



New York City Council

Christine C. Quinn, Speaker

Finance Division

Preston Niblack, Director

Jeffrey Rodus, First Deputy Director

Hearing on the Mayor's Fiscal Year 2011 Executive Budget

District Attorneys/Special Narcotics Prosecutor

June 3, 2010

Committee on Finance

Hon. Domenic M. Recchia, Jr., Chair

Committee on Public Safety

Hon. Peter F. Vallone Jr., Chair

Andy Grossman, Deputy Director, Finance Division

Lionel Francois, Legislative Financial Analyst

Summary and Highlights

District Attorneys/Special Narcotics Prosecutor

Dollars in Thousands

| | 2008 Actual | 2009 Actual | 2010 Adopted | 2010 Exec. Plan | 2011 Executive | Difference, 2010 – 2011* |
|------------------------------|------------------|------------------|------------------|--------------------|-------------------|-----------------------------|
| Spending | | | | | | |
| Personnel Services | \$262,820 | \$267,178 | \$242,335 | \$270,105 | \$235,427 | (\$6,908) |
| Other Than Personal Services | 34,912 | 36,234 | 34,104 | 38,604 | 32,479 | (1,625) |
| Table Total | \$297,732 | \$303,412 | \$276,439 | \$308,709 | \$267,906 | (\$8,533) |

District Attorneys/Special Narcotics Prosecutor

Dollars in Thousands

| | 2008 Actual | 2009 Actual | 2010 Adopted | 2010 Exec. Plan | 2011 Executive | Difference, 2010 – 2011* |
|--------------------------|------------------|------------------|------------------|--------------------|-------------------|-----------------------------|
| Spending | | | | | | |
| New York | \$90,264 | \$96,919 | \$82,771 | \$94,146 | \$77,050 | (\$5,721) |
| Bronx | 50,762 | 50,463 | 46,693 | 52,045 | 45,958 | (735) |
| Kings | 83,584 | 84,281 | 77,358 | 85,252 | 75,918 | (1,439) |
| Queens | 47,033 | 45,764 | 45,797 | 50,257 | 44,742 | (1,054) |
| Richmond | 8,311 | 8,305 | 7,601 | 8,504 | 7,490 | (111) |
| Special Narcotics | 17,778 | 17,679 | 16,220 | 18,505 | 16,748 | 528 |
| Table Total | \$297,732 | \$303,412 | \$276,439 | \$308,709 | \$267,906 | (\$8,533) |

The Fiscal 2011 Executive Budget for the City's prosecutors (\$267.9 million) is approximately \$8.5 million less than the Fiscal 2010 Adopted Budget of \$276.4 million. This is due to prior plan actions and January Plan actions which lowered the proposed Fiscal 2011 budget, and City Council funding that supplemented the Fiscal 2010 Adopted Budget. The adjusted Fiscal 2010 budget for the prosecutors as presented in the Executive Plan shows an increase of approximately \$32.3 million. This increase stems primarily from two factors: the funding of approximately \$12.9 million for collective bargaining increases and the receipt of approximately \$12.4 million in State and federal grants.

DA/OSNP: Issues and Budget Highlights

- **Budget Reductions in Prior Plans.** The budgets of the District Attorneys and the Special Narcotics Prosecutor have been the subject of a series of reductions over the course of several financial plans. While the short-term impact of these cuts has been mitigated to a large extent by the receipt of revenue credits (as well as City Council restorations), the cumulative budget impact on the Fiscal 2011 and outyear budgets is substantial. At the time of Fiscal 2010 Budget Adoption, the projected prosecutor budgets for Fiscal 2011 represented a steep drop-off compared with Fiscal 2010.
- **Proposed Budget Reductions in the January Plan.** The projected year-to-year drop-off from Fiscal 2010 to Fiscal 2011 was further exacerbated by the January Plan proposal to reduce the prosecutors' budgets by another eight percent, or 22.5 million.
- **Current Executive Plan Restorations.** In the Executive Plan, OMB has proposed a series of actions for the DA budgets such that they are each facing a 7.58% budget reduction compared to their Fiscal 2009

Adopted Budgets (adjusted for fringe benefit and lease considerations). This 7.58% budget reduction was consistent with the reduction to the NYPD (before the last-minute headcount restoration to the PD's budget after the recent Times Square terrorist incident). OMB reports that such parity was sought by the prosecutors. Because there have been several rounds of PEGs between Adoption 2009 and the current Executive Plan, as well as several other budget adjustments (relating to collective bargaining, revenue credits, a variety of new needs and adjustments, federal stimulus grants, etc.) the series of actions in the Executive Plan that ultimately yield the 7.58% reduction are numerous and difficult to reconcile.

As stated above, OMB sought to adjust PEG reductions such that parity existed with the PD going back to the Fiscal 2009 Adopted Budget (June 2008). This is an arbitrary point in time. The prosecutors suffered many rounds of budget reduction after 9/11, and have never been made whole with respect to those reductions. More recently, in January 2008 and April 2008 more than \$9 million was cut from their budgets. These cuts have not been restored.

Looking simply at the PEG-related actions impacting the DAs' Fiscal 2011 budgets since last June (when the Fiscal 2010 budget was adopted), there is virtually no change. Said differently, the combination of OMB's DA PEG reductions and PEG restorations net to almost zero. Said still differently, OMB has assessed virtually no PEG reductions on the DAs during this entire budget cycle, a cycle in which other agencies have been assessed cumulative PEGs totaling \$1.3 billion.

That being said, while the proposed Fiscal 2011 Budget for the DAs is actually larger than the Adopted Fiscal 2009 Budget and only \$8.5 million less than the Adopted Fiscal 2010 Budget, the prosecutors' proposed City-funded budget for Fiscal 2011 is \$26.1 million, or 9.34% less than its Fiscal 2010 budget as of the current Executive Plan. This is due to the accumulation of prior year PEG reductions. As large as this \$26.1 million reduction is, had OMB not restored almost \$22 million in the Executive Plan, this year-to-year reduction would have been approximately \$48 million.

It should be noted that a \$16.1-million increase in the DAs' Fiscal 2010 City-funded Budget from the Adopted Plan to the Executive Plan is due primarily to collective bargaining salary adjustments made in January. As these adjustments have been baselined into Fiscal 2011 and the outyears, their inclusion in the Financial Plan in no way explains the Executive Plan dropoff in the DAs' budgets from Fiscal 2010 to Fiscal 2011.

- **Deferred Prosecution Revenue Credits.** The Manhattan DA has been able to generate significant revenues for the City (and revenue credits for all of the City's prosecutors) through the negotiation of so-called "deferred prosecution" settlements in which defendants agree to make payments prior to the filing of an accusatory instrument. While the State recently passed legislation dictating the manner in which such revenue will be apportioned among the City, State and the specific prosecutor's office handling such cases, the legislation has already sunset. It is expected to be extended, without modification, as part of the State budget adoption process. City officials would like to see the revenue sharing terms altered in the City's favor as the prosecutors' offices are predominantly City-funded.
- **OMB Revenue Agreement.** The prosecutors have, for the past several years, operated under a Revenue Agreement with the Mayor's Office of Management and Budget (OMB) that allowed the agencies to have a portion of prior-year budget reductions restored if revenues were generated above a certain baseline. Revenues generated in New York County, the nation's financial center, have allowed for such restorations for all of the prosecutors' offices. The Revenue Agreement with OMB has expired and, OMB reports, a new one is being negotiated.
- **Stimulus Funding.** The sum of \$5 million in federal Stimulus funding flowing from the American Recovery and Reinvestment Act (ARRA) will support the operations of the City's prosecutors over

several years. These funds include approximately \$1.3 million in Fiscal 2010, \$2.5 million in Fiscal 2011, \$1.1 million in Fiscal 2012, and \$111,000 in Fiscal 2013.

District Attorneys/Special Narcotics Prosecutor

The five District Attorneys (DA's) enforce the provisions of the penal law and all other criminal statutes, which include the initial screening of new cases, preparation of hearings, gathering of resources for hearings, and presentation of cases in court for trial and appeal. The Office of the Special Narcotics Prosecutor (OSNP) enforces the provisions of the penal law relative to felony narcotics and predicate felony cases by the investigation of complaints, preparation of indictments, and trial of defendants indicted on felony narcotics charges.

| DAs/Special Narcotics <i>Dollars in Thousands</i> | 2008 Actual | 2009 Actual | 2010 Adopted | 2010 Exec. Plan | 2011 Exec. Plan | Difference 2010–2011 |
|---|------------------------------|------------------------------|-------------------------------|----------------------------------|----------------------------------|---------------------------------------|
| Spending | | | | | | |
| Personal Services | \$262,820 | \$267,178 | \$242,335 | \$270,105 | \$235,427 | (\$6,908) |
| Full-Time Salaried – Civilian | 252,258 | 257,020 | 228,910 | 256,389 | 222,002 | (6,908) |
| Other Salaried & Unsalariated | 3,819 | 4,160 | 2,031 | 2,031 | 2,031 | - |
| Additional Gross Pay | 3,144 | 2,495 | 702 | 702 | 702 | - |
| Overtime - Civilian | 3,426 | 3,250 | 907 | 1,038 | 907 | - |
| Fringe Benefits | 224 | 292 | 208 | 369 | 208 | - |
| Amounts to be Scheduled | - | - | 9,576 | 9,576 | 9,576 | - |
| PS Other | (51) | (38) | - | - | - | - |
| Other Than Personal Services | 34,912 | 36,234 | 34,104 | 38,604 | 32,479 | (1,625) |
| Supplies and Materials | 3,596 | 3,407 | 3,775 | 3,865 | 2,609 | (1,166) |
| Property and Equipment | 2,136 | 2,195 | 1,835 | 1,950 | 1,835 | - |
| Other Services and Charges | 26,727 | 27,059 | 26,523 | 29,081 | 26,064 | (459) |
| Contractual Services | 2,451 | 3,571 | 1,971 | 3,708 | 1,971 | - |
| Fixed and Misc. Charges | 3 | 2 | - | - | - | - |
| TOTAL | \$297,732 | \$303,412 | \$276,439 | \$308,709 | \$267,906 | (\$8,533) |
| Funding | | | | | | |
| <i>City Funds</i> | | | \$262,110 | \$277,510 | \$252,099 | (\$10,011) |
| <i>Memo: Council Funds</i> | | | 500 | 2,000 | | |
| <i>Other Categorical</i> | | | - | 2,193 | - | - |
| <i>State</i> | | | 13,092 | 19,214 | 12,050 | (1,042) |
| <i>Federal - Other</i> | | | - | 7,864 | 2,520 | 2,520 |
| <i>Intra City</i> | | | 1,237 | 1,929 | 1,237 | - |
| TOTAL | \$297,732 | \$303,412 | \$276,439 | \$308,709 | \$267,906 | (\$8,533) |
| Headcount | | | | | | |
| Full-Time Salaried | 3,923 | 3,911 | 3,484 | 3,491 | 3,342 | (142) |

FY 2010 Council Changes

Dollars in Thousands

Budgetary Supplement \$2,000

To supplement the Fiscal 2010 budgets of the City's prosecutors, the City Council provided these agencies with the sums of \$500,000 at the time of budget adoption and \$1.5 million in the year's first budget modification (MN-1). These amounts were provided at the prosecutors' request to partially restore budget reductions made over the past several financial plans. The supplemental appropriations have enabled the DAs and Special Narcotics Prosecutor to better perform many core and discretionary programs.

| DA – New York | 2008 | 2009 | 2010 | 2010 | 2011 | Difference |
|-------------------------------------|-----------------|-----------------|-----------------|-------------------|-------------------|-------------------|
| <i>Dollars in Thousands</i> | Actual | Actual | Adopted | Exec. Plan | Exec. Plan | 2010–2011 |
| Spending | | | | | | |
| Personal Services | \$81,690 | \$86,824 | \$75,797 | \$84,277 | \$70,413 | (\$5,384) |
| Full-Time Salaried – Civilian | 79,494 | 84,565 | 65,094 | 73,479 | 59,710 | (5,384) |
| Other Salaried & Unsalaries | 534 | 569 | 582 | 582 | 582 | - |
| Additional Gross Pay | 839 | 720 | 327 | 327 | 327 | - |
| Overtime - Civilian | 702 | 823 | 157 | 99 | 157 | - |
| Fringe Benefits | 128 | 148 | 61 | 214 | 61 | - |
| Amounts to be Scheduled | - | - | 9,576 | 9,576 | 9,576 | - |
| PS Other | (8) | (2) | - | - | - | - |
| Other Than Personal Services | \$8,574 | \$10,095 | \$6,974 | \$9,870 | \$6,638 | (\$336) |
| Supplies and Materials | 1,630 | 1,707 | 1,334 | 2,109 | 1,259 | (75) |
| Property and Equipment | 716 | 1,027 | 570 | 536 | 570 | - |
| Other Services and Charges | 4,936 | 5,478 | 4,025 | 5,644 | 3,729 | (296) |
| Contractual Services | 1,290 | 1,882 | 1,045 | 1,581 | 1,079 | 34 |
| Fixed and Misc. Charges | 1 | 2 | - | - | - | - |
| TOTAL | \$90,264 | \$96,919 | \$82,771 | \$94,146 | \$77,050 | (\$5,721) |
| Funding | | | | | | |
| <i>City Funds</i> | | | \$78,389 | \$82,939 | \$72,563 | (\$5,826) |
| <i>Other Categorical</i> | | | - | 2,000 | - | - |
| <i>State</i> | | | 3,727 | 6,658 | 3,400 | (327) |
| <i>Federal - Other</i> | | | - | 1,893 | 432 | 432 |
| <i>Intra City</i> | | | 655 | 655 | 655 | - |
| TOTAL | \$90,264 | \$96,919 | \$82,771 | \$94,146 | \$77,050 | (\$5,721) |
| Headcount | | | | | | |
| Full-Time Salaried | 1,211 | 1,233 | 1,024 | 1,024 | 979 | (45) |

| DA - Bronx | 2008 | 2009 | 2010 | 2010 | 2011 | Difference |
|-------------------------------------|-----------------|-----------------|-----------------|-------------------|-------------------|-------------------|
| <i>Dollars in Thousands</i> | Actual | Actual | Adopted | Exec. Plan | Exec. Plan | 2010–2011 |
| Spending | | | | | | |
| Personal Services | \$47,658 | \$47,294 | \$44,310 | \$49,160 | \$43,703 | (\$607) |
| Full-Time Salaried – Civilian | 46,005 | 45,933 | 43,956 | 48,806 | 43,349 | (607) |
| Other Salaried & Unsalaries | 154 | 128 | 18 | 18 | 18 | - |
| Additional Gross Pay | 610 | 511 | 71 | 71 | 71 | - |
| Overtime - Civilian | 870 | 708 | 228 | 228 | 228 | - |
| Fringe Benefits | 27 | 25 | 38 | 38 | 38 | - |
| PS Other | (8) | (11) | - | - | - | - |
| Other Than Personal Services | 3,104 | 3,169 | 2,382 | 2,884 | 2,254 | (128) |
| Supplies and Materials | 559 | 483 | 272 | 492 | 140 | (132) |
| Property and Equipment | 472 | 514 | 329 | 338 | 329 | - |
| Other Services and Charges | 1,908 | 1,980 | 1,672 | 1,831 | 1,675 | 4 |
| Contractual Services | 164 | 192 | 110 | 223 | 110 | - |
| TOTAL | \$50,762 | \$50,463 | \$46,693 | \$52,045 | \$45,958 | (\$735) |
| Funding | | | | | | |
| <i>City Funds</i> | | | \$43,212 | \$45,823 | \$42,392 | (\$820) |
| <i>Other Categorical</i> | | | - | 128 | - | - |
| <i>State</i> | | | 2,898 | 3,851 | 2,653 | (246) |
| <i>Federal - Other</i> | | | - | 1,499 | 331 | 331 |
| <i>Intra City</i> | | | 582 | 744 | 582 | - |
| TOTAL | \$50,762 | \$50,463 | \$46,693 | \$52,045 | \$45,958 | (\$735) |

| Headcount | | | | | | |
|--------------------|-----|-----|-----|-----|-----|------|
| Full-Time Salaried | 797 | 787 | 724 | 724 | 693 | (31) |

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| DA - Kings | 2008 | 2009 | 2010 | 2010 | 2011 | Difference |
|-------------------------------------|-----------------|-----------------|-----------------|-------------------|-------------------|------------------|
| <i>Dollars in Thousands</i> | Actual | Actual | Adopted | Exec. Plan | Exec. Plan | 2010–2011 |
| Spending | | | | | | |
| Personal Services | \$67,785 | \$68,387 | \$62,160 | \$69,506 | \$61,426 | (\$734) |
| Full-Time Salaried – Civilian | 63,073 | 63,761 | 60,699 | 68,045 | 59,965 | (7734) |
| Other Salaried & Unsalaries | 2,607 | 3,027 | 1,016 | 1,016 | 1,016 | - |
| Additional Gross Pay | 979 | 659 | 207 | 207 | 207 | - |
| Overtime - Civilian | 1,143 | 894 | 181 | 181 | 181 | - |
| Fringe Benefits | 19 | 73 | 57 | 57 | 57 | - |
| PS Other | (36) | (26) | - | - | - | - |
| Other Than Personal Services | \$15,799 | \$15,894 | \$15,198 | \$15,746 | \$14,492 | (\$706) |
| Supplies and Materials | 640 | 466 | 1,284 | 417 | 485 | (799) |
| Property and Equipment | 468 | 342 | 414 | 526 | 414 | - |
| Other Services and Charges | 14,130 | 14,170 | 13,141 | 13,556 | 13,234 | 93 |
| Contractual Services | 561 | 916 | 359 | 1,247 | 359 | - |
| Fixed and Misc. Charges | 1 | - | - | - | - | - |
| TOTAL | \$83,584 | \$84,282 | \$77,358 | \$85,252 | \$75,918 | (\$1,439) |
| Funding | | | | | | |
| City Funds | | | \$73,947 | \$77,747 | \$71,986 | (\$1,961) |
| State | | | 3,410 | 4,519 | 3,111 | (299) |
| Federal - Other | | | - | 2,456 | 821 | 821 |
| Intra City | | | - | 530 | - | - |
| TOTAL | \$83,584 | \$84,282 | \$77,358 | \$85,252 | \$75,918 | (\$1,439) |

| Headcount | | | | | | |
|--------------------|-------|-------|-----|-----|-----|------|
| Full-Time Salaried | 1,023 | 1,020 | 937 | 944 | 901 | (36) |

| DA - Queens | 2008 | 2009 | 2010 | 2010 | 2011 | Difference |
|-------------------------------------|-----------------|-----------------|-----------------|-------------------|-------------------|------------------|
| <i>Dollars in Thousands</i> | Actual | Actual | Adopted | Exec. Plan | Exec. Plan | 2010–2011 |
| Spending | | | | | | |
| Personal Services | \$41,010 | \$40,175 | \$37,437 | \$41,452 | \$36,850 | (\$587) |
| Full-Time Salaried – Civilian | 39,938 | 39,070 | 36,908 | 40,751 | 36,321 | (587) |
| Other Salaried & Unsalaries | 20 | 17 | 216 | 216 | 216 | - |
| Additional Gross Pay | 491 | 408 | 61 | 61 | 61 | - |
| Overtime – Civilian | 526 | 651 | 218 | 390 | 218 | - |
| Fringe Benefits | 35 | 28 | 34 | 34 | 34 | - |
| Other Than Personal Services | \$6,023 | \$5,589 | \$8,360 | \$8,805 | \$7,892 | (\$468) |
| Supplies and Materials | 491 | 490 | 743 | 593 | 560 | (183) |
| Property and Equipment | 336 | 147 | 321 | 439 | 321 | - |
| Other Services and Charges | 4,922 | 4,564 | 7,083 | 7,270 | 6,832 | (251) |
| Contractual Services | 274 | 390 | 213 | 502 | 180 | (34) |
| Fixed and Misc. Charges | 1 | - | - | - | - | - |
| TOTAL | \$47,033 | \$45,764 | \$45,797 | \$50,257 | \$44,742 | (\$1,054) |
| Funding | | | | | | |
| City Funds | | | \$44,055 | \$46,327 | \$42,696 | (\$1,360) |
| Other Categorical | | | - | 26 | - | - |
| State | | | 1,742 | 2,502 | 1,587 | (155) |

| | | | | |
|------------------------|-----------------|-----------------|-----------------|-----------------|
| <i>Federal - Other</i> | - | 1,402 | 460 | 460 |
| TOTAL | \$47,033 | \$45,764 | \$45,797 | \$50,257 |
| Headcount | | | | |
| Full-Time Salaried | 591 | 575 | 525 | 505 |

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| DA - Richmond | 2008 | 2009 | 2010 | 2010 | 2011 | Difference |
|-------------------------------------|----------------|----------------|----------------|-------------------|-------------------|-------------------|
| <i>Dollars in Thousands</i> | Actual | Actual | Adopted | Exec. Plan | Exec. Plan | 2010-2011 |
| Spending | | | | | | |
| Personal Services | \$7,379 | \$7,308 | \$6,849 | \$7,716 | \$6,715 | (\$134) |
| Full-Time Salaried – Civilian | 7,046 | 7,023 | 6,612 | 7,454 | 6,478 | (134) |
| Other Salaried & Unsalaries | 177 | 141 | 193 | 193 | 193 | - |
| Additional Gross Pay | 47 | 48 | 11 | 11 | 11 | - |
| Overtime - Civilian | 106 | 92 | 30 | 46 | 30 | - |
| Fringe Benefits | 3 | 4 | 3 | 11 | 3 | - |
| Other Than Personal Services | \$932 | \$997 | \$752 | \$789 | \$775 | \$23 |
| Supplies and Materials | 157 | 132 | 62 | 122 | 118 | 57 |
| Property and Equipment | 62 | 69 | 129 | 46 | 129 | - |
| Other Services and Charges | 570 | 629 | 420 | 494 | 386 | (34) |
| Contractual Services | 144 | 167 | 141 | 126 | 141 | - |
| TOTAL | \$8,311 | \$8,305 | \$7,601 | \$8,504 | \$7,490 | (\$111) |
| Funding | | | | | | |
| <i>City Funds</i> | | | \$7,413 | \$7,769 | \$7,169 | (\$244) |
| <i>Other Categorical</i> | | | - | 39 | - | - |
| <i>State</i> | | | 187 | 427 | 172 | (16) |
| <i>Federal - Other</i> | | | - | 269 | 149 | 149 |
| TOTAL | \$8,311 | \$8,305 | \$7,601 | \$8,504 | \$7,490 | (\$111) |
| Headcount | | | | | | |
| | 95 | 94 | 92 | 92 | 89 | (3) |

| Special Narcotics | 2008 | 2009 | 2010 | 2010 | 2011 | Difference |
|-------------------------------------|-----------------|-----------------|-----------------|-------------------|-------------------|-------------------|
| <i>Dollars in Thousands</i> | Actual | Actual | Adopted | Exec. Plan | Exec. Plan | 2010-2011 |
| Spending | | | | | | |
| Personal Services | \$17,300 | \$17,191 | \$15,782 | \$17,994 | \$16,320 | \$538 |
| Full-Time Salaried – Civilian | 16,702 | 16,668 | 15,641 | 17,853 | 16,179 | 538 |
| Other Salaried & Unsalaries | 327 | 276 | 6 | 6 | 6 | - |
| Additional Gross Pay | 178 | 149 | 26 | 26 | 26 | - |
| Overtime - Civilian | 80 | 83 | 94 | 94 | 94 | - |
| Fringe Benefits | 12 | 13 | 15 | 15 | 15 | - |
| Other Than Personal Services | \$479 | \$488 | \$438 | \$511 | \$428 | (\$10) |
| Supplies and Materials | 119 | 128 | 81 | 132 | 47 | (34) |
| Property and Equipment | 81 | 97 | 72 | 65 | 72 | - |
| Other Services and Charges | 260 | 238 | 183 | 287 | 207 | 24 |
| Contractual Services | 18 | 25 | 102 | 28 | 102 | - |
| TOTAL | \$17,778 | \$17,679 | \$16,220 | \$18,505 | \$16,748 | \$528 |
| Funding | | | | | | |
| <i>City Funds</i> | | | \$15,093 | \$16,904 | \$15,293 | \$200 |
| <i>State</i> | | | 1,127 | 1,256 | 1,127 | - |
| <i>Federal - Other</i> | | | - | 345 | 328 | 328 |
| TOTAL | \$17,778 | \$17,679 | \$16,220 | \$18,505 | \$16,748 | \$528 |

| Headcount | | | | | | |
|--------------------|-----|-----|-----|-----|-----|-----|
| Full-Time Salaried | 206 | 202 | 182 | 182 | 175 | (7) |

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Budgetary Issues of Note:

- Deferred Prosecution Revenue Credits.** The Manhattan DA has been able to generate significant revenues for the City (and revenue credits for all of the City’s prosecutors) through the negotiation of so-called “deferred prosecution” settlements in which defendants agree to make payments prior to the filing of an accusatory instrument (i.e., pre-indictment). The State recently passed legislation (which expires March 31, 2010) dictating the manner in which such revenue will be apportioned among the City, State and the specific prosecutor’s office handling such cases. Previously, State law provided no clarity regarding such revenue sharing. The State law change, as well as the existence of off-budget bank accounts into which deferred prosecution revenues are initially retained, have been the subject of dispute among the New York County DA’s office and the Administration. Whereas the DA’s office asserted that the retention and later distribution of revenues have been handled in accordance with applicable laws, the Administration has expressed concerns regarding the lack of transparency regarding the bank accounts which, it contends, makes budgeting decisions more difficult. Since these bank accounts may contain sums even greater than the size of the DA’s own budget, this is an issue that is worthy of vigilant oversight.

As a direct result of deferred prosecution revenues generated by the Manhattan DA in the Credit Suisse case, the January Plan provides the following credits in Fiscal 2010:

| Deferred Prosecution Revenue Credits (in Thousands) | |
|--|--------------------|
| | Fiscal 2010 |
| New York | \$3,817 |
| Bronx | 2,173 |
| Kings | 3,205 |
| Queens | 2,097 |
| Richmond | 354 |
| Special Narcotics | 730 |
| TOTAL | \$12,376 |

How the Recently-Passed State Revenue Sharing Law was used in the Credit Suisse Case

| | % returned to DA-NY | Revenue Transferred to the State | Revenue Allocated back to DA- NY* | State Share | City Share |
|----------------------|------------------------------------|---|--|----------------------|----------------------|
| \$0-\$25 Million | 10% | \$ 25,000,000 | \$2,500,000 | \$ 11,250,000 | \$ 11,250,000 |
| \$25-\$50 Million | 7.50% | \$ 25,000,000 | \$1,875,000 | \$ 11,562,500 | \$ 11,562,500 |
| \$50-\$100 Million | 5% | \$ 50,000,000 | \$2,500,000 | \$ 23,750,000 | \$ 23,750,000 |
| > than \$100 Million | 1% | \$168,000,000 | \$1,680,000 | \$ 83,160,000 | \$ 83,160,000 |
| TOTAL | | \$268,000,000 | \$8,555,000 | \$129,722,500 | \$129,722,500 |

* Note: The \$8.555-million sum has not been included in the agency’s budget as of the Executive Plan.

- **DP Revenue Sharing Receipts:** The Manhattan DA is entitled to \$8.555 million in DP revenue from the Credit Suisse case. This funding is in the DA's possession and has not been brought into the City's financial management system to date. It is OMB's belief that before the DA can spend any of these funds a budget modification must be passed by the City Council. OMB is still working with the DA to address this matter consistent with the recent findings of the Comptroller's Office pertaining to off-budget bank accounts. OMB anticipates that the Manhattan DA will generate similar DP revenue in the near future.
- **New DP Revenue Credits.** In anticipation of deferred prosecution revenue in Fiscal 2011 which would approximate that which was generated in Fiscal 2010, the Executive Plan includes the following Revenue PEG Credits:

| Deferred Prosecution Revenue Credits (in Thousands) | |
|--|--------------------|
| | Fiscal 2011 |
| New York | \$8,066 |
| Bronx | 4,948 |
| Kings | 6,826 |
| Queens | 4,518 |
| Richmond | 724 |
| Special Narcotics | 1,563 |
| TOTAL | \$26,645 |

- **OMB Revenue Agreement.** The prosecutors have, for the past several years, operated under a Revenue Agreement with the Mayor's Office of Management and Budget (OMB) that allowed the agencies to have a portion of prior-year budget reductions restored if revenues were generated above a certain baseline amount. Revenues generated in New York County, the nation's financial center, have allowed for such restorations for all of the prosecutors' offices. The old revenue agreement has expired. A new draft is being prepared by OMB and the Criminal Justice Coordinator. As of this writing, it has not yet been shared with the prosecutors. Whereas the old agreement was connected to the restoration of prior-plan PEGs (and so had the carrot and stick appearance that some Council Members found troublesome), OMB reports that the new agreement would simply speak to the relative shares each prosecutor's office would be credited with.

At many prior hearings, Council Members expressed displeasure with the old agreement for three basic reasons: (a) that the Agreement runs the risk of forcing prosecutors to alter their normal priorities to bend to financial incentives, (b) that the Agreement leaves the budgets of all of the other prosecutors in the hands of the New York County DA, and (c) that the ebb and flow of revenue credits over time makes both short- and long-term budgeting unmanageable. The Council will monitor the Revenue Agreement issue during the course of this budget season.

New Revenue Agreement Credits. The Executive Plan includes the following Revenue Agreement funding:

| Revenue Agreement Credits (in Thousands) | |
|---|--------------------|
| | Fiscal 2011 |
| New York | \$617 |
| Bronx | 690 |
| Kings | 620 |
| Queens | 240 |
| Richmond | 69 |
| Special Narcotics | 69 |
| TOTAL | \$2,305 |

- **State Aid to Prosecution:** The Governor’s Executive Budget proposed a 10% reduction in aid to prosecutors. OMB has replaced this anticipated loss in State funds with City funds.
- **Predicate Felony Transcripts.** Sentencing guidelines for repeat felony offenders require the production of the offenders’ records for use by judges in calculating sentences. OMB is baselining transcript funding in recognition that the production of such transcripts is now an on-going function for the DAs. Funds totaling approximately \$351,000 are included in the January Plan beginning in Fiscal 2010 to cover these costs. This funding would be added to the specific agencies as follows:

| Predicate Felony Transcripts Funding (in Thousands) | |
|--|---------------------------------------|
| | Fiscal 2010 & Outyears |
| New York | \$161 |
| Bronx | 36 |
| Kings | 69 |
| Queens | 39 |
| Richmond | 23 |
| Special Narcotics | 23 |
| TOTAL | \$351 |

- **Office of the Special Narcotics Prosecutor (OSNP) Adjustment:** A technical adjustment would add \$603,000 to the OSNP’s baseline budget. When a prior restoration was calculated by OMB, the restoration percentage for the OSNP was lower than that for the rest of the DAs in recognition of the disproportionate assistance traditionally provided by the City Council. This adjustment will henceforth allow the Council to treat the OSNP in the same manner as the DAs when contemplating restorations and/or enhancements.
- **Criminal Justice System Efficiencies:** Three (3) DAs -- Brooklyn, Queens and Staten Island -- are being given funding in recognition of their efforts to reduce conviction to sentencing times.
- **Stimulus Funding.** The sum of \$5 million in federal Stimulus funding flowing from the American Recovery and Reinvestment Act (ARRA) will support the operations of the City’s prosecutors over

several years. These funds include approximately \$1.3 million in Fiscal 2010, \$2.5 million in Fiscal 2011, \$1.1 million in Fiscal 2012, and \$111,000 in Fiscal 2013. This funding would be added to the specific agencies as follows:

| ARRA Funding (All DAs & Special Narc.) | |
|---|--------------------|
| Fiscal 2010 | \$1,281,825 |
| Fiscal 2011 | 2,519,995 |
| Fiscal 2012 | 1,051,032 |
| Fiscal 2013 | 111,496 |
| TOTAL | \$4,964,348 |