

THE COUNCIL OF THE CITY OF NEW YORK

Speaker of the Council
Christine C. Quinn



Hon. Maria del Carmen Arroyo, Chair, Health Committee

Hearing on the Mayor's Fiscal 2013 Preliminary Budget & the Fiscal 2012 Preliminary Mayor's Management Report

Office of the Chief Medical Examiner

March 19, 2012

Latonia McKinney, Deputy Director
Pamela Corbett, Legislative Financial Analyst

Table of Contents

Office Overview.....	1
Financial Summary.....	1
Financial Analysis	3
Fiscal 2013 Programs to Eliminate the Gap.....	6
Council Initiatives	11
State Budget Actions	12

Office Overview

The Office of Chief Medical Examiner (OCME) is responsible for investigating deaths resulting from criminal violence, accident or suicide; that occur suddenly, when in apparent good health; when unattended by a physician; in custody; or occurring in any suspicious or unusual manner. The Office also investigates deaths where an application for cremation is made. The Office provides additional forensic services, including DNA testing, to support criminal investigations. The Office also manages all functions of the City mortuary, including the retrieval and processing of deceased bodies; assistance with autopsies; and body preparation for City burial. Structurally, the OCME is housed within the Department of Health and Mental Hygiene (DOHMH).

This report provides a review of the Fiscal 2013 Preliminary Budget for the OCME. The first section presents a financial summary, including the highlights of the Fiscal 2013 Preliminary Budget and Preliminary Mayor's Management Report. Next, this report discusses proposed funding shifts and reductions, relevant Council Fiscal 2012 restorations and relevant state budget actions.

Financial Summary

OCME Financial Summary

<i>Dollars in Thousands</i>	2011 Actual	2012 Adopted	2012 Feb. Plan	2013 Feb. Plan	*Difference 2012 - 2013
Spending					
Personal Services Subtotal	\$44,990	\$42,893	\$45,354	\$41,016	(\$1,877)
Full-Time Salaried - Civilian	40,983	39,959	40,955	37,741	(2,218)
Overtime - Civilian	1,905	841	2,441	1,794	953
Fringe Benefits	37	15	16	16	1
Other	(2,067)	(2,078)	(1,942)	(1,464)	614
Other Than Personal Services Subtotal	\$17,587	\$17,958	\$24,784	\$18,304	\$346
Contractual Services	4,222	5,705	7,021	3,630	(2,074)
Other	13,365	12,253	17,764	14,674	2,421
TOTAL	\$62,577	\$60,851	\$70,138	\$59,320	(\$1,531)
Funding					
City Funds	N/A	\$58,313	\$57,933	\$55,296	(\$3,017)
Federal – CD	N/A	0	0	0	0
Federal- Other	N/A	2,536	10,230	4,020	1,484
Intra City	N/A	0	127	0	0
Other Categorical	N/A	0	65	0	0
State	N/A	3	1,783	5	2
TOTAL	\$62,577	\$60,851	\$70,138	\$59,320	(\$1,531)
Headcount (full-time salaried, civilian)	604	653	643	588	(65)

*The difference of Fiscal 2012 Adopted compared to Fiscal 2013 February Plan Funding.

The Fiscal 2013 OCME Preliminary Budget reflects a \$1.5 million decrease when compared to the budget at adoption. This decrease is mostly attributed to the City's Program to Eliminate the Gap (commonly referred to as a PEG or PEG program) for OCME, which totaled approximately \$4 million in reduced City tax levy (CTL) spending for Fiscal 2013. This loss in CTL is partially offset by an increase in federal grants and other minor adjustments.

Within the larger context of the DOHMH budget, OCME funding comprises slightly less than 4 percent of the \$1.5 billion DOHMH Fiscal 2013 Preliminary Budget. The medical examiner's full-time staff of 588 budgeted positions represents nearly 13 percent of the DOHMH's total Fiscal 2013 proposed headcount, but accounts for over a third of all recommended DOHMH headcount reductions.

Starting in April 2011, the State discontinued its matching grant to localities for administering "optional" public health services, including medical examiner services, which would have resulted in a \$15 million loss in State funding per year to the OCME. The OCME would have lost a third of its overall budget. Recognizing the detrimental impact this loss would have had on OCME operations – definite, substantial increases in turnaround time for most services – the Fiscal 2012 Executive Budget offset this loss in State funding and preserved these vital services by adding \$15 million in City tax levy to the OCME program budget. Interestingly, despite this necessary infusion of additional City funding, the Administration still applied a PEG target to the OCME, effectively reducing the City's net contribution toward supporting OCME services.

Over the past few years, the OCME has sought to diversify its funding portfolio and better protect itself against future cuts in City and State funding by aggressively pursuing federal grants and other outside funding opportunities. These efforts, briefly illustrated in the chart on the previous page, have already begun to play a crucial role in helping the OCME to maintain its headcount while it still attempts to meet its PEG targets. In fact, in the most recent PEG program (as described in more detail later on), the OCME has proposed to shift several of its City-funded positions to grant funding, endeavoring to maintain staff while still trying to remain within City spending targets.

Financial Analysis

Like so many other City agencies over the past few years, the OCME has undergone numerous PEG programs in order to help the City balance its budget. Below is a summary of the OCME's PEG programs, starting with the Fiscal 2011 Executive Budget.

OCME PEG History (Fiscal 2010-2013)

PEG Program/Target/Description	<i>(in 000s)</i>					
	HC	FY11	HC	FY12	HC	FY13
<u>November 2011 (OCME - 6%, DOHMH 6%)</u>						
Attrition and Vacancy Reductions	N/A	N/A	(48)	(\$972)	(48)	(\$2,454)
Layoffs	N/A	N/A	(13)	(222)	(13)	(951)
Grant Shifts	N/A	N/A	--	--	--	(91)
Overtime Reduction	N/A	N/A	--	--	--	(168)
OTPS Reductions	N/A	N/A	--	(26)	--	(301)
Training Reduction	N/A	N/A	--	--	--	(10)
Subtotal, November 2011	0	\$0	(61)	(\$1,220)	(61)	(\$3,975)
<u>May 2011 (OCME - 8%, DOHMH 8%)</u>						
Attrition and PS Efficiencies	N/A	N/A	(10)	(\$1,520)	(10)	(\$1,407)
Layoffs	N/A	N/A	(17)	(565)	(17)	(726)
OTPS Efficiencies	N/A	N/A	--	(1,000)	--	(1,000)
Enterprise License Agreement Savings	N/A	N/A	--	(60)	--	(60)
Grant Revenue	N/A	N/A	--	(116)	--	(52)
Additional Revenue	N/A	N/A	--	(40)	--	(40)
Subtotal, May 2011	0	\$0	(27)	(\$3,301)	(27)	(\$3,285)
<u>November 2010 (OCME - 4%, DOHMH 5%)</u>						
Attrition and PS Efficiencies	N/A	(\$983)	(10)	(\$1,038)	(10)	(\$1,148)
Grant Revenue	N/A	(464)	--	(116)	--	(52)
Additional Revenue	N/A	(27)	--	(40)	--	(40)
PS Furloughs	N/A	--	--	(482)	--	(260)
Layoffs	N/A	--	(17)	(565)	(17)	(726)
Subtotal, November 2010	0	(\$1,474)	(27)	(\$2,241)	(27)	(\$2,226)
<u>May 2010 (OCME - 3.3%, DOHMH 4%)</u>						
PS Reduction	--	(\$3,236)	--	(\$2,878)	--	(\$2,797)
OTPS Efficiencies	(39)	(2,673)	(39)	(2,105)	(39)	(1,858)
Subtotal, May 2010	(39)	(\$5,909)	(39)	(\$4,983)	(39)	(\$4,655)
TOTAL	(39)	(\$7,383)	(154)	(\$11,745)	(154)	(\$14,141)

The Fiscal 2010 budgeted headcount for the OCME at adoption was 710 full time positions. Since then, the OCME has undergone four separate mandatory PEG programs, as described above. As of the Fiscal 2013 Preliminary Budget, the OCME will have lost nearly 19 percent of its total funding and 22 percent of its staff since July 2009. Of the 154 eliminated positions, exactly half were dedicated toward DNA testing while 36 percent were dedicated toward forensic pathology. 7 percent of these eliminated positions were administrative staff and the balance held facility,

operational and information technology functions. DNA testing positions are reduced by almost a third and pathology staff by nearly 18 percent. Even excluding this latest round of headcount reductions, by July 2010, the OCME had already lost nearly a tenth of its Fiscal 2010 budgeted headcount, with losses disproportionately targeting positions dedicated toward DNA testing.

In previous budget cycles, the OCME was able to mitigate these cuts by acquiring more staff via grant funding, pursuing internal efficiencies (streamlining operations where possible) and eliminating testing on all cases only involving criminal possession of a weapon. These strategies, however, cannot be applied to this latest round of cuts. Eliminating testing on other crime categories will have public safety ramifications. Grant funding becomes jeopardized when OCME voluntarily eliminates positions (to achieve PEG targets) and its performance deteriorates (e.g., an emerging testing backlog), as grants are often predicated on both need and performance. According to current civil service rules, the OCME must lay off grant-funded staff before it can eliminate CTL-funded positions. Another option, outsourcing testing, would prove to be cost ineffective as public labs are required by law to review outsourced deliverables prior to uploading to DNA database, therefore still requiring OCME staff time and resources.

As implied in the Office Overview, the OCME performs two main functions – forensic pathology (identifying cause of death and related services) and forensic biology (DNA testing). OCME is given a mandate by the State to function as the City’s mortuary and is responsible for performing all tasks related to that role – mainly, forensic pathology. In 2007, the City expanded the OCME’s testing portfolio (and consequently, caseload) from testing homicides and sexual assaults to also include testing for all property crimes, attempted homicides and felony assaults. These mandates suggest that these functions are highly valued by the City and State and should be protected.

Not surprisingly, the OCME’s diminishing resources have, in turn, diminished its ability to continue to perform these functions within an acceptable time frame. The City has already learned from previous experience that headcount reductions to pathology and related operations ultimately translate into increased death scene response time, resulting in delays that can violate religious customs. Headcount reductions to Forensic Biology and other related DNA testing positions *can and already have* resulted in a backlog of evidence waiting to be examined, producing longer turnaround times that will jeopardize the City’s public safety. Unintended consequences include, among other things, delayed suspect confirmations and exclusions, delayed database hits and increased risk of criminal recidivism. For an in-depth look at the OCME’s recent performance trends, please view the ***Fiscal 2012 Preliminary Mayor’s Management Report*** on the next page.

Preliminary Mayor's Management Report

Performance Measures - Office of the Chief Medical Examiner

	FY09	FY10	FY11	FY12 4-Month Actual	Target FY 12
Median time for MLI scene arrivals (hours)	1.6	1.6	1.7	1.8	*
Median time to complete autopsy reports (days)	48.0	53.5	61.5	72.0	51.0
Median time to process cremation requests (hours)	0.9	1.2	1.2	1.2	1.5
Median time to complete toxicology cases (days)	30.5	35.0	40.5	64.0	28.0
Median time to complete toxicology sexual assault cases (days)	17.5	17.0	21.0	23.0	17.0
Median time to complete toxicology DUI cases (days)	13.5	13.0	16.0	13.5	10.0
Average days to complete analysis of a DNA case	89.8	76.0	83.0	78.0	75.0
Median time to complete DNA homicide cases, from evidence submission to report (days)	97.0	112.0	114.0	90.0	90.0
Median time to complete DNA property crime cases, from evidence submission to report (days)	70.5	58.0	65.0	57.0	*
Median time to complete DNA sexual assault cases, from evidence submission to report (days)	17.5	19.0	27.0	36.0	50.0
DNA matches with profiles in database	1,264	1,264	1,629	598	*

Alarming, from Fiscal 2009 through Fiscal 2011, the median time to complete DNA sexual assault cases had increased by 54.3 percent. However, when measuring change since Fiscal 2009 against the Fiscal 2012 target, the overall turnaround time for these cases will have experienced a nearly two-fold increase. Bear in mind, these targets are determined based on available resources.

Other noteworthy delays from Fiscal 2009 through Fiscal 2011:

- Median time to complete DNA homicide cases, from evidence submission to report, has increased by 17.5 percent
- DNA matches with profiles in the database has risen by 28.9 percent
- Median time for death scene arrivals has increased by 6 percent
- Median time to complete autopsy reports have increased by 28 percent
- Median time to process cremation requests have gone up by 33 percent

As is evident from the Preliminary Mayor's Management Report, there is a noticeable link between the OCME's resources and performance and it is clear that a testing backlog now exists. In 2000, the OCME was given mandate to test all rape cases, starting with a backlog of 17,000 kits dating back to 1991 (known as the Rape Kit Backlog Project). By 2003, all kits were tested, resulting in numerous arrests and convictions. The OCME's testing efforts had been so successful in avoiding another backlog that it has become regarded as a national best practice. Unfortunately, with this new backlog now emerging, the OCME is already beginning to see a reversal in the tremendous progress it had made. So long as this trend continues, the OCME's ability to access grant funding could become jeopardized, and much more importantly, the public safety of New York will suffer.

Fiscal 2013 Programs to Eliminate the Gap

OCME - Attrition and Vacancy Reductions

Fiscal 2013 Impact. \$2.5 million in City tax levy.

Headcount. (48) total vacant/attritted positions.

- Most of the eliminated positions are related to DNA testing (criminalists).

Description. Savings will be achieved in the personnel budget through attrition and vacancy reductions.

Impact Estimate. OCME is now considering eliminating automatic submissions for certain crime categories (e.g., sexual assault kit, felony assault kit) and eliminating DNA testing on misdemeanor crimes and vehicle theft.

- Backlog of DNA evidence waiting to be examined.
 - Increased turnaround time for results.
 - Delayed suspect confirmations and exonerations.
 - Delayed database hits and risk of recidivism.
- Service cuts.
 - Stop DNA testing on certain crime types.
 - Limit number of items within one case will increase risk of:
 - Missed database hits.
 - Wrongful arrests/convictions.
 - Weak prosecutions.

Rationale. The OCME is obligated to meet its PEG target, as prescribed by the Mayor's Administration. Multiple rounds of layoffs precipitated by past PEG programs have only served to lower retention within the OCME. By eliminating vacant positions over staffed positions, the OCME can better protect its workforce.

- However, it should also be noted that the magnitude of the OCME's vacant headcount is not a reflection of reduced need, but rather a function of the difficulties in staffing these highly skilled positions in an environment where job security has been threatened by multiple rounds of layoffs.
 - The OCME invests nearly eight months of training into each of these employees at a cost of up to \$50,000 per employee. In order to reap the benefits of this investment, the OCME requires a guarantee of future funding for these positions in the outyears.
 - Otherwise, if the OCME is forced to eliminate additional staff in order to meet future PEG targets, the OCME will needlessly waste its already scarce resources.

Update. SEE **Council Initiatives and Funding** IN NEXT SECTION.

OCME - Grant Shifts

Fiscal 2013 Impact. \$91,000 in City tax levy.

Headcount. Not applicable.

Description. OCME will shift personnel expenses to federal and State grants.

Impact Estimate. There will be no impact to direct services or OCME operations. Administrative and Criminalist positions will be affected by this shift.

- Administrative positions are related to Procurement, Finance and other grant management activities.
- Criminalist positions performing anthropological and DNA analysis will be affected by having a portion of salary and overtime expenses funded with grant awards.
- The list of grants is below. The “funding reliability” indicates whether the agency is competing for the funding or generally can rely on continued funding:

Grant Description	Funding Reliability	Start	End
Using DNA to identify the Missing	Competitive	03/01/11	08/31/12
Using DNA to identify the Missing	Competitive	03/01/11	08/31/12
2010/2011 DNA Backlog Reduction	Recurring	10/01/10	03/31/13
2011 Forensic Science Training Program	Competitive	01/01/12	06/30/14
2010 DNA Research Grant	Competitive	10/01/10	09/30/12
2011 Basic Research Grant	Competitive	01/01/12	12/31/13
2010/2011 DNA Backlog Reduction	Recurring	10/01/10	03/31/13
2010/2011 DNA Backlog Reduction	Recurring	10/01/10	03/31/13
2009/2010 UASI	Competitive	08/01/10	07/31/13
2009/2010 UASI	Competitive	08/01/10	07/31/13
2009/2010 UASI	Competitive	08/01/10	07/31/13
2011 Forensic Science Training Program	Competitive	01/01/12	06/30/14

Rationale. This is simply a funding shift reflecting the amount of revenue that will free up City Tax Levy funding for active awards.

OCME – Layoffs

Fiscal 2013 Impact. \$951,000.

Headcount. 13, all City funded.

Description. OCME will reduce 13 budgeted positions through layoffs.

Impact Estimate.

- **Anthropology (2):** two Criminalists will be eliminated in the Anthropology department that work directly on WTC related issues and at Ground Zero. OCME has recently been approved by City Hall to temporarily cease Ground Zero operations as no excavation is pending in the near future.
- **Facilities (1):** this department will eliminate a Laborer. The Laborer function is less of an impact as Facilities needs more individuals in the Maintenance Worker title. The elimination of this PS line in this department will negatively impact their ability to hire a Maintenance Worker, causing Engineers to work costly over-time.
- **Finance (1):** Finance will lose one Administrative Staff NM, creating delays which impact the day-to-day oversight and fiscal protection of the agency.
- **IT (1):** IT will lose a position that they critically need to rehire for additional desktop support for the upcoming release of two major agency-wide applications: Case Management System (CMS) and the Laboratory Information Management System (LIMS). The reduction in headcount capacity will have a detrimental impact on the in-house support required for these new critical agency systems when they go live.
- **Mortuary (1):** OCME Mortuary Services are a 24/7 operation that covers the entire 5 boroughs. The department is responsible for transporting, storing and releasing of decedents throughout the city. This area has experienced previous layoffs and the loss of an additional Forensic Mortuary Technician (FMT) may cause decedent processing and autopsy delays.
- **Motor Pool (1):** the elimination of an MVO will impact OCME's ability to support 24/7 operations by driving to death scenes, picking up decedents at hospitals, etc. Turnaround time may be increased.
- **Pathology (2):** OCME has decided to eliminate two Criminalists in the Pathology Department that provide forensic crime scene reconstruction services. In addition to NYPD's crime reconstruction, OCME is used in high profile cases where having greater forensic expertise is valuable to answer the questions posed in the case. These enhanced services are of great benefit to the DAO's. The elimination of this function will not impact OCME core services but the loss will be felt in the criminal justice community. No staff will remain to support this function.
- **Records (1):** the loss of a Records Aide will not impact the Records Department function and productivity.
- **Special Operations (1):** the loss of a Public Health Educator will not impact core services.

- Forensic Biology (2): the loss of a Lab Associate and Associate Staff Analyst will impact departmental administrative support, specifically the stocking of supplies and reagents in the laboratories.

Rationale. OCME selected thirteen (13) active positions to eliminate during the FY13 November Plan for the following reasons:

- Departments selected individuals that are reachable in their title and will not have a large impact on OCME's core mission and services.

OCME - OTPS Reductions

Fiscal 2013 Impact. \$26,000 in City tax levy

Headcount. Not applicable.

Description. OCME will reduce OTPS expenses, including supplies and IT services

- Supplies being reduced - Histology supplies and consumables for the operation of their automated staining instruments, Toxicology chemicals and lab supplies, and DNA Supplies and Kits. These cuts total \$25,923 in FY12 and \$156,980 in FY13. The baseline cut in FY14 and out is about \$100,000.
- IT services - The IT department is cancelling its Gartner subscription which provided IT research and other consultant services.
- OTPS expenses - Messenger and locksmith services are being reduced by \$93,525 in FY13 and out.

Impact Estimate.

- Reduced supplies -For Histology and Toxicology, there will be no impact on services because the reductions are based on a reforecast of the budget based on actual spending. Within DNA, decreases in headcount will lead to increased turnaround time. Less DNA cases will be processed per year; thereby reducing the amount of testing supplies used in a given fiscal year.
- IT services - There is no impact because it was determined that this subscription was not necessary to run current operations.
- OTPS expenses - Minimal impact is expected. Messenger services will be absorbed by existing staff within the Evidence and property control department, and locksmith services will be obtained on an as needed basis.

Rationale. These efficiencies offer little to no impact to direct services.

OCME - Overtime Reduction

Fiscal 2013 Impact. \$168,000 in City tax levy.

Headcount. Not applicable.

Description. OCME will reduce overtime in its Security Department:

- From Monday through Friday, there will be a total reduction of 12 hours of overtime reduced per day.
- On Saturday and Sunday, there will be a total of 24 hours reduced.

Impact Estimate. None.

Rationale. This efficiency resulted from a change in security protocol to limit vehicle access to the DNA building on off hours.

OCME - Training Reduction

Fiscal 2013 Impact. \$10,000 in City tax levy.

Headcount. Not applicable.

Description. OCME will reduce its budget for training provided through DCAS.

Impact Estimate. No impact is expected.

- No new restrictions on eligibility.
- Same amount of trainings will continue to be available to staff.

Rationale. The training budget reflects actual usage.

Council Initiatives

- In recognition of the need to protect OCME DNA testing positions that would have otherwise been eliminated beginning January 2012, the City Council made midyear partial restoration of \$730,000 to the OCME, effectively preserving 12 criminalist positions for the remainder of the current fiscal year.
 - These positions were flagged for elimination via the OCME's Attrition and Vacancy Reductions PEG.
 - The headcount slated for elimination within this PEG will skyrocket to 48 positions for Fiscal 2013.
- The City Council has been working diligently with the Mayor's Office of Management and Budget (OMB) for possible baseline restoration in the Fiscal 2013 Executive Budget.
 - On February 21, 2012, OMB announced that it will restore 27 positions within the OCME. It is still unclear as to which functions will be preserved through this restoration and if the restoration will be available in the outyears.
 - The Council is hopeful additional details will be available by the time the Administration releases its Fiscal 2013 Executive Budget.

State Budget Actions

State Executive Budget for SFY 12-13: Creation of an all-crimes DNA database.

Description: Includes legislation to amend State law to expand the state's DNA database by requiring all convicts to submit a DNA sample.

- The bill also contains provisions to ensure equal access to the database by both prosecutors and defense attorneys.
 - The bill allows defendants in certain criminal cases to obtain DNA testing prior to a trial to demonstrate their innocence.
 - Additionally, certain convicted criminal defendants will be able to file motions to a judge to obtain all evidence in their cases from the District Attorneys' office involved.
 - Judges will also be allowed to approve those requests even if DAs object.
- The state collects DNA from all convicted felons and anyone convicted of one of 36 criminal misdemeanors.
 - All penal misdemeanors and non-penal felonies, such as DWI and securities fraud.
 - District attorneys and some law enforcement officials have argued this is not enough, because it covers only 48 percent of offenders.

Impact to OCME: There will be an impact – on the back end– to OCME if the State's offender database is expanded to all crimes.

- Namely, there will be an increase (a surge during the first six months) in the number of hit notifications to Forensic Biology cases.
- This will impact Forensic Biology in terms of time dedicated to pulling case files, confirming accuracy of profile developed and uploaded, and – when the State releases the name of the offender – notifications to DAO and NYPD of each respective hit.
- OCME acknowledges that while there may be an impact to its operations, it's a minimal investment when considering the enormous assistance to the criminal justice community generated by an increase in cases solved and resolved with pleas.

Rationale: experience that shows many small-timers move on to robberies, rapes and murders that could be solved or prevented.

Background: All states take DNA from most felons and most also get samples from people convicted of misdemeanor sex crimes.

- New York's database has been expanded four times since it was established in 1996.

State Enacted Budget for SFY 2011-12: Permanent loss of nearly \$16 million in State aid.

Description: State of New York Enacted Budget for 2011-2012 discontinued its matching grant to localities for administering "optional" public health services, which would have resulted in a \$15 million loss in State funding per year to the OCME.

Impact to OCME:

- The discontinuation of matching State funds for optional services caused the OCME to lose approximately 30 percent of its overall budget, in State funds starting in Fiscal 2012.

- The New York City Fiscal 2012 Adopted Budget added \$15.6 million in City tax levy to the program budget for OCME in order to offset the OCME's loss in State funding. The substantial increase in CTL to the OCME preserved these vital services.