



Darcel D. Clark
District Attorney

A SAFER BRONX

Through Fair Justice

A Safer Bronx Through Fair Justice

OFFICE OF THE BRONX COUNTY
DISTRICT ATTORNEY
DARCEL D. CLARK

Introduction

For the past four years that I have served as your District Attorney, I have made significant strides to create an office that best serves the people of the Bronx.

First and foremost, keeping our communities safe is my top priority as the District Attorney and that will never change.

As a 21st Century Prosecutor, I have made it my office's mission to "Pursue Justice with Integrity" by providing fairness to defendants and fulfilling our duty to victims.

That means ensuring public safety by seeking punishment for certain crimes and realizing when punitive measures do not advance justice.

It means diverting people from the justice system and incarceration, especially those with drug addiction or mental health issues.

So, while January 1, 2020 was the day the new state criminal justice reform law took effect, my office has been enacting reform for years.

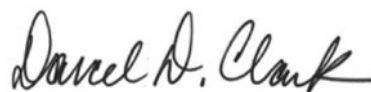
The criminal justice reforms have redesigned the cash bail system, redefined the evidence that prosecutors must turn over to the defense and how quickly those materials must be disclosed, and modified the requirements that prosecutors must meet to satisfy a defendant's right to a speedy trial.

I have been formulating my policy over my first term, and I release it now to dovetail with the criminal justice reform law.

"A Safer Bronx through Fair Justice" reflects my personal beliefs and prosecutorial philosophy, which have been shaped by 13 years as an Assistant District Attorney, 16 years as a Judge, four years as your District Attorney, and a lifetime of residing in the Bronx.

I believe that a prosecutor should make all decisions with an eye towards the least restrictive means of ensuring public safety. At every step in a prosecution—from charging, to bail, and sentencing—my office will seek the least restrictive option that is consistent with protecting the community and victims. At the same time, we will focus our resources on those crimes and individuals that most threaten the safety of the people of the Bronx.

I embark on my second term as District Attorney with great hope for the future of criminal justice and I look forward to A Safer Bronx Through Fair Justice.



Bronx District Attorney
Darcel D. Clark



Focusing the Criminal Justice System on Public Safety

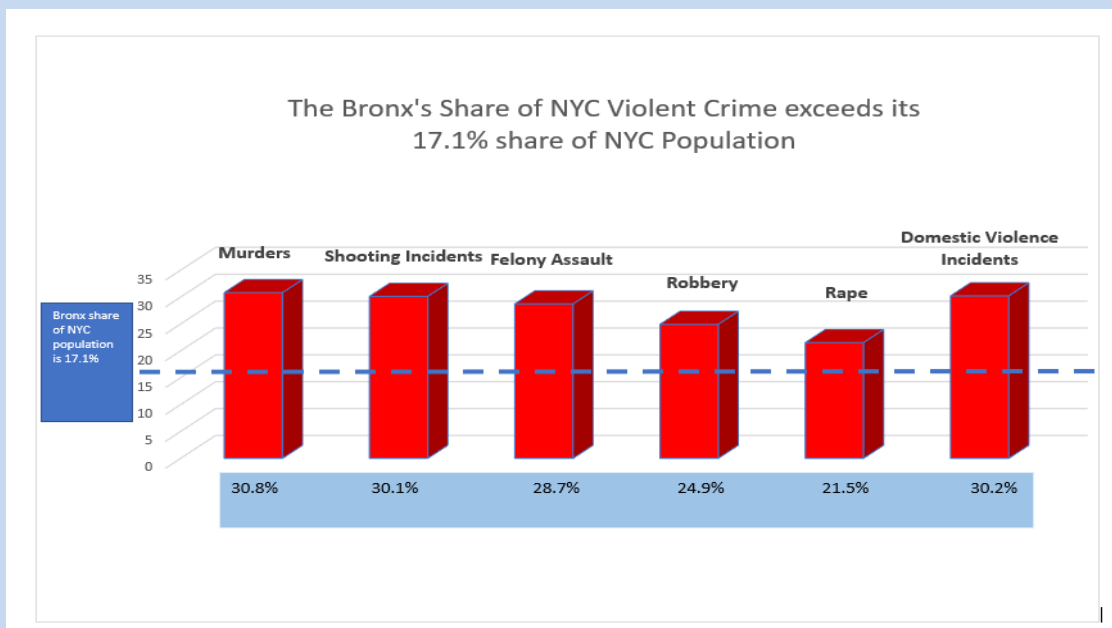
My top priority as Bronx District Attorney is to safeguard the public. Part of this commitment is seeking punishment for certain crimes and recognizing when punitive measures do not advance justice. Historically, some prosecutors have pursued overly-harsh punishments for minor offenses that do not implicate any legitimate threat to public safety. Further, the courtroom has been used as the default means to address societal issues such as poverty, homelessness, behavioral health, and substance use disorders. This must be corrected.

Moving forward, my office will seek to identify and address the underlying causes of an individual's criminal activity and divert these individuals into social, behavioral and substance use disorder services. Additionally, we will work to reduce collateral consequences to individuals who enter the criminal justice system by declining to pursue charges or

reducing charges when appropriate.

To achieve these complementary goals of public safety and equal justice, the fundamental principle that will guide each prosecutorial decision that is made by my office—from charging, to pretrial detention or services, dispositions, and reentry planning—will be to pursue options that are the least restrictive means of ensuring public safety.

This should not be misinterpreted as a “soft” approach to prosecution, but rather a comprehensive strategy for being “smart on crime.” Having spent more than 13 years as an Assistant District Attorney, 16 years as a Judge, and now as District Attorney, I am fully aware that incarceration—even long periods of incarceration—will be necessary in some cases to ensure public safety, but it will not be considered as the default resolution in every case.



My office's focus on public safety will allow us to reallocate significant resources to the following categories of crimes, defendants, and victims.

a. Violent crime and guns

Despite the decrease in overall crime in New York City and the Bronx over the last decade, violent crime continues to be a significant issue for the Bronx. The number of homicides, shooting incidents, felony assaults, robberies, rapes, and domestic incident reports are still disproportionately high relative to the Bronx's share of the City's population. With the additional challenges of high poverty rates, under-resourced schools, mental and behavioral health disorders, and other social factors, the Bronx faces significant barriers to reducing violence.

My office will continue to treat incidences of violent crime with the utmost seriousness and will do everything possible to protect the people of the Bronx from violent criminals. When appropriate, we will seek imprisonment as a means of ensuring public safety.

Gun violence also remains a significant issue in the Bronx. In 2018, for example, the percentage of New York City shooting incidents that occurred in the Bronx (30.1 percent) was nearly double the Bronx's share of the City's population (17.1 percent).¹ The illegal possession of a loaded gun is an inherent threat to public safety. Accordingly, it will

be my office's policy to define the least restrictive disposition for carrying a loaded gun in the Bronx as two years in prison and two years of post-release supervision.² In appropriate cases, however, prosecutors will have the discretion to consider mitigating factors and may offer a lesser incarceratory sentence or an alternative disposition to incarceration.

b. Drug trafficking

The opioid epidemic is one of the greatest challenges facing the Bronx today. As with violent crime, the Bronx has been hit hard by the opioid epidemic and, in contrast to some other boroughs in the City, the number of overdose deaths has continued to steadily increase over the last several years.³

I am deeply concerned about the impact of this crisis on the people of the Bronx and I am committed to pursuing all policies that will help to reverse this deadly trend. My office has taken steps to treat substance use disorders as a public health issue, rather than a criminal justice problem. We have created several diversion programs to connect people with services and treatment in lieu of incarceration. Building on the success of these programs, my office will expand the availability of diversion as an alternative to the criminal justice system for people who are suffering from a substance use disorder.

¹ New York City Police Department and United States Census data.

² Note that this is below New York's mandatory minimum of three-and-a-half years in prison for first felony offenders.

³ *Unintentional Drug Poisoning (Overdose) Deaths in New York City*, New York City Health Department, Epi Data Brief, August 2019, No. 116.

Public Safety

While my office seeks to help connect those with substance use disorders with the services and treatment they need, we will simultaneously seek to aggressively prosecute those who bring fentanyl, opioids, and other addictive and deadly drugs into the Bronx community. Specifically, my office will focus our narcotics investigation and prosecution efforts primarily on large-scale narcotics traffickers and other high-level suppliers and will seek appropriate punishment for those who are responsible for spreading this terrible epidemic in the Bronx.

c. Cases with special victims

All crime victims deserve respect and justice. However, there are certain victims of crime who are particularly vulnerable and may need additional attention. Child and elderly victims, who are often unable to protect themselves and may be victimized by those who are supposed to protect them, deserve our particular attention. Similarly, victims of domestic and sexual violence, who often face unique challenges as a result of their abuse, will continue to be a high priority for

my office. Victims and witnesses who put their safety at risk by coming forward to testify at trial will also be treated as “special victims.”

In cases designated as having a “special victim,” my office may consider the victim’s status as an aggravating factor in our charging decisions and disposition offers and recommendations.

d. Crime drivers

Recognized criminology research suggests that a relatively small number of people are responsible for a significantly disproportionate amount of crime. While this principle has had a widespread and successful impact on policing models throughout the world, especially with respect to the development of targeted enforcement strategies, it has not been fully embraced by prosecutor’s offices.

In focusing primarily on public safety, I intend to adopt innovative approaches to prosecution that will help focus our resources on the relatively small number of crime drivers who disproportionately impact the safety of the people of the Bronx.

Diverting Appropriate Cases

Due to a lack of suitable alternatives, the criminal justice system has too often become the default for responding to a broad range of public and behavioral health issues. Prosecutors have an important role to play in diverting certain defendants away from the criminal justice system and connecting those in need to services and treatment. As we exercise our discretion, my office will focus our efforts on diverting people who do not belong in the criminal justice system to programming that will help them become contributing members of the community and declining to prosecute cases that are best handled outside of the criminal justice system.

a. Substance Use Disorder

A significant number of the relatively minor offenses that are brought to my office are crimes that are committed primarily because the defendant suffers from a substance use disorder. These disorders need to be treated primarily as a public health issue, not a criminal justice issue. I recognize that treating substance use disorders punitively has led to mass incarceration and negative collateral consequences for too many of our community members. A harm reduction approach and consideration of treatment options is more effective and enhances public safety.

My office has sought to address this disconnect of punishing people with substance use disorders by creating and implementing the Overdose Avoidance and Recovery (OAR) and Heroin Overdose Prevention and Education (HOPE) programs, which allow people with substance use disorders who have committed minor crimes to access and engage in real treatment without criminal justice consequences.

We must also recognize that individuals with substance use disorders and other social service needs enter the criminal justice system for crimes other than drug possession. As such, I will also expand the charges for which diversion to treatment or other social services are offered as an alternative to prosecution. The presumption will be that a defendant who is charged with certain misdemeanors and other non-violent crimes will receive an opportunity to engage in services and, when they do so successfully, their criminal case will be dismissed in the interests of justice. The offenses that will take this non-traditional path include but are not limited to:

- Criminal Possession of a Controlled Substance in the Seventh, Fifth, and Fourth degrees (PL §§ 220.03, 220.06, and 220.09), provided there is no indicia of intent to sell;
- Criminal Trespass in the Second Degree (PL § 140.15); and
- Petit Larceny (PL § 155.25)

b. Mental Health Considerations

Our nation's criminal justice system has become the largest mental health institution in the world. While the history of deinstitutionalization—the government policy that moved mental health patients out of state-run facilities—is complicated, the end result has left too many people untreated, homeless, and cycling in and out of the criminal justice system, often for minor offenses.⁴

As with substance use disorders, mental illness needs to be addressed using evidence-based responses. Although the Bronx currently operates a mental health court, we need to expand our efforts so that all defendants with mental illness are treated effectively and ensure that the criminal justice system is not being used as a mental health provider. My office will work with the Office of Court Administration (OCA), Bronx administrative and supervising judges, the defense bar, the Department of Probation, and other interested stakeholders, to further expand the number of individuals that can be diverted away from the criminal justice system and into appropriate mental and behavioral health services.

In 2019, more than 1,400 cases were diverted from the criminal justice system. In 2016, there were about 500 diverted.

⁴ Judge Anne Harper & Judge Michael J. Finkle, Mental Health Courts, 51 No. 2 JudgeJ 4, 4-5 (Spring 2012)

Declining to Prosecute Appropriate Cases

In addition to diverting appropriate individuals from the criminal justice system, and consistent with my goal of focusing my office's efforts on promoting public safety, I am instructing my Assistant District Attorneys to presumptively decline to prosecute and request that NYPD issue a summons or connect the defendant to services for the following:

Charges

- Trespass (PL § 140.05)
- Criminal Trespass in the Third Degree (PL § 140.10)
- Theft of Services where the underlying offense is fare evasion in public transportation (PL § 165.15(3))
- Criminally Possessing a Hypodermic Instrument (PL § 220.45)
- Criminal Possession of Marijuana in the Fourth Degree (up to eight ounces) (PL § 221.15)
- Unlawful Assembly (PL § 240.10)
- Disorderly Conduct (PL § 240.20)
- Loitering for Prostitution (PL § 240.37)
- Operating without a License (VTL§ 509)
- Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree (VTL 511(1)(a), where the underlying reason for the suspension(s) is either Failure to Pay Child Support, Failure to Pay a Fine, or Failure to Post a Bond and the defendant was not involved in a collision in the incident or did not engage in any other serious violation of the Vehicle & Traffic Law that endangered public safety;
- Possession of a Knife (New York City Administrative Code 10-133), where that is the sole charge and there are no facts indicating an intent to use it against another.

(Note that there is a presumption against prosecuting these charges. In certain instances, however, also note that a Supervising Assistant District Attorney may approve charging these offenses in the interest of public safety. This list is not comprehensive but rather reflects some of the more commonly brought charges that my office will now decline to prosecute as a default position.)

Fairness in Charging, Plea Bargaining, and Dispositions

When diversion or a declination is not appropriate, charges will be pursued. Throughout the nation there are some prosecutors who view charging decisions, plea offers, and disposition recommendations as leverage for inducing a defendant to plead guilty. Assistant District Attorneys in the Bronx will be mindful of the consequences of their decisions at each stage of the criminal justice system and should never use charging or dispositional recommendations as tools to leverage a guilty plea. Charges should reflect the actual alleged underlying conduct and dispositional recommendations must proportionately reflect the gravity of the offense.

a. Fairness in Charging

It will be an official policy of my office not to over-charge for the purpose of gaining prosecutorial leverage. We will not add charges solely to inflate the potential sentence. As a practical example of fairness in charging, it will be the general practice of my office not to file multiple charges that arise from the same underlying criminal conduct. While we may need to charge multiple crimes in certain instances, charges will never be filed to increase leverage in plea bargaining and sentencing.

An example of an exception to this general rule is child pornography cases. It is common in child pornography cases for a defendant to possess hundreds or thousands of illegal files. While it may be said that these hundreds or thousands of

potential charges stem from the same underlying criminal act (i.e. downloading illegal files), pursuing a single charge would not adequately reflect the seriousness of the crime nor adequately address the need for justice for child victims. In such cases, my office will pursue the number of charges that will yield an appropriate punishment.

b. Fairness in Plea Bargaining

It will be the general practice of my office that plea offers will be made early in the prosecution and will not increase in severity over time unless the facts of the case as known by the prosecutor change. Plea offers will reflect my office's assessment of the appropriate outcome for the charged crime using the least restrictive philosophy and considering the impact on the victim and public safety.

Plea offers must balance public safety, justice for victims, and treatment and rehabilitation for defendants. My office will assess the crimes we charge and the dispositional offers on those cases using this balancing test and, in most cases, this will mean that an initial plea offer will be the offer for the pendency of the case. The decision of a defendant to avail themselves of their constitutional right to a trial will not be used against them and will not have any impact on a previously offered disposition.

Fair Justice

One important exception to this general rule is cases involving special victims, such as children, domestic partners, and those who face harm as a result of cooperating with law enforcement. In order to protect especially vulnerable victims, it will be the policy of my office that where a defendant does not avail themselves of a plea offer and, as a result, a vulnerable victim is forced to testify at trial, this may be considered an aggravating factor when we make a sentencing recommendation after trial.

c. Fairness in Disposition Recommendations

In all cases, my office will seek the least restrictive sentence that is consistent with protecting public safety and ensuring justice for victims. Before seeking incarceration, Assistant District Attorneys will consider community-based sentences that reduce collateral consequences and help defendants avoid recidivating. The decision to pursue incarceration is not one I take lightly. It will be our

recommendation only when allowing defendants to remain in the community contravenes public safety or does not provide adequate justice for victims.

It is my goal that my office pursues sentences that are proportionate to the underlying crime and harm caused to the victim and community. Consistent with our current policy, Assistant District Attorneys shall continue to conference cases and seek approval from their supervisors, deputy bureau chiefs, and bureau chiefs for any recommendation of a prison sentence. In addition, all recommendations of a prison sentence of 15-years or longer shall require executive approval.

In addition, as will be discussed in detail below, when seeking incarceration, my office will recommend sentences that are geared toward the successful reentry of the incarcerated individual upon his or her release.



Promoting Successful Re-Entry and Reducing Recidivism

The majority of defendants who are sentenced to jail and prison will return home to the community. Too often, returning individuals are met with significant obstacles that make it more likely that they will recidivate. As prosecutors, we have a duty and a profound interest in promoting successful reentry. This is not just the right thing to do from a social justice perspective, it is also cost-efficient given that the cost of incarcerating someone far exceeds the cost of providing them the tools to productively reenter the community.

The first step in promoting successful reentry is at the charging stage. Prosecutors in my office must thoughtfully consider employment, immigration, family unification, and the broad range of other potential collateral consequences when initiating a prosecution.

At the sentencing stage, sentences will ideally incorporate individualized incentives that are designed to encourage successful reentry, such as educational and/or vocational opportunities, rehabilitation programming, and trauma counseling. To the extent that programming is available, my office will seek to incorporate such programming into our recommendations. We will also advocate for opportunities that will help incarcerated individuals to succeed post-incarceration.

Additionally, there are many barriers to successful reentry that can and should be addressed before a prisoner is released. Mundane tasks, such as securing a birth certificate and state-issued identification, are absolutely critical and needed for a reentrant to acquire housing, health insurance, and employment. Yet, in many instances, individuals walk out the door of a correctional facility without any identification beyond their prison or jail ID. This can lead to negative results and can permanently impact an individual's success.

As District Attorney, I have no control over New York State's jails and prisons. Nonetheless, I believe prosecutors have a shared responsibility to help those who are reentering the community after they have served their time. My office has already taken steps to ease this transition, such as launching a monthly reentry collaborative that connects reentering individuals with service providers.

Still, much more needs to be done and I will work with all stakeholders, including community groups, legislators, partnering with community-based groups to try innovative approaches to reentry and other policymakers, to help create a reentry system that does all that it can to help reentering individuals succeed and thrive.

Conclusion

After decades of neglect in the latter part of the 20th Century, the Bronx is now experiencing a renaissance and revival. Economic development and investment are at record levels. Bronx-born entrepreneurs are opening exciting new local businesses, and our cultural institutions are thriving. While there is still much progress to be made, I believe this is a time of immense opportunity for the Bronx and its residents.

As a life-long Bronxite, I am especially proud that my office will continue to deliver a criminal justice system that the people of the Bronx deserve—one that works for our community and reflects our values.



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Darcel D. Clark

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