

State Saves as City Bears Added Jail Costs for Felony Cases

Also available ...

[Arrest, Felony, Jail Time, and Related Statistics](#)

...at www.ibo.nyc.ny.us

SUMMARY

IN RECENT YEARS THE CITY'S CRIME RATE has declined dramatically along with the number of people arrested for felonies such as drug dealing, robbery, or murder. Despite this decline, the average time defendants in felony cases spend from arrest, to trial, and if found guilty, to sentencing and transfer to state prisons has risen. This means longer average stays in city jails, largely at city expense, before inmates are sent to state prisons, where the state covers the cost. The increase in the average length of custody in city jails is costing the city an estimated \$50 million annually.

There are a number of potential explanations for the increase, including inadequate staffing in the criminal justice system, a change in the type of cases coming to trial, and tougher sentencing laws and plea policies adopted in the mid-1990s. In our analysis we found that:

- As felony arrests have fallen, the caseloads of judges, prosecutors, and defense attorneys have generally declined, suggesting that inadequate resources has not been a major contributing factor in the increased average time to disposition. But the rise in misdemeanor arrests over the same period may have offset at least some of the decreased felony workload.
- It is possible that the types of cases that are ultimately adjudicated in the criminal justice system are becoming more difficult and time-consuming, although the direct evidence on this point is limited.
- The most likely contributing causes were the enactment in 1995 of longer mandatory sentences for violent felony crimes and tougher plea bargaining policies adopted by District Attorneys. These changes probably lengthened the pre-trial plea bargaining process and contributed to an increase in the number of cases going to trial, which typically takes more time than a plea bargain or other disposition.

Most of the factors that have likely contributed to lengthier average periods of incarceration in city jails are beyond the city's direct control. If the Mayor or City Council wants to take steps to reduce the average length of stay in city jails in order to lower costs to the city, it will take an integrated approach with the state and court system. But for many New Yorkers the additional city costs may be worth bearing if it means a safer city.

**New York City
Independent Budget Office
Ronnie Lowenstein, Director
110 William St., 14th floor
New York, NY 10038
Tel. (212) 442-0632
Fax (212) 442-0350
e-mail: ibo@ibo.nyc.ny.us
<http://www.ibo.nyc.ny.us>**

INTRODUCTION

From 1994 through 2004, the drop in major crime in New York City led to a one-third decrease in the annual number of arrests for felonies, the most serious criminal offenses.¹ As a result, the number of convicted felons sent into the state prison system from New York City to serve long prison sentences declined sharply.

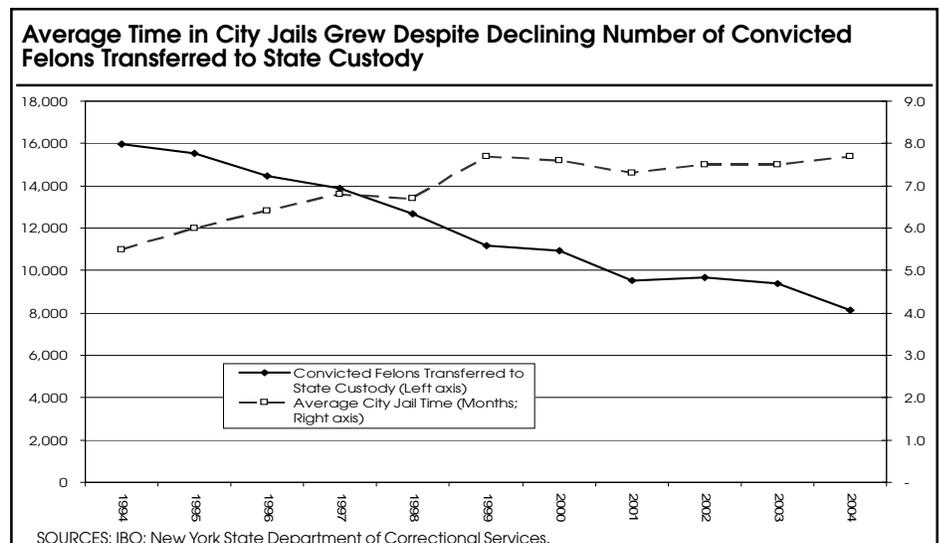
Surprisingly, however, the average time spent in custody at city jails between arrest and sentencing and transfer to state prison for ultimately convicted felons increased substantially in the late 1990s, and has remained at a high level since. The average stay in city jails for inmates eventually convicted and sent upstate increased by more than one-third, from 5.5 months in 1994 to 7.7 months in 1999, and has remained at roughly this level through 2004.² (All years are calendar years unless otherwise noted.) The slowdown in criminal case processing is also reflected in the percentage of felony dispositions in New York City failing to meet the New York State Office of Court Administration’s own internally established “standards and goals,” which call for felony cases to reach disposition within six months from the date the case is filed in state Supreme Court. The percentage of felony dispositions failing to meet this standard grew from 23 percent in 1994 to 30 percent in 2003.

The slowdown in criminal case processing comes at a significant cost to the city. Those convicted of a felony charge and sentenced to a prison term are transferred to state facilities, where the cost of incarceration is borne by the state. The amount of their sentence spent in an upstate prison is reduced by the amount of time spent in city custody between the time of arrest and conviction, sentencing, and transfer—which is paid for by the city.³ The subtraction of city jail-time credit from the amount of time an inmate will ultimately spend in state prison is thus a zero-sum game: the longer prisoners remain in city custody, the larger the city’s—and the smaller the state’s—share of total imprisonment costs. If the amount of time inmates spent in city Department of Correction (DOC) custody prior to their transfer upstate had remained at 5.5 months (the 1994 level) rather than rising to the 2004 level of 7.7 months, the city would currently be saving about \$50 million per year.⁴

This additional cost may merely represent the city’s share of an increase in the total costs of incarceration as a result of longer mandatory prison sentences and other factors. Moreover, there may be important but not easily quantified benefits from a tougher approach to criminal justice such as helping to continue the extraordinary decline in crime in the city. In that case both the city and the state pay the budgetary costs of longer periods of incarceration, while the general public benefits in terms of safety and security. On the other hand, if the increase in city jail time for convicted felons has resulted from factors such as inadequate resources for adjudication, then additional spending to increase the numbers of judges, prosecutors, or public defenders might be a cost-effective alternative, while assuring that accused felons receive their constitutional right to a speedy trial.

In order to determine the causes for the slowdown in criminal case processing and the resulting increase in the average time spent in city custody, IBO examined data from, and discussed the trends and their causes with a number of participants in the process, including the New York City Department of Correction, the Office of the Criminal Justice Coordinator, the Office of Court Administration, the District Attorneys’ offices, the Legal Aid Society, the New York State Division of Criminal Justice Services, and others.

The City Jail Population. About two-thirds of the inmates in city jails at any given time are *detainees*, meaning they are being held pending trial or disposition on the criminal charges they are facing. The pace of criminal case trials and sentencing in the courts is therefore a major determinant of the cost of running the city’s jail system. (The remaining one-third of the DOC inmate population consists primarily of already-convicted individuals serving out sentences of less than one



year for misdemeanor offenses, as well as state parole violators awaiting parole revocation hearings and possible return to the state prison system.)

The focus of this analysis is on the subset of detainees charged and eventually convicted of felony crimes, and thereafter sentenced to multi-year terms of imprisonment in state custody. Although this subset accounts for only about 8 percent of the roughly 107,000 inmates passing through city jail custody each year, the seriousness of their cases results in well above average lengths of stay in city jail custody as compared to all DOC inmates. In fact, this subset of the total inmate flow through DOC custody accounts for about 38 percent of the total “inmate-days” of custody provided by DOC.

WHY HAS CRIMINAL CASE PROCESSING SLOWED?

Subsequent to an arrest made by a police officer, the adjudication of criminal cases in New York City involves several participants, including judges serving within a court system operated under the auspices of the state Office of Court Administration, prosecuting attorneys serving on the respective staffs of a District Attorney elected from each borough as well as a citywide Special Narcotics Prosecutor, and defense attorneys representing defendants who in over 95 percent of cases are considered indigent and therefore in need of defense counsel funded entirely by the city.

The process is also governed by statutory timelines, intended to meet the constitutional requirement for a speedy trial. Arrestees must be arraigned in criminal court within 24 hours, at which point the counts against them are spelled out and either bail is set or the accused is released on his or her own recognizance. In felony cases, the District Attorney then has five days to bring the charges before the grand jury. In many cases, the grand jury will vote to indict as quickly as the same day, although for more complex conspiracy or racketeering charges the process may take weeks. Once indicted on criminal charges, the accused is arraigned in Supreme Court, where the trial judge sets a schedule for motions, discovery, and other pre-trial phases, and for the start of the trial itself. Under Section 30.30 of the Criminal Procedure Law, felony trials must generally take place within six months (misdemeanors within 90 days).

Given the complexity and multitude of variables associated with criminal case processing trends, there are numerous factors that could have contributed to the slowdown in criminal case processing in New York City. First and most obvious are shortages of key personnel—judges (and other court

personnel), prosecutors and defense attorneys. The pace of criminal case processing could certainly be slowed if the staffing in any of these three areas is not sufficient to handle the volume of cases coming into the system.

A related factor is the mix of cases that the courts face. Abstracting from any changes in the volume of cases faced by courts, if the cases they must hear are more difficult and time-consuming, the result would be longer average times spent in city jails by defendants.

Another set of factors include changes in law, policy, or practice that would affect the behavior of any of the participants in such a way as to prolong the time needed to reach a verdict in a felony case.

In what follows we review these several factors.

Resources. The first set of factors we examine include the resources available to adjudicate felony cases in the court system, including judges, prosecutors, and defense attorneys. In short, there is not sufficient evidence to suggest that a shortage of such key personnel has played a major role.

Judicial Caseloads. New York City Criminal Court judges oversee adjudication of misdemeanor arrests, as well as preside over arraignments of felony cases. If a grand jury returns a felony indictment, the case is heard before a judge in the Supreme Court. The judicial resources available are measured in judge-days by the Office of Court Administration—the total number of days spent in court by judges annually.

The number of misdemeanor arrests grew substantially with the city’s crackdown on lesser, quality-of-life offenses under Mayor Giuliani, increasing the number of misdemeanor arraignments Criminal Court judges had to handle. These judges faced an increase in misdemeanor arrests per judge-day from 9.9 in 1994 to 12.8 in 1997 and 1998, falling slightly to 12.0 arrests per judge-day by 2003. The impact, however, is likely to have been modest since these cases are generally not as time-consuming as felony cases.

Conversely, the number of potentially more time-consuming felony filings per judge-day fell over the same period: from 1.2 in 1994 to 0.89 by 2003. As a result, the workload of judges handling criminal cases in the Supreme Court seems unlikely by itself to have been a factor in longer periods to disposition.

Prosecutorial Resources. Public prosecutors are another key element in felony case dispositions. Total staffing of the five

District Attorney Felony Caseloads Fall But Misdemeanor Caseloads Rise			
	1994	2000	2004
No. of Assistant District Attorneys	1,710*	1,737	1,516
Arrests per Ass't D.A.:			
Felony	81	65	61
Misdemeanor	99	129	126
Total	180	194	187
Felony trials commenced per Ass't D.A.:	1.9	1.3	1.0 [†]

SOURCES: IBO; New York State Division of Criminal Justice Services.
NOTES: *Estimated. [†]2003.

District Attorney's offices (including the office of the Special Narcotics Prosecutor) remained fairly constant from 1994 until 2003, totaling about 4,100 personnel, including roughly 1,700 assistant district attorneys. More recently, staffing dipped to about 3,600—with 1,500 assistant district attorneys—in 2004. The number of felony arrests per assistant district attorney declined during the latter half of the 1990s, with more modest declines through 2004. The number of felony trials begun per assistant district attorney also fell. At the same time, though, prosecutors did have to handle an increased number of misdemeanor cases.

Defense Staffing. New York City has the sole responsibility for funding counsel and supportive services for indigent defendants charged with crimes in the city. The Legal Aid Society, under contract with the city, serves as the primary defender for indigent defendants in the city. Indigent defendants can also be represented by members of a court-appointed panel of so-called 18-B attorneys, or by one of five nonprofit indigent defense contractors (one in each borough). The 18-B attorneys are paid by the city to handle cases in which Legal Aid Society representation would create a conflict of interest (for example where there are multiple defendants), or when a defendant is charged with a crime punishable by death or life imprisonment.

Many observers (and the Legal Aid Society itself) have repeatedly claimed that the funding it receives to provide adequate criminal defense for the indigent is far from sufficient. As for 18-B attorneys, their compensation rate was raised in 2004 for the first time since 1986. The nearly two decade stagnation in compensation rates for 18-B attorneys almost certainly resulted in a steady erosion in the quantity and quality of attorneys willing to serve as indigent defenders.

Comments received by IBO from the Deputy Chief Administrative Judge for the New York City Courts reinforced

the view that inadequate defense counsel hampers the pace with which criminal cases are processed.⁵ She noted that “recent years have seen significant shortages in indigent criminal defender services in the City of New York.” She also indicated that: “It is nearly axiomatic that a lack of available defense attorneys has the greatest impact in the area of trials. Where the number of attorneys available to represent defendants at trial either decreases or remains unchanged, judges must compete for the same attorney’s time. This competition results in judges directing counsel to be available for dates certain and prohibiting them from becoming engaged before another judge.”

While it may well be the case that public defenders are overworked and underpaid, data supplied by the Legal Aid Society suggests that in recent years, the caseload of defense attorneys in Supreme Court has actually been declining, from over 20 cases in 1996 (the earliest year for which data was available), to under 15 in 2004.

Caseload Mix. While most of the indicators of resources available for felony adjudications would seem to point to a declining workload, the *types* of cases faced by the courts could affect the average time between arrest and disposition. Two factors could have resulted in longer average case processing times: the complexity of cases to be adjudicated, and the types of charges being prosecuted.

If the cases courts must hear are more complex and time-consuming—for example, if more cases are adjudicated by jury trials—average case processing times would rise, in which case the decline in the volume of cases may have been offset in whole or in part by the average time needed to reach a disposition. There is no direct evidence on this point, but two indicators were cited by persons we interviewed. First, the share of felony arrests that ultimately resulted in new Supreme Court filings fell during the late 1990s, from 34 percent in 1994 to 26 percent in 2000. It is possible that this means that those cases that did reach the court were the more difficult and time-consuming cases. Second, as we discuss in the next section, there was a 23 percent increase in the share of felony filings that went to trial between 1994 and 1997, following enactment of longer mandatory sentences.

In addition, the types of charges against defendants could influence average time to disposition. Drug cases are generally considered to require less time to process than violent felony cases.⁶ Drug *arrests* fell from 32 percent of all felony arrests in 1994 to 27 percent by 2004. However, the mix of Supreme Court cases stayed relatively constant during this period, with

drug cases constituting between 50 percent and 55 percent until 2000 (subsequent to the rise in average city jail time), and violent felonies making up between 28 percent and 33 percent. There is thus no indication of an increase in the types of cases—particularly violent felonies—that typically consume more court-days than drug or property crimes.

Changes in Sentencing and Plea Policy. Two significant changes occurred in the mid-1990s that altered the dynamics of felony prosecutions: the adoption of tougher plea policies by the District Attorneys and the passage of a state law increasing minimum prison sentences for certain classes of felonies. Both were likely to have contributed to the increase in city jail time for convicted felons ultimately bound for state prison.

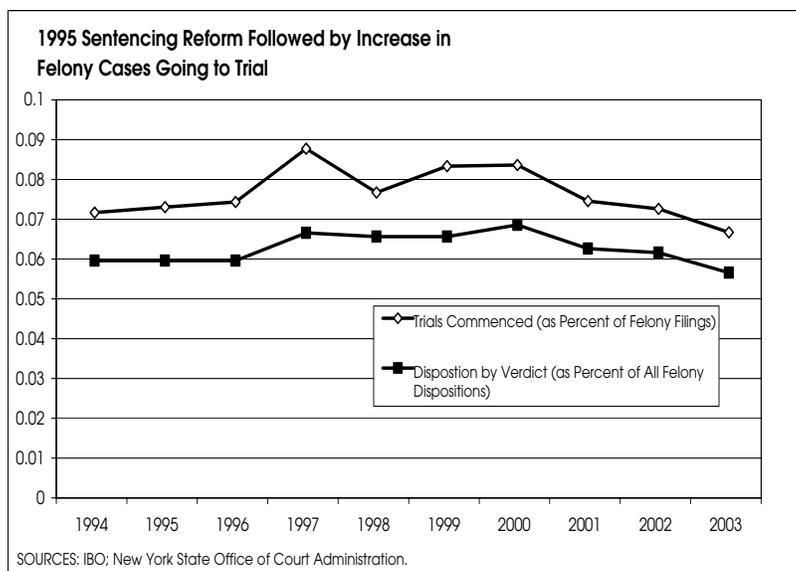
Adoption of Tougher Plea Policies by District Attorneys. Plea policies on the part of city prosecutors can be a major determinant of the pace of criminal case processing, with about 95 percent of Supreme Court convictions secured via a guilty plea as opposed to a guilty verdict rendered by a either a jury or a judge.

In the mid-1990s, the city’s District Attorneys began adopting more stringent plea bargaining policies. Two changes in particular are noteworthy. First, prosecutors “raised the bar” for pre-indictment pleas, offering lesser reductions in potential sentences than had been the case since the late 1980s. Second, prosecutors became more reluctant to allow defendants to plead guilty to lesser offenses once an indictment had been filed in Supreme Court. Prosecutors have generally argued that tough plea policies serve the public interest by helping to insure that offenders end up adequately and justly punished for crimes to which they plead guilty.

The Sentencing Reform Act of 1995. In 1995, legislation was enacted in Albany that increased the minimum amount of time that must be served by individuals convicted of violent felonies. The average minimum sentence given to violent felons (about one-third of all inmates transferred each year from city jails to state prison) increased from 58.7 months in the year before enactment of the legislation (1994) to 81.2 months in 1997, and averaged 81.6 months between 1997 and 2004. For all convicted inmates transferred from city to state custody, the average minimum sentence increased from 38.4 months in 1994 to 46.2 months in 2004.

It seems plausible to infer that the lengthier prison sentences facing defendants—in combination with the tightening of plea policies on the part of prosecutors—may have increased the reluctance of defendants to enter into guilty pleas (or at least not as early in the process as they may previously have been willing to do), preferring instead to test their chances at trial. In fact, there was an increase in the number of trials started as a percentage of new felony filings in Supreme Court, rising from 7.1 percent in 1994 to a high of 8.7 percent in 1997, and generally remaining at a higher level before beginning to fall in 2001. At the same time, the share of felony case dispositions by verdict—as opposed to plea, dismissal, or other outcome—increased from 5.9 percent in 1994 to 6.6 percent in 1997.

Sentencing of State-Prison Bound Inmates. After a criminal conviction is secured via a guilty plea or trial verdict, the sentencing phase of the adjudication process begins, during which the court determines the appropriate prison term. According to the Department of Correction, the average number of days state prison-bound convicted felons remained in city jails while awaiting sentencing increased from 15 days in 1994 to 26 days by 2003, a jump of over 40 percent.



Most felony convictions require the city’s Department of Probation to prepare a pre-sentence investigation (PSI) report, which provides the sentencing judge with information on the defendant’s background, such as possible mitigating circumstances associated with a given crime as well as the likelihood of success of rehabilitation programs not involving incarceration. A slowdown in the pace of preparing the pre-sentence report could contribute to a lengthening of the sentencing phase. There is no indication that the timeliness of pre-sentence report preparation has slipped over the time period in question, however. The Mayor’s Management Report indicates that the percentage of investigation reports completed by the

scheduled date of sentencing was consistently between 97.5 percent and 99 percent between fiscal years 1994 and 2002 (after which the measure was changed). It therefore remains unclear as to why the sentencing phase has lengthened.

CONCLUSION

The most likely causes of the increase in case processing times appear to be the combination of longer mandatory sentences and tougher plea policies in the mid-1990s, as well as an increase in the number of days required during the sentencing phase of the process. It also appears possible that the criminal cases reaching Supreme Court are more difficult and time-consuming on average than in the past. In contrast, there is not sufficient evidence to suggest that a shortage of key personnel—judges, prosecutors, and defense attorneys—has played a major role.

There may be important but not easily quantified benefits from tougher plea policies and longer mandatory sentences because violent and repeat offenders are spending longer terms in state prison for their crimes. This may serve justice and help continue the extraordinary decline in crime in the city. In that case both the city and the state pay the budgetary costs of longer periods of incarceration, while the general public benefits in terms of safety and security.

This is not to say, however, that total resources are sufficient, or that additional resources or alternative forms of case

disposition—such as the Supreme Court Information parts created in the 1990s—might not help speed case processing. It is noteworthy, however, that most of the factors we identified, with the exception of the budgets for indigent defense and for the district attorneys, are outside the city’s direct control. Reducing the time to adjudicate felony criminal cases will require an integrated approach by the city, the state, and the court system.

Written by Bernard O’Brien

END NOTES

¹ A felony is defined in state law as a criminal offense punishable by a prison term that can exceed one year. In contrast, a misdemeanor is a lesser criminal offense punishable by a term of not more than one year. Inmates sentenced to less than one year serve out their terms in city jails.

² Also noteworthy is the fact that of the 8,141 inmates sent upstate in 2004, 17 percent had already spent over one year in city jail custody at the time of their transfer into state prison. The comparable figure in 1994 was only 9 percent.

³ The state does reimburse the city \$34 per day while so-called “state-ready” prisoners are awaiting transfer beyond 24 hours—a small fraction of the city’s actual average per inmate cost. The latest data available from DOC indicates that in 2004 inmates were on average transferred to state custody 18 days after sentencing.

⁴ Based on Department of Correction’s estimate of savings from closing the Vernon C. Bain Center and various other housing consolidations that would be made possible from such a reduction in average city jail time for inmates ultimately bound for state prison. Includes all DOC costs as well as fringe benefits for DOC workers paid from central city accounts, and services provided by other agencies in city jails (notably inmate medical care contracted for through the Department of Health and Mental Hygiene.)

⁵ Letter from the Hon. Judge Joan B. Carey, July 20, 2005.

⁶ In response to the crack cocaine epidemic of the 1990s, a new division of the Supreme Court was created—so-called Supreme Court Information parts—to help move drug cases more expeditiously.

You can receive IBO reports electronically—and for free. Just go to www.ibo.nyc.ny.us and click on subscriptions.