

LEGISLATIVE PRIORITIES

New York State Law Enforcement Council

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NEW YORK STATE LAW ENFORCEMENT COUNCIL

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*New York State Sheriffs'
Association*

*Citizens Crime Commission
of New York City*



PREFACE

The New York State Law Enforcement Council was formed in 1982 as a legislative advocate for New York's law enforcement community. The Council's members represent the leading law enforcement professionals throughout the State, including the Attorney General of the State of New York, the New York State District Attorneys Association, the New York State Association of Chiefs of Police, the New York State Sheriffs' Association, the New York City Criminal Justice Coordinator, and the Citizens Crime Commission of New York City. Since its inception, the Council has been an active voice and participant in improving the quality of justice and in the continuing effort to provide for a safer New York.

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CREATE A NEW FELONY FOR SERIOUS REPEAT MISDEMEANANTS WHO PLACE UNDUE STRAIN ON THE CRIMINAL JUSTICE SYSTEM

In spite of the decline across every major category of crime in New York State in recent years, a significant population of career criminals has continued to break the law in defiance of this trend.¹ Such criminals' rap sheets indicate long histories of misdemeanor crimes unpunished by any meaningful amounts of jail or prison time. The penalties currently available for misdemeanor crimes are ineffective in deterring these life-long criminals from further offenses or inducing them to reform their behavior. Using intimate knowledge of the criminal justice system gained by repeatedly

When serious repeat misdemeanants refuse to curb their actions, the burden they place on the entire criminal justice system raises otherwise minor behavior to the level of a felony offense.

passing through the system, these career misdemeanants purposely manipulate the limits defined within the laws in order to avoid garnering felony records and the attendant penalties.

Counties throughout the state have attempted to help convicted offenders turn to legal, productive pursuits by providing Alternative to Incarceration (ATI) and re-entry programs. Through these programs, offenders can access services including job placement, education, and drug treatment. These opportunities are effective for convicted offenders who are motivated

¹ DIV. OF CRIM. JUST. SERV., NEW YORK STATE CRIME UPDATE: JANUARY – JUNE 2007 VS. 2006 (2008), available at <http://criminaljustice.state.ny.us/pio/annualreport/6moso6o7.pdf>; DIV. OF CRIM. JUST. SERV., CRIME IN NEW YORK STATE: 2006 FINAL DATA (2007), available at http://criminaljustice.state.ny.us/pio/annualreport/2006_final-release.pdf.

² Press Release, Office of the Mayor of New York City, Mayor Michael R. Bloomberg Announces Operation Spotlight: New Initiative Focuses on Persistent Misdemeanants (May 21, 2002), available at <http://nyc.gov/html/om/html/2002a/pr121-02.html>.

to change, and are integral to the continued reduction of crime in New York State. However, a significant number of repeat misdemeanants decline to reform no matter how many times they are offered assistance. In New York City, for example, around 28% of all non-felony prosecutions are committed by 6% of defendants.²

The Law Enforcement Council supports the creation of a felony crime for defendants whose many prior convictions for Penal Law misdemeanors raise otherwise minor behavior to a higher level of culpability. The judicious application of such a crime would show repeat offenders that the revolving door of the criminal justice system is closed.

IDENTIFYING REPEAT MISDEMEANOR OFFENDERS

This proposal aims to provide higher penalties for those offenders who deliberately and repeatedly calibrate their illegal behavior to stop just short of felony-level wrongdoing. This type of criminal knows, for example, that if he or she is caught shoplifting merchandise valued at less than \$1000, the resulting charge is only the class A misdemeanor of Petit Larceny rather than the more serious Grand Larceny in the Fourth Degree, a class E felony—no matter how many times he or she has been convicted for Petit Larceny in the past. Although New York’s sentencing provisions enhance penalties for second felony offenders and persistent felons, career misdemeanants know that most misdemeanor offenses are not enhanced in any analogous way for a second or twenty-second conviction.

Case Study 1: Male, 64, Albany and Saratoga Counties

Length of Criminal History: 46 years (1/7/60 – 11/24/06)

Most Frequent Convictions (A Misdemeanors):

Petit Larceny:	53 convictions
Criminal Possession of Stolen Property 5°:	10 convictions
Menacing 2°:	2 convictions
Criminal Possession of a Controlled Substance 7°:	2 convictions
Endangering the Welfare of a Child:	2 convictions
Criminally Possessing a Hypodermic Instrument:	2 convictions
Miscellaneous Misdemeanors and Violations:	11 convictions
Total Convictions:	82 convictions
Average Number of Convictions:	2 convictions per year
Range of Actual Sentences Received:	
Low End: Conditional Discharge or Time Served	
High End: 1 year jail	

Case Study 2: Female, 45, Bronx

Length of Criminal History: 21 years (4/14/87 – 1/11/08)

Most Frequent Convictions (A Misdemeanors):

Petit Larceny:	19 convictions
Criminal Possession of a Controlled Substance 7°:	10 convictions
Criminal Trespass:	9 convictions
Theft of Services:	7 convictions
Assault 3°:	3 convictions
Criminal Facilitation 4°:	2 convictions
Miscellaneous Misdemeanors and Violations:	6 convictions
Total Convictions:	56 convictions
Average Number of Convictions:	3 convictions per year
Range of Actual Sentences Received:	
Low End: Conditional Discharge or Time Served	
High End: 1 year jail	

In addition to Petit Larceny, other misdemeanors common to career offenders include criminal possession of stolen property, criminal possession of a controlled substance, trademark counterfeiting, loitering for the purposes of prostitution, marijuana possession or sale, and criminal trespass.³

³ N.Y. PENAL LAW §§ 165.40, 220.03, 165.71, 240.37, 221.15, 221.40, 140.15.

Case Study 3: Male, 48, Manhattan	
Length of Criminal History: 15 years (12/27/91 – 4/29/07)	
Most Frequent Convictions (A Misdemeanors):	
Theft of Services	28 convictions
Criminal Possession of a Controlled Substance 7°	19 convictions
Criminal Trespass	10 convictions
Loitering	2 convictions
Jostling	1 conviction
Criminal Mischief 4°	1 conviction
Miscellaneous Violations:	38 convictions
Total Convictions:	99 convictions
Average Number of Convictions:	6 convictions per year
Range of Actual Sentences Received:	
Low End:	Conditional Discharge or Time Served
High End:	30 days jail

HIGHER PENALTIES WILL REMOVE INCENTIVES FOR WORKING THE SYSTEM

The kinds of individuals described above, with twenty- or fifty-page-long rap sheets, have clearly failed to respond to the ATIs or the misdemeanor penalties offered within our criminal justice system. Instead they have learned through decades of criminal activities how to commit their crimes without serving long amounts of time. They recognize the statutory limits of our laws

and commit crimes to minimize their punishment. In that regard, the seriousness of felony proceedings, the possibility of a prison sentence, and the threat of a felony record could dissuade repeat misdemeanor offenders from persistent criminal actions.

Existing laws have successfully deterred repeat felony offenders by providing higher penalties for their crimes.⁴ New York should apply this logic to repeat misdemeanor offenders; the creation of more serious consequences will put such career criminals on notice that they can no longer expect free passes for continued illegal activity.

⁴ N.Y. PENAL LAW §§ 70.04, 70.06, 70.07, 70.08, 70.10.

REPEAT MISDEMEANANTS SUBJECT LOCAL GOVERNMENTS TO HIGH COSTS

Habitual misdemeanor offenders place an unnecessary burden upon the criminal justice system. Even though individual misdemeanors are less serious in nature than their felony counterparts, when considered in the aggregate, they represent a very real drain on resources compared to felony crimes. Local governments bear a large portion of this financial burden. The Council has identified some misdemeanor offenders who have more than six convictions in an average year. The cost of sending an individual through the system six or more times in a single year is significant compared to the cost of housing the same defendant in state prison for a year.

For one thing, the cost of maintaining a prisoner in a local jail exceeds the cost of maintaining him or her in state prison. It cost \$88.84 per day, or \$32,427 per year, in fiscal year 2005-2006 to maintain a prisoner

⁵ CREATE A NEW FELONY FOR SERIOUS REPEAT MISDEMEANANTS WHO PLACE UNDUE STRAIN ON THE CRIMINAL JUSTICE SYSTEM

5 Telephone Interview with Linda Foglia, Assistant Public Info. Officer, Dep't of Corr. Serv. (Mar. 26, 2008).

6 CORR. ASS'N OF N.Y., BASIC PRISON & JAIL FACT SHEET (2006), available at http://www.correctionalas-sociation.org/pvp/publications/basic_prison_fact_2006.pdf.

7 Adriano Bongiorno, *The State of Our County Jails*, NYSAC NEWS (N.Y. St. Ass'n of Counties, Albany, N.Y.), Winter 2006, at 7, available at http://www.nysac.org/Communications_and_Publications/documents/NYSACNews-forWeb.pdf.

8 *Petit Larceny* (N.Y. PENAL LAW § 155.25), *Criminal Trespass in the Second Degree* (PL § 140.15), *Criminal Possession of a Controlled Substance in the Seventh Degree* (PL § 220.03), and *Criminal Possession of Marijuana in the Fifth Degree* (PL § 221.10).

in the New York State Department of Correctional Services.⁵ The estimated daily cost for a prisoner in the New York City jail system is almost twice as high at \$164.11 (\$59,900 per year),⁶ and the average estimated daily cost for county jails outside New York City is \$105 (\$38,325 per year).⁷ Even though misdemeanor offenders are often not sentenced to jail, many are nevertheless housed in local jails for days, weeks, or months while waiting for arraignment, hearings, or trial.

Aside from jail costs, repeat misdemeanants also waste valuable human resources, overloading court dockets and distracting police, prosecutors, and public defenders from investigating and trying other cases. In fact, high-level misdemeanors common to serious repeat misdemeanants accounted for four⁸ of the seven most frequent arraignment charges in New York City in 2006.⁹

Serious repeat misdemeanants are processed through the system so frequently that they become familiar to the police officers, prosecutors, and court employees in their local jurisdictions. In many areas, the local police know to keep an eye out for these habitual offenders because of the increased probability that they will break the law again, only weeks or months after being convicted and released in an earlier case. The unceasing effort of arresting, prosecuting, and ultimately punishing a person who has no intention of reforming, but only seeks to complete a short jail sentence before committing the same crimes again, overburdens the system, the public servants who work to protect New Yorkers from these criminals, and the victims whose lives they have affected.

SUMMARY

New York should acknowledge that when repeat misdemeanants refuse to curb their actions, their incorrigible attitude and the burden they place on the entire criminal justice system raises otherwise minor behavior to the level of a felony offense. When “low-level” criminals continually demonstrate no desire to take advantage of existing opportunities for personal rehabilitation, it is in the best interests of the public that they can be appropriately charged in recognition of their actions.