

---

LEGISLATIVE PRIORITIES

---

New York State  
Law Enforcement  
Council

2009



## 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 District Attorneys Association of the State of New York, 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.

### NYSLEC

**District Attorneys  
Association of the State  
of New York**

Daniel M. Donovan, Jr.  
*President*

**Attorney General of  
the State of New York**  
Andrew M. Cuomo

**Criminal Justice  
Coordinator of the City  
of New York**  
John Feinblatt

**New York State  
Association of Chiefs  
of Police**

Robert D’Angelo  
*President*  
John Grebert  
*Executive Director*  
John Poklemba  
*Counsel*

**New York State  
Sheriffs’ Association**

Peter Kehoe  
*Executive Director*  
Christopher O’Brien  
*Deputy Executive Director*

**Citizens Crime  
Commission of New  
York City**

Richard Aborn  
*President*

**Counsel**

Robert M. Morgenthau  
*District Attorney*  
*New York County*

**Coordinator**

Leroy Frazer, Jr.  
*New York County District  
Attorney’s Office*

## CREATE A FELONY CHARGE FOR SERIOUS REPEAT MISDEMEANANTS

---

The first half of 2008 witnessed a rise in murders, rapes and robberies in New York<sup>1,2</sup> – a sharp contrast to the decline in every major category of crime in the early part of the decade in New York State.

Lost in the headlines were the astonishing – and growing – number of career petty criminals, people who make a living committing misdemeanors.<sup>3</sup> Their rap sheets list long histories of misdemeanor crimes unpunished by any meaningful amounts of jail or prison time. Using intimate knowledge of the criminal justice system gained by repeatedly passing through it, these career misdemeanants purposely manipulate the limits defined within the laws in order to avoid garnering

*The penalties that are available for misdemeanor crimes neither deter these lifelong criminals from further offenses nor induce them to reform their behavior.*

felony records and the attendant penalties. The penalties that are available for misdemeanor crimes neither deter these lifelong criminals from further offenses nor induce them to use the rehabilitative services offered to help them reform their behavior.

The Law Enforcement Council supports the creation of a felony crime for defendants whose many prior convictions for Penal Law misdemeanors raise their illegal behavior to a higher level of culpability.

<sup>1</sup> Jamie Scram, et al., “It’s Murder Out There: City Slays, Rapes and Robberies Soar in ‘08,” New York Post (September 29, 2008), *available at* [www.nypost.com/seven/09292008/news/regionalnews/its\\_murder\\_out\\_there\\_131246.htm](http://www.nypost.com/seven/09292008/news/regionalnews/its_murder_out_there_131246.htm).

<sup>2</sup> N.Y. Div. Of Crim. Just. Serv., “Data from the Computerized Criminal History System as of August 2008,” (Aug. 2008) (on file with the LEC).

<sup>3</sup> There were 204,764 misdemeanor arrests from January – June 2008 in New York State. N.Y. Div. Of Crim. Just. Serv., “Data from the Computerized Criminal History System.”

The judicious application of the proposed law would show repeat offenders that the revolving door of the criminal justice system is closed.

#### **WHAT IS A REPEAT MISDEMEANOR OFFENDER?**

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 is caught shoplifting merchandise valued at less than \$1,000, 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. And he knows that no matter how many times he has been convicted for Petit Larceny in the past, he still only faces a class A misdemeanor charge.

**A felony** is a criminal offense punishable by a prison term that can exceed one year and is served at a state facility.

**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 term in local jails.

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 whether it is their 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
<b>Total Convictions:</b>	<b>82 convictions</b>
<b>Average Number of Convictions:</b>	<b>2 convictions per year</b>
<b>Range of Actual Sentences Received:</b>	
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
<b>Total Convictions:</b>	<b>56 convictions</b>
<b>Average Number of Convictions:</b>	<b>3 convictions per year</b>
<b>Range of Actual Sentences Received:</b>	
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, Criminal Possession of Marijuana, Criminal Sale of Marijuana and Criminal Trespass.<sup>4</sup>

<sup>4</sup>  
N.Y. Penal Law §§  
165.40, 220.03, 165.71,  
240.37, 221.15, 221.40,  
140.15.

### Case Study 3: Male, 42, Manhattan

**Length of Criminal History: 18 years (11/31/91 – 10/3/08)**

#### **Most Frequent Convictions (A Misdemeanors):**

Petit Larceny:	34 convictions
Theft of Services:	30 convictions
Criminal Possession of a Controlled Substance 7°:	13 convictions
Criminal Trespass:	10 convictions
Transit Violations:	3 convictions
Criminal Mischief 4°:	1 conviction
Miscellaneous Violations:	17 convictions
<b>Total Convictions:</b>	<b>109 convictions</b>
<b>Average Number of Convictions:</b>	<b>6 convictions per year</b>
<b>Range of Actual Sentences Received:</b>	
Low End: Conditional Discharge or Time Served	
High End: 9 months in jail	

### *How will a Felony Charge Impact a Career Misdemeanant?*

The kinds of individuals described above, with 20 or 50 page rap sheets, have clearly failed to respond to the misdemeanor penalties or the re-entry programs offered within our criminal justice system. They tend to follow one of two pathways. Many operate within the relatively “safe” boundaries of low-level criminal

behavior, repeatedly committing crimes that carry light penalties without breaking the invisible line between misdemeanors and felonies. This group puts a burden on the criminal justice system. Other repeat misdemeanants escalate their repertoire of crimes and commit violent felonies. These people pose an immediate danger to society. For both categories of criminal, there is a potential remedy.

The threat of a longer prison sentence and a felony record could dissuade repeat misdemeanants from persistent criminal actions and prevent escalated felony crimes.

Existing laws successfully deter repeat felony offenders by providing higher penalties for their crimes.<sup>5</sup> New York should apply this logic to repeat *misdemeanants*; 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.

### *At What Cost?*

Habitual misdemeanants place an avoidable financial burden on society.

The cost of maintaining a prisoner in a local jail exceeds the cost of maintaining her in state prison. It cost about \$88.77 per day, or \$32,400 per year, in 2005 to maintain a prisoner in the New York State Department of Correctional Services.<sup>6</sup> The estimated daily cost for a prisoner in the New York City jail system was almost twice as high at \$164.11 (\$59,900 per year) in 2005,<sup>7</sup> and the average estimated daily cost for county jails outside New York City is \$105 (\$38,325 per year).<sup>8</sup>

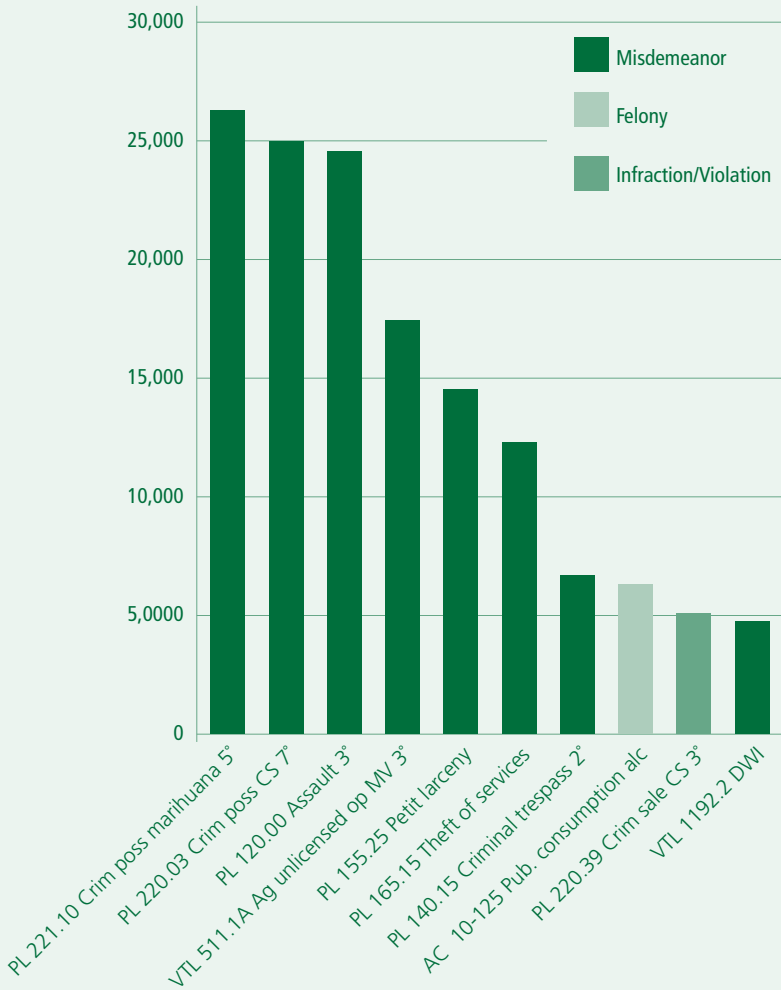
<sup>5</sup> N.Y. Penal Law §§ 70.04, 70.06, 70.07, 70.08, 70.10.

<sup>6</sup> Corr. Ass'n of N.Y., "Basic Prison & Jail Fact Sheet" (Mar. 2006), available at [www.correctionalassociation.org/publications/download/pvp/factsheets/basic\\_prison\\_fact\\_2006.pdf](http://www.correctionalassociation.org/publications/download/pvp/factsheets/basic_prison_fact_2006.pdf).

<sup>7</sup> *Ibid.*

<sup>8</sup> Adrian Bongiorno, "The State of Our County Jails," NYSAC News (N.Y. St. Ass'n of Counties) (2006), available at [www.nysac.org/Communications\\_and\\_Publications/documents/NYSACNEWSforWeb.pdf](http://www.nysac.org/Communications_and_Publications/documents/NYSACNEWSforWeb.pdf).

## Top Ten Arraignment Charges 2007



Source: Criminal Court of the City Of New York 2007 Annual Report (July 2008).

Aside from jail costs, repeat misdemeanants tax valuable human resources, overloading court dockets and distracting police, prosecutors, and public defenders from investigating and trying other cases. In 2007, eight of the 10 most common arraignments were for misdemeanors, not felonies. In fact, high-level misdemeanors common to serious repeat misdemeanants accounted for five of the 10 most frequent arraignment charges in New York City in 2007.<sup>9,10</sup> In the first six months of 2008, police made 204,764 misdemeanor arrests across the state.

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 likelihood 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 incarcerating a person who seeks to complete a short jail sentence so that they can return to the streets and commit the same crimes again overburdens the system and the public servants who work to protect New Yorkers. Most importantly, it lays the groundwork for an ongoing cycle of crimes committed on unsuspecting victims.

### *Repeat Misdemeanants Need Rehabilitation*

Counties throughout the state have attempted to help convicted offenders turn to legal, productive pursuits by providing alternatives to incarceration and re-entry programs. Through these programs, offenders can ac-

9  
Petit Larceny (N.Y. Penal Law § 155.25), Criminal Trespass in the Second Degree (N.Y. Penal Law § 140.15), Criminal Possession of a Controlled Substance in the Seventh Degree (N.Y. Penal Law § 220.03), Theft of Services (N.Y. Penal Law § 165.15), and Assault in the Third Degree (N.Y. Penal Law § 120.00).

10  
N.Y. State Unified Ct. Sys., “Criminal Court of the City of New York: Annual Report 2007” (2008), *available at* [www.courts.state.ny.us/courts/nyc/criminal/NYCCCC%20Annual%20Report%20Final%20072508.pdf](http://www.courts.state.ny.us/courts/nyc/criminal/NYCCCC%20Annual%20Report%20Final%20072508.pdf).

cess services including job placement, education, drug treatment, and housing assistance. These opportunities are effective for convicted offenders who are motivated to change, and are integral to the continued reduction of crime in New York State.

A significant number of repeat misdemeanants decline rehabilitation services. In many cases, the relative ease and short timeframe with which they enter and exit the system fails to motivate offenders to reform. Re-entry programs require a longer time commitment than a 15 or 30 day jail sentence.

Increasing penalties for repeat misdemeanants, in the form of felony convictions and jail terms of more than one year, will help motivate offenders to choose the path of rehabilitation over a life of crime.

### **SUMMARY**

Repeat misdemeanants burden the entire criminal justice system. The insignificant penalties given to misdemeanants enable them to continue committing crimes without fear of serious repercussions and fail to redirect criminals to the many rehabilitation services offered throughout the state. By creating a new felony for serious repeat misdemeanants, New York State can help remedy a flaw in the system that allows career criminals to get away with committing a high volume of crime without serious consequences.