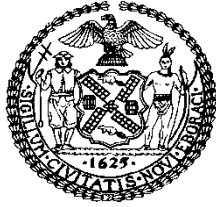


Committee on the Justice System:
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THE COUNCIL OF THE CITY OF NEW YORK

**COMMITTEE REPORT OF THE
GOVERNMENTAL AFFAIRS DIVISION**

**Jeffrey Baker, Legislative Director
Brian Crow, Deputy Director, Justice Division**

COMMITTEE ON JUSTICE SYSTEM

Hon. Rory Lancman, Chair

February 7, 2019

Preconsidered Int. No. T2019-3704: By The Speaker (Council Member Johnson)

Title: A Local Law to amend the administrative code of the city of New York, in relation to requiring district attorneys to report on criminal prosecutions

Administrative Code: Amends §9-307
Adds Chapter 4 of Title 9

I. INTRODUCTION

On February 7, 2019 the Committee on Public Safety, chaired by Council Member Donovan Richards, and the Committee on the Justice System, chaired by Council Member Rory Lancman, will hold an oversight hearing regarding police discipline. The Committee on the Justice System will also hear Preconsidered Introductory Bill Number T2019-3704 (Int. T2019-3704), a local law to amend the administrative code of the city of New York, in relation to requiring District Attorneys to report on criminal prosecutions Those expected to testify include representatives of the District Attorneys of New York City, Mayor’s Office of Criminal Justice (MOCJ), and various advocates, stakeholders, and members of the public.

II. BACKGROUND

Accountability and transparency are key components of good governance,¹ and a necessary component of these principles is public reporting and data sharing. This practice is essential not just for governmental actors, but for the public as well; a study by the American Civil Liberties Union found that 85% of voters were “much more likely to support a prosecutor who believes in making a prosecutors’ decisions transparent by sharing data, information and polices with the public.”² Presently, the City’s District Attorneys are not mandated to conduct any public reporting.

There is a national movement for more transparency from District Attorneys. For example, one of the factors in the American Bar Association’s Prosecutorial Reform Index is for

¹ “What is Good Governance?” United Nations Economic and Social Commission for Asia and the Pacific *available at* <https://www.unescap.org/sites/default/files/good-governance.pdf>. The others are being participatory, consensus orientated, responsive, effective and efficient, equitable and inclusive, and following the rule of law

² “New Polling of Voters’ Opinions Towards Prosecutors.” American Civil Liberties Union *available at* <https://www.aclu.org/fact-sheet/new-polling-voters-opinions-towards-prosecutors>

“prosecutors [to] periodically and publicly account for their activities as a whole.”³ In 2017, the San Francisco District Attorney (SFDA) shared their case management system with a Public Policy professor at University of California, Berkeley, and a professor of Criminology at the University of Pennsylvania to look at racial and ethnic disparities in case dispositions.⁴ Despite their troubling findings – Black, Asian and Hispanic defendants received worse case outcomes than White defendants – the report is prominently placed on the SFDA’s website.⁵

The Cook County State’s Attorney’s Office (CCSAO), which includes Chicago, has gone even further. Their 2017 report includes case dispositions disaggregated by race and age, as well as dispositions by charge.⁶ CCSAO also created an open data portal with six years of data on felony cases for manipulation and analysis by the public – including 300,000 cases and 45 million data points.⁷ “I am proud to be taking the lead on open data, and hope that many of my fellow prosecutors around the country will join me in this effort to be truly transparent and accountable to our constituents,” State’s Attorney Kimberly Foxx said, adding, “The public deserves nothing less.”⁸

³ “Prosecutorial Reform Index: Factors” American Bar Association, Rule of Law Initiative *available at* https://www.americanbar.org/advocacy/rule_of_law/publications/assessments/pri/pri_factors/

⁴ MacDonald, John and Raphael, Steven “An Analysis of Racial and Ethnic Disparities in Case Dispositions and Sentencing Outcomes for Criminal Cases Presented to and Processed by the Office of the San Francisco District Attorney” available at

https://sfdistrictattorney.org/sites/default/files/MacDonald_Raphael_December42017_FINALREPORT%20%28002%29.pdf

⁵ Id.

⁶ Cook County State’s Attorney 2017 Data Report, *available at*

https://www.cookcountystatesattorney.org/sites/default/files/files/documents/ccsao_2017_data_report_180220.pdf

⁷ Cook County Government, Open Data, *available at*

https://datacatalog.cookcountylil.gov/browse?tags=state%27s%20attorney%20case-level&sortBy=most_accessed

⁸ “State’s Attorney Foxx Announces Unprecedented Open Data Release” Cook County State’s Attorney, available at <https://www.cookcountystatesattorney.org/news/states-attorney-foxx-announces-unprecedented-open-data-release>

III. PRACTICES OF DISTRICT ATTORNEYS IN NEW YORK CITY

Each of the City’s five District Attorneys are independently elected and are given full discretion to prosecute or not prosecute any criminal act.⁹ However, as a recent Second Circuit case made clear, “the actions of county prosecutors in New York are generally controlled by municipal policymakers... with a narrow exception... being the decision of whether, and on what charges, to prosecute.”¹⁰ The offices are elected by localities and are considered local officers, thus subject to reporting requirements made by local law.¹¹

The City’s District Attorneys currently produce some public reporting, but it is far from uniform. The New York County District Attorney’s Office publishes reports, but these are primarily focused on particular minor offenses, such as “turnstile jumping” and marijuana possession.¹² The Bronx District Attorney and Staten Island District Attorney publish annual reports, but they contain little data.¹³

IV. ANALYSIS OF PRECONSIDERED INT. NO. T2019-3704

This bill requires the city’s District Attorney’s offices to report on the basic functionings of their offices. This annual report would include the number of cases prosecuted, cases where they decline to prosecute after being brought arrest charges by the NYPD, the number and types of cases where they ask for bail, and the average length of a case before a disposition. The report also requires the numbers to be disaggregated by offense, and the race, gender and age of the

⁹ New York Constitution Art. 13, § 13; New York County Law § 700; Kinberg v. Kinberg, 48 A.D.3d 387, 387 (App. Div. 1st Dept. 2008) (“the authority to prosecute defendant for criminal activity resides solely with the District Attorney.”)

¹⁰ Bellamy v City of New York, 17-1859-CV, 2019 WL 347201, at *22 (2d Cir Jan. 29, 2019)]

¹¹ Kelley v. McGee, 57 N.Y.2d 522 (1982)

¹² News and Reports, Manhattan District Attorney’s Office <https://www.manhattanda.org/category/news/reports/>

¹³ 2017 Annual Report, Office of the Bronx County District Attorney available at https://www.bronxda.nyc.gov/downloads/pdf/annual-reports/annual_report_2017.pdf and 2017 Annual Report, Office of Richmond County District Attorney available at <https://www.statenislandda.org/wp-content/uploads/2018/07/RCDA-2017-ANNUAL-REPORT.compressed.pdf>

defendant. The reports also require disaggregation by whether the defendant was incarcerated or in a program, which are important in determining the appropriate length of a case. This bill would take effect immediately, but to permit each of the offices to develop the technological capacities to produce these reports, the first report would not be required until 2021. The bill would also require the Mayor's Office of Criminal Justice to aggregate each of these reports into a single report to allow simple comparisons between the five District Attorney's offices.

Preconsidered Int. No. T2019-3704

By The Speaker (Council Member Johnson) and Council Member Lancman

A Local Law to amend the administrative code of the city of New York, in relation to requiring district attorneys to report on criminal prosecutions

Be it enacted by the Council as follows:

Section 1. Title 9 of the administrative code of the city of New York is amended by adding a new chapter 4 to read as follows:

CHAPTER 4
DISTRICT ATTORNEYS

§ 9-401 Definitions. As used in this chapter, the following terms have the following meanings:

Charge severity. The term “charge severity” means whether a top charge is a felony, misdemeanor, violation, or traffic infraction.

Conviction severity. The term “conviction severity” means whether a charge of conviction is a felony, misdemeanor, violation, or traffic infraction.

Dispose. The term “dispose” means any instance in which a prosecution results in a dismissal, adjournment in contemplation of dismissal, or conviction.

Incarcerated. The term “incarcerated” means a defendant who is incarcerated pursuant to article 510 of the penal law, but who has not been deemed an incapacitated person under Article 730 of the criminal procedure law.

Office. The term “office” means the office of any district attorney in the city of New York.

Program. The term “program” means any diversion, treatment, or other intervention that a defendant enters into voluntarily, while not being in-custody.

Prosecute. The term “prosecute” means to file an accusatory instrument.

Supervised release. The term “supervised release” means any instance in which a criminal defendant is released from custody during the pendency of a prosecution under the condition that such defendant maintain contact with an entity or individual that provides monitoring or supervision during such release.

Top charge. The term “top charge” means the most charge that carries the longest potential period of incarceration filed in an accusatory instrument, or, if an accusatory instrument is not filed, the term “top charge” means the charge that carries the longest potential period of incarceration referred for prosecution.

§ 9-402 Reporting.

a. Each office shall submit an annual report to the council and the office of criminal justice, and post such report on such office’s website. Such reports shall be submitted within 30 days of January 1 each year, starting in 2021, and shall include the following information for criminal prosecutions during the previous calendar year:

1. The number of cases prosecuted in total and disaggregated by:

a. charge severity, and felony charges shall be further disaggregated by whether such charges are for a violent felony;

b. top charge; and

c. the race, gender, and age of the person prosecuted.

2. The number of cases resulting in a conviction, in total and disaggregated by:

a. conviction severity; and felony charges shall be further disaggregated by whether such conviction was for a violent felony;

b. charge or charges of conviction; and

c. the race, gender, and age of the person prosecuted.

3. The number and percentage of cases referred for prosecution for which the office does not prosecute, in total and disaggregated by top charge and charge severity, and also disaggregated by the race, gender, and age of the person that is not prosecuted. The information reported in this paragraph shall not include cases referred for prosecution for which the office does not prosecute because the individual referred for prosecution participated in a program in lieu of prosecution.

4. The number and percentage of cases referred for prosecution for which the office does not prosecute because the individual referred for prosecution participated in a program in lieu of prosecution, in total and disaggregated by top charge and charge severity, and also disaggregated by the race, gender, and age of the person that is not prosecuted.

. The number of and percentage of prosecutions in which the office requests bail or remand at a criminal court arraignment, bail or remand is so imposed, supervised release is recommended at a criminal court arraignment, and supervised release is so imposed.

5. The number and percentage of all prosecutions, prosecutions in which felony complaints are filed, prosecutions disposed in supreme court, and prosecutions in which misdemeanor complaints are filed, that were disposed in the following categories: dismissal on the motion of the district attorney, dismissal on speedy trial grounds, acquitted at trial, dismissal on other grounds, adjournment in contemplation of dismissal, conviction for a violation, conviction for a traffic infraction, conviction for a misdemeanor, conviction for a felony, and any other outcome.

6. The number and percentage of prosecutions, in total and disaggregated by both charge severity and conviction severity, disposed at the following times: criminal court arraignment,

supreme court arraignment, between criminal court arraignment and disposition, between supreme court arraignment and disposition, after pretrial hearings were commenced and before trial, and after trial.

7. The average time between initial arraignment and disposition, in total and disaggregated by charge severity and conviction severity, and also disaggregated by:

(a) Charge severity, with felony charges further disaggregated by whether such charges violent felonies as defined in article 70 of the penal law;

(b) Whether the defendant was incarcerated; and

(c) Whether the defendant participated in a program during such period.

8. Sentences imposed, in total and disaggregated by charge severity and conviction severity, in the following categories: determinate period of imprisonment, indeterminate period of imprisonment, definite period of imprisonment, conditional discharge, probation, fine, and time served. In any case in which a fine is imposed in addition to another sentence, the report shall include only such other sentence. Sentences of conditional discharges shall be listed in total and disaggregated by type of condition imposed in the following categories: program attendance, community service, or other type of condition.

b. All terms used this section that are not defined in section 9-401 have the same meanings as they have in the penal law or criminal procedure law, where applicable.

c. Reports required pursuant to subdivision a of this section shall be stored permanently and accessible from each office's website, and shall be provided in a format that permits automated processing.

§ 2. Title 9 of the administrative code of the city of New York is amended by adding a new section 9-307 to read as follows:

§ 9-307 District attorney reporting. No later than 45 days from January 1 of each year, starting in 2021, the office shall provide to the council and publish on its website an annual report on district attorneys. This report shall consist of the information required pursuant to section 9-402 aggregated for all district attorneys, and published in a manner that permits the comparison of such information for such district attorneys.

§ 3. This local law takes effect immediately.

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