who tested positive for drugs increased from 13 percent in 2005 to 18 percent in 2009. However, drugs do not show up in the BAC measured through the Intoxilyzer test if a driver is impaired by drugs rather than alcohol, or a combination of drugs and alcohol.

Law enforcement officials say that Drug Recognition Expert testimony on the witness stand makes officers more convincing witnesses and is essential for helping judges understand what drug impairment looks like. For example, the National District Attorneys Association has recognized the importance of drug recognition training and recommends that prosecutors request the services of a Drug Recognition Expert in DWI cases in which they suspect drug impairment.<sup>25</sup>

**NOPD did not routinely provide video evidence of stops to Traffic Court.** NOPD did not introduce video of DWI stops into evidence even when camera systems installed on NOPD vehicles captured the evidence. A ranking NOPD officer in the SOD Traffic Unit told evaluators that the evidence was not submitted because it was not required, and it would be a chore to provide it. However, video of DWI stops can provide persuasive evidence because it captures the sights and sounds

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<sup>23</sup> The head of NOPD's traffic unit created a pilot plan for a No Refusal program in 2012, but NOPD put the effort on hold because of the demands of the consent decree agreement with the U.S. Department of Justice. Police said that reforms mandated by the consent decree were required, while a developing a No Refusal program was not.

<sup>24</sup> In 2012 State Police trained 18 NOPD officers in Advanced Roadside Impaired Driving Enforcement (ARIDE), a certification program that goes beyond the Standard Field Sobriety Test and includes some instruction on drug impairment but does not meet the more demanding Drug Recognition Expert standards. See [www.arideonline.org](http://www.arideonline.org).

<sup>25</sup> National Traffic Law Center, *DWI Prosecutor's Handbook* (Washington, D.C.: National Transportation and Highway Safety Board, updated December 2007), 7

of the DWI arrest and can remove the arresting officer's conduct as a possible defense tool.<sup>26</sup>

**NOPD did not systematically collect Place of Last Drink (POLD) Data.** Police did not systematically collect information about where a motorist was drinking before getting arrested on DWI charges.<sup>27</sup> NOPD's contract with the Louisiana Highway Safety Commission calls for police to conduct sobriety checkpoints and DWI patrols in "high-risk" locations; place of last drink data provides the geographic data necessary for these targeted efforts.<sup>28</sup>

**RECOMMENDATION 1. NOPD SHOULD ADOPT INNOVATIVE TECHNIQUES TO CURTAIL IMPAIRED DRIVING AND GIVE PROSECUTORS THE EVIDENCE THEY NEED TO CONVICT IMPAIRED MOTORISTS.**

**NOPD should implement a No Refusal Program.** In 2012 the lieutenant in charge of the SOD Traffic Unit developed a blueprint for a No Refusal program, but the program was never implemented. NOPD should review the proposal developed in 2012, make any necessary changes consistent with model practices recommended by the U.S. Department of Transportation and the National Highway Traffic Safety Administration, and begin implementing it on a pilot basis. Once NOPD has gathered data demonstrating that the program it has implemented is effective, it should be fully implemented.

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<sup>26</sup> Ibid., 7.

<sup>27</sup> These data could also be used by the City to identify nuisance bars.

<sup>28</sup> On Dec. 30, 2014, the City issued RFP No. 2740-01774 in search of a vendor to provide an electronic citation issuance system. On April 1, 2015, the selection committee chose a vendor, the Oklahoma company Saltus Technologies, and voted to enter into contract negotiations. The specifications for the electronic ticket system included GPS coordinates that would enable the City to identify traffic hotspots. The desired system would also allow a police officer to enter other relevant location information, such as the address of a bar where a driver had been drinking.

**Police should hire or train a Drug Recognition Expert.** The specific training of a Drug Recognition Expert (DRE) would help police accurately record the observed behaviors that must be part of their documented evidence in order for prosecutors to convict drug-impaired drivers in court. NOPD took an important step in 2012 when it gave 18 officers certification training in Advanced Roadside Impaired Driving Enforcement (ARIDE), a program that is intended to give officers some background in identifying drug impairment. In addition, NOPD should increase officers' credibility as witnesses in drug-impaired driving cases further by certifying one or more officers as Drug Recognition Experts.

**NOPD should introduce video evidence in all DWI cases.** Video evidence should be routinely passed to prosecutors in DWI cases to provide compelling visual and audio evidence in DWI cases. NOPD now equips officers with body cameras in addition to camera systems installed in NOPD vehicles, so this valuable evidence should be even more readily available than it has been in the past.

**NOPD should collect Place of Last Drink Data during all DWI stops.** NOPD officers could readily collect place of last drink data along with information collected during a DWI arrest. The geographic mapping of place of last drink and location of arrest data could increase the effectiveness of NOPD checkpoints and patrol assignments by identifying locations at high risk for impaired drivers.

## IV. DWI CASE RECORDS MANAGEMENT

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Deputies at the Orleans Parish Sheriff's Office (OPSO) booked the arrested motorist, recorded the arrestee's address and birth date, and photographed him or her. If a detainee posted bond, OPSO generated a court date and a subpoena ordering the driver to appear at Traffic Court a few weeks later. If the motorist was unable to post bond, OPSO assigned the case to a court section and the arrestee stayed in jail until a deputy took him directly to court for first appearance the next day Traffic Court was in session.<sup>29</sup>

*DWI Adjudication  
Process Map: the  
Paperwork*

### ARREST TO COURT FILING

Early each morning court was in session, an OPSO deputy delivered DWI booking paperwork to the Clerk of Court's secretary at Traffic Court. Court employees typed in basic case information and scanned case documents into the court's computer system. The deputy returned to Central Lock-Up to pick up DWI detainees for first appearance, which was held in the court section assigned by OPSO. Following the first appearance, another court secretary randomly allotted the cases to court sections for adjudication.

*DWI Adjudication  
Process Map: the  
Driver*

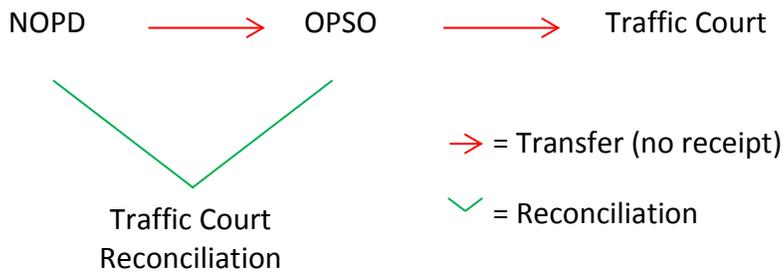
**FINDING 2. NOPD, OPSO, AND TRAFFIC COURT DID NOT HAVE ADEQUATE CONTROLS OVER THE TRANSFER OF DWI RECORDS FROM ONE AGENCY TO ANOTHER; AS A RESULT, THERE WAS NO WAY TO VERIFY THAT ALL DWI ARRESTS WERE ENTERED INTO TRAFFIC COURT'S CASE MANAGEMENT SYSTEM AND WERE PROSECUTED.**

Evaluators reviewed the transfer of DWI defendant records from NOPD to OPSO, from OPSO to Traffic Court, and then from Traffic Court to the prosecuting city attorneys. Evaluators found few procedural controls in place to ensure that an arrestee's paperwork resulted in a case filing in Traffic Court. Figure 2 shows the system's vulnerabilities.

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<sup>29</sup> Graphics depicting DWI processes are available in Appendix A, "The DWI Adjudication Process: The Paperwork," and Appendix B, "The DWI Adjudication Process: The Driver."

**Figure 2.** Transfer of DWI Records



First, NOPD did not receive written documentation that it delivered DWI arrestees to OPSO or keep records of DWI arrests made by police officers.<sup>30</sup> Evaluators requested a complete list of arrests from NOPD in order to reconcile the documentation among the three agencies, but NOPD could not provide a list of DWI arrests.<sup>31</sup>

Second, Traffic Court’s police liaison secretary reconciled cases NOPD filed at the Court with booking information from OPSO. However, if the Court’s reconciliation revealed a discrepancy, there was no way to determine if the error originated with NOPD or OPSO. NOPD could not verify it had delivered an arrestee to OPSO because officers did not receive receipts when they dropped arrestees off at OPSO for booking; there was also no way to verify that OPSO deputies had appropriately booked every arrestee delivered to them.

Third, although the Court reconciled records between NOPD and OPSO, Court employees did not sign a log when they received DWI paperwork from OPSO. As a result, there was no separate record indicating the Court had received the documents in the event a case did not subsequently appear on the Court docket.<sup>32</sup> Further, the City had no way to confirm whether Traffic Court acted on

<sup>30</sup> NOPD referred evaluators first to the Court for the information and then to OPSO. OPSO told evaluators that deputies used to give police officers receipts verifying that an arrestee had been transferred to sheriff’s custody, but the practice stopped because police officers told deputies they did not want to wait.

<sup>31</sup> The Court received the “Daily Report of Violations,” which a Traffic Court secretary called an arrest register, from NOPD the day following the arrest, and original arrest paperwork within a week or two following the arrest; NOPD did not provide a copy of this report to evaluators. In the absence of an independent count of DWI cases from NOPD, evaluators compared the Court’s count of DWI cases to handwritten logs of Intoxilyzer tests and refusals submitted to Louisiana State Police.

<sup>32</sup> OPSO staff stated that it required signatures from Traffic Court workers before Hurricane Katrina, but that the practice of signing paperwork logs stopped after the storm. OPSO

all DWI arrests since NOPD did not give copies of the Daily Report of Violations to prosecutors.<sup>33</sup>

Fourth, there was no check that Court employees entered all DWI arrests into the case management system. As a result, a case could be misplaced if reassigned to another court division.<sup>34</sup> Similarly, city attorneys prosecuting cases could not be sure they had received all cases from Traffic Court because there was no procedural check in place to alert the Law Department if a case did not appear on the docket.

There was also the possibility that a case could be diverted intentionally without notice or any record of the change because there were no controls in place to monitor a case's progress through the court system.

In addition, city attorneys did not receive arrest information directly from NOPD, which delayed legal assistants' driver history research; the delay foreshortened prosecutors' time to prepare, potentially influencing case outcomes. DWI defense attorneys at a legal education seminar confirmed that they had clients who pleaded guilty to DWI before prosecutors discovered DWI convictions in other states that could have enhanced defendants' sentences. City attorneys needed prompt access to arrest information to complete research before arraignments, which were typically held three to four weeks after a DWI arrest.

The absence of a rigorous system of checks on the transfer of court documents created two major problems. First, without a system of checks and a way to audit the process of transferring case documents from one agency to another,

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reinstated the process after evaluators questioned the verification of paperwork hand-offs in interviews. Regardless, the Traffic Court employee who received the paperwork said the logs were still flawed, because the forms did not provide a way to document that the paperwork was incomplete. The Traffic Court employee also said that OPSO stopped sorting booking paperwork by court section and matching it up with booking information in each case, as it continued to do for Municipal Court. OPSO lost its ability to verify whether documentation was complete by omitting the practice of sorting and matching the booking paperwork.

<sup>33</sup> At Traffic Court the police initiated DWI legal proceedings with affidavits in the form of traffic citations. Louisiana law empowered either the police or the Law Department to file DWI charges against motorists in Traffic Court. According to La. R.S. 13:2512, "... all proceedings in the municipal and traffic courts of New Orleans shall be initiated by affidavit or bill of information. The affidavit shall consist of the sworn statement of the complainant, or the police officer, filed with the court on a form approved by the respective court... . The city attorney of the City of New Orleans or any of his assistants may also initiate prosecutions by affidavit or bill of information on information and belief in the municipal and traffic courts of New Orleans."

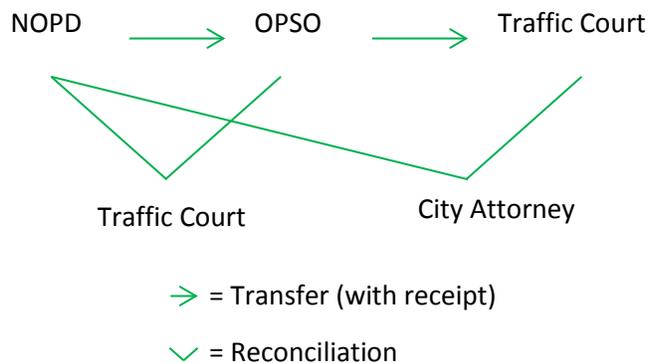
<sup>34</sup> Cases might be reassigned if the defendant already had a pending DWI charge in another division or if the judge or city attorney had a conflict of interest.

there was no safeguard against abuse. Second, there was no way to verify the effective and consistent administration of justice.<sup>35</sup>

**RECOMMENDATION 2. NOPD, OPSO, AND TRAFFIC COURT SHOULD INSTITUTE CONTROLS BY WHICH A THIRD PARTY VERIFIES THE TRANSFER OF DWI RECORDS TO ENSURE TIMELY AND ACCURATE DOCKETING OF ALL DWI ARRESTS, AND CITY ATTORNEYS SHOULD RECEIVE IMMEDIATE NOTIFICATION OF DWI ARRESTS FROM NOPD.**

NOPD, OPSO, and Traffic Court should institute controls to document the transfer of DWI records, hold people accountable for record keeping, and monitor the progress of cases through the system. For example, NOPD and OPSO could begin requiring receipts when they deliver documents. NOPD should also deliver copies of arrest information to the Law Department so that prosecutors can reconcile cases between NOPD and the Court. Traffic Court should also continue to reconcile documentation from NOPD and OPSO. This process is illustrated in Figure 3.

**Figure 3.** DWI Transfers with Receipts and Reconciliation



Second, OPSO should match the DWI booking paperwork with bond paperwork and sort each bundle by initial court section assignment to speed up processing at Traffic Court. Implementing this practice should also make it easier for OPSO and Traffic Court to verify that the information delivered is complete. OPSO should also redesign its DWI logs so that Traffic Court can more easily identify incomplete paperwork and document which pieces are missing.

In addition, NOPD should keep a searchable record of all DWI tickets issued and, if possible, use electronic citations for DWI arrests.<sup>36</sup> Departments in many other

<sup>35</sup> Bach, *Ordinary Injustice*.

cities have moved to electronic citations and reports, which reduces the possibility of lost tickets and can improve efficiency by streamlining operations for the agencies that manage DWI cases.<sup>37</sup>

Electronic citations could also facilitate collecting and analyzing data to improve prosecution and give NOPD new information about where best to deploy its resources to reduce drunk driving. Electronic citations should allow police officers to spend more time on patrol, potentially increasing NOPD's capacity to apprehend DWI offenders and improving the odds that police officers will appear in court when it is time to prosecute.<sup>38</sup>

Lastly, electronic citations have the potential to reduce not only the number of Traffic Court workers who are needed to process tickets but the risk that DWI paperwork could get lost. Relying on paper citations increased the chances of errors that could cause DWI cases to get downgraded on technicalities.<sup>39</sup>

Verifiable controls governing the maintenance and handling of records should make it possible for the Court to monitor the progress of cases, employ resources efficiently, and ensure that all cases are processed consistently. Implementing these steps would place documentable controls on each party's role in the early stages of the DWI adjudication process by creating a reliable audit trail.

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<sup>36</sup> An electronic citation system should include features for electronic receipts for custody transfers; even without an electronic system, OPSO should work with police to find a faster way to give officers the transfer-of-custody receipts they need. The LHSC launched a pilot program in fall 2013 to give police and prosecutors in two parishes software for electronic arrest report forms for DWI cases to reduce errors and improve the quality of information available about DWI arrests.

<sup>37</sup> NOPD implemented an electronic citation system after Hurricane Katrina, but it reportedly did not work.

<sup>38</sup> The City's Information Technology and Innovation department researched the costs and benefits of purchasing an electronic citation system and learned that ticket writing increased in cities with e-citation systems because officers spent less time on the side of the road filling out forms. Also, the manager at ITI said he thought that any e-ticket system that the City purchased could also include an electronic subpoena and calendar system function. Traffic Court does not participate in the electronic subpoena and calendaring system that other New Orleans courts use to notify police.

<sup>39</sup> The City recently took steps to address this issue: in late 2014 the City issued a request for proposals for an electronic traffic citation system. On April 1, 2015, a selection committee chose a vendor, Saltus Technologies, and voted to enter into contract negotiations.

**FINDING 3. A TRAFFIC COURT EMPLOYEE FREQUENTLY TOOK BOOKING PAPERWORK HOME RATHER THAN DELIVERING IT DIRECTLY FROM OPSO TO THE COURT, CALLING INTO QUESTION THE INTEGRITY AND COMPLETENESS OF OFFICIAL RECORDS.**

On weekdays the Sheriff's Office delivered booking paperwork to court according to policy, which called for an OPSO employee to sort the booking and bond paperwork at OPSO before delivering it to Traffic Court. However, at some point OPSO stopped sorting the paperwork for Traffic Court, and following weekends and holidays, the Traffic Court employee who received the paperwork did not have sufficient time to prepare cases for court hearings. She said the large numbers of DWI arrests often made it difficult to prepare cases for court hearings before arrestees arrived at Court from the jail on Monday mornings or the first work day after a holiday weekend. The employee solved the problem by picking up DWI booking paperwork at OPSO on Sunday afternoons and many holidays, sorting the paperwork for the next work day, and taking the paperwork home overnight.<sup>40</sup>

However, this practice placed the security and integrity of official paperwork in question. Transporting documents essential to the initiation of a case to and from a personal residence increased the risk of misplaced or lost documents and undermined confidence that all DWI arrests resulted in official case filings. Further, there might be no way of knowing that a document was missing since booking paperwork transfers did not result in a reliable audit trail. Finally, the practice left the court employee in a highly vulnerable position had there been any question about the integrity of the documents.

Regardless of how well meaning the practice might be, the act of taking DWI booking paperwork home was an example of Traffic Court's informal approach to record keeping and the processing of DWI cases.

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<sup>40</sup> Upon learning of the unofficial Sunday paperwork pick-ups, the director of intake and processing at OPSO directed OPSO staff not to release anything unless the Traffic Court representative signed for the paperwork.

**RECOMMENDATION 3. TRAFFIC COURT ADMINISTRATORS SHOULD ESTABLISH A WORKLOAD-BASED APPROACH FOR PREPARING DWI PAPERWORK DESIGNED TO MAINTAIN THE INTEGRITY AND SECURITY OF ESSENTIAL DOCUMENTS.**

Maintenance of court records is a critical court function.<sup>41</sup> Traffic Court administrators should develop policies and procedures for receiving DWI paperwork from weekends and holidays that ensures the security of official court documents and provides court employees sufficient time for processing defendants' paperwork. For example, Traffic Court could schedule two people to process paperwork in the Clerk's office on Monday mornings or schedule first appearances at court an hour later on Mondays.

Traffic Court administrators should also ask OPSO to resume sorting DWI booking and bond paperwork in the same way that it organizes paperwork for Municipal Court. Doing so should help ensure that the documentation OPSO provides is complete and reduce the workload on Monday mornings and after holiday weekends.

**CASE FILING TO CLOSING**

State law gave Traffic Court the responsibility for adjudicating misdemeanor traffic violations in New Orleans.<sup>42</sup> However, evaluators' examination of court records revealed thousands of long-standing open cases, suggesting Traffic Court had difficulty closing the cases brought before it.

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<sup>41</sup> Comprehensive guidelines for record management generally include rules for maintaining court records, such as the establishment of case files, the storage and access of older files, and the disposal of files according to a records retention policy. They also provide instruction for documenting the receipt of paperwork required for case initiation; ensuring the file's completeness; and maintaining its integrity, especially during the transfer of case files and documents. See, for example, Judicial Council of California, *Trial Court Records Manual* (San Francisco: Judicial Council of California, 2014), accessed October 12, 2014, at <http://www.courts.ca.gov/documents/trial-court-records-manual.pdf>; Michigan Supreme Court, *Michigan Trial Court Case File Management Standards* (Lansing, MI: Michigan Super Court State Court Administrative Office, July 2014), accessed October 12, 2014, at [http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf\\_stds.pdf](http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf); and the National Center for State Courts website at <http://www.ncsc.org/Topics/Technology/Records-Document-Management/Resource-Guide.aspx>.

<sup>42</sup> La. R.S. 13:2501.1.

**FINDING 4. TRAFFIC COURT RECORDS REVEALED THOUSANDS OF LONG-STANDING OPEN DWI CASES, POTENTIALLY ALLOWING DRIVERS TO AVOID COURT-ORDERED PENALTIES AND THE PAYMENT OF FINES AND FEES.**

Evaluators found 14,635 open DWI cases that had been filed in Traffic Court from 1989 through 2009, demonstrating that Traffic Court was not effectively tracking cases and bringing them to closure.<sup>43</sup> The chief administrative judge at Traffic Court could not explain what the open cases were or why there were so many of them, but noted that there were many reasons why a case could remain open.<sup>44</sup>

The cost to the City could be significant: if the drivers in half the open DWI cases through 2009 were found guilty of first-offense DWI and assessed a fine of \$600, the City would have received an additional \$4.4 million.<sup>45</sup>

Potential financial losses aside, the existence of longstanding open cases and an examination of associated information provided by the Court revealed shortcomings in Traffic Court's ability to track information, manage cases, and effectively and efficiently fulfill its function.

- Some 8,109 cases were at least 20 years old at the time of evaluators' review. Long-standing open cases would likely not have been prosecutable because details of cases would be hard to substantiate so long after the fact. Also, witnesses would be difficult to locate and their testimony less reliable.
- Evaluators found at least 40 open cases in which the drivers were deceased.<sup>46</sup>

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<sup>43</sup> Evaluators requested data in 2013, and approximately one third of the 14,635 open DWI cases (4,657 cases) listed February 14, 1989 as their start date. However, many of these cases may have been even older. A court employee said that in 1989 the Court implemented the system in use at the time of evaluators' review and speculated that a large amount of data may have been imported at that time. Evaluators restricted the 2013 review to all open cases filed before January 2010, assuming cases filed after 2010 could still have been in process. Evaluators considered cases open if they were unadjudicated, if a driver had pleaded or was found guilty but had not paid fines or fees, if the driver had failed to show up for a court date, or if the case had been adjudicated but the case disposition information had not been sent to the Office of Motor Vehicles.

<sup>44</sup> Evaluators attempted to conduct a more detailed analysis of number of cases that were pending rather than adjudicated with unpaid fines, and to examine whether the court had issued arrest warrants, but additional data provided by the court proved unreliable.

<sup>45</sup> The range of penalties for first-offense DWI is \$300 to \$1,000. The citation for the law that was in effect during the period of this review is La. R.S. 14:98(B)(1). The DWI law was reorganized during the 2014 legislative session, and the current citation for the range of penalties is 14:98.1.A.(1).

- Traffic Court had no written policy and did not consistently implement a system governing who should issue arrest warrants, when they should be issued, when to recall the warrants, and how to track and document the process.<sup>47</sup> As a result, variability among sections of Traffic Court was evident in evaluators' sample of 80 DWI cases from the first half of 2012: in one division there were two warrants issued after a delay of three and four months, respectively; other court sections issued warrants promptly. Evaluators also reviewed case files that noted a warrant had been issued and then recalled without documenting the reason for the recall.

In sum, there was no assurance that warrants would be issued consistently, that the Court would know whether or not an individual complied with a warrant, or that the reason the Court recalled a warrant would be documented in the record.

**Case Study #2:** Matters such as issuing arrest attachments and implementing a case management system that guards against long-standing open cases were more than academic. In 2012 news stories reported that a New Orleans resident had been arrested at least eight times in Orleans Parish for DWI but had never stood trial.

The driver frequently failed to show up in court. Attachments for his arrest were issued three times, but in two instances, the arrest attachments were recalled without explanation, and he went free for years.

The case also illustrates the importance of sending a copy of police DWI arrest lists to the Law Department as a check on Traffic Court. The defendant was never arraigned on DWI charges, and prosecutors had no way of knowing that his cases existed because they were not aware of cases at Traffic Court until arraignment.

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<sup>46</sup> Evaluators conducted a cursory search of Traffic Court's case management system for cases in which defendants had died but the case files remained open. Starting with the oldest cases, evaluators looked for the oldest defendants and then checked names against death records. They stopped after identifying 40 deceased individuals; according to Traffic Court's system, 31 had pending cases with active arrest warrants, and nine had gone through the adjudication process at Traffic Court but had unpaid fines.

<sup>47</sup> During the time of this review, Traffic Court administrators and judges and the Law Department were engaged in an ongoing discussion about who was responsible for issuing arrest attachments and recalling bonds. Questions about which system actors were responsible for issuing arrest attachments arose after news stories revealed in 2012 that a man had been arrested ten times for drunk driving in New Orleans but had never been prosecuted. (see Case Study #2.) After the stories broke, the Chief Deputy City Attorney at Traffic Court worked with the Court's IT department and discovered 55 instances from 2000 to 2012 in which repeat DWI offenders had unresolved cases. The Clerk of Court at Traffic Court then researched these cases and learned that 15 had no arrest warrants, meaning the cases could have expired, and 27 had arrest warrants, but the drivers had not been brought into court. The remaining 13 cases were current or had been resolved.

**Case Study #3:** Evaluators' random sample included a man who was arrested at 9:30 a.m. on a weekday in February 2012. He had passed out behind the wheel of his car on Orleans Avenue while the keys were still in the ignition. His record of arrest and prosecution (rap) sheet showed five previous DWI arrests in New Orleans, but only one of those cases could be found at Traffic Court.

There was no court record resulting from DWI arrests in December 1983, January 1986, March 1986, and February 1998. Records show the fifth arrest in August 1998 was the only one adjudicated; it was downgraded to reckless operation.

All five of these prior cases were too old to count toward charging the motorist as a repeat offender. However, the case begs the question: how and why was there nothing in the court record about these four arrests?

The driver pleaded guilty to first-offense DWI in January 2013.

**RECOMMENDATION 4. TRAFFIC COURT SHOULD DEVELOP A MONITORING SYSTEM THAT IDENTIFIES CASES THAT HAVE BEEN INACTIVE OR OTHERWISE NOT CLOSED AFTER A GIVEN PERIOD OF TIME TO ENSURE THAT CASES ARE ADJUDICATED AND REACH CLOSURE, AND THAT OFFENDERS COMPLETE COURT-ORDERED INSTRUCTIONS AND ALL POSSIBLE FINES AND FEES ARE COLLECTED.**

The National Center for State Courts recommends using age of active pending caseload as a performance measure because "once the age spectrum of cases is determined, the court can focus attention on what is required to ensure cases are brought to completion within reasonable timeframes."<sup>48</sup>

Traffic Court should develop an agreed-upon policy for and create a system to flag cases that remain inactive or incomplete for a period of time due to non-payment of fines or non-fulfillment of other court-ordered consequences.<sup>49</sup> These measures should help Traffic Court ensure that all cases are adjudicated and that each case is closed. These steps could also increase the amount of fines collected by the Court.

Prosecutors should request that the Court purge the system of cases they determine too old or too weak to prosecute successfully and terminate any open arrest warrants in those cases. Evaluators also suggest that Traffic Court

<sup>48</sup> National Center for State Courts, *CourTools: Giving the Courts the Tools to Measure Success, "Age of Active Pending Caseload"* (Williamsburg, VA: National Center for State Courts, 2005), 1.

<sup>49</sup> Traffic Court officials said that the Court's new case management system has the ability to run "case-aging reports."

periodically do a search of obituaries and close cases in which drivers are deceased.<sup>50</sup>

Finally, Traffic Court should develop a policy and protocols governing the issuance of warrants and their subsequent recall, and methods for tracking and documenting actions taken.

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<sup>50</sup> Traffic Court plans to clean up old data as part of the implementation of its new computer system. Staff anticipate that this process could take several years.

## V. DWI CASE PROSECUTION: CITY ATTORNEYS

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According to the National Traffic Law Center, a program of the National District Attorneys Association:

DWI cases are among the most challenging and technical criminal cases that prosecutors will ever handle. They are often confronted by vigorous defense efforts ... . Successful prosecution of DWI cases therefore requires careful attention and presentation in a professional and thorough manner.<sup>51</sup>

New Orleans city attorneys approached the prosecution of DWI cases casually: they did not formally screen cases or make charging decisions; supervision and oversight of part-time attorneys was neither consistent nor systematic; and there were no written policies or procedures guiding the performance of prosecutorial functions and responsibilities. These practices appeared to undermine the successful prosecution of DWI cases, especially of drivers in the highest risk categories.

### **SCREENING AND CHARGING**

State statute permitted police to initiate DWI cases in Traffic Court through traffic citations.<sup>52</sup> After Traffic Court employees logged DWI cases into the Court's system, a secretary in the Clerk of Court's office allotted each case to one of the four Traffic Court divisions. Traffic Court then sent the cases to the Law Department, where a legal assistant logged the cases into the attorneys' computer system, began a paper file for each case, and separated the files by court division.<sup>53</sup>

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<sup>51</sup> National Traffic Law Center, *DWI Prosecutor's Handbook*, 21, accessed November 10, 2014, <http://www.nhtsa.gov/Driving+Safety/Enforcement+&+Justice+Services>.

<sup>52</sup> According to La. R.S. 13:2512, "... all proceedings in the municipal and traffic courts of New Orleans shall be initiated by affidavit or bill of information. The affidavit shall consist of the sworn statement of the complainant, or the police officer, filed with the court on a form approved by the respective court ... . The city attorney ... may also initiate prosecutions by affidavit or bill of information and belief in the municipal and traffic courts of New Orleans."

<sup>53</sup> The legal assistant checked to make sure that the file contained the arrest registry, the results of the Intoxilyzer test, the results of the field sobriety test, and the NOPD narrative of the incident. The assistant also began a criminal history search and requested accident reports.

**FINDING 5. CITY ATTORNEYS DID NOT SCREEN CASES ACCORDING TO ESTABLISHED STANDARDS OUTLINED IN AMERICAN BAR ASSOCIATION AND NATIONAL DISTRICT ATTORNEYS ASSOCIATION STANDARDS FOR PROSECUTION, THEREBY UNDERMINING THEIR PROSECUTORIAL ROLE AND INCREASING THE COURT'S WORKLOAD.**

According to the American Bar Association, “the decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor,” who should make a decision to charge based on established “standards and procedures for evaluating complaints” brought before them.<sup>54</sup> By law NOPD officers could initiate a case by filing a DWI citation with the Court, but prosecutors remained responsible for screening cases and determining whether or not there was sufficient evidence to prosecute.<sup>55</sup>

The Louisiana Attorney Disciplinary Board’s *Rules of Professional Conduct* reiterates these responsibilities in its section on the “special responsibilities of a prosecutor”: “a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous ...” and should “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.”<sup>56</sup> These responsibilities are key defining elements of the prosecutorial function in an adversarial system of justice.

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<sup>54</sup> American Bar Association, *Criminal Justice Standards*, “Prosecution Function,” (Chicago: American Bar Association, 2014), accessed October 15, 2014, [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_pfunc\\_blk.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pfunc_blk.html), Standard 3-3.4. According to the National District Attorneys Association (NDAA), “it is the ultimate responsibility of the prosecutor’s office to determine which criminal charges should be prosecuted and against whom,” NDAA, *National Prosecution Standards 3<sup>rd</sup> Ed.*, “4-2.1 Prosecutorial Responsibility,” (Alexandria, VA: National District Attorneys Association, 2009), 52, accessed October 15, 2014, <http://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>. NDAA is the only national organization that defines standards specifically for U.S. state and local prosecutors, but its guidelines are not binding. That said, the standard should guide practice: the prosecutor should “establish standards” and be able to “explain the screening process to victims, witnesses, officers, and investigators so that they understand the outcome.” Bach, *Ordinary Injustice*, 141.

<sup>55</sup> La. R.S. 13:2501.1 (F) “In addition, every prosecution in the Traffic Court of New Orleans under state law shall be filed in the court by affidavit or bill of information under the provision of state law defining the offense and such prosecution shall be brought by the city attorney of New Orleans.” See also La. R.S. 13:2512 in footnote 52.

<sup>56</sup> See Rules 3.1 and 3.8, Louisiana Attorney Disciplinary Board, *Louisiana Rules of Professional Conduct* (Metairie, LA: Louisiana Attorney Disciplinary Board, rev. 2011), 37 and 41.

Not all city attorneys practicing in Traffic Court understood their prosecutorial responsibility to screen cases and make a charging decision. One city attorney asserted that police officers determined whether a driver should be charged and for what level of offense, and city attorneys seldom amended charges. “We don’t charge; it’s the officers,” stated the city attorney; “it’s up to the police officer to determine how he’ll charge the defendant.”

Omitting the screening process undermined effective DWI case prosecution in several ways. First, city attorneys weakened their role as prosecutors by failing to screen cases and investing in police officers the authority to determine how the defendant would be charged. Second, when city attorneys accepted all DWI cases for prosecution without screening or evaluating the evidence, they lost the opportunity to identify weaknesses in their own cases; instead, they relied on defense attorneys to alert them to obvious problems with cases.<sup>57</sup>

City attorneys’ practice of relying on opposing counsel to alert prosecutors to problems with cases suggested a “collegiality and collaboration” that undermined the adversarial system of justice. Although collegiality and collaboration may be admirable in other fields, “in the practice of criminal justice they are in fact the cause of system failure.”<sup>58</sup>

Whether through friendship, mutual interest, indifference, incompetence, or willful neglect the players end up not checking each other and thus not doing the job the system needs them to do if justice is to be achieved.<sup>59</sup>

Third, conducting driver research prior to screening cases and filing a bill of information to initiate the case in court could have an added benefit: city attorneys could re-start the case and give themselves additional time to conduct driver research.

Fourth, city attorneys did not make deliberate, considered decisions about whether to invest public resources in and form a strategy for prosecuting DWI cases. The decision to accept all cases for prosecution meant that all cases ended up on the Court’s docket, increasing the Court’s workload. As a result, Traffic Court, prosecutors, support staff, and defendants committed time and resources

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<sup>57</sup> According to the Chief Deputy City Attorney, prosecutors review cases after arraignment, but her office was too short-staffed to have a formal screening process. Instead, defense attorneys would notice obvious problems with a case and alert prosecutors to them.

<sup>58</sup> Bach, *Ordinary Injustice*, 6.

<sup>59</sup> *Ibid.*

to cases in which charges may not have been “supported by probable cause” and/or for which there was not “sufficient admissible evidence to support a conviction.”<sup>60</sup>

Fifth, the absence of formal screening increased the likelihood that incorrect information could be entered into the Court’s case management system, compromising staff’s ability to conduct driver research. Traffic Court employees received citations directly from NOPD and entered information into the Court’s case management system exactly as it appeared on the citation. Any nicknames, aliases, misspellings (e.g., names misspelled due to the absence of a driver’s license at the time of arrest), or information incorrectly recorded during the arrest would be saved in the court’s system. When a driver’s identifying information in previous records did not match new information, driver history research could miss previous DWI offenses.<sup>61</sup>

Finally, interviews with city attorneys indicated that negotiating plea deals appeared to occur absent evidence regarding an individual offender’s risk to reoffend; his risk to public safety; and without regard for proven, research-based methods of influencing an offender’s criminal behavior. Unless Traffic Court prosecutors made plea decisions based on available research, follow-up interventions would be unlikely to change offender behavior or reduce recidivism. According to a report sponsored by the National Institute of Corrections,

Perhaps no other justice system process has as profound an effect on harm reduction as plea negotiations. To be successful in reaching the goal of public safety, plea negotiation practices should be guided by research.<sup>62</sup>

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<sup>60</sup> ABA, “Prosecution Function,” Standard 3-3.9.

<sup>61</sup> Law Department staff searched the National Crime Information Center (NCIC) database for information on previous arrests and possible convictions for DWI. A Jefferson Parish official noted that prosecutors in Jefferson Parish file a bill of information, which supersedes the ticket and enables prosecutors to fix mistakes on tickets that could give defense attorneys the ability to contest charges.

<sup>62</sup> National Institute of Corrections, *A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems*, 3<sup>rd</sup> ed. (Washington, D.C.: National Institute of Corrections, 2010), 34.

**RECOMMENDATION 5. THE LAW DEPARTMENT SHOULD RECEIVE COPIES OF DWI CASES DIRECTLY FROM NOPD AND FOLLOW NDAA AND ABA PROSECUTORIAL STANDARDS REGARDING SCREENING CASES AND MAKING CHARGING DECISIONS; CITY ATTORNEYS SHOULD FILE BILLS OF INFORMATION IN DWI CASES TO INITIATE PROSECUTION.**

Drunk driving poses a serious threat to public safety, and these cases should compel a thorough and vigorous response from prosecutors and the Court. City attorneys should receive copies of citations directly from NOPD when police deliver tickets to Traffic Court. Placing citations directly into the hands of prosecutors would permit prosecutors to correct any errors or omissions in identifying information, screen cases to ensure both probable cause and sufficient evidence are present, make a deliberate charging decision, and establish a way to check that the Court enters all citations into its case management system.<sup>63</sup>

Screening cases and making charging decisions are key prosecutorial functions that could improve the quality of DWI cases brought before the Court and reduce Traffic Court's workload. Although state law permits police officers to initiate cases, the reasons listed above suggest the practice may undermine case prosecution. Moreover, state law expressly permits prosecutors to initiate cases and evaluators recommend that city attorneys routinely file a bill of information in Traffic Court after reaching the decision to charge. This action should supersede the police citation at Traffic Court and re-start the case, giving city attorneys and legal assistants additional time to complete initial driver research and correct any inaccuracies on the citation.<sup>64</sup>

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<sup>63</sup> City attorneys in Traffic Court each received an average of seven new cases per week.

<sup>64</sup> The Jefferson Parish DA files bills of information in DWI cases and other documents in JeffNet, the Parish's case management system, where they are available to defense attorneys. Defense attorneys must file a motion for discovery to receive copies of blood tests or videos of the arrest. There is precedence for this approach in New Orleans as well: the Chief Deputy City Attorney at Traffic and Municipal courts said that her attorneys in Municipal Court sometimes file bills of information in Municipal Court when there are problems with police citations.

## PROSECUTING DWIs

**FINDING 6. CITY ATTORNEYS PROPOSED SENTENCES ASSOCIATED WITH SECOND OFFENSE DWI IN ONLY 1.7 PERCENT OF DWI CASES, DOWNGRADED 84 PERCENT OF CASES WITH HIGH BAC READINGS TO LESSER CHARGES, AND REDUCED DWI CHARGES TO RECKLESS OPERATION IN 20 PERCENT OF CASES WITHOUT ESTABLISHING WRITTEN CRITERIA FOR PROSECUTORIAL DISCRETION AND PLEA BARGAINS AS RECOMMENDED BY NDAA AND ABA STANDARDS.**

American Bar Association standards state that every prosecutor's office should develop a written policy to "guide the exercise of prosecutorial discretion" in order to "achieve a fair, efficient, and effective enforcement of the criminal law." In fact, "in the interest of continuity and clarity," all office policies and procedures should be "maintained in a handbook."<sup>65</sup>

NDAA standards state: "the prosecutor should make the existence and terms of [a plea agreement] part of the record," and "maintain the reasons for the disposition in the case file."<sup>66</sup> By providing a transparent record of the process, such actions also guard against the possibility that the prosecutor could be accused of a "miscarriage of justice."

The Law Department did not have a written policy or procedures to guide prosecutorial discretion nor was there evidence in prosecution files of the reasons justifying plea agreements and decisions to downgrade cases or reduce penalties. As a result, case files offered no explanation for the large percentage of cases in which city attorneys reduced high BAC levels or for the smaller portion of second offense DWIs compared with other reported averages in the United States.

One reason evaluators found few second offense DWIs among case files was that city attorneys downgraded approximately one-fifth of DWI cases to reckless operation of a motor vehicle, for which lower fines and penalties apply.<sup>67</sup> When

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<sup>65</sup> ABA, "Prosecution Function," 3-2.5. The standards further advise that the handbook should be made available to the public, except when "it is reasonably believed that public access to their contents would adversely affect the prosecution function."

<sup>66</sup> NDAA, *National Prosecution Standards*, "5-5.1 Record of Plea Agreement," 72.

<sup>67</sup> City Attorney prosecutors began entering case dispositions into Traffic Court's new computer system in late December 2014. The new system will for the first time identify by name the prosecutor who resolved the case and capture charge reductions and other downgrades in the official record. However, as of early 2015 prosecutors' own case files remained on paper and there was no systematic or searchable way for Law Department managers to examine reasons

a case was downgraded to reckless operation, there was no first offense DWI conviction, without which prosecutors would be unable to pursue enhanced penalties in a future offense. From 2007 to 2012, charges were reduced to reckless operation in 1,088 of the closed 5,060 DWI cases. As with the reduction of BAC levels, it was similarly impossible to know whether DWI cases were resolved with a reckless operation plea because of a weakness in the case or because they had been influenced by factors not relevant to the facts in the case.

### **SECOND-OFFENSE DWIS**

Traffic Court's case management system recorded 6,714 DWI cases from 2007 to 2012. Approximately 1.7 percent of those cases (117) were labeled second-offense DWI cases; in evaluators' sample of 80 DWI case files from the first half of 2012, evaluators found one person identified as a second offender.<sup>68</sup>

Numerous studies suggest these numbers were low. One study of drunk drivers in Maryland found that 24.3 percent of drivers arrested for DWI had a previous DWI violation.<sup>69</sup> Researchers in a second study followed 77 first-time DWI offenders for 12 years and found that 38 percent of them were convicted of a subsequent DWI.<sup>70</sup> Related research supports these higher rates of recidivism: 3 percent to 5 percent of drivers were responsible for "about 80 percent of drunken driving episodes, and the remaining 20 percent of DWI episodes are accounted for by the remaining 185 million drivers in the United States."<sup>71</sup>

The Chief Deputy City Attorney said she did not know why second-offense charges were so rare, but the quick resolution of cases took precedence over convictions for multiple offenses. Obtaining proof of prior DWI convictions from other parishes or other states could be a lengthy process, and prosecutors often opted for a quick resolution to first-offense charges rather than wait for the paperwork necessary to pursue second-offense penalties.

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for downgrades. NDAA's direction to document reasons for case dispositions referred to prosecutors' own files, not court files.

<sup>68</sup> At the time of this review, La. R.S. 14:98(C)(1) addressed second-offense DWI cases. The current version of the DWI law discusses second-offense DWI cases in La. R.S. 14:98.2

<sup>69</sup> William J. Rauch et al., "Risk of Alcohol-Impaired Driving Recidivism Among First Offenders and Multiple Offenders," *American Journal of Public Health* 100, no. 5 (May 2010): 919-924.

<sup>70</sup> Alan A. Cavaiola, David B. Strohmets, and Sandra D. Abreo, "Characteristics of DUI recidivists: A 12-year follow-up study of first time DUI offenders," *Addictive Behaviors* 32 (2011): 855-861.

<sup>71</sup> DeMichele and Lowe, "DWI Recidivism."

However, missing documentation in some files raised questions about whether research on driver history was routinely performed for all DWI cases: 13 (16 percent) of the 80 cases in evaluators' sample contained no rap sheets in the Law Department DWI files. Moreover, in five of those cases, the main DWI case files at Traffic Court indicated that the defendants had prior DWI cases. Evaluators also did not find any copies of certified convictions from other courts in case files.<sup>72</sup>

### **HIGH BAC LEVELS**

Evaluators' sample of 80 cases during the first six months of 2012 included 58 individuals who took the Intoxilyzer test, 31 of whom had high (0.15 and above) and very high (0.20 and above) BAC levels. Prosecutors downgraded BAC levels in 26 (84 percent) of these cases, and prosecutors preserved the high BAC reading in only one case.<sup>73</sup>

Drivers with high BACs are more dangerous than other intoxicated drivers: in fatal accidents in which alcohol was involved, 56 percent of drivers had a BAC above 0.15 and were 382 times more likely to be involved in a single-vehicle fatal crash than drivers who have not been drinking.<sup>74</sup> Under state law, the legal threshold for drunk driving is a blood alcohol concentration (BAC) of at least 0.08, but penalties increase for drivers who are excessively intoxicated.<sup>75</sup>

Regardless, city attorneys explained to evaluators that they routinely offered reduced sentences to defendants with high BAC readings because offering reduced sentences gave defendants an incentive to plead guilty. One assistant

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<sup>72</sup> City attorneys also did not develop witness lists or event timelines, as recommended in National Traffic Law Center, *DWI Prosecutor's Handbook*, 3, and 12-14. The National Traffic Law Center is a program of the NDAA.

<sup>73</sup> Three high-BAC cases were still pending in Traffic Court at the close of 2014. One high-BAC case had been transferred to Criminal Court for prosecution as a felony. Other records support the fact that the majority of drivers arrested for drunk driving have high BAC levels. Evaluators reviewed Intoxilyzer logs filed by NOPD and the Crescent City Connection Police Department in the first quarter of 2012 and determined that more than half of arrested drivers who took the Intoxilyzer had a high BAC reading (>0.15). This is consistent with evaluators' sample, in which 53 percent (31 of 58) had high or very high BAC readings.

<sup>74</sup> National Highway Traffic Safety Administration, *Traffic Safety Facts, 2009 Data, DOT HS 811 385* (Washington, D.C.: National Highway Traffic Safety Administration, U.S. Department of Transportation, 2009), 5, accessed October 30, 2014, <http://www.nhtsa.gov/staticfiles/ncsa/pdf/2010/811385.pdf>. See also, NHTSA, *Guide to Sentencing DWI Offenders*, 12-13. A prosecutor's rate of conviction is specifically listed in NDAA standards as a factor that should not be considered when deciding to exercise discretion. NDAA, *National Prosecution Standards*, "42.4 Factors Not to Consider," 125-26.

<sup>75</sup> La. R.S. 14:98 et seq.

city attorney told evaluators that the primary goal was to get a conviction. The possibility of stiffer penalties associated with high BAC levels “doesn’t matter to me,” she noted. “I’m still going to end up with a DWI conviction.”<sup>76</sup>

City attorneys lowered high BAC readings for plea deals by changing the information on the police citation. Police officers wrote the DWI charge and the Intoxilyzer reading on the traffic ticket, which served as the state’s affidavit.<sup>77</sup> City attorneys chose not to use Traffic Court’s case management system during the period of review for this project, so they recorded their actions by writing on the citation in Traffic Court’s paper file. When tickets indicated a BAC reading of 0.15 or above, prosecutors crossed out the reading and wrote 0.149, altering the official record of the arrest and providing no rationale for the change.

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<sup>76</sup> Traffic Court was staffed by part-time city attorneys who also maintained private practices and, as a result, might be motivated to reduce the time spent at Traffic Court by disposing of cases as quickly as possible.

<sup>77</sup> DWI is a state charge, and is normally prosecuted by district attorneys. In Traffic Court and other mayor’s courts in incorporated towns, city attorneys may be deputized by D.A.s and authorized to serve as prosecutors in state cases.

**Figure 4:** Example of a DWI ticket on which the prosecutor reduced the BAC reading as part of a plea deal

Fil. # B-03354-12 [ ] 10460698 [X]  
 STATE OF LOUISIANA  
 PARISH OF ORLEANS Jud. Dist. TRAFFIC court  
 Municipal SS Ward  
 The undersigned being duly sworn upon his oath deposes and says:  
 On the SAT 4 day of FEBRUARY 2012 at 3:48 A M.  
 Violator Name: [REDACTED]  
 Address: [REDACTED]  
 City N.O State LA Zip 70005  
 DOB: [REDACTED] Sex M Ht. 60 Eyes BRN  
 OLN: [REDACTED] STATE LA CLASS E  
 ID/Pseudo # [REDACTED] STATE [REDACTED]  
 Carrying  Commercial  CDL CRASH:  PROPERTY  INJURY  
 Haz Mat  Vehicle  FATALITY  
 Unlawfully operated YR. 07 MAKE DODGE MODEL TRUCK COLOR BLK  
 [REDACTED] 2013  
 Location ANDREW HIGGINS C  
TCHOUAFOULAS ST [REDACTED] [REDACTED]  
 VIOLATED AND WAS SUBSEQUENTLY ARRESTED FOR VIOLATION OF [STANDARD] 1190  
 operating a motor vehicle or other means of conveyance while under the influence  
 of an alcoholic beverage and/or a controlled dangerous substance, contrary to the  
 laws of the state of Louisiana and against the peace and dignity of the same  
 VIOLATION: 32:13.9 STOP SIGN  
32:58 CARELESS OPERATION  
32:78 DRIVING AGAINST TRAFFIC  
 CHILD 12 YEARS OR YOUNGER IN VEH.  
 VIDEO TAPE VCN: [REDACTED]  Radar # [REDACTED]  
 Arresting Officer (print) Signature  [REDACTED]  
C. Campbell Cory Campbell  
 THE ABOVE SWORN TO AND SUBSCRIBED BEFORE ME THIS  
4 DAY OF FEB 20 12 AT 11:00 A.M. (M)  
Sgt. Heard PAZZ (Notary or Ex Officio) SGT. AVERY THE 1100  
 REFUSED TEST  SUBMITTED TO TEST  
 INSTRUMENT NO. 6B01394 RESULT: 0.234 DC PICKER UP  YES  NO  
 TIME OF TEST 4:20 A DATE OF TEST 02-04-12 RESULTS PENDING   
 BLOOD  URINE   
 PERSON DRAWING BLOOD CAN BE LOCATED:   
 CHEMICAL TEST PENDING AT: [REDACTED]  
 COURT APPEARANCE:  JUVENILE  UPON NOTICE  WAIVED  
 INCREASED FINE ISSUED CONTACT AGENCIES BELOW  
 DATE 02-12-12 TIME 3:48 P PHONE 304-658-8800  
 AT 727 SOUTH BROAD ST. CITY NEW ORLEANS LA.  
 I understand the terms and conditions of the summons and promise to appear at the time and place shows above. Failure to appear will cause for the suspension of my driving privileges and the imposition of additional fines and/or fees by the Louisiana Department of Public Safety and Corrections. I understand my signature is not an admission of guilt.  
 SIGNATURE: ARRESTED

The driver pleaded guilty under Article 894, the law that allows defendants to have the case expunged.

As part of the plea deal, the city attorney downgraded the driver's high BAC reading of 0.234 to 0.149, just below the 0.15 threshold that would have triggered enhanced penalties.

This ticket shows that the driver was arrested with a BAC of 0.234, nearly three times the legal threshold for driving drunk, but the city attorney changed the recorded reading to 0.149, just below the threshold for enhanced penalties.

**Case Study # 4:** According to the police report, one motorist in evaluators' sample left a Memorial Day weekend party, backed into a car and then drove forward, hitting people who were standing outside their automobile. She then gunned the engine and hit more pedestrians on the sidewalk, sending a total of five people to the hospital.

When police arrived at the accident scene, they observed that the motorist reeked of alcohol, had bloodshot eyes, was slurring, and had trouble balancing. The driver scored 0.27 on the Intoxilyzer, more than three times the 0.08 BAC threshold for drunk driving. She told police she did "not really" feel the effects of the alcohol she had consumed at the party.

Despite the pervasive evidence of drunkenness, the city attorney offered a sentence that included neither the mandatory jail time nor the ignition interlock device that usually comes with a high BAC. The city attorney also dropped all ancillary charges, including driving on a suspended license in an unregistered car with no license plates.

The driver pleaded guilty under Article 894, the law that allows defendants to expunge their convictions. The driver served no jail time and paid a \$500 fine, less than the \$750 required of drivers with the highest BACs. Probation terms included 36 Alcoholics Anonymous meetings, a higher number than in most DWI cases, and 90 days of wearing an alcohol-monitoring bracelet to enforce a prohibition on drinking.

Eighteen days into the probation sentence, the bracelet detected alcohol, suggesting that the driver was drinking and at risk of committing a future DWI. According to the terms of the alcohol monitoring order, the driver was subject to arrest, imprisonment, or additional fines for violating probation, but the offender received no sanctions on her next court date.

City attorneys' frequent use of plea bargains in which they reduced charges and BAC readings resulted in few convictions for multiple DWIs and high BAC readings. The practice had public safety consequences. Penalties for second and subsequent DWI offenses and high BAC readings are designed to keep recidivist drunk drivers and individuals most likely to have the highest rates of intoxication off the road.<sup>78</sup> For example, vehicle immobilization methods such as ignition interlock devices have been proven effective at deterring drivers from driving drunk, especially when combined with license sanctions.<sup>79</sup> Although not an option in Louisiana for convictions on lesser charges, Louisiana law requires the installation of interlock devices for six to 12 months in the cars of individuals convicted of second offense DWI and the highest first-time BAC readings ( $\geq .20$ ). (See Appendix C for more detail on La. R.S. 14:98.)

***La. R.S. 14:98***

<sup>78</sup> In 2014 the Louisiana Legislature strengthened the DWI law and made some small changes to increase penalties to multiple and high-risk offenders. The changes to the law demonstrate lawmakers' intent that the most dangerous drunk driving cases be taken seriously and prosecuted fully.

<sup>79</sup> NHTSA, *A Guide to Sentencing DWI Offenders*, 10-11.

Clear standards could establish parameters within which city attorneys exercise their discretion and make plea agreements. Moreover, city attorneys who did not document in prosecution case files the reasons for reaching plea agreements, making charge reductions, and reducing BACs left their actions open to question and the prosecution process vulnerable to abuse.

### **RECKLESS OPERATION**

About one-fifth of DWI cases were downgraded to reckless operation in plea bargains, yet prosecutor files contained no information linking these reductions in charges to weaknesses in cases.<sup>80</sup> Some downgrade notations in city attorney files raised questions about why prosecutors exercised discretion in certain instances and whether leniency was based on whom the defendant was rather than the facts of the case. See, for example, Case Studies 5 and 6.

**Case Study #5:** In one case in evaluators' sample, NOPD arrested a suburban firefighter in New Orleans for DWI after the driver nearly rear-ended a police patrol car. The firefighter refused the Intoxilyzer and the field sobriety test, but police reported that his level of impairment was "extreme," the smell of alcohol was "strong," and he was swaying and slurring his speech. The firefighter was released on his own recognizance from jail.

He performed community service at another fire station, attended Alcoholics Anonymous meetings, went to a Mothers Against Drunk Driving class, took a day of a safe driving class, and the city attorney dismissed the DWI charge in favor of reckless operation. Notes in the city attorney case file implied that his job as a firefighter was meaningful to the downgrade: "complete Ref/almost rear-ended 26/fire fighter 14:99 ok 10-19-12 met with counsel."

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<sup>80</sup> La. R.S. 14:99. There were 12 cases in which prosecutors made notes in the city attorney case files implying that they had struck a deal with the defense attorney, but the file included no indication of why prosecutors accepted a deal. In these cases, prosecutors agreed to downgrade the charge if the defendant performed common probation requirements. Those cases generally contained notations such as "MADD, safe driving + AA = 99," presumably indicating that if a defendant attended a Mothers Against Driving Drunk panel, a driver's education class, and Alcoholics Anonymous meetings, the city attorney would downgrade the DWI charge to Reckless Operation.

**Case Study #6:** In another case in evaluators' sample, a former parish prosecutor who began his career in Traffic Court was defending a college student from a prominent local family. The city attorney file listed the lawyer's name and phone number, and file notes say "student @[out-of-state university - name removed] to start pre sent/14:99 when complete/no record. Met with counsel 8-6-12." The main Traffic Court file showed that the case was downgraded to reckless operation, and the file contained no documentation that common probation requirements were performed.

In Case Studies 5 and 6, prosecutors documented no reasons for the charge reduction. A defendant for whom an initial DWI charge was downgraded would not be treated as a second offender if arrested again for DWI. The driver's personal characteristics and connections could be seen to outweigh the facts of the case in the absence of documentation explaining why the charges were reduced. The resulting lack of transparency and accountability put public safety at risk and undermined public confidence in the justice system.<sup>81</sup>

**RECOMMENDATION 6. THE LAW DEPARTMENT SHOULD DEVELOP A WRITTEN POLICY CONTAINING STANDARDS AND CRITERIA TO GUIDE PROSECUTORIAL DISCRETION AND DOCUMENT THE REASONS FOR AND RESULTS OF PLEA BARGAINS IN THEIR CASE FILES. IT SHOULD ALSO TRACK DWI CONVICTIONS, DOWNGRADES, AND THE DISPOSITION OF HIGH BAC CASES.**

Decisions made by prosecutors in DWI cases had direct public safety consequences. By their own admission, attorneys made decisions so that cases could be resolved quickly, regardless of possible public safety consequences: by downgrading cases, city attorneys reduced the possibility of enforcing penalties intended to keep repeat offenders and drivers with the highest levels of intoxication off the road.<sup>82</sup>

Further, when city attorneys dismissed a DWI charge and agreed to a guilty plea for reckless operation, there was no notation in Traffic Court's case management system that indicated the charge was downgraded.<sup>83</sup> In contrast, Baton Rouge

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<sup>81</sup> Six cases in evaluators' sample included drivers who had previously been arrested for DWI, but the original charge was *nolle prossed*, quashed, or downgraded to a lesser charge. When the driver was arrested for DWI again, there was no first-offense DWI conviction on which to base second-offense sentences.

<sup>82</sup> In order to reduce the risk of reoffending, it is essential that prosecutors consider the "wide body of research" regarding the effectiveness of "various sanctioning options and take this into account" when sanctioning offenders. See, for example, NIC, *Framework for Evidence-Based Decision Making*, 33.

<sup>83</sup> Since prosecutors chose not to use the case management system, evaluators had to conduct a case-by-case comparison of the original charges and the final dispositions to determine which

City Court tracked downgrades as one of the categories in its computer system, making it possible for supervisors to monitor and review the disposition of DWI cases.

The Law Department should adhere to American Bar Association and the National District Attorneys Association standards and develop a handbook that includes written policy for prosecutorial discretion and requires city attorneys to document the reasons for and results of plea bargains fully and routinely in prosecution files.

The Law Department also should track DWI convictions, downgrades to reckless operation, and the disposition of high-BAC cases in a way that facilitates analysis. Prosecution of DWI cases is ultimately about improving public safety: cases involving the most dangerous offenders should be managed according to the highest standards, and prosecutors should be able to provide the public with evidence that those standards are being met.

**FINDING 7. THE RATE AT WHICH THE DISTRICT ATTORNEY'S OFFICE REJECTED FELONY DWI CASES INCREASED FROM 9 PERCENT TO 37 PERCENT BETWEEN 2010 AND 2012 BECAUSE OF INSUFFICIENT DOCUMENTATION IN CASE FILES THE LAW DEPARTMENT FORWARDED TO THE D.A.**

The District Attorney (D.A.) prosecuted felony DWI cases in Criminal District Court. La. R.S. 14:98 requires two previous DWI convictions in the ten years prior to a felony DWI charge.<sup>84</sup> The Law Department identified cases for possible felony prosecution and sent them to the District Attorney's Office for consideration.

Although DWIs were among Traffic Court's most serious cases, the D.A.'s Office routinely handled felony cases that threatened public safety. The Law Department needed to provide specific information about a driver's prior DWI convictions so that the D.A. could determine whether a case could be tried as a felony. The District Attorney's Office expected the Law Department to provide a certified copy of the case file from any previous convictions in the New Orleans

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charges were downgraded. Given the time-intensive nature of the effort, managers would not be able to conduct systematic and routine tracking of downgrades to monitor their frequency and ensure proper documentation.

<sup>84</sup> Legislative reorganization of the law in 2014 changed the legal citation for felony DWI to La. R.S. 14:98.3 and La. R.S. 14:98.4.

Traffic Court. The file should also include a copy of the charging document, arrest register, Boykin form, minute entries documenting actions taken in the case, and sentencing documents.<sup>85</sup>

The District Attorney's Office also expected to receive a list of where and when convictions in other places occurred so that it could obtain certified conviction records from other parishes or states. The D.A. returned cases to the Law Department for prosecution when documentation of at least two prior DWI convictions in the previous ten years could not be verified.

The Law Department did not provide the legal assistant whose job it was to send cases to the D.A.'s Office with sufficient training or specific instructions about what information the D.A.'s Office needed, when that information should be sent, or who was responsible for compiling it: there was also no standardized form letter or checklist specifying what information needed to be included in the transmission.<sup>86</sup>

In fact, the basic information the D.A.'s Office needed from city attorneys in order to document previous DWI convictions was often missing. Many of the referral letters from the Law Department simply said that the case was being referred "because of the extensiveness of the defendant's DWI history" but failed to provide any documentation of previous convictions. As a result, correspondence from the D.A.'s Office rejecting cases for felony prosecution frequently cited the D.A.'s inability to find evidence of previous DWI convictions or noted that previous DWI convictions were more than ten years old and would therefore not count toward charging people as multiple offenders.<sup>87</sup>

According to the Chief of Screening in the D.A.'s Office, additional problems compromised the DA's ability to prosecute the case. Cases might remain with city attorneys for five months to as long as a year before the D.A.'s Office made a decision to accept the case, and the time delay frequently made prosecution more difficult. If it took more than a year for the D.A. to decide to take the case, and city attorneys failed to keep the misdemeanor DWI case alive by continuing to schedule and postpone hearings, there was a risk that the most serious cases

***Letter from Law  
Department  
notifying D.A.'s  
Office of possible  
felony DWI***

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<sup>85</sup> The 1969 U.S. Supreme Court case Boykin v. Alabama affirmed that guilty pleas are valid only if they are made on a voluntary basis and with full understanding that rights are being waived. The Boykin form documents that the defendant's plea is voluntary, and he understands that he is waiving his right to a trial.

<sup>86</sup> After a year in her position, the legal assistant could not tell evaluators what information needed to be sent to the D.A.'s Office when a case was referred for felony prosecution.

<sup>87</sup> For an example of a DWI referral letter and rejection from the D.A.'s Office, see Appendix F.

could have become ineligible for prosecution.<sup>88</sup> Further, some defendants took advantage of the situation and pleaded guilty to the open misdemeanor in Traffic Court while transfers to the D.A.'s Office were pending.

The lack of specific information about prior DWI convictions and lax protocols governing the transfer of cases led to declining felony case acceptances by the D.A.'s Office. The Law Department attempted to transfer at least 146 DWI cases from Traffic Court to the District Attorney's Office from 2010 through 2012.<sup>89</sup> Figure 5 shows that the case rejection rate increased from 9 percent in 2010 to 37 percent in 2012.

**Figure 5.** Percentage of Felony DWI Case Referrals Rejected by the District Attorney's Office

Year	Number of attempted transfers with decision	Number of cases rejected by D.A.'s Office	Percent of cases rejected by D.A.'s Office
2010	45	4	9%
2011	40	6	15%
2012	38	14	37%

Note: 123 cases had transfer decisions at the time of this review.  
Source: Law Department

Finally, evaluators saw no evidence that the Law Department tracked performance information such as the rejection rate or the amount of time it took to transfer cases and used it as a management tool. City attorneys needed to use this information to identify the increasing number of cases rejected by the D.A.'s Office or respond quickly to problems.

<sup>88</sup> La. C.Cr.P Article 578. If prosecutors take no action in a case in a year, the case prescribes. However, the timeline may be interrupted if, for example, the court grants a continuance or the defendant fails to appear in court when summoned.

<sup>89</sup> Correspondence provided to evaluators by the Law Department was incomplete. In addition to the 146 DWI cases that were referred from 2010 to 2012, there were another 13 cases in which the District Attorney sent a letter announcing a referral decision in 2010 and 2011, but the Law Department did not provide evaluators with copies of the original referral letters. Evaluators did not count those cases in its analysis because it was unknown in which year the Law Department made the original referrals. Including those attempted transfers would have increased the rejection statistics for 2010 and 2011 because seven of the 13 undated referrals were rejected for felony prosecution.

**RECOMMENDATION 7. THE LAW DEPARTMENT SHOULD DEVELOP A TRAINING MANUAL, DETAILED INSTRUCTIONS, AND STANDARD FORMS DESIGNED TO ENSURE THAT LEGAL ASSISTANTS PROVIDE THE INFORMATION THE DISTRICT ATTORNEY’S OFFICE NEEDS TO PROSECUTE FELONY DWI CASES; CITY ATTORNEY MANAGERS SHOULD PROVIDE FORMAL TRAINING FOR LEGAL ASSISTANTS AND SUPERVISE THEM, AND THE LAW DEPARTMENT SHOULD TRACK POTENTIAL FELONY CASES TO IDENTIFY TRENDS AND ADDRESS PROBLEMS AS THEY ARISE.**

City attorneys and their legal assistants should meet with district attorneys and the D.A. Office’s Chief of Screening to develop detailed protocols that include definitions, timelines for specific tasks, and a list of the information the D.A.’s Office needs to prosecute a felony DWI. City attorney supervisors should train their staff to perform the agreed-upon procedures accurately and provide ongoing supervision to ensure protocols are implemented correctly and consistently.

The Law Department should use its ability to systematically track cases it is attempting to transfer to the D.A.’s Office to identify any rising rate of cases rejected by the D.A. for felony prosecution. Staff should implement a timeline for checking the status of cases sent to the D.A.’s Office and alerting city attorneys to file motions in Traffic Court to keep potential felony cases alive while transfers are pending.

City attorneys should also dismiss a DWI case once it has been accepted for felony prosecution in Criminal District Court so defendants would not be able to plead guilty to the misdemeanor case in order to avoid the more serious charge. City attorneys should ensure that case records of dismissed misdemeanor cases indicate the cases were transferred to Criminal District Court as felonies.<sup>90</sup>

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<sup>90</sup> During the period of this review, felony cases were dismissed from Traffic Court using the same code as misdemeanor cases deemed unfit for prosecution. This practice left both evaluators and managers unable to distinguish cases deemed not viable for prosecution from cases that had been successfully identified for enhanced prosecution.

## VI. TRAFFIC COURT: DWI CASE MANAGEMENT AND DISPOSITION

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Article 894 of the Louisiana Code of Criminal Procedure permitted defendants who plead guilty to DWI to have their conviction expunged from the public record.<sup>91</sup>

**FINDING 8. TRAFFIC COURT AND OPSO UNNECESSARILY REMOVED INFORMATION ESSENTIAL FOR STATISTICAL ANALYSES FROM THEIR ELECTRONIC DATABASES WHEN HANDLING EXPUNGEMENTS.**<sup>92</sup>

Records revealing identifying information about defendants whose cases were expunged under Article 894 must be removed from public access. Act 145 of the 2014 legislative session clarified rules of expungement, and the newly created Articles 971, 972, 973 and 992 provide guidance on handling records of expunged cases. Collectively, they call for the removal of arrest and conviction records “from public access” but stipulate that confidential records remain “available for law enforcement agencies, criminal justice agencies, and other statutorily defined agencies.”

OPSO and Traffic Court removed arrest, booking, and adjudication records for all DWI expungements under Article 894 from their electronic databases. Previously, Traffic Court removed all records of expungements from its system; recently, the Court started leaving a placeholder for expungements in the system by inserting the code “EXP” in the charge and disposition fields. In both versions of the process, these agencies eliminated important elements of the audit trail for DWI cases.

Defendants in 80 percent of DWI cases pleaded guilty to DWI under Article 894, and the removal of virtually all data for these cases seriously compromised the integrity of arrest, booking, case, and court financial data. It was impossible to determine the complete universe of any data set: court workload analyses, city attorney conviction rates, case processing times, OPSO booking statistics, and

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<sup>91</sup> La. C.Cr.P. Art. 894.

<sup>92</sup> Arresting agencies such as NOPD are also supposed to remove records from public access in expungements, and NOPD is routinely included on orders from Traffic Court requesting that agencies expunge records. NOPD informed evaluators that it did not keep DWI arrest records, but NOPD should keep a searchable record of DWI tickets issued to allow for audits and reconciliations (See Recommendation 2). However, as required by law, personal identifying information should be removed from those records.

police arrest rates all require information on the complete universe of cases. Removing records of expunged DWI cases also made it impossible to track the collection of millions of dollars in fines and fees associated with expunged cases.<sup>93</sup>

**RECOMMENDATION 8: TRAFFIC COURT, NOPD, AND OPSO SHOULD MAINTAIN ARREST, CHARGE, BOOKING, CASE DISPOSITION AND FINANCIAL INFORMATION FOR THE PURPOSES OF STATISTICAL ANALYSIS.**

Traffic Court, NOPD, and OPSO should shield records of DWI expungements from public access as required by articles 971, 972, and 973 by removing the offenders' names and personal identifiers. However, they should preserve all other aspects of the cases for audit purposes.

Public officials increasingly require criminal justice agencies to use data to show they operate effectively and make the best possible use of public safety dollars. The National Transportation Safety Board specifically calls for a "data-driven approach" that continuously monitors progress toward "specific, ambitious, and measurable goals" when addressing DWIs.<sup>94</sup> The data must be reliable and complete in order to present an accurate picture of the agency's practices and performance.

NOPD, OPSO, and Traffic Court should remove from their records only the personal information by which an individual who pleaded guilty under Article 894 could be identified. Data fields that do not identify the individual and can be used to analyze aggregate arrest data, bookings, charges, case processing, and finances should remain in the agencies' databases for the purposes of statistical analysis.

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<sup>93</sup> Louisiana Code of Criminal Procedure Article 894 applies to all misdemeanors, so a similar observation about the need to maintain the total universe of data for analytical purposes would apply to Article 894 expungements of any misdemeanor offense in both Traffic and Municipal Courts.

<sup>94</sup> NTSB, *Reaching Zero*, 40.

**FINDING 9. TRAFFIC COURT DID NOT CONSISTENTLY REQUIRE DEFENDANTS TO COMPLETE PROBATION.**

According to Traffic Court’s probation officers, Traffic Court judges typically sentenced offenders convicted of DWI to a combination of fines and probation activities. The range of activities included community service, attending Alcoholics Anonymous meetings, a driver’s education class, and a Mothers Against Drunk Driving (MADD) Victim Impact Panel. In some cases, the offender might be assigned to intensive substance abuse treatment instead of AA meetings. An offender was required to check in with his or her probation officer regularly and provide evidence of progress toward fulfilling probation requirements.

Evaluators found eight cases among their sample of 80 DWI cases in which DWI offenders did not complete the terms of their probation. Three offenders had not completed their terms of probation and had missed court dates; their cases remained outstanding. However, the five remaining individuals paid their fees to the Court, and their cases were closed without consequence.

A probation officer confirmed that probationers were not held accountable if they did not complete probation requirements. The probation officer noted that she did not bother to file revocation-of-probation paperwork with the judge if offenders failed probation terms; it created too much work for everyone to try to bring the defendant back for additional hearings. Instead, she usually asked the judge to release the offender from probation.

**RECOMMENDATION 9: TRAFFIC COURT SHOULD REQUIRE DEFENDANTS TO COMPLETE THE TERMS OF PROBATION ORDERED BY THE COURT.**

Traffic Court should require individuals to complete the terms of their probation. Effective responses to DWI geared toward changing offender behaviors require courts to ensure offender accountability by delivering “certain, consistent, and coordinated” consequences: at Traffic Court probationers could learn quickly that they could violate the terms with impunity.<sup>95</sup>

Moreover, there is no evidence that financial penalties alone change the behavior of individuals who drive drunk. According to the National Transportation Safety Board, courts effective in dealing with DWI offenders

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<sup>95</sup> DeMichele and Lowe, “DWI Recidivism,” 4.

“hold offenders accountable through intensive monitoring ... .” Further, real gains are made through the “efficient sanctioning and tracking of the offender population.”<sup>96</sup>

Traffic Court averaged 28 new DWI cases per week, or seven per section; the Court should intensify its efforts to supervise and monitor the individuals responsible for the most serious cases processed by Traffic Court.

Using probationary terms as a consequence but not reliably enforcing them undermined the Court’s authority and weakened its ability to administer justice effectively. Worse, it risked reinforcing the very behaviors—lack of self-control, disregard for authority, and ability to rationalize the acceptability of their dangerous actions—frequently exhibited by DWI recidivists.

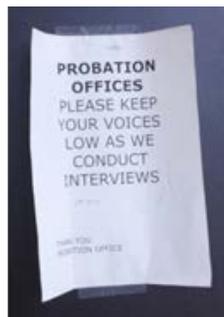
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<sup>96</sup> NTSB, *Reaching Zero*, 33.

## VII. TRAFFIC COURT PROBATION DEPARTMENT

**FINDING 10. TRAFFIC COURT'S ADMINISTRATION OF ITS PROBATION DEPARTMENT UNDERMINED THE EFFECTIVE SUPERVISION OF CLIENTS: IT NEITHER ENSURED THE SECURITY AND CONFIDENTIALITY OF CLIENT RECORDS NOR ENSURED THE PROFESSIONAL FULFILLMENT OF PROBATION OFFICERS' DUTIES.**

Probation was the default consequence ordered by Traffic Court judges and played a critical role in Traffic Court's management of DWI cases. In fact, evaluators found only 12 completed cases among the 6,714 DWI cases recorded in Traffic Court's case management system from 2007 through 2012 not sentenced to probation. Effective probation supervision was therefore central to Traffic Court's handling of DWI cases.



Effective supervision of probationers requires probation officers to communicate frequently with offenders, and defendants must be able to reach probation officers regularly and reliably to fulfill the reporting conditions of their probation. Moreover, conversations with DWI probationers frequently involve sensitive topics such as criminal history, health, employment problems, mental health, substance abuse, and alcoholism, so privacy is of the utmost importance both for productive communication with offenders and to safeguard records in accordance with the law.



**Physical layout of Traffic Court's Probation Department.** The physical layout of Traffic Court's Probation Department undermined probation officers' ability to perform duties professionally: their working space lacked the necessary security to safeguard confidential information and permit private transactions between probationers and their probation officers.



Traffic Court probation officers worked in a row of cubicles in a busy hallway on the main floor where conversations could easily be overheard. The lack of privacy made it more difficult for probation officers to establish

trust with defendants and encourage candid discussion of criminal backgrounds, health, mental health, and substance abuse issues.

**Probation Department records storage.** The Health Insurance Portability and Accountability Act<sup>97</sup> (HIPAA) created national standards to protect the confidentiality of people’s medical records and other health information. In violation of HIPAA regulations, the Traffic Court Probation Department stored probationers’ records in file cabinets kept unlocked during the day in a public hallway, putting sensitive information at risk. When probation officers went into courtrooms, these files were left unattended.



Probation files typically included rap sheets, health information, and substance abuse assessments, as well as documentation of clients’ progress on probation terms. Leaving the files unsecured in public areas created the risk that files could be tampered with or stolen, exposing the court to potential liability if sensitive health information was disclosed.

The hallway that housed the Probation Department had a working phone in only one probation officer’s cubicle, but the phone did not accept voicemail messages.<sup>98</sup> Without voicemail, probationers who called when the probation officer could not answer the phone entered a telecommunications labyrinth with no way to reach the intended recipient.



The probation officer without a working phone relied on e-mail as the primary means of communicating with offenders, but corresponding in writing did not facilitate detailed exchanges about probation progress. The resulting cursory communications reduced the likelihood of monitoring probationers effectively.

<sup>97</sup> Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 104<sup>th</sup> Congress, (August 21, 1996). See HIPAA Privacy Rule, Code of Federal Regulations 2007, Title 45, Vol. 1, subchapter C, Part 160, pp. 696-785. U.S. Department of Health and Human Services, Office of the Secretary, *Standards for Privacy of Individually Identifiable Health Information*, 45 CFR Parts 160 and 164.

<sup>98</sup> The telephone outlet in the Div. B probation officer’s cubicle did not work, and repeated attempts to get it fixed had not been successful.

Another probation officer did not have a city e-mail address and used a personal e-mail address for professional communications with probationers.<sup>99</sup>

**Traffic Court did not provide probation officers with opportunities for continuing professional education.** Beginning in 2012 probation officers did not have access to job training.<sup>100</sup> Probation officers had attended the American Probation and Parole Association conference in prior years; conversations with conference attendees from around the country provided valuable information about effective new approaches to supervising probationers. However, in 2012 Traffic Court said it could no longer afford to send them; probation officers were also unable to attend the state probation and parole officers' meeting.<sup>101</sup>



The challenges probation officers faced sent the message to probationers that probation was not taken seriously. The Probation Department's poor working arrangement undermined probation officers' authority with probationers and resulted in less effective and efficient supervision. It also signaled to probation officers that the Court did not value their work and/or that probation was not an important part of the judicial process. Probationers frequently took advantage of the lack of readily available, effective ways to communicate with their probation officers to extend deadlines and avoid the consequences of non-compliance with the terms of their probation.

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<sup>99</sup> The Div. A probation officer's city e-mail disappeared from the system in 2011; since then, all efforts on the part of IT and court administrative staff to reactivate the official e-mail address had proven unsuccessful. Use of personal email for public business creates the risk that public records will not be properly maintained. Public business should be conducted through a city e-mail address.

<sup>100</sup> In contrast, in 2013 one judge attended an expensive continuing legal education seminar paid for by Traffic Court at a beach resort in the nation of Panama weeks before his retirement and return to full-time private practice at a downtown law firm.

<sup>101</sup> The American Probation and Parole Association held its annual meeting in New Orleans in 2014, and Traffic Court said its probation officers were able to attend the event because doing so did not require travel.

**RECOMMENDATION 10. TRAFFIC COURT SHOULD PROVIDE PROBATION OFFICERS WITH WORKSPACE THAT PROVIDES THE PRIVACY NECESSARY FOR COUNSELING; THE CAPACITY TO SECURE PRIVATE RECORDS AND A POLICY GOVERNING THEIR MANAGEMENT; AND THE TRAINING AND COMMUNICATIONS TECHNOLOGY NECESSARY TO SUPERVISE PROBATIONERS EFFECTIVELY.**

The solutions to these problems are straightforward ones. First, Traffic Court should provide probation officers with space that affords the privacy necessary for the effective counseling and supervision of probationers.

Second, Traffic Court should provide probation officers with the ability to secure sensitive information and develop a policy for properly safeguarding DWI offender history and health information, whether stored in paper or electronic form.<sup>102</sup> Paper files should be kept in secure areas and locked at all times, and access to electronic files should be restricted.

Third, Traffic Court should ensure that each probation officer has a working phone (ideally with its own phone number or extension), voicemail, and a city e-mail account for communicating with offenders. An open line of communication between probation officers and offenders is essential for effective supervision, monitoring probationers' progress, and enabling probationers to contact their probation officers with questions or concerns. If desk phones are not feasible, court-issued mobile phones for probation officers with voicemail could be substituted.

Personal e-mail accounts should not be used to communicate with offenders; minimum standards of professionalism require probation officers to have city e-mail addresses. Traffic Court should also provide probation officers with business cards that include all the communication options available for probationers who wish to contact their probation officer.

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<sup>102</sup> Traffic Court's new probation system had not yet reached the probation department in early 2015, but Traffic Court officials told evaluators that the new case management system would allow probation officers to scan records of AA meeting attendance, sensitive health information, and criminal history records into the computer system. The new case management system should also give probation officers the ability to make case notes about a DWI offender's probation progress and share them electronically with a judge.

Fourth, education for probation officers should be central to Traffic Court's mission of improving public safety, especially since virtually every individual convicted of DWI is sentenced to probation.<sup>103</sup>

In addition, professional probation officers work in a dynamic field and need continuing education to stay current on mental health, substance abuse, and the most effective methods of bringing about behavioral change in DWI offenders. Probation officers also need to be knowledgeable about the latest prescription drugs from the pharmaceutical industry so they can understand test results and communicate relevant information effectively with offenders.

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<sup>103</sup> The law governing DWI cases calls for sentences of jail time or probation, and probation was the default position of judges at Traffic Court. In the 80 case files that evaluators examined, two people served jail time, but neither person did so as a sentence for a DWI conviction.

## VIII. CONCLUSION

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At every step of DWI case processing, the prosecution and adjudication of cases illustrated basic failures of legal standards and/or model practices. In Traffic Court a community of legal professionals had permitted professional standards to slide on a daily basis. Routine lapses of commonly accepted model practices—accepted because of local custom, judicial prerogative, prosecutorial discretion, or claims of insufficient resources—perpetuated Traffic Court’s poor performance. Prosecutors, judges, and court staff exhibited behaviors that suggested they were “so accustomed to a pattern of lapses that they no longer [saw] their role in them.”<sup>104</sup>

“The ideal (the laws, principles, theories) and the actual (the practitioners and the contingencies they face) never match each other perfectly,”<sup>105</sup> but the examination of the available data shows that prosecutors and the Court consistently missed the mark.

- Internal controls governing the maintenance and transfer of documents were lax, creating the opportunity for abuse.
- Thousands of long-standing open cases undermined public confidence in the Court: offenders slipped through the system without consequence and millions of dollars in potential fines and fees went uncollected.
- Traffic Court’s policy regarding the issuance of warrants was inconsistent, resulting in the capricious administration of justice.
- City attorneys did not perform a basic function of their office and formally screen cases, which undermined their prosecutorial role and increased the Court’s workload.
- The clock on cases started before city attorneys or their staff knew the cases existed, which lessened their time to screen cases, conduct driver history research, and document previous offenses.
- City attorneys routinely downgraded cases, lowering BACs and reducing DWIs to reckless driving.
- The Law Department did not have policies guiding discretion, and city attorneys did not record reasons for plea bargains or downgrading charges.

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<sup>104</sup> Bach, *Ordinary Injustice*, 2.

<sup>105</sup> *Ibid.*, 4.

- City attorneys and the Court tracked no data on convictions, downgrades, probation completion, or reoffending, making it impossible to measure effectiveness or hold system actors accountable.
- Documentation necessary for determining the eligibility of cases for prosecution as felonies was frequently missing when city attorneys referred cases to the District Attorney’s Office.
- It was impossible to conduct any detailed analyses of DWI data, because system actors unnecessarily removed information needed for analysis for expunged cases, and 80 percent of drivers who pleaded guilty to DWI at Traffic Court did so under the law that eventually allowed them to have their cases expunged.
- Probation officers provided little in the way of offender supervision; responsible for following up on virtually every offender, they lacked basic communication tools necessary to do their jobs.
- The Court failed to hold individuals accountable consistently; a probation officer affirmed she usually did not always follow up on noncompliance of probation terms.

The management of DWI cases in Traffic Court illustrates what one scholar coined “lax adversarialism” in criminal trial courts around the country.<sup>106</sup> United States courts are based on an adversarial system in which prosecutors and defense attorneys each use the law to their best advantage to prevail in court. However, the judicial process in Traffic Court streamlined the administration of justice and created a more collaborative environment for the system actors involved. In this way, Traffic Court, along with courts throughout the country, redefine the law on a daily basis:

When professional alliances trump adversarialism, ordinary injustice predominates. Judges, defense lawyers, and prosecutors, but also local government, police, and even trial clerks who process the paperwork, decide the way a case moves through the system, thereby determining what gets treated like a criminal matter and what does not. Lax adversarialism ... lets cases and defendants pass through the system unchecked, ... predicting which cases will end up in the “lost” column on their scorecards ... not based on the actual facts ... . Ordinary injustice flourishes in the shadows where these deals are cut and decisions made.<sup>107</sup>

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<sup>106</sup> Ibid., 6.

<sup>107</sup> Ibid., 6 and 7.

DWI cases floated passively through a system that was unable to distinguish between more serious and less serious cases and mete out punishment or behavioral modification efforts appropriately; drivers with exceptionally high BACs or previous DWI arrests were not necessarily treated differently from an ordinary first-time offender, even though repeat offenders and those with higher BACs are much more dangerous to public safety.

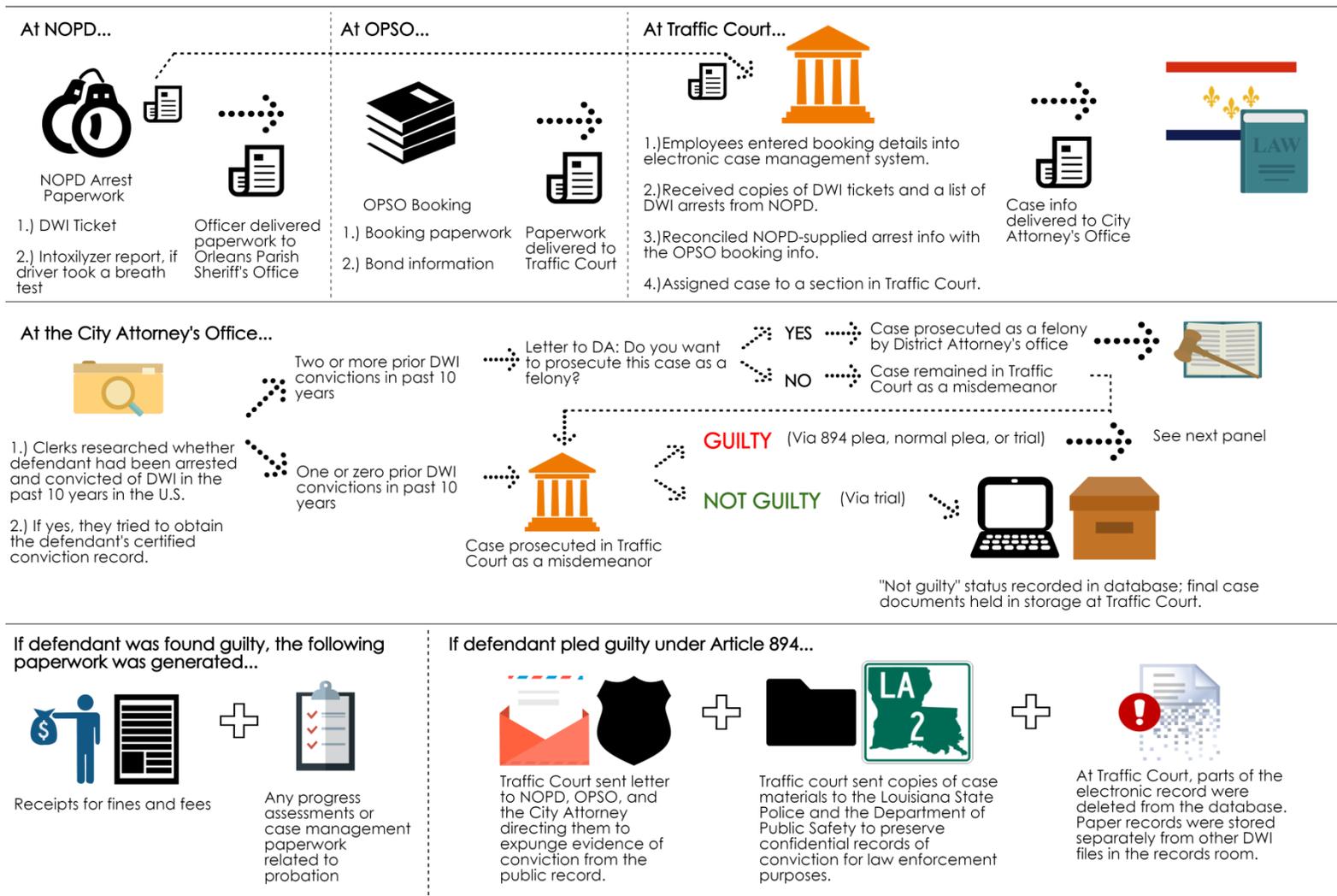
Traffic Court's city attorneys, who had no formal screening process, relied on defense lawyers to point out problems with cases and then pleaded them down for quick convictions. As a result, cases resolved through pleas moved quickly through the Court with little need for judicial hearings. Making deals on DWI cases offered defendants and their lawyers a greater number of opportunities to expunge their convictions and/or plead guilty to reduced charges with less demanding consequences. Probation practices encouraged permissiveness on the part of probation officers and disregard for the Court's authority on the part of offenders.

These failings unnecessarily exposed the community to harm. However, most of the problems revealed in this report could be readily solved with attentive management, fidelity to professional best practices, the latest techniques in curbing drunk driving, and better communication among the agencies that handle DWI cases.

Traffic Court's new case management system and NOPD's effort to procure an electronic ticket system provide an excellent opportunity for various parties that work on DWI cases to formalize their processes and procedures for handling drunk driving cases and begin to analyze their results in a quest for improvement.

## APPENDIX A. THE DWI ADJUDICATION PROCESS: THE PAPERWORK

# The DWI Adjudication Process: The Paperwork



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Infographic Created by Henderson Analytics

## APPENDIX B. THE DWI ADJUDICATION PROCESS: THE DRIVER

# The DWI Adjudication Process: The Driver

### Quick Notes

- A) Eighty percent of people who pled guilty to DWI charges did so under Article 894.
- B) About 20 percent of DWI cases got downgraded to reckless operation.
- C) Almost no DWI cases went to trial. Traffic Court's case management system recorded 34 trials from 2007 to 2012, or about 1.4 DWI trials per court section per year.
- D) OIG sampled 80 DWI cases for this evaluation. Of the 51 defendants who had pled guilty at the time of our review, only 1 (2.0 percent) did jail time as a consequence of his DWI conviction - this came after he failed to complete his probation.
- E) Fines are distributed to other entities, including criminal justice entities, based on statutory formulae. Traffic Court kept all money collected as fees.

### DWI Arrest



Driver's license suspended

### Jail



Taken to Orleans Parish Prison for booking

posted bond



no bond posted

Stayed in jail until next business day



Taken to court for first appearance



Formal charges filed at arraignment

pled guilty

pled not guilty

#1

### If defendant pled guilty...



Defendant paid a fine and any court fees



Defendant placed on probation

#2

### OR...if defendant pled guilty under Article 894...



Defendants often paid fees instead of fines (see Note E)



Defendant placed on probation. DWI conviction expunged from the public record; not visible to current or future employers.



The defendant's driver's license was immediately reinstated

(see Note A)

#3

### If defendant pled not guilty...



A trial date was set



The trial date was typically pushed back multiple times; meanwhile the following usually happened:

- 1.) Both sides' lawyers attempted to arrive at a plea agreement
- 2.) The defendant's lawyer typically urged the client to take proactive steps toward meeting likely probation requirements
- 3.) These delays gave the defendant more time to pay legal fees



### Possible outcomes...

- 1.) Defendant pled guilty to original charge
- 2.) Defendant pled guilty to a lesser charge (see Note B)

- 3.) Case went to trial for the original charge.
  - GUilty
  - NOT GUILTY

(see Note C)

#4

### If defendant pled guilty to original charge, pled guilty to a lesser charge, or was tried and found guilty...



1.) Judge levied fine against defendant and possibly

2.) Ordered the defendant to pay court fees



Defendant was sentenced to probation or to jail time (see Note D)

If defendant pled guilty under Article 894, the conviction was expunged - see box #3 for more details.



#5

### If defendant was tried and found not guilty...



Defendant exited legal process



Defendant had no fees or fines to pay.



The defendant's driver's license was reinstated

#6

## APPENDIX C. THE DWI LAW

The law governing DWI offenses that was in effect during the period of review of this project was La. R.S. 14:98.<sup>108</sup> Here is a summary of the law's provisions:

Level of offense	BAC	Financial Penalty	Jail	Minimum Jail	Probation	Ignition Interlock
<b>First-offense DWI, 14:98.B</b>	0.08 - 0.149	\$300 - \$1,000	10 days - six months	two days in jail or four days of community service.	Serve two days in jail, participate in substance abuse program and a driver's education program. OR Four days of community service, participate in substance abuse program and a driver's education program. At least half of the community service should be in litter abatement.	
(Misdemeanor)						
	0.15 - 0.19	\$300 - \$1,000	10 days - six months	two days	Take substance abuse and driver's education classes.	

<sup>108</sup> The new DWI law passed in 2014 breaks up and reorganizes La. R.S. 14:98. For the new citations, see La. R.S. 14:98 and La. R.S. 14:98.1 through La. R.S. 14:98.8.

Level of offense	BAC	Financial Penalty	Jail	Minimum Jail	Probation	Ignition Interlock
	0.20 or greater	\$750 - \$1,000	10 days - six months	two days	same	Two-year driver's license suspension. Restricted license may be granted for the entire period, as long as an ignition interlock is installed for first 12 months.
<b>Second-offense DWI, 14:98.C</b>	0.08 - 0.149	\$750 - \$1,000	30 days - six months	two days, but 30 days if the conviction of the second offense occurred within a year of the first.	Serve 15 days in jail, participate in substance abuse program and a driver's education program. OR 30 days of community service, participate in substance abuse program and a driver's education program. At least half of the community service should be in litter abatement.	At least six months

Level of offense	BAC	Financial Penalty	Jail	Minimum Jail	Probation	Ignition Interlock
(Misdemeanor)						
	0.15 - 0.19	\$750 - \$1,000	four days	same		
	0.20 or greater	\$1,000	four days	same		Four-year driver's license suspension. May apply for a restricted license, provided an ignition interlock device is in place for the first three years.

Level of offense	BAC	Financial Penalty	Jail	Minimum Jail	Probation	Ignition Interlock
<b>Third-offense DWI, 14:98.D</b>	0.08 - 0.149	\$2,000	one year - five years	one year	Presumptive existence of a substance abuse disorder. Serve 30 days of community service, undergo substance abuse evaluation, submit to four weeks of inpatient treatment and up to 12 months of outpatient treatment. Be incarcerated at home for at least six months. If the offender fails to complete substance abuse treatment, he can be required to serve the rest of his prison sentence without credit for time served in home incarceration. The offender's vehicle can be impounded at the discretion of the District Attorney and sold for the benefit of law enforcement and the state.	Must have an ignition interlock device installed until the offender has completed substance abuse treatment and home incarceration. After one year of an actual driver's license suspension, offender may apply for a restricted license with an ignition interlock for the remainder of the term.

Level of offense	BAC	Financial Penalty	Jail	Minimum Jail	Probation	Ignition Interlock
(Felony)						
	0.15 - 0.19					
	0.20 or greater					

Level of offense	BAC	Financial Penalty	Jail	Minimum Jail	Probation	Ignition Interlock
<b>Fourth-offense DWI, 14:98.E</b>	0.08 - 0.149	\$5,000	10 years - 30 years	two years	Presumptive existence of a substance abuse disorder. Serve 40 days of community service, undergo substance abuse evaluation, submit to four weeks of inpatient treatment and up to 12 months of outpatient treatment. Be incarcerated at home for at least one year. If the offender fails to complete substance abuse treatment, he can be required to serve the rest of his prison sentence without credit for time served in home incarceration. The offender's vehicle can be impounded at the discretion of the District Attorney and sold for the benefit of law enforcement and the state. If the offender has previously been required to participate in substance abuse treatment and home incarceration for a fourth or subsequent offense, he shall serve at least three years in jail.	Must have an ignition interlock device installed until the offender has completed substance abuse treatment and home incarceration. After one year of an actual driver's license suspension, offender may apply for a restricted license with an ignition interlock for the remainder of the term.

Level of offense	BAC	Financial Penalty	Jail	Minimum Jail	Probation	Ignition Interlock
(Felony)						
	0.15 - 0.19					
	0.20 or greater					

Note: Classes and treatment costs are borne by the offender. A different schedule of penalties exists for drivers under age 21. Additional penalties exist for drivers with children under age 12 in the car, and for people with commercial driver's licenses. Other penalties exist for vehicular homicide under the influence.

Note: This chart reflects the version of R.S. 14:98 that was in effect during the period of this review. Some provisions of the DWI law changed as of Jan. 1, 2015. The Legislature changed the citations for subsections of the DWI law, redefined jail and community service provisions in hours rather than days, expanded the use of ignition interlock devices, strengthened punishment for third and subsequent offenders, and allowed the use of court diversion programs for some higher-level offenses.

## APPENDIX D. THE LICENSE SUSPENSION LAW

The law governing administrative license suspensions in DWI cases is La. R.S. 32:667. This summary includes the main provisions of the law in effect at the time of this review:

Charge	Intoxilyzer	Administrative License Penalty	Hardship license
First-offense DWI	BAC of 0.08 to 0.19	90-day driver's license suspension.	Eligible after 30 days of license suspension; eligible immediately upon installation of ignition interlock.
	BAC of 0.20 or greater	Two-year driver's license suspension.	Eligible with an ignition interlock; device must remain on car for at least the first year.
	Refused Intoxilyzer	One-year driver's license suspension.	Eligible with an ignition interlock.
	Refused Intoxilyzer, Crash	If crash with injuries or fatalities, one-year driver's license suspension.	Not allowed.
Second-offense DWI	BAC of 0.08 to 0.19	One-year driver's license suspension.	Eligible with ignition interlock.
	BAC of 0.20 or greater	Four-year driver's license suspension.	Eligible with an ignition interlock; device must remain on car for the first three years.
	Refused Intoxilyzer	Two-year driver's license suspension.	Eligible with an ignition interlock.
	Refused Intoxilyzer, Crash	If crash with injuries or fatalities, two-year driver's license suspension.	Not allowed.

Notes:

Different schedules of license sanctions exist for underage drivers and for commercial drivers. Losing a driver's license also means losing boat-driving privileges in Louisiana waterways.

If a driver is not convicted of DWI, his license shall be immediately reinstated without fees.

## APPENDIX E. LIST OF INFORMATION REVIEWED

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Evaluators reviewed the following information in the course of this evaluation:

1. A list of all open DWI cases at Traffic Court.
2. Files kept by Traffic Court, probation officers, and city attorneys for a random sample of 20 DWI cases from each of the four sections of court from the first six months of 2012.
3. Electronic case management records on all DWI cases filed at Traffic Court from 2007 to 2012.
4. Case records identified by the Law Department for 55 repeat offenders with multiple open cases at Traffic Court.
5. All correspondence between the Law Department and the District Attorney's office regarding the transfer of potential felony DWI cases from 2010 to 2012.
6. Logs filed by the New Orleans Police Department, the Crescent City Connection Bridge Police, Louisiana State Police, and the Office of the Sheriff for the Parish of Orleans documenting when breath tests were administered on the Intoxilyzer in Orleans Parish in 2012.
7. Booking records at the Orleans Parish Sheriff's office for DWI cases in 2012.
8. DWI case disposition records from New Orleans Traffic Court and Orleans Parish Criminal District Court transmitted to the Louisiana Supreme Court in 2012 and error records associated with such transmissions.
9. The Louisiana Highway Safety Commission's fiscal year 2012 contract with the New Orleans Police Department for impaired driving grant money and monthly police reports documenting how the money was used.
10. Checkpoint announcements from the New Orleans Police Department's public information office and internal checkpoint supervisor reports from the SOD Traffic unit for 2012.
11. Louisiana Traffic Records Data reports from 2007 to 2011, research from the National Highway Traffic Safety Administration, and recommendations from the National Transportation Safety Board.
12. Background information, guidelines, and standards developed by professional associations such as the National Center for State Courts, the American Probation and Parole Association, the National

District Attorneys Association, the Louisiana District Attorney Association, the American Bar Association, the National College for DUI (driving under the influence) Defense, the advocacy group Mothers Against Drunk Driving (MADD), and the Insurance Information Institute trade group.

13. Federal statutes, state laws, and city ordinances governing drunk driving; state rules on court management; and key Louisiana court cases establishing precedents in impaired driving cases.

## APPENDIX F. EXAMPLE OF A DWI FELONY CASE REFERRAL LETTER AND RESPONSE

Below is an example of a letter that the City Attorney's Office wrote to the District Attorney's Office to attempt to transfer a felony case. There is no specific information in the letter about where the D.A.'s Office should look to find two previous DWI convictions in the last ten years.

  
MITCHELL J. LANDRIEU  
MAYOR

CITY OF NEW ORLEANS  
LAW DEPARTMENT  
1300 PERDIDO STREET, 5<sup>TH</sup> FLOOR EAST  
NEW ORLEANS, LOUISIANA 70112  
TELEPHONE: (504) 658-9800  
TELECOPIER: (504) 658-9868

RICHARD F. CORTIZAS  
CITY ATTORNEY

April 26, 2012

Ginger Miller  
District Attorney's Office  
619 South White Street  
New Orleans, La. 70119

RE: [REDACTED]; DOB [REDACTED]  
NOPD Item No: L-9308-11  
NOTC Status Date: 4/23/65

Dear Ms. Miller:

Attached is the certified pending DWI case(s) recorded under the name and/or social security number of [REDACTED]. Because of the extensiveness of the defendants DWI history, the City Attorney's Office believes his pending DWI case should be prosecuted by the District Attorney's Office in Criminal District Court. If any additional information is needed from the City Attorney's Office, please do not hesitate to contact me via email [cclarche@nola.gov](mailto:cclarche@nola.gov) or via the office (504) 658-8550.

Sincerely,  
  
Charlene Larche-Mason  
Chief Deputy City Attorney

CLM: abm

cc: Judge Ronald Sholes, Division D  
Noel Cassanova, Traffic Clerk of Court

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The case was rejected for felony prosecution because the prior convictions were too old. If the original letter had included the dates of the previous offenses and where they were adjudicated, it would have been obvious that the earlier arrests were too old to count toward enhancing prosecution in the latest cases. Meanwhile, it took the D.A.'s Office more than a year to decide to reject the case, perhaps putting the case in danger of expiring before it could be prosecuted.



Office of the Orleans Parish District Attorney

Leon A. Cannizzaro, Jr.  
DISTRICT ATTORNEY

April 29, 2013

Charlene Larche-Mason  
Chief Deputy City Attorney  
727 S. Broad Street, room 106  
New Orleans, LA 70119

Re: City of New Orleans v. [REDACTED]  
NOPD Item No. L-09308-11  
Case No. [REDACTED]

Dear Ms. Larche-Mason:

On April 26 2012, we received your letter referring the instant case to our office for consideration as a felony offense. After review, we have determined that the defendant has multiple arrests for Driving under the Influence but the most recent is from January 15, 1999. All prior convictions are more than ten years old. As a result, we do not have the requisite two prior convictions to prove a felony offense against this defendant. At this time, we are referring this matter back to your office for further proceedings as you see fit. I am attaching a copy of all documents that we obtained in relation to this item number. If you have any questions, please do not hesitate to contact me at (504) 571-2912

Sincerely,

  
Vernon J. Main III  
Assistant District Attorney

City Ordinance section 2-1120(8)(b) provides that a person or entity who is the subject of a report shall have 30 days to submit a written explanation or rebuttal of the findings before the report is finalized, and that such timely submitted written explanation or rebuttal shall be attached to the finalized report.

An Internal Review Copy of this report was distributed on May 14, 2015 to the entities who were the subject of the evaluation in order that they would have an opportunity to comment on the report prior to the public release of this Final Report. Comments were received from the New Orleans Police Department, the City of New Orleans Law Department, the New Orleans Traffic Court, and the Orleans Parish Sheriff's Office. Their comments are attached to this report.

The OIG would like to clarify the following points:

- OIG changed the title to reflect the scope of the report more accurately.
- Traffic Court judges assert that “the responsibility for providing adequate office and equipment resources for the Traffic Court falls upon the City of New Orleans.” It is true that the City is financially responsible for these Traffic Court expenses; however, the administrative responsibility for ensuring that court staff are able to perform their duties falls to the judicial administrator of the Traffic Court.
- The Orleans Parish Sheriff states that “two recommendations were removed” from the report as a result of “meeting with my staff.” The two items removed from the report neither referenced the OPSO nor were they discussed during OPSO's exit conference with the OIG.

An internal review draft is provided to managers of programs under review. Managers have 30 days to review the report, after which the OIG extends the courtesy of an exit conference. Changes to a report are a normal part of the OIG's extensive quality control process.

# OFFICIAL COMMENTS FROM CITY OF NEW ORLEANS POLICE DEPARTMENT

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**Mitchell J. Landrieu**  
MAYOR

CITY OF NEW ORLEANS

## DEPARTMENT OF POLICE

715 South Broad Street  
New Orleans, Louisiana 70119



**Michael S. Harrison**  
SUPERINTENDENT

*"to protect and to serve"*

June 17, 2015

Ed Quatrevaux, Inspector General  
Office of the Inspector General  
City of New Orleans  
525 St. Charles Avenue  
New Orleans, LA 70130

Re: **DWI Case Management Report**

Dear Inspector General Quatrevaux:

Thank you for giving me the opportunity to review and comment on your evaluation of the management of Driving While Intoxicated (DWI) cases.

Impaired driving presents a significant threat to public safety. Annually, 40-50% of fatal traffic accidents in New Orleans involve impaired drivers. That is why NOPD works aggressively and uses all the tools at our disposal – including checkpoints, saturation patrols, and radar enforcement – to identify impaired drivers and get them off our roads. We have recently supplemented these efforts by entering into an agreement with the Louisiana State Police (LSP) to increase LSP's presence on our highways. Under this agreement, the City is funding the deployment of state troopers on New Orleans highways during high-volume and high-risk times. We believe that this additional law enforcement presence will help curb aggressive driving and prevent traffic accidents and fatalities.

We are also continually working to deploy new technologies and practices in order to enhance our ability to encourage responsible driving throughout New Orleans. In particular, later this year we intend to deploy an electronic warrant system as well as an electronic citation system that will enable us to more effectively enforce state and local traffic laws. Furthermore, we have been participating in the Louisiana Department of Public Safety's new web-based LADRIVING DWI processing system since it was launched earlier this year. LADRIVING has the potential to greatly enhance the efficiency of our DWI enforcement efforts, by allowing for the creation and sharing of electronic DWI reports among criminal justice agencies.

It is vitally important that we hold offenders responsible for DWIs and I am pleased that your report provides suggestions on how the criminal justice community can collectively improve the way we process these cases. In the responses below, I note specifically how we have already taken action to address many of the issues identified in your report related to historical NOPD processes for DWI arrests.

*Finding 1: NOPD Officers did not use proven techniques recommended by organizations such as the U.S. Department of Transportation and the National District Attorneys Association to generate the evidence prosecutors needed to convict defendants.*

*Recommendation 1: NOPD should adopt innovative techniques to curtail impaired driving and give prosecutors the evidence they need to convict impaired motorists.*

NOPD constantly works to identify and implement best practices and has already implemented or begun to implement many of the techniques identified in your report.

No Refusal Program. NOPD has drafted a policy for a No Refusal program and is currently working to finalize the policy and implement a program. However, an effective No Refusal program requires the full collaboration of the medical community, judicial system, and prosecutors, as well as the implementation of an electronic warrant system that will allow officers to request and receive warrants for blood testing during a DWI stop. NOPD is currently finalizing a contract to obtain an electronic warrant system and plans to convene the necessary partners once an internal policy is finalized. We anticipate launching a No Refusal program before the end of this year.

Drug Recognition Expert. In 2014, NOPD certified one officer and one sergeant as Drug Recognition Experts through the DRE school managed by the International Association of Chiefs of Police. We continue to evaluate opportunities to train additional officers as they become available.

Video Evidence. Prosecutors have full access to all videos generated by body worn cameras (BWCs). These videos are stored and managed through an online portal, and NOPD has given access and training to both the District Attorney and City Attorney so that they can identify and view these videos. NOPD provides prosecutors with item numbers on all DWI cases that can be used to easily identify and retrieve any existing body camera footage related to a case they are prosecuting. NOPD is currently implementing a new central storage and management solution for in-car camera footage that will allow prosecutors to identify and view videos in much the same way. Once that system is operational later this summer, NOPD will provide access and training to prosecutors.

Place of Last Drink Data. NOPD does currently collect place of last drink data on a voluntary basis during DWI arrests. Individuals who are arrested for DWI are asked where they had their last drink, and this information is transmitted to the state. NOPD does not currently receive this data aggregated from the state and does not use it for analytical purposes. Place of last drink data is often inconsistent and inaccurate. When individuals provide this information, they are often unclear about the location or intentionally providing false information. However, NOPD plans to request that the state provide reports on place of last drink data in Orleans Parish on a regular basis so that NOPD can determine what patterns, if any, exist.

*Finding 2: NOPD, OPSO, and Traffic Court did not have adequate controls over the transfer of DWI records from one agency to another; as a result, there was no way to verify that all DWI arrests were entered into Traffic Court's case management system and were prosecuted.*

*Recommendation 2: NOPD, OPSO, and Traffic Court should institute controls by which a third party verifies the transfer of DWI records to ensure timely and accurate docketing of all DWI arrests, and city attorneys should receive immediate notification of DWI arrests from NOPD.*

Earlier this year, the Louisiana Department of Public Safety and the Louisiana Highway Safety Commission launched LADRIVING, an online DWI processing system. This system replaces the manual log book previously used to record DWI arrests and enables NOPD to create digital arrest reports and to transfer these documents to prosecutors or other agencies. We believe LADRIVING, if fully adopted by the relevant agencies, can serve as this control by providing access to information on all DWI arrests to prosecutors, the court, and the sheriff. NOPD is currently entering its DWI arrests into this database and will request that the other agencies also begin using the database to ensure that arrest records are being accurately and completely transferred. NOPD will also work with the state to grant access to this database to City Attorneys, Traffic Court staff, and OPSO staff as necessary.

*Finding 8: Traffic Court and OPSO unnecessarily removed information essential for statistical analyses from their electronic databases when handling expungements.*

*Recommendation 8: Traffic Court, NOPD, and OPSO should maintain information regarding the arrest, charge, booking, case disposition and financial information for the purposes of statistical analysis.*

NOPD agrees that statistical data should be preserved regardless of expungements and we currently maintain this data. Additionally, the new LADRIVING system will allow for more sophisticated analyses of DWI arrest trends by providing this data in a digital format for the first time. This modern system provides NOPD with data reporting and analysis tools than have ever been available to us, including the ability to view arrest data in maps and analyze arrests by day of the week or time.

Sincerely,



Michael S. Harrison  
Superintendent of Police

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



**MANAGEMENT RESPONSE FORM**

**PLEASE COMPLETE THIS FORM AND RETURN AS SPECIFIED BELOW. SUPPLY YOUR RESPONSES IN THE SHADED BOXES.**

PLEASE INDICATE YOUR AGREEMENT OR DISAGREEMENT WITH EACH OF THE FOLLOWING RECOMMENDATIONS BY SELECTING A RESPONSE FROM THE DROPDOWN BOX. IF YOU REJECT OR PARTIALLY ACCEPT THE RECOMMENDATION, PLEASE EXPLAIN WHY IN THE SPACE PROVIDED. PLEASE DESCRIBE EACH ACTION YOUR AGENCY WILL TAKE TO IMPLEMENT THE RECOMMENDATION, OR FIX THE PROBLEM, ALONG WITH THE NAME AND CONTACT INFORMATION OF THE PERSON(S) RESPONSIBLE FOR THE ACTION AND THE COMPLETION DATE (IF ONE IS ALREADY NOT PROVIDED).

**RETURN THIS COMPLETED FORM TO BECKY MOWBRAY AT [rmowbray@nolaoig.org](mailto:rmowbray@nolaoig.org) BY JUNE 17.**

ENTER NAME HERE: **SUPERINTENDENT MICHAEL HARRISON**

<b>RECOMMENDATION #1</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
1. NOPD should adopt innovative techniques to curtail impaired driving and give prosecutors the evidence they need to convict impaired motorists <ul style="list-style-type: none"> <li>• No Refusal program</li> <li>• Drug Recognition Expert</li> <li>• Video Evidence of DWI stops</li> <li>• Place of Last Drink data</li> </ul>	<b>MULTIPLE, SEE BELOW</b>	<b>Accept</b>
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #1, PLEASE EXPLAIN WHY: <b>WE ACCEPT RECOMMENDATIONS RELATED TO NO REFUSAL PROGRAM, VIDEO EVIDENCE, AND PLACE OF LAST DRINK DATA. WE BELIEVE THAT WE ARE ALREADY IN COMPLIANCE WITH THE RECOMMENDATIONS RELATED TO DRUG RECOGNITION EXPERTS.</b>		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #1 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
<b>1.1 NO REFUSAL PROGRAM - POLICY WILL BE REVIEWED AND APPROVED BY NOPD POLICY OFFICE, AND THEN STAKEHOLDER GROUPS CONVENED TO FINALIZE NO REFUSAL PROGRAM.</b>	<b>LT. ANTHONY MICHEU</b>	<b>12/31/2015</b>
<b>1.2 VIDEO EVIDENCE - AFTER IN-CAR CAMERA SYSTEM IS ESTABLISHED, PROVIDE ACCESS AND TRAINING ON SYSTEM TO PROSECUTORS</b>	<b>CHRIS LEA</b>	<b>12/31/2015</b>
<b>1.3 PLACE OF LAST DRINK DATA - WILL REQUEST ANNUAL AGGREGATED DATA FROM THE STATE</b>	<b>LT. ANTHONY MICHEU</b>	<b>12/31/2015</b>

DWI Case Management  
 May 14, 2015

Management Response for: Chief Michael Harrison

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



1.4		
1.5		

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



<b>RECOMMENDATION #2</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
2. NOPD, OPSO, and Traffic Court should institute controls by which a third party verifies the transfer of DWI records to ensure timely and accurate docketing of all DWI arrests, and city attorneys should receive immediate notification of DWI arrests from NOPD.	JONATHAN WISBEY, JTWISBEY@NOLA.GOV	Accept
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY: ACCEPT THIS RECOMMENDATION AND INTEND TO USE THE STATE'S NEW LADRIVING SYSTEM TO PROVIDE THIS NOTIFICATION.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
2.1 GRANT ACCESS TO LADRIVING SYSTEM TO CITY ATTORNEYS SO THAT THEY HAVE REAL-TIME INFORMATION ON DWI ARRESTS. ACCESS CAN ALSO BE GRANTED TO TRAFFIC COURT AND OPSO IF THEY WISH TO USE THE SYSTEM IN THE SAME WAY.	JONATHAN WISBEY	9/1/2015
2.2		
2.3		
2.4		
2.5		

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



<b>RECOMMENDATION #8</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
8. Traffic Court, NOPD, and OPSO should maintain information regarding the arrest, charge, booking, case disposition and financial information for the purposes of statistical analysis.	N/A	Accept
<p><b>IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY: WE ACCEPT THE RECOMMENDATION AND ARE CURRENTLY IN COMPLIANCE WITH IT. NOPD MAINTAINS STATISTICAL DATA ON DWI ARRESTS REGARDLESS OF EXPUNGEMENTS.</b></p>		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
8.1		
8.2		
8.3		
8.4		
8.5		

DWI Case Management  
 May 14, 2015

Management Response for: Chief Michael Harrison

# OFFICIAL COMMENTS FROM CITY OF NEW ORLEANS LAW DEPARTMENT

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MITCHELL J. LANDRIEU  
MAYOR

CITY OF NEW ORLEANS  
LAW DEPARTMENT  
1300 PERDIDO STREET, 5<sup>TH</sup> FLOOR EAST  
NEW ORLEANS, LOUISIANA 70112  
TELEPHONE: (504) 658-9800  
TELECOPIER: (504) 658-9868

SHARONDA R. WILLIAMS  
CITY ATTORNEY

June 17, 2015

Ed Quatrevaux, Inspector General  
Office of the Inspector General  
City of New Orleans  
525 St. Charles Avenue  
New Orleans, LA 70130

RE: DWI Case Management Report

Dear Mr. Quatrevaux:

We have received and thoroughly reviewed your May 14, 2015 draft report entitled "DWI Case Management at Traffic Court" ("Report"). As I have discussed with your staff, the City Attorney's office is continually reviewing its policies and procedures as we work to ensure that the prosecution of all offenses at Traffic Court is done effectively, efficiently, and in accordance with best prosecutorial practices. Recommendations 5-7 of the Report address policies and practices in the City Attorney's office; we have thoroughly reviewed those recommendations, and our responses are as follows:

Recommendation 5 is that the city attorneys should file bills of information in DWI cases to initiate prosecution. In connection with this recommendation, the Report suggests that city attorneys are not screening cases in accordance with national prosecution standards. All cases presented to our office are screened by either an assistant city attorney deputized by the District Attorney to prosecute DWI's or by the Chief Deputy City Attorney. Nonetheless, the City Attorney's office has developed a draft protocol, which will become effective on July 1, 2015 and which is attached hereto. The protocol addresses properly screening cases in accordance with national prosecution standards.

With regard to the filing of bills of information, police officers initiate charges against the defendant, but after a review of all available evidence, the criminal history of the defendant, and all witness interviews, the City Attorney's office exercises its prosecutorial discretion to amend charges as appropriate.<sup>1</sup> If the attorney determines that additional charges should be imposed, then those additional charges are filed with the court via a bill of information. In cases where

<sup>1</sup> "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charges to file...generally rests entirely in his discretion." *Borden-kircher v. Hayes*, 434 U.S. 357, 364 (1978)

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additional charges will not be imposed, the City Attorney's office uses affidavit(s)/summons(es), which is specifically allowed under Section 154-142 of the New Orleans Municipal Code (stating that "[a]ll proceedings in the municipal and traffic courts, shall be initiated by affidavit, which shall consist of the sworn statement of the complainant, the police officer, or an employee of the department of streets..."). Nonetheless, we will continue to evaluate the workloads of the city attorneys and available resources to determine whether bills of information can be utilized in additional cases.

Recommendation 6 is that the law department should develop a written policy containing standards and criteria to guide prosecutorial discretion and document the reasons for and results of plea bargains in case files. You further recommended that the law department track DWI convictions, downgrades, and the dispositions of high BAC cases. As stated above, the City Attorney's office has developed a draft protocol setting forth guidelines for plea agreements. The protocol will be effective July 1, 2015. The protocol also requires city attorneys to document and maintain plea agreements in case files. With regard to additional tracking of case dispositions, as the Report noted, the city attorneys were provided access to the Traffic Court's new computer system in December 2014, which will allow city attorneys to enter case dispositions and charge reductions into the computer system and which should allow for more effective tracking.

Recommendation 7 is that the law department should develop a training manual, detailed instructions, and standard forms to ensure that legal assistants are providing sufficient information to the District Attorney's office to prosecute felony DWI cases. The City Attorney previously met with the District Attorney's office approximately one year ago to ensure that the District Attorney was receiving all information required to prosecute felony DWI cases. The City Attorney will re-convene a meeting with the District Attorney's office to ensure that the District Attorney's office is receiving all necessary information. In addition, the City Attorney will meet with all staff in the City Attorney's office to ensure that all available information and corresponding documentation is provided to the District Attorney.

Notably, the District Attorney's office has access to the same information that the City Attorney has access to and that would be provided in connection with the prosecution of cases (e.g., certified records for previous DWI convictions, N.C.I.C.). Also, there are instances in which our office requested certified documents from another parish or state and contemporaneously forwarded the case to the District Attorney while waiting on the request to be filled by the other parish and/or state, thus allowing the District Attorney's office to initiate its screening process while the document request was pending. Nonetheless, in 2012, the District Attorney's office took an average of 257 day to inform the City Attorney's office whether the District Attorney would accept or refuse the charges on felony referrals from our office. Some decisions took more than one year as reflected in the attached document. The City Attorney does not have specific details about why the response from the District Attorney's office was a certain length of time in any specific case. It could be related to the time it takes to obtain certified documents from other parishes or from the state. Additional information about the District Attorney's processes is needed to fully address the concerns expressed in the Report in connection with Recommendation 7. Regardless, the City Attorney will meet with her staff and

the District Attorney to ensure that all information in possession of the City Attorney's office is provided to the District Attorney for felony prosecutions.

The Report addresses an important issue of public safety, and the City Attorney's office appreciates the opportunity to review and comment on your analysis of DWI prosecutions. Thank you for your recommendations.

Best regards,



Sharonda R. Williams  
City Attorney

cc: Andrew Kopplin, First Deputy Mayor/CAO  
Michael Harrison, Superintendent of New Orleans Police Department  
Charlene Larche, Chief Deputy City Attorney  
Daniel Cazenave, NOPD Superintendent's Office

OFFICE OF INSPECTOR GENERAL  
CITY OF NEW ORLEANS



<b>RECOMMENDATION #5</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
5. The Law Department should receive copies of DWI cases directly from NOPD and follow NDAA and ABA prosecutorial standards regarding screening cases and making charging decisions; city attorneys should file bills of information in DWI cases to initiate prosecution.	SHARONDA WILLIAMS [REDACTED]	Partially Accept
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY: BILLS OF INFORMATION CURRENTLY ARE USED WHEN INITIATING NEW CHARGES, AND AFFIDAVITS/SUMMONS BY THE POLICE ARE PERMITTED UNDER LOCAL LAW FOR TRAFFIC COURT CASES.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
5.1 PROTOCOL IS IN DRAFT FORMAT AND WILL BE IMPLEMENTED BY JULY 1, 2015	SHARONDA WILLIAMS	JULY 1, 2015
5.2		
5.3		
5.4		
5.5		

DWI Case Management  
May 14, 2015

Management Response for: Sharonda Williams  
[REDACTED]

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



<b>RECOMMENDATION #6</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
6. The Law Department should develop a written policy containing standards and criteria to guide prosecutorial discretion and document the reasons for and results of plea bargains in their case files. It should also track DWI convictions, downgrades, and the disposition of high BAC cases.	SHARONDA WILLIAMS [REDACTED]	Accept
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY:		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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DWI Case Management  
 May 14, 2015

Management Response for: Sharonda Williams  
 [REDACTED]

OFFICE OF INSPECTOR GENERAL  
CITY OF NEW ORLEANS



<b>RECOMMENDATION #7</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
7. The Law Department should develop a training manual, detailed instructions, and standard forms designed to ensure that legal assistants provide the information the District Attorney's Office needs to prosecute felony DWI cases; city attorney managers should provide formal training for legal assistants and supervise them, and the Law Department should track potential felony cases to identify trends and address problems as they arise.	SHARONDA WILLIAMS [REDACTED]	Accept
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY:		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
7.1 MEET WITH THE DISTRICT ATTORNEY TO DETERMINE WHAT DOCUMENTS ARE NEEDED AND TO LEARN ANY OTHER ISSUES THAT MAY CAUSE DELAY IN RESPONDING TO REFERRALS OR REJECTION OF REFERRALS	SHARONDA WILLIAMS	JULY 15, 2015
7.2 MEET WITH CITY ATTORNEY OFFICE STAFF TO ENSURE THAT ALL DOCUMENTS ARE PROVIDED TO THE DISTRICT ATTORNEY	SHARONDA WILLIAMS	JULY 31, 2015
7.3		
7.4		
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DWI Case Management  
May 14, 2015

Management Response for: Sharonda Williams  
[REDACTED]

# OFFICIAL COMMENTS FROM CITY OF NEW ORLEANS TRAFFIC COURT

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## State of Louisiana City of New Orleans Traffic Court



727 SOUTH BROAD STREET  
NEW ORLEANS, LA 70119  
(504) 658-8500

JUDGE ROBERT E. JONES, III  
DIVISION "B"  
CHIEF JUDGE

JUDGE HERBERT A. CADE  
DIVISION "A"

JUDGE MARK J. SHEA  
DIVISION "C"

JUDGE STEVEN M. JUPITER  
DIVISION "D"

DEBRA A. HALL  
JUDICIAL ADMINISTRATOR

June 19, 2015

Ed Quatrevaux, Inspector General  
New Orleans Office of Inspector General  
525 St. Charles Ave., Suite 300  
New Orleans, LA 70130

Dear Mr. Quatrevaux,

The Judges of the Traffic Court of New Orleans have reviewed the draft of the report titled "DWI Case Management at Traffic Court." After joint conference we submit the following response.

First, we observe that the very title of report misleads the reader into assuming that it concerns the "Traffic Court" when, in fact, the Inspector General's evaluators examined and criticized the operations and procedures of the New Orleans Police Department, the Orleans Parish Sheriff's Office and the Law Department of the City of New Orleans, entities over which the Judges of the Traffic Court have no authority or control.

Second, the report is based on stale data. In December, 2014, the Traffic Court migrated its case management database to a new, web-based system which, it is hoped, will increase efficiency in case management.

With regard to the specifics of the findings and recommendations we note the following:

1. Warrants: The law provides for the issuance of warrants by the court *sua sponte* in only two instances, viz., failure of a defendant to appear or failure of a defendant to comply with terms of probation, and they are so issued by the Court. The "finding" that the Court has "no assurance ... that the Court would know whether or not an individual complied with a warrant" (pg. 23) borders on the non-sensical. Non-compliance is the reason warrants are issued. "Compliance" with a warrant is effected either by arrest by a police officer or the defendant's voluntary appearance before the Court, both of which are documented.

Footnote 49 of the Report observes that other entities may have warrant request authority, but misleadingly and without support of a mandate in law, prefers to accuse “the Traffic Court” of having no “written policy” with respect to warrants.

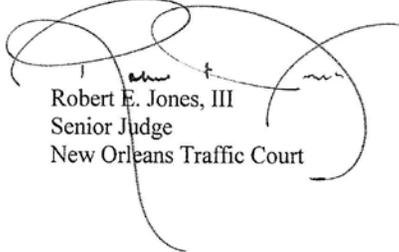
2. Expungement Data: The criminal case records held by the Traffic Court are expunged in accordance with law.

3. Open Case Records: It is the responsibility of the prosecutor to advance the prosecution. If the OIG has the fiscal luxury of performing “cursory” searches of death records (footnote 48) the information it obtains should be shared with the Law Department so that it can close the relevant cases.

4. Probation Officers Quarters and Equipment: The responsibility for providing adequate office and equipment resources for the Traffic Court falls upon the city of New Orleans by operation of law. L.R.S. 13:2509.

The Court is cognizant of the need to achieve greater efficiencies in the administrative aspects of the judicial system, and has consistently striven to do so within the given fiscal constraints. The Judges have exercised, and will continue to exercise, their judicial power appropriately.

Sincerely,



Robert E. Jones, III  
Senior Judge  
New Orleans Traffic Court

## OFFICIAL COMMENTS FROM THE ORLEANS PARISH SHERIFF'S OFFICE

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Office of the Sheriff  
Parish of Orleans ~ State of Louisiana

**Marlin N. Gusman**  
Sheriff

June 18, 2015

Ed Quatrevaux  
Inspector General  
New Orleans Office of Inspector General  
525 St. Charles Ave., Suite 300  
New Orleans, LA 70130

Dear Mr. Quatrevaux:

Thank you for the opportunity to both review the draft of your report, titled "DWI Case Management at Traffic Court," but also for meeting with my staff to further discuss the concerns raised therein. As a result, two recommendations were removed by your office. I have completed the requested DWI Management Response Form per your request.

As indicated in our response, I would like to stress that the Orleans Parish Sheriff's Office (hereinafter "OPSO") remains committed to improving the efficiency of all parts of the criminal justice system in Orleans Parish, including the management of DWI cases, to any extent that we can. However, I must respectfully disagree with any allegation that the OPSO has contributed to any inefficiencies in the DWI case management system. I note that the OPSO provides automated electronic transmissions of electronic data to the Traffic Court multiple times per day, and that the OPSO is solely responsible for populating that system with all arrest and booking data relevant to traffic arrests. I believe that this system is extremely efficient for purposes of transmission of timely, track-able, and accurate data and disagree with any contention that the OPSO should devote any additional staff time to altering the order of the courtesy paper copy of arrest records which are physically brought to the Court on a daily basis. As indicated in the attached response form, the OPSO maintains that its current form is adequate for OPSO's internal purposes, and there has been no issue with location or maintenance of any records while using this form. However, in an effort to assist the Court should the Court have requests for modification of our form, we will certainly consider those re-designs to the extent that they do not conflict with our internal operations.

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819 South Broad Street, New Orleans, LA 70119 ~ 504-822-8000 ~ [www.opcsa.org](http://www.opcsa.org)  
"To Serve and Protect"

I further disagree with any contention that the OPSO fails to properly maintain any data of expunged records for purposes of any statistical analysis which your office may have, and note that there is no record of my office ever receiving a request for this data which complied with the stringent requirements of article 973 of the Louisiana Code of Criminal Procedure, which imposes affirmative obligations upon both record-requesting and record-producing law enforcement agencies with respect to such sensitive records. As indicated by my staff, the OPSO will produce any such records made in compliance with Louisiana law.

I welcome any further questions or comments you or your staff may have, and look forward to review of the final report.

Sincerely,



Marlin N. Gusman  
Sheriff

MNG/dcb

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



MANAGEMENT RESPONSE FORM

PLEASE COMPLETE THIS FORM AND RETURN AS SPECIFIED BELOW. SUPPLY YOUR RESPONSES IN THE SHADED BOXES.

PLEASE INDICATE YOUR AGREEMENT OR DISAGREEMENT WITH EACH OF THE FOLLOWING RECOMMENDATIONS BY SELECTING A RESPONSE FROM THE DROPDOWN BOX. IF YOU REJECT OR PARTIALLY ACCEPT THE RECOMMENDATION, PLEASE EXPLAIN WHY IN THE SPACE PROVIDED. PLEASE DESCRIBE EACH ACTION YOUR AGENCY WILL TAKE TO IMPLEMENT THE RECOMMENDATION, OR FIX THE PROBLEM, ALONG WITH THE NAME AND CONTACT INFORMATION OF THE PERSON(S) RESPONSIBLE FOR THE ACTION AND THE COMPLETION DATE (IF ONE IS ALREADY NOT PROVIDED).

RETURN THIS COMPLETED FORM TO BECKY MOWBRAY AT [rmowbray@nolaog.org](mailto:rmowbray@nolaog.org) BY **JUNE 17**.

ENTER NAME HERE:

<b>RECOMMENDATION #2</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
2. NOPD, OPSO, and Traffic Court should institute controls by which a third party verifies the transfer of DWI records to ensure timely and accurate docketing of all DWI arrests, and city attorneys should receive immediate notification of DWI arrests from NOPD.		Partially Accept
<p>IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY: OPSO IS CURRENTLY ACCEPTING THE PAPERWORK FROM NOPD AT ARREST AND PROVIDING THE INFORMATION ELECTRONICALLY TO TRAFFIC COURT. THIS ELECTRONIC INFORMATION, WHICH IS ESSENTIALLY A "DATA DUMP" WHICH POPULATE'S THE TRAFFIC COURT'S COMPUTER SYSTEMS, IS CONTINUOUSLY TRANSFERRED THROUGHOUT THE DAY. THE PACKET IS ALSO BEING "HAND DELIVERED" TO THE COURTS EVERY WEEKDAY BY AN OPSO STAFF MEMBER ASSIGNED TO THE INTAKE AND PROCESSING CENTER. A COPY OF THIS PACKET IS ALSO BEING KEPT IN THE ARRESTEE'S FOLDER IN THE OPSO RECORD ROOM. NOPD IS NO LONGER PROVIDING AND/OR REQUIRING A "RECEIPT" OF ACCEPTANCE FROM OPSO. AS INDICATED DURING THE EXIT CONFERENCE, OPSO CONSIDERS ITS CURRENT FORM APPROPRIATE FOR ITS INTERNAL PURPOSES, THOUGH WOULD RECONSIDER THE DESIGN FOR PURPOSES OF ASSISTING THE COURT ADMINISTRATION SHOULD THE PROPOSED RE-DESIGN NOT CONFLICT WITH OPSO OPERATIONS.</p>		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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DWI Case Management  
 May 14, 2015

Management Response for: Sheriff Marlin Gusman

OFFICE OF INSPECTOR GENERAL  
CITY OF NEW ORLEANS



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DWI Case Management  
May 14, 2015

Management Response for: Sheriff Marlin Gusman  
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OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



<b>RECOMMENDATION #8</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
8. Traffic Court, NOPD, and OPSO should maintain information regarding the arrest, charge, booking, case disposition and financial information for the purposes of statistical analysis.		Partially Accept
<p>IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY: THE OPSO ALREADY DOES "MAINTAIN" THE DATA REFERENCED IN THIS RECOMMENDATION. HOWEVER, THIS INFORMATION, WHICH IS PART OF THE "RECORD OF ARREST OF A PERSON," HAS NEVER BEEN REQUESTED BY THE OIG OR ANY OTHER LAW ENFORCEMENT AGENCY VIA THE PROCEDURE SET FORTH IN LA. C.CR.P. ART. 973, WHICH REQUIRES A WRITTEN CERTIFICATION FROM SAID AGENCY PERTAINING TO THE NATURE OF THE REQUESTED INFORMATION'S USE. UPON RECEIPT OF A WRITTEN REQUEST WHICH COMPLIES WITH ART. 973, THE OPSO WILL PROVIDE A DATASET CONTAINING ANY REQUESTED FIELDS PERTAINING TO EXPUNGED ARRESTS OR CONVICTIONS. THE OPSO HAS NO LEGAL AUTHORITY TO PROVIDE ANY PORTION OF A RECORD OF ARREST OR CONVICTION WHICH HAS BEEN EXPUNGED UNTIL SUCH A WRITTEN REQUEST AND CERTIFICATION IS PROVIDED.</p>		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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DWI Case Management  
 May 14, 2015

Management Response for: Sheriff Marlin Gusman