



BILL DE BLASIO
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
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TRACY CATAPANO-FOX, ESQ.
EXECUTIVE DIRECTOR

April 29, 2014

Police Commissioner William Bratton
New York City Police Department
One Police Plaza
New York, NY 10006

Dear Police Commissioner Bratton:

Pursuant to the Memorandum of Understanding between the CCRB and the NYPD, enclosed is the Administrative Prosecution Unit's quarterly report for the first quarter of 2014. This report highlights the APU operations, which began receiving cases in April 2013 and specifically delineates the unit's activities for the first quarter of this year.

Please review and provide any comments within two weeks of receipt. It is our intention to discuss this report at the May 14th board meeting and provide it to the public.

Respectfully submitted,

The Civilian Complaint Review Board



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STATUS REPORT FOR THE CCRB'S ADMINISTRATIVE PROSECUTION UNIT

FIRST QUARTER OF 2014

HISTORY OF THE ADMINISTRATIVE PROSECUTION UNIT

In January 2001, Mayor Giuliani and Police Commissioner Kerik announced a plan that would authorize the Civilian Complaint Review Board to prosecute in the NYC Office of Administrative Trials and Hearings (OATH) all substantiated CCRB cases where the Board recommended charges and specifications. The police unions filed a lawsuit challenging this plan as an unconstitutional violation of the City Charter. Upon review, the appellate court determined that the prosecution of cases by the CCRB was properly authorized, but that the disciplinary hearings must be take place before an employee of the Police Commissioner and could not take place at OATH.

The CCRB's Administrative Prosecution Unit was not funded by the City Council until 2010, in which a pilot project authorized a CCRB attorney to serve as lead prosecutor in disciplinary trials at the NYPD for a proscribed number of cases in which allegations were substantiated by the Board. Initially staffed with one attorney and one investigator, the pilot program was given permanent status and funding in November 2011. It was subsequently expanded into a full-fledged unit with the signing of a Memorandum of Understanding (MOU) on April 2, 2012 by former Police Commissioner Raymond Kelly and former CCRB Chairman Daniel D. Chu. This was the first time that a civilian oversight agency in the United States had been given prosecutorial power.

The MOU authorized the CCRB to prosecute all substantiated CCRB allegations in which the Board recommended administrative charges, with limited exceptions. The NYPD's Department Advocate's Office (DAO) continues to handle substantiated CCRB allegations for which the Board recommends command discipline or instructions. The Board also notes misconduct occurring outside the CCRB's jurisdiction and refers those allegations to DAO or NYPD's Internal Affairs Bureau (IAB) where appropriate.

The APU became operational on April 11, 2013 and is comprised of legal, investigative and administrative staff. The 12 APU lawyers include the Chief Prosecutor, Deputy Chief Prosecutor and ten line prosecutors. All APU attorneys are former local or federal prosecutors. The APU's investigative

staff includes a Supervising Investigator and four investigators, all of whom previously worked in the CCRB's Investigative Division. The APU's budget also funds an administrative assistant, a policy analyst and an information technology officer. All APU staff members engaged in intensive training with regard to police procedures and disciplinary proceedings, which included observing DAO trials, participating in NYPD ride-a-longs, training at the NYPD shooting range and DAO legal training.

2013 APU DOCKET

As previously disclosed in the CCRB's 2013 Annual Report, the Board recommended charges and specifications in 139 cases involving 212 officers between April 11, 2013 and December 31, 2013. Of these cases, eight were closed and 131 were open as of December 31, 2013. The eight closed cases included allegations against 12 officers. All eight were forwarded to the APU after the statute of limitations had expired so the unit was unable to act on all but one, in which the crime exception to the eighteen month statute of limitations applied.

Three pleas taken in 2013 from three members of service were later modified by Police Commissioner Bratton. In two of those cases, the Police Commissioner reduced the penalty to instructions, from the forfeiture of eight and ten vacation days respectively. In the third case, he increased the penalty from the forfeiture of six vacation days to the forfeiture of ten vacation days.

There were 131 open cases in the APU's docket at year's end: in four cases a guilty plea was entered and awaiting the Police Commissioner's approval; in two cases the trial commenced but was not completed; in 28 cases a trial was scheduled to begin; in 15 cases a court appearance was calendered; in 61 cases charges had been served and the case was being scheduled for its initial appearance in the Trial Room; and 21 cases were awaiting the filing of charges.

2014 FIRST QUARTER STATISTICS

During the First Quarter of 2014 (Q1 2014), the APU received 45 new cases from the Board. In 20 of these cases charges were served, in six cases charges were filed but were awaiting service and in 18 cases charges were not yet filed. One case was closed by the APU this quarter without any action by the unit because the case had previously been adjudicated by the NYPD. During the first quarter, the unit took pleas in six cases from eight members of service. All eight of these pleas are awaiting the Police Commissioner's review.

The APU completed 11 trials and commenced four others during Q1 2014. Draft decisions were issued following two of these trials. In one case the member of service (MOS) was found not guilty and in the other the MOS was found guilty of two of the three specifications with which he was charged. We are awaiting decision from the Police Commissioner as to the final disposition of these cases.

Of cases received in Q1 2014, 46.7% occurred in Brooklyn, 20% in the Bronx, 11.1% in Manhattan, 17.8% in Queens and 4.4% in Staten Island. As a percentage of the APU's entire open docket, 41.7% of cases occurred in Brooklyn, 22.9% in the Bronx, 16.6% in Manhattan, 12.0% in Queens and 6.9% in Staten Island.

The precincts with the three highest percentages of cases sent to the APU in Q1 2014 are the 75th precinct with 11.1%, the 41st precinct with 8.9%, and the 77th and 70th precincts with 6.7% each. When the entire APU open docket is considered, the precincts with the highest percentage of cases are the 75th precinct with 8.6%, the 73rd precinct with 4.6%, and the 40th and 46th precincts with 4.0% each.

Among cases received in Q1 2014, the types of allegations with the largest number of charges filed are 17.7% for stop of a person, 12.7% for discourtesy and 11.4% for excessive force. As a percentage of all open APU charges, the largest categories are 20.2% for stop of a person, 15.2% for frisk of a person and 11.2% for search of a person.

If the number of charges are aggregated for stop of a person, frisk of a person, frisk of personal property, search of a person and search of personal property, the precincts with the highest percentage of charges filed from cases received by the APU in Q1 2014 are the 79th precinct with 34.5%, the 19th precinct with 20.7% and the 72nd precinct with 13.8%. As a percentage of all open APU charges, the precincts with the highest percentage of aggregated stop, question and frisk charges are the 75th precinct with 9.1%, the 46th precinct with 5.9%, and the 67th and 79th precincts with 5.0% each.

ISSUES ARISING OUT OF THE IMPLEMENTATION OF THE APU

The establishment of the APU has involved a great deal of coordination and cooperation between the CCRB and the NYPD. One of the challenges we have faced is how to reach consensus when the MOU is silent on a particular issue. In some instances, we have answered the challenge with innovation. In others, more inter-agency discussions are needed to resolve these open issues.

Use of video conferencing for NYPD disciplinary trials

In Q1 2014, the APU used video conference technology to enable an incarcerated complainant to testify from Rikers Island with the consent of respondent's counsel. This innovation was a collaborative effort between the APU, the Office of the Deputy Commissioner of Trials (DCT), NYPD's Management Information Systems Division and the New York City Department of Corrections (DOC). In the past, DAO produced incarcerated witnesses at trial only if the respondent was facing the possibility of dismissal; otherwise the trial proceeded without the incarcerated witness' live testimony or not at all.

The ability to elicit testimony via video conference has numerous benefits, including promoting judicial efficiency, providing an alternative means to obtain testimony if a state court judge refuses to sign a witness production order, minimizing the staffing impact of production on DOC and NYPD, and minimizing the disruption to other offices on the same floor as the Trial Rooms at One Police Plaza. In addition, the use of video technology ensures that every witness who is willing to testify has an opportunity to be heard and that the Police Commissioner is able to consider all of the available evidence before deciding whether to impose discipline.

There are three additional APU cases scheduled for trial in the coming months in which incarcerated witnesses will testify via video conference. In the future, we hope to use video conferencing to allow witnesses from outside the tri-state area to testify when they are unable to travel to New York for trial.

Potential obstacles to expanding the use of video conferencing are the limited number of conference rooms at One Police Plaza which are outfitted with video conferencing equipment and the need to reserve those rooms for other purposes.

Impact of APU on DCT's trial calendar

In 2013, DAO tried 12 CCRB cases in the Trial Rooms at One Police Plaza. In Q1 2014 alone, the APU tried 15 cases. At this rate, the APU can be expected to try more than twice as many cases as the DAO CCRB team did even in the high watermark year of 2012 when DAO conducted 21 trials. This larger volume is due, in part, to the fact that the APU rarely declines to prosecute a case. In addition, the APU's ability to resolve a case short of trial is more limited than DAO's because the MOU does not confer on the APU the authority to offer command discipline or instructions in lieu of charges.

This high volume of trials has impacted the operations of DCT and the ability of the APU to try cases in an expeditious manner. Historically, DAO's CCRB team was able to calendar cases for trial within approximately six weeks of the initial appearance. Currently, DCT is calendaring trials approximately three months from the first appearance. The addition of a third courtroom or the regular use of a second court reporter on calendar call days could alleviate some of the backlog of trials. Authorizing the APU to offer command discipline and instructions without referral to DAO would also expedite the resolution of cases.

APU access to Disciplinary Administrative Database System

Presently the APU does not have access to the NYPD's Disciplinary Administrative Database System (DADS) and as a result we must rely on DAO for many administrative tasks related to prosecuting a case. Allowing the APU limited DADS access would enable us to process and resolve cases more expeditiously, in the same way that the NYPD's operations are enhanced by having limited access to the CCRB's Complaint Tracking System (CTS). This benefits both the respondent who is eager to resolve his case and the complainant who seeks closure regarding the incident. The expeditious resolution of cases will increase public confidence in the disciplinary system by demonstrating that civilian complaints are taken seriously by the Police Department. Finally, allowing the APU limited access to DADS shifts part of the administrative burden of processing APU cases from DAO to the CCRB.

APU access to officer disciplinary history

At present time the APU does not have access to respondents' Central Personnel Index (CPI). Instead, DAO prepares a Word document for the APU titled "Summary of Employment History" (SEH) which includes some but not all of the respondent's relevant disciplinary history. For example, the SEH contains only the respondent's most recent evaluation even though DCT considers the respondent's last three evaluations when making a penalty recommendation.

This lack of complete information regarding respondents' disciplinary history impedes the penalty recommendation and plea negotiation process. The APU is working without a complete picture of the

respondents' background, making it difficult to recommend an appropriate penalty or negotiate a fair plea agreement. We, therefore, request that the APU be provided with the same version of the CPI provided to DAO attorneys.

Conclusion

The Administrative Prosecution Unit is committed to ensuring that it prosecutes police misconduct thoroughly and ethically, and we look forward to a continued productive relationship with the NYPD in ensuring that its mission is fulfilled.

Open APU Docket as of 3/31/2014

Stage	Cases Received in First Quarter of 2014	All Open Cases
Plea modified by Police Commissioner, awaiting formal closure	0	3
Guilty plea entered, awaiting approval by Police Commissioner	0	7
Trial verdict rendered, awaiting approval by Police Commissioner	0	2
Trial completed, awaiting verdict	0	10
Trial commenced, but not completed	0	4
Trial scheduled	0	36
Calandered for court appearance	0	18
Charges served, awaiting initial appearance	20	67
Charges filed, awaiting service	6	7
Awaiting filing of charges	18	21
	44	175

Closed APU Cases as of 3/31/2014

Type	1st Quarter 2014	2014 Year to Date
Plea	0	0
Trial - Guilty	0	0
Trial - Not Guilty	0	0
S.O.L. Expired	0	0
Charges Dismissed	0	0
NYPD Retained	0	0
APU Declined to Prosecute	0	0
Previously Adjudicated by NYPD	1	1
	1	1

APU Cases By Borough as of 3/31/2014

Borough	Cases Received in First Quarter of 2014		All Open APU Cases	
	Number	% Total	Number	% Total
Brooklyn	21	46.7%	73	41.7%
Bronx	9	20.0%	40	22.9%
Manhattan	5	11.1%	29	16.6%
Queens	8	17.8%	21	12.0%
Staten Island	2	4.4%	12	6.9%
	45	100.0%	175	100.0%

APU Cases By Precinct as of 3/31/2014

Precinct	Cases Received in 1Q 2014		All Open APU Cases	
	Number	% Total	Number	% Total
1	0	0.0%	1	0.6%
6	1	2.2%	0	0.0%
7	0	0.0%	2	1.1%
9	0	0.0%	1	0.6%
10	1	2.2%	1	0.6%
13	0	0.0%	1	0.6%
14	1	2.2%	2	1.1%
18	1	2.2%	3	1.7%
19	1	2.2%	1	0.6%
23	0	0.0%	6	3.4%
24	0	0.0%	2	1.1%
25	0	0.0%	2	1.1%
28	0	0.0%	2	1.1%
30	0	0.0%	2	1.1%
32	0	0.0%	1	0.6%
34	0	0.0%	2	1.1%
40	2	4.4%	7	4.0%
41	4	8.9%	5	2.9%
42	0	0.0%	2	1.1%
43	0	0.0%	2	1.1%
44	2	4.4%	6	3.4%
46	0	0.0%	7	4.0%
47	1	2.2%	2	1.1%
48	0	0.0%	1	0.6%
50	0	0.0%	2	1.1%
52	0	0.0%	6	3.4%
60	0	0.0%	3	1.7%
61	1	2.2%	1	0.6%
62	0	0.0%	1	0.6%
63	0	0.0%	2	1.1%
66	0	0.0%	1	0.6%
67	1	2.2%	6	3.4%
69	2	4.4%	4	2.3%
70	0	0.0%	2	1.1%
72	1	2.2%	2	1.1%
73	2	4.4%	8	4.6%
75	5	11.1%	15	8.6%
76	1	2.2%	5	2.9%
77	3	6.7%	6	3.4%
79	3	6.7%	6	3.4%
81	0	0.0%	2	1.1%
83	0	0.0%	3	1.7%
84	1	2.2%	2	1.1%
88	1	2.2%	2	1.1%
90	0	0.0%	1	0.6%
94	0	0.0%	1	0.6%
102	1	2.2%	1	0.6%
103	2	4.4%	3	1.7%
105	0	0.0%	1	0.6%
106	0	0.0%	2	1.1%
107	1	2.2%	2	1.1%
109	0	0.0%	3	1.7%
110	1	2.2%	2	1.1%
111	1	2.2%	1	0.6%
113	1	2.2%	4	2.3%
114	1	2.2%	2	1.1%
120	0	0.0%	6	3.4%
122	1	2.2%	4	2.3%
123	1	2.2%	2	1.1%
	45	100.0%	175	100.0%

Open Charges Filed by Type as of 3/31/2014

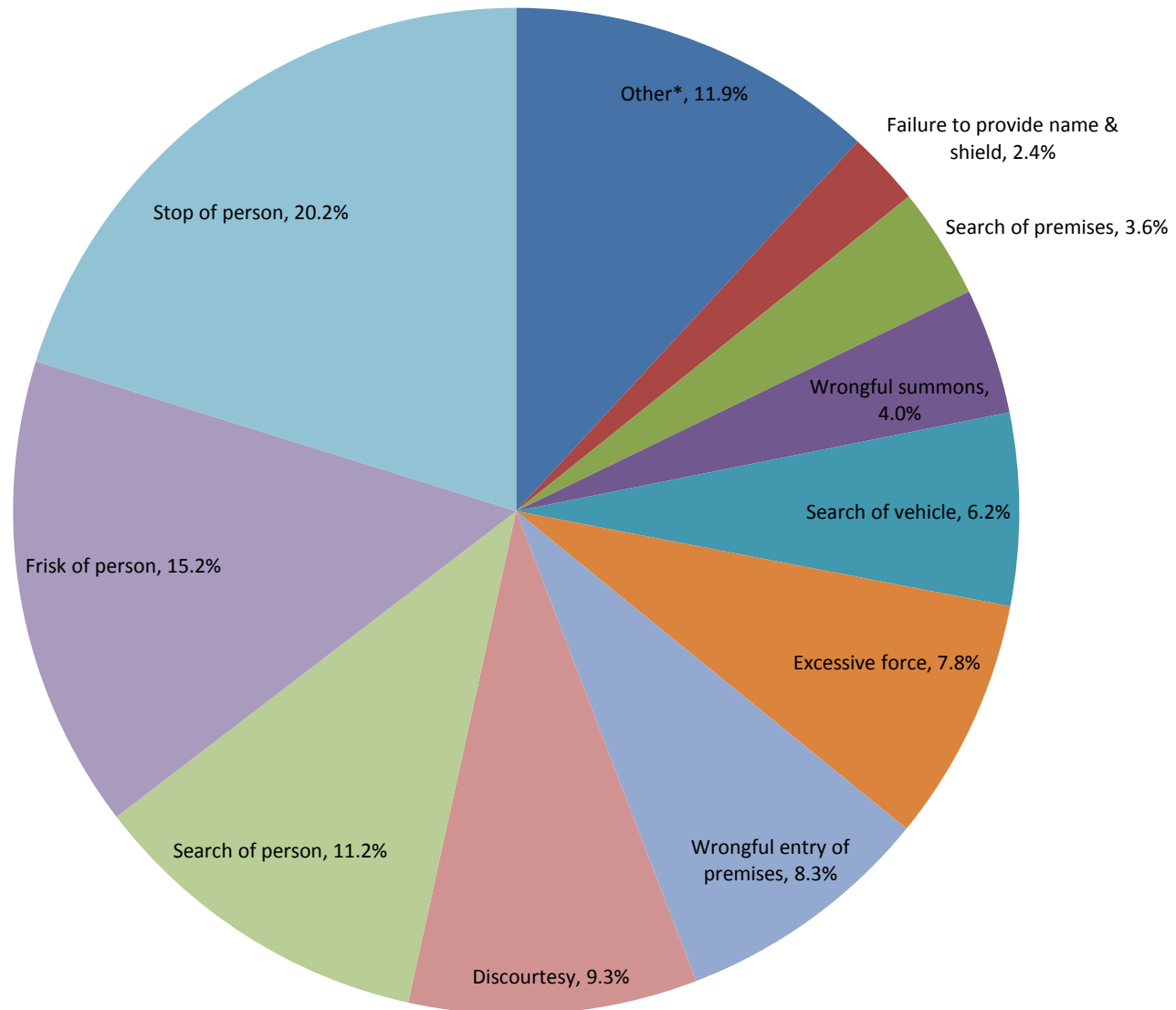
Type	From Cases Received in 1Q 2014		All Open Charges	
	Number	% of Total	Number	% of Total
Advised another officer not to provide name and shield	0	0.0%	1	0.2%
Discourtesy	10	12.7%	39	9.3%
Wrongful entry of premises	8	10.1%	35	8.3%
Excessive force	9	11.4%	33	7.8%
Failure to obtain medical attention for a prisoner	1	1.3%	2	0.5%
Failure to provide name & shield	1	1.3%	10	2.4%
Frisk of person	8	10.1%	64	15.2%
Frisk of personal property	1	1.3%	2	0.5%
Offensive Language	3	3.8%	7	1.7%
Failure to process civilian complaints	0	0.0%	1	0.2%
Search of person	5	6.3%	47	11.2%
Search of personal property	1	1.3%	4	1.0%
Search of premises	3	3.8%	15	3.6%
Search of vehicle	3	3.8%	26	6.2%
Seizure of property	1	1.3%	2	0.5%
Stop of person	14	17.7%	85	20.2%
Stop of vehicle	0	0.0%	5	1.2%
Improper strip search	2	2.5%	5	1.2%
Threat of arrest	1	1.3%	4	1.0%
Threat of force	1	1.3%	5	1.2%
Unlawful detention	4	5.1%	4	1.0%
Wrongful arrest	1	1.3%	8	1.9%
Wrongful summons	2	2.5%	17	4.0%
	79		421	

Stop, Question & Frisk Charges By Precinct as of 3/31/2014*

Precinct	From Cases Received in 1Q 2014		All Open APU Charges	
	Number	% Total	Number	% Total
1	0	0.0%	5	2.3%
6	0	0.0%	0	0.0%
7	0	0.0%	2	0.9%
9	0	0.0%	5	2.3%
10	0	0.0%	0	0.0%
13	0	0.0%	0	0.0%
14	0	0.0%	0	0.0%
18	0	0.0%	0	0.0%
19	6	20.7%	6	2.7%
23	0	0.0%	10	4.6%
24	0	0.0%	2	0.9%
25	0	0.0%	1	0.5%
28	0	0.0%	0	0.0%
30	0	0.0%	4	1.8%
32	0	0.0%	3	1.4%
34	0	0.0%	3	1.4%
40	0	0.0%	10	4.6%
41	0	0.0%	2	0.9%
42	0	0.0%	3	1.4%
43	0	0.0%	8	3.7%
44	0	0.0%	1	0.5%
46	0	0.0%	13	5.9%
47	0	0.0%	0	0.0%
48	0	0.0%	1	0.5%
50	0	0.0%	1	0.5%
52	0	0.0%	9	4.1%
60	0	0.0%	2	0.9%
61	2	6.9%	2	0.9%
62	0	0.0%	0	0.0%
63	0	0.0%	0	0.0%
66	0	0.0%	0	0.0%
67	0	0.0%	11	5.0%
69	0	0.0%	3	1.4%
70	0	0.0%	0	0.0%
72	4	13.8%	4	1.8%
73	1	3.4%	10	4.6%
75	2	6.9%	20	9.1%
76	2	6.9%	10	4.6%
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79	10	34.5%	11	5.0%
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84	0	0.0%	5	2.3%
88	0	0.0%	0	0.0%
90	0	0.0%	1	0.5%
94	0	0.0%	0	0.0%
102	0	0.0%	0	0.0%
103	2	6.9%	5	2.3%
105	0	0.0%	0	0.0%
106	0	0.0%	2	0.9%
107	0	0.0%	0	0.0%
109	0	0.0%	9	4.1%
110	0	0.0%	1	0.5%
111	0	0.0%	0	0.0%
113	0	0.0%	4	1.8%
114	0	0.0%	1	0.5%
120	0	0.0%	6	2.7%
122	0	0.0%	2	0.9%
123	0	0.0%	8	3.7%
	29		219	

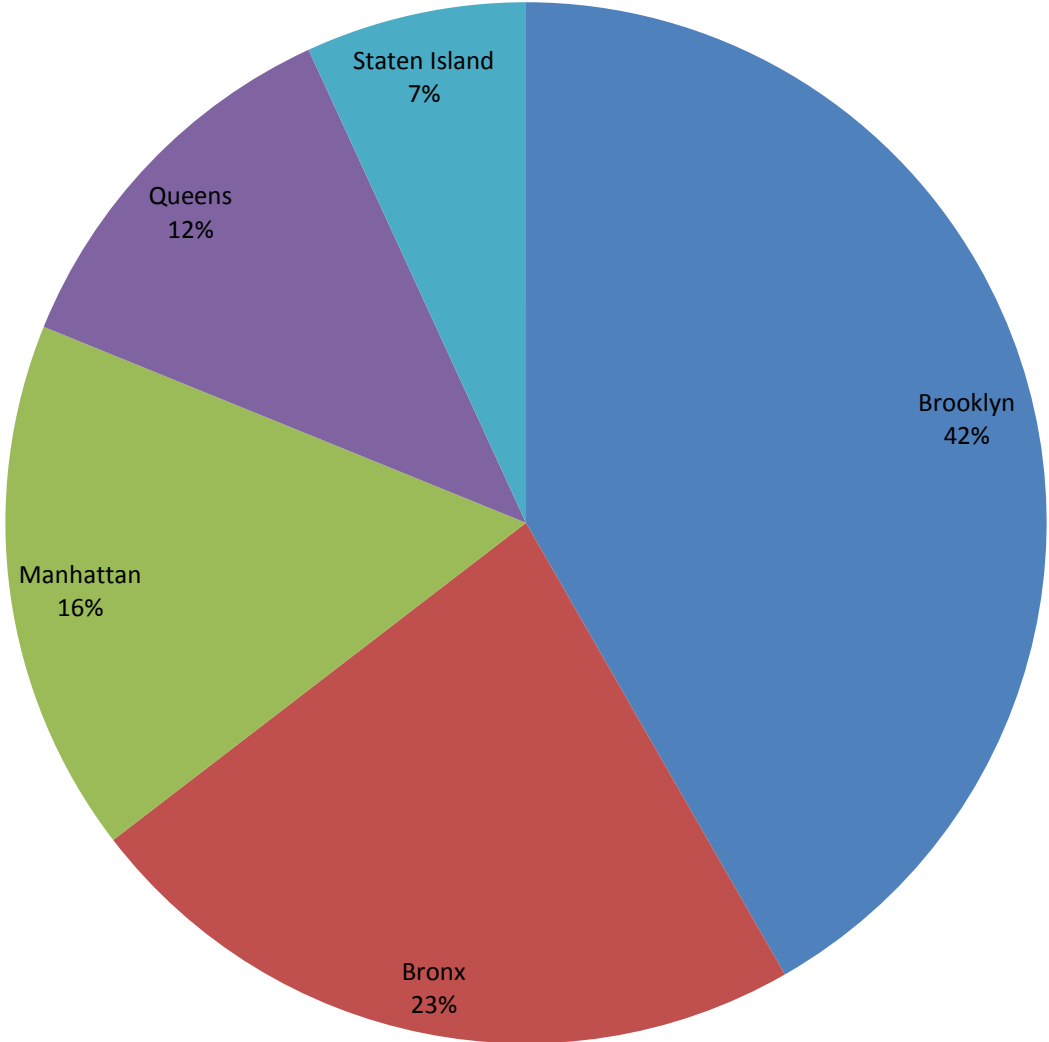
*includes the following charges: Frisk of person, frisk of personal property, search of person, search of personal property, and stop of person

Open Charges as of 3/31/2014



*2% or less include advised another officer not to provide name and shield, failure to process civilian complaints, failure to obtain medical attention for a prisoner, frisk of personal property, seizure of property, search of personal property, threat of arrest, unlawful detention, stop of vehicle, improper strip search, threat of force, offensive Language, and wrongful arrest.

APU Cases By Borough as of 3/31/2014



Stop, Question & Frisk Charges By Patrol Borough as of 3/31/2014

