



THE CITY OF NEW YORK
INDEPENDENT BUDGET OFFICE

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May 16, 2011

Hon. Brad Lander
Council Member
New York City Council
250 Broadway, Suite 1776
New York, New York 10007

Dear Council Member Lander:

As you requested, IBO has reviewed the long-term trends in funding for the city's five district attorneys (DAs) and special narcotics prosecutor (SNP). In order to provide some context for the funding data we have also examined arrest and prosecution data for each borough over time.

Our main findings include:

- There is no formula in city or state law specifying the level of funding to be allocated to district attorneys. Instead, the respective levels of city tax levy appropriations are determined by the Mayor and City Council through the budget process.
- District attorneys are funded primarily with city tax levy appropriations. This is particularly the case for the district attorneys outside of Manhattan.
- The share of city tax levy personal service (PS) appropriations for the Manhattan DA has been relatively constant since 1980. The largest change in the shares occurred in Brooklyn, which fell from 30 percent of the PS funding in 1980 to 25 percent this year. The special narcotics prosecutor's share increased from 3 percent to 7 percent.
- Even with an Executive Budget proposal for 2012 that would add a combined \$6.6 million in "workload funding" to the budgets of the district attorneys' offices except Manhattan, the largest share of the total allocation for the DAs still goes to Manhattan. This adjustment, which is not reflected in our tables below, would result in the Manhattan DA's share of city tax levy personal service appropriations falling slightly to 29 percent. The additional funding for DAs outside of Manhattan is not "baselined" for years beyond 2012.

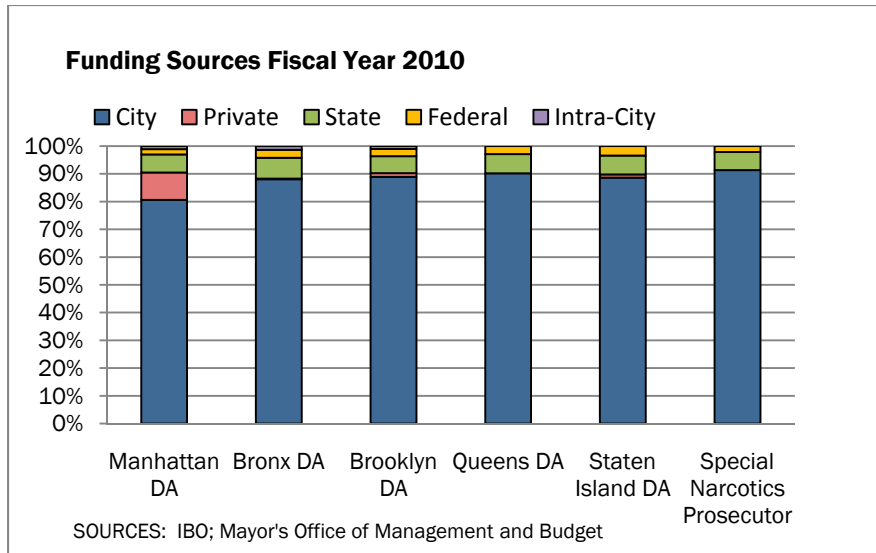
There are a multitude of factors which influence the workload facing each of the city's district attorneys. We examined one simple indicator: felony and misdemeanor arrest activity and prosecutions and found:

- Felony arrests increased in all boroughs during the 1980s and generally fell thereafter. With respect to borough shares, Manhattan accounted for 35 percent of felony arrests in 1980 but only 25 percent by 2009. The Bronx has seen the largest increase in its share.
- Over the same period, Manhattan's share of misdemeanor arrests fell almost by half, from 48 percent in 1980 to 26 percent in 2009. Meanwhile, Brooklyn and the Bronx saw significant increases in their respective shares.
- Even after adjusting for the subset of felony and misdemeanor arrests which prosecutors decline to prosecute, the shift away from Manhattan in the borough shares of arrest activity remains apparent.

Background. The city's five district attorneys, one in each borough, investigate and prosecute criminal conduct of various sorts ranging from what are commonly referred to as "street crimes" to sophisticated economic or so-called white collar offenses. In addition, the city's special narcotics prosecutor is responsible for investigating and prosecuting felony narcotics cases.

Funding Formula. There is no requirement in city or state law that funding be allocated to district attorneys based on any type of formula involving factors such as borough population, reported crime, arrest levels, or any other quantitative measure. Instead, the respective levels of city tax levy appropriations that support each prosecutor's operations are determined by the Mayor and City Council through the annual budget process.

Funding Sources. District attorneys are funded primarily with city tax levy appropriations. The share of city funds within DA budgets in fiscal year 2010 ranged from 81 percent for the Manhattan DA to 91 percent for the special narcotics prosecutor. The district attorneys also receive state, federal, and intra-city governmental funding along with private, nongovernmental funding, the latter often in the form of monies from the forfeiture of assets.



Note that the funding shares reflect only those amounts that flow into the city’s general fund and are reflected in the city’s Financial Management System (FMS). As you are aware, concerns have been raised by the Bloomberg Administration about proceeds from settlements and other sources that flow into accounts maintained by DAs outside of FMS—often with little in the way of disclosure and transparency. It has been asserted by the Mayor’s Office of Management and Budget that the existence of these off-budget accounts makes it difficult to fairly weigh requests from DAs for additional city tax levy appropriations.

Revenue from Prosecutions. The prosecutorial efforts of the district attorneys often generate significant revenue for the city. For example, the Manhattan DA, especially since 2004, has generated significant restitution payments for the city treasury—many of which resulted from prosecution of financial crimes. Restitution received by the city flows into the general fund, with over \$300 million recorded over the past two years as displayed in the table below. The Mayor’s Office of Management and Budget estimates that the Manhattan DA produces between 95 percent and 98 percent of the citywide restitution payments each year.

Restitution revenues often stem from deferred prosecution settlements in which prosecutors agree to not prosecute, provided the defendants agree to correct their behavior and (usually) to make payments to the DAs for a specific number of years. At the end of the period, the threat of prosecution is removed, provided the defendant’s behavior has been satisfactory and the required payments made. One example was a recent agreement between the Manhattan DA and Credit Suisse which yielded total revenue of \$268 million, of which \$129.7 million flowed to the state and \$129.7 million to the city. The remaining \$8.6 million was allocated directly back to the Manhattan DA. The \$129.7 million allocated to the city treasury in the Credit Suisse case makes up nearly all of the \$133.5 million in DA restitution payments for 2010.

Restitution Payments to City Treasury	
2004	\$35,800,000
2005	\$2,500,000
2006	\$4,600,000
2007	\$14,700
2008	\$4,100,000
2009	\$175,100,000
2010	\$133,500,000
SOURCES: IBO; Financial Management System	

Prosecutors have for the past several years operated under a revenue agreement with the Mayor’s budget office that allows a portion of reductions in DA budgets to be restored if revenues generated from prosecutorial activities are above a certain baseline amount. One consequence of this agreement is that revenues generated overwhelmingly in New York County have funded budget restorations for district attorneys in all five boroughs.

Asset forfeiture. In addition to restitution payments, which flow first into the city treasury and then are shared among the DAs in the form of city funding to support their operations, other private, nongovernmental sources of funding (often referred to as categorical funding) also support DA operations. The main type of categorical funding received by DAs consists of asset forfeiture monies which stem from specific prosecutions carried out by individual DAs. These monies flow directly to individual DAs and are not shared with their counterparts in the other boroughs. The total amounts of categorical funding made available to the DAs since 2004 is displayed below. Such categorical funding is to be used by DAs to help cover expenses associated with their prosecutorial work. One can see that the amount of categorical funding available to the Manhattan DA routinely exceeds by a wide margin that available to the city’s other prosecutors.

Private (Categorical) Funding, by Fiscal Year							
<i>Dollars in millions</i>							
	2004	2005	2006	2007	2008	2009	2010
Manhattan	\$4.1	\$6.8	\$3.6	\$8.6	\$4.9	\$13.1	\$10.1
Bronx	-	-	0.1	0.2	0.2	0.1	0.1
Brooklyn	2.0	0.4	0.3	0.2	0.9	2.3	1.2
Queens	-	-	-	0.1	0.2	0.1	-
Staten Island	-	-	-	0.1	0.2	0.1	0.1
Special Narcotics Prosecutor	0.2	0.2	0.2	-	-	0.3	-
SOURCES: IBO; Mayor’s Office of Management and Budget							

City Tax Levy Funding: Personal Service versus Other Than Personal Service OTPS. The largest portion of city tax levy funding for district attorney operations in the current year covers personal services. A smaller portion is directed towards other than personal services OTPS for rent, supplies, equipment, contracts, etc.

2011 Current Modified Budget: City Tax Levy Funding			
<i>Dollars in millions</i>			
	Personal Service	Other Than Personal Service	Total
Manhattan	\$71.3	\$6.1	\$77.5
Bronx	42.5	2.2	44.6
Brooklyn	58.6	15.2	73.8
Queens	36	7.8	43.8
Staten Island	6.7	0.9	7.6
Special Narcotics Prosecutor	15.5	0.5	16.0
SOURCES: IBO; Mayor's Office of Management and Budget			
NOTE: Based on May 2011 Financial Plan			

There are two points to highlight in the data above—the Manhattan DA has the highest level of PS appropriations while the Brooklyn DA receives more than twice as much OTPS funding than does any other DA.

The Brooklyn DA's exceptional level of OTPS funding is attributable to the office's rental costs of more than \$11 million annually for office space, far more than comparable costs incurred by the other district attorneys. The Brooklyn district attorney's OTPS spending increased sharply after 1998 when the agency moved from city-owned space to private leased space.

The share of the Brooklyn DA's total OTPS spending which is consumed by rent increased from 60 percent in 1999 to 71 percent in 2009, increasingly crowding out other OTPS spending.

Rent Expenditure for Each District Attorney's Office						
<i>Dollars in millions</i>						
	Manhattan	Bronx	Brooklyn	Queens	Staten Island	Special Narcotics Prosecutor
1999	\$0.4	\$0.0	\$7.7	\$2.2	\$0.4	\$0.2
2004	0.7	0.0	9.2	2.5	0.0	0.0
2009	1.2	0.0	11.2	2.6	0.0	0.0
Percentage of Total Expenditure						
1999	1%	0%	12%	7%	7%	1%
2004	1%	0%	13%	7%	0%	0%
2009	1%	0%	13%	6%	0%	0%
Percentage of OTPS Expenditure						
1999	5%	1%	60%	47%	32%	21%
2004	9%	1%	66%	46%	0%	0%
2009	12%	1%	71%	46%	0%	0%
SOURCES: IBO, Financial Management System						

Because Brooklyn's OTPS spending is an outlier, the remainder of this review of DA funding focuses only on PS spending.

City Tax Levy PS Funding Trends. The shares of city funding for DA personnel costs have been relatively constant since at least 1980. The table below shows city tax levy PS appropriations for the district attorneys at five year intervals. Combined PS appropriations grew in nominal dollars from \$27 million in 1980 to \$231 million by 2011.

The subsequent rows in the table reflect the share of PS funding for each prosecutor through the years. The largest change in the shares occurred in Brooklyn, which fell from 30 percent of the PS spending in 1980 to 25 percent this year, and in the SNP which increased its share from 3 percent to 7 percent.

District Attorney Personal Service Appropriations, 1980-2011								
	1980	1985	1990	1995	2000	2005	2010	2011*
Total City Tax Levy Funding Appropriated for DAs and SNP								
<i>Dollars in millions</i>	\$27	\$61	\$113	\$152	\$177	\$195	\$244	\$231
Share Appropriated for Each District Attorney								
Manhattan	31%	33%	32%	31%	31%	31%	31%	31%
Bronx	18%	18%	18%	18%	18%	18%	18%	18%
Brooklyn	30%	27%	26%	28%	27%	27%	26%	25%
Queens	16%	15%	15%	15%	15%	15%	16%	16%
Staten Island	2%	2%	2%	2%	2%	3%	3%	3%
Special Narcotics Prosecutor	3%	4%	6%	6%	7%	7%	7%	7%
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
SOURCES: IBO; Mayor's Office of Management and Budget								
NOTE: * As of May 2011 Financial Plan								

Arrest Activity Trends. The role of the district attorneys largely begins after defendants have been arrested and they begin to be processed through the judicial system. Thus felony and misdemeanor arrests can serve as one indicator of the workload facing each district attorney’s office.

Felony arrest activity increased in all boroughs during the 1980s and generally fell thereafter. With respect to borough shares, Manhattan accounted for 35 percent of felony arrests in 1980 but only 25 percent by 2009. The Bronx has seen the largest increase in its share, which grew from 19 percent to 24 percent, with smaller changes in the other boroughs.

Felony Arrests by Borough, 1980-2009						
	Manhattan	Bronx	Brooklyn	Queens	Staten Island	Total
Felony Arrests, in thousands						
1980	30.0	16.6	24.4	14.0	1.8	86.8
1990	48.9	31.6	42.9	21.6	3.2	148.2
2000	32.4	25.6	33.2	18.1	3.9	113.2
2005	25.6	20.7	28.6	17.3	2.9	95.0
2009	24.0	22.6	28.1	17.3	3.7	95.7
Felony Arrests, share per borough						
1980	35%	19%	28%	16%	2%	100%
1990	33%	21%	29%	15%	2%	100%
2000	29%	23%	29%	16%	3%	100%
2005	27%	22%	30%	18%	3%	100%
2009	25%	24%	29%	18%	4%	100%
SOURCES: IBO, New York State Division of Criminal Justice Services						

For misdemeanor arrests there were even greater shifts in borough shares over the same three decades. Manhattan’s share fell almost by half, from 48 percent in 1980 to 26 percent in 2009. Meanwhile, the Bronx—and to a lesser extent Brooklyn—saw significant increases in their respective shares. Unlike felony arrests, which saw explosive growth from 1980 to 1990 followed by a gradual decline to levels not far above 1980, citywide misdemeanor arrests have increased nearly fourfold since 1980.

Misdemeanor Arrests by Borough, 1980-2009						
	Manhattan	Bronx	Brooklyn	Queens	Staten Island	Total
Misdemeanor Arrests, in thousands						
1980	31.0	8.4	14.3	9.5	2.0	65.3
1990	55.8	16.4	26.1	16.6	3.7	118.6
2000	67.8	51.0	65.4	33.6	6.8	224.7
2005	53.2	51.1	53.4	32.2	6.3	196.1
2009	63.7	65.8	67.8	40.1	7.9	245.1
Misdemeanor Arrests, share per borough						
1980	48%	13%	22%	15%	3%	100%
1990	47%	14%	22%	14%	3%	100%
2000	30%	23%	29%	15%	3%	100%
2005	27%	26%	27%	16%	3%	100%
2009	26%	27%	28%	16%	3%	100%

SOURCES: IBO, New York State Division of Criminal Justice Services

Varying Extent to Which Arrests Are Prosecuted. Arrests alone are not a complete indicator of workload as district attorneys decline to prosecute a portion of arrest cases; because these cases do not even reach arraignment they typically involve very little work on the part of the district attorney’s office. According to the state’s Division of Criminal Justice Services statistics for New York City as a whole, about 7 percent of felony arrests and 9 percent of misdemeanor arrests in 2009 were disposed of when district attorneys declined to prosecute. Because of significant differences in decline-to-prosecute decisions from one borough to the next, accounting for these cases alters the distribution of arrest-driven workload for the five district attorneys’ offices. Therefore, we calculated the arrest-driven caseload for each DA excluding cases they declined to prosecute.

2009 Felony Arrest Dispositions						
	Manhattan	Bronx	Brooklyn	Queens	Staten Island	Citywide %
Conviction (by Plea or Trial)	56%	60%	60%	70%	63%	61%
Dismissal (by Court/Judge)	37%	24%	30%	20%	27%	28%
DA Declined to Prosecute	4%	13%	6%	7%	6%	7%
All Other Dispositions (Acquittals, etc.)	3%	3%	4%	3%	4%	3%
TOTAL	100%	100%	100%	100%	100%	100%

SOURCES: IBO, New York State Division of Criminal Justice Services

In addition to arrests which do not even reach arraignment as a result of a DA’s decision not to attempt prosecution, a much larger share of arrest cases are dismissed at some point after arraignment. A higher proportion of felony arrest cases (37 percent) were dismissed in Manhattan than was the case in the other four boroughs. Because the DAs have at least begun to pursue prosecution in cases that are classified as dismissed, we have left them in our arrest-driven caseload measure.

Since 1980 there has been a generally upward trend in the share of felony arrests disposed of without an attempt to prosecute. Only 2 percent of felony arrests citywide were disposed of without attempted prosecution in 1980. The comparable figure for 2009 was 7 percent.

There is also significant variation by borough. The differences perhaps reflect variations in office policy and may in part be driven by resource constraints. With limited budgets, DAs must choose which cases in which to invest their resources, taking into account factors such as the strength of available evidence and the likelihood of successful prosecution.

In recent years, the share of felony arrests that were not prosecuted in the Bronx—13 percent in 2009—exceeded that of any other borough. Meanwhile, only about 4 percent of felony arrest cases in Manhattan during 2009 were disposed without an attempt to prosecute and the average citywide was 7 percent.

However, even after we adjust the arrest data to account for those cases where the DA chose not to prosecute, the shift away from Manhattan in total felony arrest activity since 1980 is still apparent. Manhattan’s share of citywide felony arrests that resulted in prosecutions fell from 35 percent in 1980 to 27 percent in 2009.

Trends in Felony Arrest Dispositions, 1980-2009						
	Manhattan	Bronx	Brooklyn	Queens	Staten Island	Citywide
Share DA Declined to Prosecute						
1980	3%	1%	3%	1%	3%	2%
1990	3%	4%	5%	<1%	6%	3%
2000	4%	11%	11%	4%	12%	8%
2005	6%	10%	12%	6%	9%	9%
2009	4%	13%	6%	7%	6%	7%
Prosecution Attempted, in thousands						
1980	26.9	15.2	21.4	12.2	1.7	77.3
1990	42.1	29.4	42.4	19.5	2.9	136.4
2000	31.4	24.0	29.2	18.3	3.5	106.3
2005	24.9	18.3	23.8	16.3	2.5	85.8
2009	25.2	20.2	27.7	16.9	3.5	93.5
Prosecution Attempted, borough shares						
1980	35%	20%	28%	16%	2%	100%
1990	31%	22%	31%	14%	2%	100%
2000	30%	23%	27%	17%	3%	100%
2005	29%	21%	28%	19%	3%	100%
2009	27%	22%	30%	18%	4%	100%
SOURCES: IBO, New York State Division of Criminal Justice Services						

Looking at the share of misdemeanor arrests which the DAs declined to prosecute, we see a similar upward trend since 1980 in the share of misdemeanor arrests disposed without an attempt to prosecute. About 4 percent of misdemeanor arrests citywide were dropped in 1980. The comparable figure was about 9 percent in 2009.

As with felony arrests, the share of misdemeanor arrests disposed of without prosecution in the Bronx—19 percent in 2009—has exceeded the share of other boroughs in recent years. At the other end of the spectrum, fewer than 4 percent of misdemeanor arrests disposed of in Queens in 2009 were not prosecuted.


The shift away from Manhattan in misdemeanor cases since 1980 is still apparent even after adjusting for declined prosecutions. Manhattan's share fell from 46 percent in 1980 to 27 percent in 2009. Shares for Brooklyn and Queens grew moderately. Notably, the share of prosecuted misdemeanors in the Bronx—even after adjusting for the borough's much higher percentage of declined prosecutions—increased by more than two-thirds.

Trends in Misdemeanor Arrest Dispositions, 1980-2009						
	Manhattan	Bronx	Brooklyn	Queens	Staten Island	Citywide
Share DA Declined to Prosecute						
1980	5%	1%	4%	3%	10%	4%
1990	4%	7%	3%	<1%	14%	4%
2000	3%	7%	5%	1%	11%	5%
2005	8%	15%	10%	4%	11%	10%
2009	5%	19%	5%	4%	8%	9%
Prosecution Attempted, in thousands						
1980	26.5	8.0	12.8	8.8	1.7	57.8
1990	49.0	15.1	26.1	15.6	3.1	108.8
2000	65.4	45.6	59.0	33.1	5.9	208.9
2005	50.9	40.3	45.1	30.1	5.8	172.3
2009	58.7	50.8	60.5	37.6	7.1	214.6
Prosecution Attempted, borough shares						
1980	46%	14%	22%	15%	3%	100%
1990	45%	14%	24%	14%	3%	100%
2000	31%	22%	28%	16%	3%	100%
2005	30%	23%	26%	17%	3%	100%
2009	27%	24%	28%	18%	3%	100%

SOURCES: IBO, New York State Division of Criminal Justice Services

I hope this information is helpful to you. Please feel free to call me directly, at 212-442-8642, or Bernard O'Brien, IBO's senior budget and policy analyst covering criminal justice issues, at 212-442-8656, if you have any questions on this or any other subject.

Sincerely,



George Sweeting
Deputy Director