

SUMMARY

Advancing Racial Equity: Shrinking Misdemeanor Prosecution in New York

Misdemeanors make up the vast majority of criminal cases, yet instead of advancing public safety, misdemeanor enforcement may at times actively undermine it. A recent study in Boston found that not prosecuting nonviolent misdemeanors reduced re-offending by almost 60%. Our analysis of misdemeanor cases in New York City in 2019 and 2020 shows the system rarely results in misdemeanor convictions and inflicts “process is punishment” effects as people experience arrest, detention, and daylong waits for typically brief court appearances. While the total number of misdemeanor arraignments is dropping in New York City, stark racial disparities persist.

With changeovers in political leadership in both New York State and New York City, this is a promising moment to dramatically reform misdemeanor justice. This brief summarizes two [new reports](#)—the first presenting our data on racial disparities and case outcomes in New York City, and the second offering statewide legislative recommendations.

Racial Disparities in Misdemeanor Prosecution

Black New Yorkers accounted for exactly half of the almost 190,000 misdemeanors prosecuted in New York City in 2019 and 2020, a proportion more than double their share of the population. Hispanic/Latinx New Yorkers were also overrepresented among the city’s misdemeanors at almost 1.4 times their share of the general population.

Disparities Starkest Where Police Discretion Highest

“Victimless” charges lacking any civilian complainant and largely reliant on police discretion exhibited the highest racial disparities. The charge of resisting arrest requires a police

officer to decide someone’s behavior prevented them from making an arrest—here 65% of those charged were Black; obstructing government administration in the second degree (66% Black) can apply to any action an officer believes impairs the police or some other government function; and false personation (64% Black) hinges on an officer’s conclusion that someone deliberately misled the police about their identity. None of these charges need involve any alleged violence.

Low Conviction Rates and Infrequent Use of Jail

Out of the misdemeanor charges New York City prosecutors filed in 2019 and 2020, only 12% ended in a misdemeanor conviction. Another 32% ended in a plea to a lesser offense such as a violation, which is not classified a crime. Only 9% of cases with any level of conviction resulted in a jail sentence, with prior criminal history preponderantly impacting the likelihood of jail (14% vs. 2%). Given factors such as the heavier police presence common to predominantly Black and Brown communities, sizable racial disparities exist in the accumulation of such priors.

Legislative Recommendations

New York State policymakers can chart a new course. Our full report contains ten concrete recommendations spanning the five core areas outlined below.

1. **Decriminalization**
Decriminalization can mean full legalization or the reclassification of certain conduct from crimes to non-criminal offenses. Given their vulnerability to racially disparate arrest practices, victimless misdemeanors lacking violence, property loss, or other harm are especially ripe for removal from the criminal courts. In total, we identify 15 misdemeanors that could reasonably be defined as victimless, including possessing small amounts of drugs, jumping the subway turnstile, prostitution, misdemeanor possession of a forged instrument, and those cited above as heavily reliant on police discretion.
2. **Pre-Filing Diversion**
“Pre-filing diversion” means the individual performs community service or participates in services or other programming *prior* to any court involvement, with program completion effectively ending the matter. Legislation could set hard caps on diversion requirements to prevent replacing the court process with unduly onerous diversion obligations.
Mandatory pre-filing diversion (with the individual’s consent to forgo contesting the case) could extend to victimless misdemeanors not otherwise decriminalized and to nonviolent property misdemeanors. The single charge of petit larceny accounted for almost 24,000 misdemeanors in 2019 and 2020—13% of the total. Given it is often a crime of poverty stemming from unmet socioeconomic or behavioral health needs, it is a prime candidate for universal diversion. To avoid entrenching racial disparities shown to result from the disproportionate accumulation of criminal histories, diversion eligibility could be based purely on the charge, not on priors.
3. **Disclosure of Police Disciplinary History**
Prosecutors can play an essential role in mitigating racial injustice when deciding whether to file charges. At a minimum, legislation could require prosecutors to determine if a police officer deciding to make an arrest has a relevant disciplinary history and, if they file charges, disclose potentially exculpatory information tied to that history.
4. **Jail Exposure**
Given that jail sentences *increase* recidivism, we propose eliminating them for most misdemeanor convictions and requiring non-jail sentencing options (e.g. social services and community service), unless the charge involves domestic violence, a sex offense, and others containing elements of violence, or when there has been repeated noncompliance with non-jail sentencing conditions.
5. **Expungement**
The proposed Clean Slate Act would authorize the automatic sealing of past records three years after the most recent misdemeanor and seven after the most recent felony conviction. This or similar legislation could help to correct past policing or other legal system injustices and prevent old mistakes from harming people’s employment and other opportunities for a lifetime.

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For the full reports: [courtinnovation.org/publications/misdemeanor-race-NYC](https://www.courtinnovation.org/publications/misdemeanor-race-NYC)