



Roderick and Solange MacArthur Justice Center
4400 S. Carrollton Avenue
New Orleans, Louisiana 70119
O 504 620 2259
F 504 208 3133

macarthurjustice.org

James W. Craig
Attorney (Licensed in Mississippi and Louisiana)
Director, Louisiana Office

jim.craig@macarthurjustice.org

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Dear Mayor Cantrell and Superintendent Ferguson,

We appreciate how quickly Superintendent Ferguson responded to our request that NOPD policy be revised to direct officers to issue summonses instead of arresting people for state misdemeanors and felonies that are not crimes of violence, sex offenses, or domestic offenses. However, we must disagree with NOPD's refusal to make changes to its arrest policy and with the reasons given for maintaining the status quo as the COVID-19 infection and death rates in New Orleans continues to rise. We write to clarify the danger to the community posed by the current NOPD policy and to ask you to reconsider your position.

There are several groups of individuals affected by an NOPD officer's decision to arrest someone and take them to jail rather than to issue a summons: (1) the person charged; (2) the arresting NOPD officers and any officers transporting the person to jail; (3) the people who are currently detained in the Orleans Justice Center ("OJC"); (4) the people working in the jail, including OPSO staff and health care providers; and (5) others who will come into contact with anyone in these aforementioned groups. All of these individuals are members of our community and the health and safety of all of them is our concern and your responsibility.

Current NOPD policy risks bringing infection into the jail and endangers both jail staff and those imprisoned, undermines the efficacy of OPSO's social distancing and containment efforts, and risks infection of new arrestees. We take issue with your statement that "officers currently have the discretion to issue citations and/or summons when possible, rather than taking a person into physical custody for a low-level offense." As written and posted on the Department's website,¹ current NOPD policy does **not** give officers discretion to issue summonses for many misdemeanors or any low-level felonies. Also, current policy excludes large categories of arrestees, such as anyone with a prior arrest of any kind, regardless of the severity of the prior charge.

Thus, NOPD's existing policy requires officers to make arrests of people charged with low-level offenses like felony simple drug possession, unauthorized use of a moveable, and illegal possession of stolen things. For example, just last week, NOPD officers arrested a person while officers were performing an eviction simply for having one pain pill suspected to be oxycodone. NOPD officers on proactive patrol took another person to jail for possession of a single pill suspected to be ecstasy. **Over the past two weeks, officers have arrested and taken to jail people for misdemeanor charges including simple possession of marijuana, theft of alcoholic beverages from a store, and trespass.**

¹ New Orleans Police Department Operations Manual, Chapter 41.8, Affidavit and Summons (Non-Traffic).

Given this record of arrests, it is clear that, whatever may be your intention, NOPD officers believe the current policy encourages, if not requires, them to make custodial arrests even for non-violent misdemeanor charges. The NOPD must reverse this practice and instead direct officers to issue summonses for state misdemeanors and felonies that are non-violent, non-domestic, and non-sex offenses where there is no risk to the public. As we have previously stated, we have proposed language to amend the current policy available for your review. This change in policy would shift the “default” procedure for NOPD officers from arrest to summons and still allow them the discretion to arrest suspects when circumstances indicate that public safety requires it.

A revised policy would follow the directive of Chief Justice Johnson of the Louisiana Supreme Court that law enforcement agencies should, whenever practicable, “issue summons and citations on misdemeanor crimes and non-violent offenses in lieu of arrest, with a notice to appear on a future date.”²

Maintaining physical distance is necessary to stop the spread of COVID-19, but it is impossible to accomplish physical and social distancing in OJC with the revolving door created by NOPD’s arrests of those on low-level charges. That is exactly why the professors at the Tulane University School of Public Health and School of Medicine wrote an open letter to “urgently request that the members of the New Orleans Criminal Justice Community work to reduce the population of the jail immediately . . . , and continue to reduce the number of intakes into the Orleans Justice Center over the longer course of the crisis.”³

For the same reason, Orleans Parish Sheriff Marlin Gusman has requested cooperation from the Criminal District Judges “to minimize any unnecessary introduction of COVID-19 into the facility by those who may ultimately be released at first appearance.”⁴ The refusal of the NOPD to change policy in order to reduce the number of people taken to jail runs counter to the efforts of the rest of the criminal justice community to stop the spread of COVID-19.

Based on the heightened rate of infection and mortality in New Orleans, the risk is unconscionably high that the virus will be transmitted to and cause serious harm to those you arrest and book on low-level charges, as well as to the officers who arrest and transport them, the prisoners in the jail to which they are transported, and the OPSO staff and health care providers.

For some New Orleanians, your choice to perform arrests instead of issuing summonses for low-level charges will result in death for our loved ones both within and outside OJC.

² “La. Supreme Court chief justice offers prison reduction guidance amid COVID-19 pandemic,” WAFB9, found at <https://www.wafb.com/2020/04/03/la-supreme-court-chief-justice-offers-prison-reduction-guidance-amid-covid-pandemic/> (last accessed Apr. 8, 2020). Our proposal is aligned with ¶7 of the Chief Justice’s letter. We trust this puts to rest any question whether NOPD can lawfully expand the use of summonses in lieu of arrests.

³ “An open letter regarding COVID-19 and jails in Orleans Parish, Louisiana,” Tulane University School of Public Health and Topical Medicine (March 25, 2020), found at <https://sph.tulane.edu/open-letter-covid19-jail> (last accessed Apr. 8, 2020) (“Tulane SPH Letter”)

⁴ Sheriff Marlin Gusman, Letter to Orleans Parish Criminal District Judges (March 26, 2020), found at <https://www.documentcloud.org/documents/6819741-Letter-From-Sheriff-Gusman-to-Judge-Pittman.html> (last accessed Apr. 8, 2020).

The pandemic requires that NOPD adapt its actions so as not to put New Orleanians at greater risk of contracting COVID-19. Continuation of a policy under which NOPD officers routinely take people to jail for low-level offenses **decreases** public safety. We again ask you to act to safeguard the community by changing NOPD policy.

Sincerely,

James W. Craig, Director
Hannah A. Lommers-Johnson, Attorney
The Roderick and Solange MacArthur Justice Center