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New Orleans Safe City Initiative

Use of Summonses and Custodial Arrests for Municipal Offenses

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In the summer of 2008, the City Council enacted two ordinances addressing the use of summonses. One mandates the use of a summons when police encounter a person with an outstanding traffic attachment. The other, Section 54-28 of the Municipal Code, mandates, with some enumerated exceptions, the use of a summons when police encounter a person believed to be committing a municipal offense other than domestic violence. This memorandum reports on the effects of the latter ordinance.

Section 54-28 requires:

- That an officer issue a summons for a municipal offense in lieu of a custodial arrest unless the circumstances meet specific criteria for which custodial arrest is deemed necessary;
- That the officer record on the citation form the reasons a custodial arrest is made if a summons is not issued; and,
- That the New Orleans Police Department report quarterly on the numbers of summonses, custodial arrests, and the reasons given for custodial arrests.

Summary of findings

- Summonses are being issued in 29 percent of non-domestic violence municipal cases, up from 24 percent prior to the ordinance’s enactment.
 - For municipal offenses other than public intoxication, summonses are being issued in 41 percent of cases.
- No inappropriate factor, such as race or sex, determines whether a summons is issued or a custodial arrest is made. The three factors that are predictive of issuance of a summons are:
 - The presence of a public intoxication charge (increases the likelihood of custodial arrest);
 - The presence of a regulatory offense such as inappropriate licensing or littering (increases the likelihood of a summons); and,
 - New Orleans residency (increases the likelihood of a summons).

- Reasons for refusal to give a summons are provided in 51 percent of the cases.
 - For municipal offenses other than public intoxication, reasons for refusal to give a summons are provided in 52 percent of cases.
 - If one assumes that a charge of public intoxication is itself a stated reason for custodial arrest, reasons for refusal to give a summons are provided in 68 percent of cases.

- No agency is collecting and reporting comprehensive data relevant to the use of summonses.

Methodology

Data was provided by the Municipal Court for analysis of the frequency of summons use and the rate of defendants' appearance after being given a summons or released on bond. The pre-enactment baseline cohort was drawn from cases commenced between March 1 and May 31, 2008, and the post-enactment comparison cohort was drawn from cases between the same dates one year later.

All other analyses are based on examination of citation forms for a cohort of Municipal Court cases commenced during a period of approximately ten days, between October 8 and October 17, 2009. Data were available only from 78.4 percent of the citations written between these dates and the analyses include only one defendant per case in cases with multiple defendants. It is important to note that 38.6 percent of the cases in our sample have more than one offense charged in a given case, for a total of 470 offenses charged in connection to 308 cases.

The most frequently charged offenses in this October 2009 cohort are: Public Intoxication (18.3% of all offenses charged); Disturbing the Peace (15.8%); Criminal Trespass (14.0%); Obstructing Public Passage (8.1%); Resisting an Officer (5.1%); Theft (4.9%); Begging (4.3%); Simple Battery (4.0%); and Open Container in Vehicle (3.4%). Of the remaining 104 offenses, no other charge makes up three percent of the total number of offenses.

Public Intoxication Cases

The nature of public intoxication charges requires special consideration in the context of summons use. Section 54-405 of the Municipal Code, "Public drunkenness, drug incapacitation," states, "It is unlawful for any person to appear in a public place manifestly under the influence of alcohol, narcotics or other drugs, not therapeutically administered, *to the degree that he may endanger himself or other persons or property.*" The third exception to the issuance of a summons in Section 54-28 states, "The person acts in a violent or destructive manner or makes a statement indicating that *he or she intends to inflict injury to self or another or damage to property*" (emphases added). Thus, officers may assume that incidents involving a public intoxication charge generally should result in a custodial arrest. Indeed, in the October 2009 cohort, 93 percent of public intoxication charges resulted in custodial arrest. Officers may also believe that their obligation to provide a reason for a

custodial arrest is satisfied by the existence of a public intoxication charge. For these reasons, some of the subsequent analyses contrast police actions when there is a public intoxication charge with police actions when there is not.

Frequency of summons use

Table 1 provides the breakdown of summons use versus custodial arrest for the pre- and post-enactment cohorts (March through May of 2008 and 2009) as well as for the 10-day October 2009 cohort. For the purposes of this comparison, we have removed all cases with domestic violence offenses, as they are exempted from the ordinance. Also included is the frequency of summons use for cases with or without a public intoxication charge.

Table 1: Rates of Summons Use and Custodial Arrest Preceding and Following Enactment of Section 54-28

	Summonses issued	Custodial arrest
2008 pre-enactment cohort (n=8,754)*	24.4%	75.0%
2009 post-enactment cohort (n=9,247)*	29.3%	67.7%
October 2009 cohort (n=308)	31.5%	68.5%
October 2009 cohort cases without a public intoxication charge (n=222)	41%	59%

*This data includes a small percentage of cases considered non-summons and non-custodial, for which we have no further explanation.

Reasons Provided for Custodial Arrest

Section 54-28 authorizes an officer to make a custodial arrest for an eligible (non-domestic violence) municipal offense only when one of the following applies:

1. The person does not possess identification issued by any municipal, state, territorial, federal, or other government authority within the United States;
2. The person makes a statement that indicates an intent to disregard the summons or refuses to sign the summons;
3. The person acts in a violent or destructive manner or makes a statement indicating that he or she intends to inflict self-injury to self or another or damage to property;
4. The person is a habitual offender, defined as any individual with a criminal history of two or more felony convictions or five or more felony or municipal arrests; or
5. Based on the circumstances, an officer determines that it is absolutely necessary to make an arrest.

If the officer determines that any of the above apply he or she may issue a summons as a matter of discretion. If, however, the officer makes a custodial arrest, he or she must record the applicable reasons for the custodial arrest on the back of the citation form.

Table 2, below, provides the custodial arrest reasons recorded for the 68.5 percent of the October 2009 cohort cases for which a custodial arrest was made. The rows in Table 2 correspond to the ordinance's enumerated criteria for custodial arrest, detailed above. In addition to these criteria, we have included open attachment(s) as a reason for custodial arrest. Also provided are the numbers and frequency of cases in which neither a reason for custodial arrest was given nor could one be reasonably extrapolated from the incident description provided by the officer. These figures represent a liberal interpretation of the information provided by the officer as they include both reasons for arrest that were explicitly stated as well as reasons inferred by researchers when none was explicitly stated. In the vast majority of cases, no explicit reasons were stated; in most, the officer simply provided a description of the incident.

Table 2: Reasons Provided for Making a Custodial Arrest in lieu of Issuing a Summons for Municipal Offenses (all non-domestic violence cases)

Reason given for arrest	Percentage of custodial arrests (n=211)
1. No ID/false name (n=23)	10.9%
2. Intent to disregard the summons (n=0)	---
3. Violent/threat of violence (n=32)	15.2%
4. Habitual offender (n=1)	0.5%
5. Absolutely necessary (n=35)	16.6%
Warrant/open attachment (n=16)	7.6%
No reason given or apparent (n=102)	48.3%
Unable to read the citation copy (n=2)	0.9%

Table 3, below, shows the frequency with which officers provided reasons for not issuing a summons. Please note that the two cases for which the citation copy is illegible are not included in the figures below.

Table 3: Frequency of Reasons Provided for Custodial Arrest

Custodial arrest sample	Reasons provided for custodial arrest	No reasons provided for custodial arrest
All custodial arrests (n=209)	51.2%	48.8%
Custodial arrests excluding public intoxication cases (n=129)	51.9%	48.1%
Custodial arrests with a public intoxication charge only (n=80)	56.2%	43.8%
All custodial arrests and assuming that each public intoxication case has a reason provided (n=209)	67.9%	32.1%

Demographics of Custodial Arrestees and Individuals Issued Summonses

Using information from the October 2009 cohort, a regression analysis was performed to determine which, if any, demographic or offense factors predict the use of summons or custodial arrest. A regression analysis allows for an individual factor to be analyzed while holding other factors constant in order to determine whether and to what degree a given factor is predictive of various outcomes.

The demographic factors examined are New Orleans residency, homelessness, race, and sex. The offense factors examined are person offense, public intoxication, other public order offense, and regulatory offense. Three factors were found to be predictive of summons use or custodial arrest, as follows:

- An individual with a public intoxication charge is approximately seven times more likely to be placed under custodial arrest than an individual who has all of the other factors in common, but does not have a public intoxication offense charge;
- A New Orleans resident is almost five times more likely to be issued a summons than an individual who has all of the other factors in common, but is not a New Orleans resident;
- An individual with a regulatory offense charge is almost five times more likely to be issued a summons than an individual who has all of the other factors in common, but does not have a regulatory offense charge; and,
- An individual is neither more nor less likely to be issued a summons or placed under custodial arrest as a result of having any of the following characteristics: being homeless; being African-American; being female; having a person offense, a property offense, or any public order offense charge other than public intoxication; or the total number of offenses charged.

Tables 4 through 9, below, provide the data underlying these findings.

Table 4: Custodial Arrest and Summons by NOLA Residency/Homelessness

Residency	Percentage placed under custodial arrest	Percentage issued a summons
NOLA non-resident (n=50)	92.0%	8.0%
Homeless (n=7)	85.7%	14.3%
NOLA resident (n=247)	63.6%	36.4%
Not reported (n=4)	50.0%	50.0%

Table 5: Custodial Arrest and Summons by Race/Ethnicity

Reported race/ethnicity	Percentage placed under custodial arrest	Percentage issued a summons
Asian (n=2)	100%	---
Hispanic (n=11)	81.8%	18.2%

Caucasian (n=111)	70.3%	29.7%
African-American (n=184)	66.3%	33.7%

Table 6: Custodial Arrest and Summons by Sex

Sex	Percentage placed under custodial arrest	Percentage issued a summons
Female (n=58)	74.1%	25.9%
Male (n=250)	67.2%	32.8%

Table 7: Custodial Arrest and Summons by Offense Type

Offense type	Percentage placed under custodial arrest	Percentage issued a summons
Public intoxication offense (n=86)	93.0%	7.0%
Property offense (n=102)	82.4%	17.6%
Person offense (n=21)	71.4%	28.6%
Other public order offense (n=176)	67.0%	33.0%
Regulatory offense (n=31)	25.8%	74.2%

Table 8: Custodial Arrest and Summons by Offense Charge

Offense charge	Percentage placed under custodial arrest	Percentage issued a summons
§54-405 Public intoxication (n=86)	93.0%	7.0%
§54-403 Disturbing the peace (n=74)	77.0%	23.0%
§54-153 Criminal trespass (n=66)	81.8%	18.2%
§54-401 Obstructing public passage (n=38)	34.2%	65.8%
§54-441 Resisting an officer (n=24)	100%	---
Other charges** (n=182)	48.0%	52.0%

** "Other charges" consists of all single offense charges that make up less than five percent of the total number of offenses charged.

Table 9: Predictive Factors of Custodial Arrest or Issuance of Summons

Factor	Significantly predictive (p<.05), or not?	Increase/decrease in the likelihood of custodial arrest (Exponential β)***
NOLA resident	Yes (p=.014)	β=-.235 (decrease)
Homeless	No (p=.659)	β =.575
African-American	No (p=.628)	β =1.167
Female	No (p=.189)	β =1.643
Public intoxication offense	Yes (p=.002)	β=6.938 (increase)
Regulatory offense	Yes (p=.035)	β=.221 (decrease)
Other public order offense	No (p=.679)	β =.774
Person offense	No (p=.735)	β =1.296
Property offense	No (p=.141)	β =2.529

Number of offenses charged per case	No (p=.392)	$\beta=1.381$
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***Exponential β values of less than 1 predict a decrease in likelihood and those greater than 1 predict an increase in likelihood of custodial arrest with the deviation from 1 reflecting the strength of the prediction. For instance, an exponential β value of 0.2 suggests a five-fold decrease in likelihood of custodial arrest, while an exponential β value of 4 suggests a four-fold increase in likelihood of custodial arrest.