

NEW YORK STATE SENATOR

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Entry **F** **M** Downtown & Brooklyn **L** **1** **2** **3** via platform

Turning Lives Around:

The Need to Decriminalize Turnstile Jumping



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INTRODUCTION

Turnstile jumping is a criminal offense predominantly affecting people of color with low incomes. The sad reality is that as New York has become increasingly unaffordable, public transportation fares have risen, placing a financial burden on New Yorkers with limited means. Fare evasion should be adjudicated as a civil matter, not a criminal matter, with fines paid for jumping a turnstile at a subway instead of resulting in an arrest with a criminal record.

BACKGROUND

Theft of services under section 165.15 of the penal law is one of the most common offenses committed in the City of New York. In 2016, theft of service offenses ranked as the second most common offense with 26,463 arrests, behind only assault in the third degree, which was the most common arrest at 27,893 arrests in 2016.¹ Under section 165.15(3) of the penal law related to theft of services, a person is guilty of this offense if a person has intent to use a subway, bus, railroad or other public transportation without payment of the lawful amount. This offense is a class A misdemeanor, punishable up to one year imprisonment and a fine of up to \$1,000.

Turnstile jumping is a crime often committed by low-income individuals who cannot afford the \$2.75 base fare for a subway ride. According to a report by the Community Service Society,² transit expenses make up more than 10% of the budget for 300,000 working-poor families in New York. More than 25% of these working-poor New Yorkers were unable to afford a subway or bus fare in 2015. In addition to the potential criminal penalties a defendant faces, offenders who are undocumented immigrants may also be subject to deportation under President Trump's administration. The NYPD has stated it will not cooperate with a detainer request related to an arrest for fare evasion.

On June 30, 2017, New York County District Attorney Cy Vance announced that his office would no longer prosecute most offenders for theft of service violations.³ Instead, first time offenders will receive a civil summons, which will be handled by the MTA's Transit Adjudication Bureau. Offenders who have previously been arrested for turnstile jumping will receive a desk appearance ticket and an opportunity to complete a diversion program prior to the court appearance. Upon completion of the diversion program, the District Attorney's office will not prosecute the offender. Approximately 10,000 people were arrested in Manhattan in 2016 on theft of service charges. Criminal charges would still apply if the offender had any outstanding warrants or if the person was a threat to public safety. The Brooklyn District Attorney's Office announced it would adopt a similar policy for theft of service offenses.

¹ Division of Criminal Justice Services, DCJS Computerized Criminal History System (1/17/17), *New York City Arrests by Top Charge: 2016*.

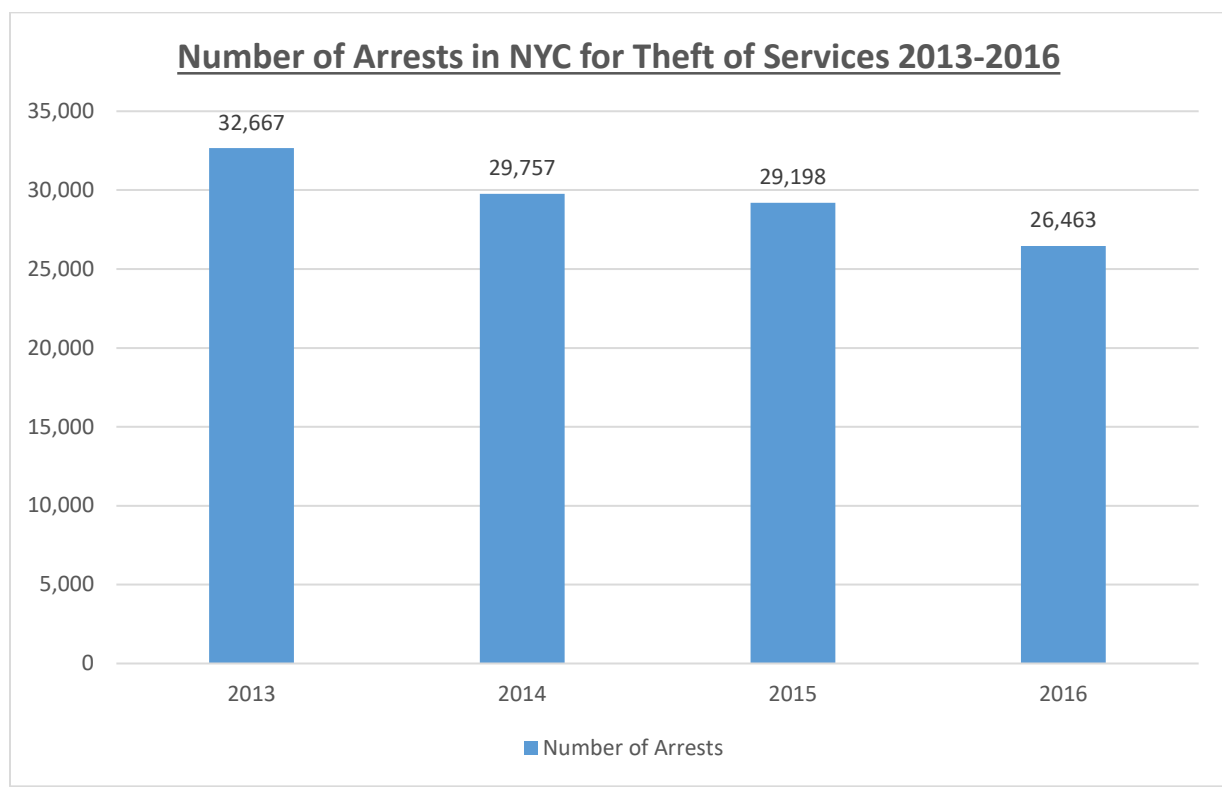
² COMMUNITY SERVICE SOCIETY, *THE TRANSIT AFFORDABILITY CRISIS: HOW REDUCED MTA FARES CAN HELP LOW-INCOME NEW YORKERS MOVE AHEAD*, 2016.

³ District Attorney Cyrus Vance, New York County, *District Attorney Vance to End Criminal Prosecution of Approximately 20,000 Low-level, non-violent misdemeanors per year*, Press Release, June 30, 2017.

Theft of service offenses is also a crime that disproportionately affects people of color. In 2016, almost 92% of persons arrested for fare evasion were persons of color.⁴

TURNSTILE JUMPING DATA

As data from the state’s Division of Criminal Justice Services indicates, the number of arrests in the City of New York for violating section 165.15 of the penal law related to theft of services has decreased each of the past four years. In 2013, there were 32,667 arrests for theft of services in the City, compared with 26,463 arrests in 2016, representing a decrease of 19% in arrests. However, these numbers still represent a significant portion of misdemeanor arrests in the City.

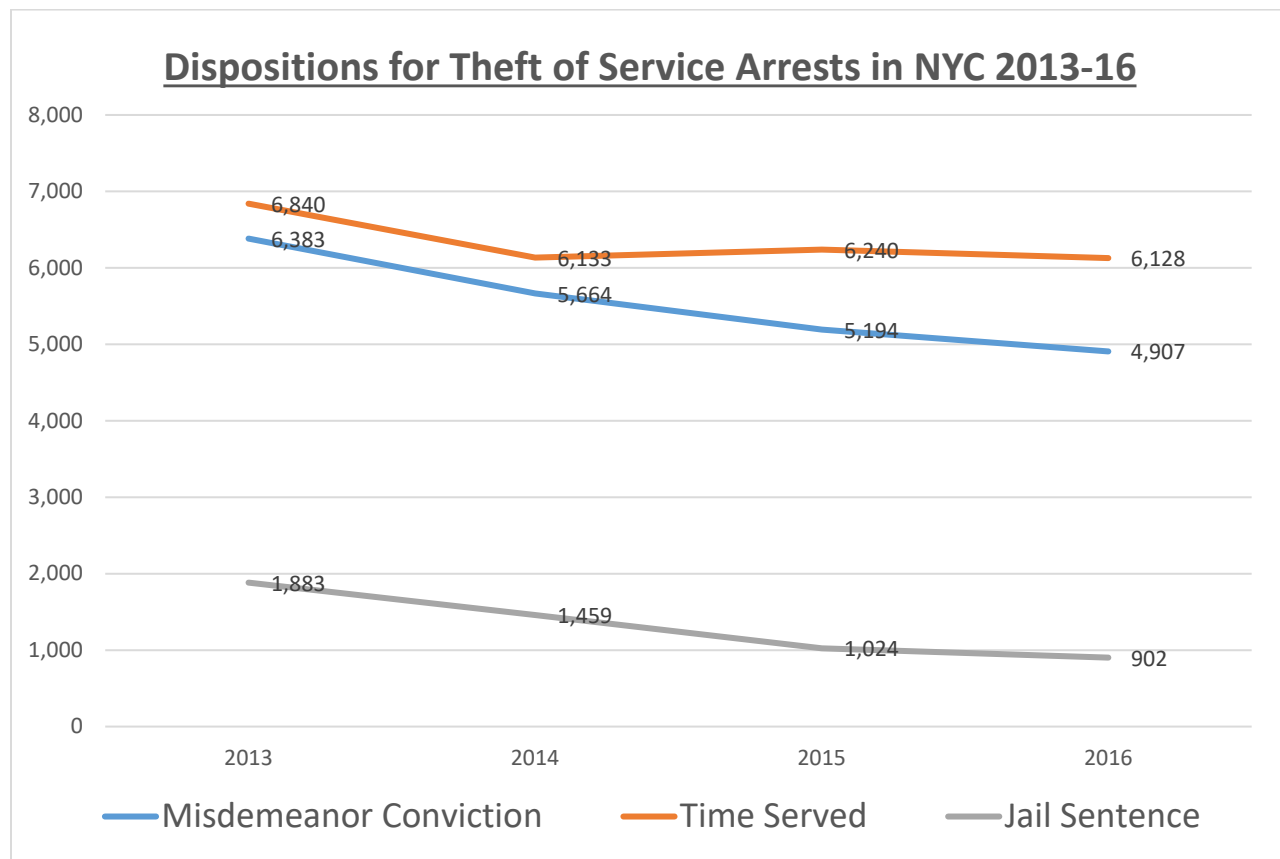


Data from DCJS also demonstrates that arrests in the City of New York related to theft of service violations consist of the vast majority of arrests for theft of services in the entire state of New York. In the year 2015, there were 24,847 dispositions from theft of service arrests out of a statewide disposition number of 28,153 from theft of service arrests. This represents 88.25% of all dispositions in the state of New York related to theft of service arrests.

⁴ Aidan McLaughlin, Thomas Tracy & Dan Rivoli, *Hundreds of Harlem, Bronx Subway Riders get free Metro Card Swipes As Group Protests Disproportionate Fare-beating Arrests*, NY DAILY NEWS, May 11, 2016.

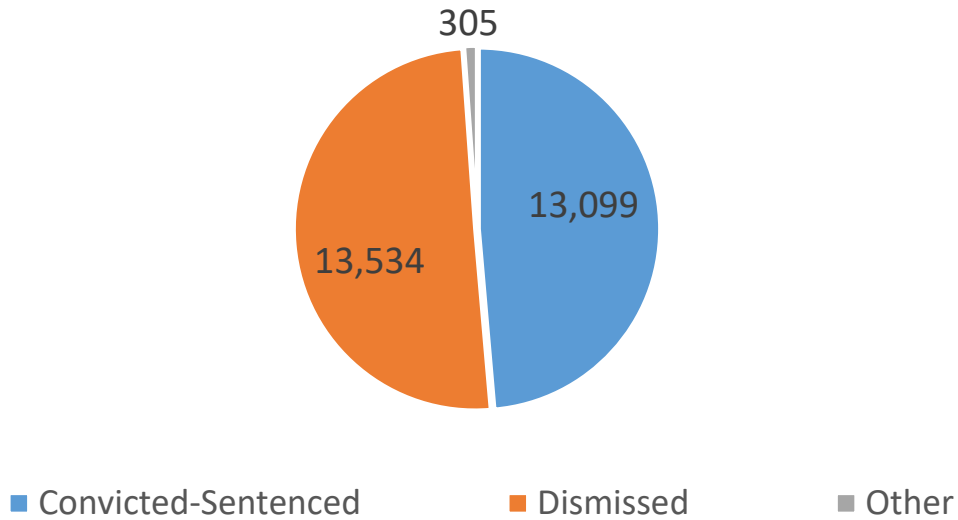
The decline in arrests for theft of service offenses has also led to a decline in misdemeanor convictions. Misdemeanor convictions declined from 6,383 in 2013 to 4,907 convictions in 2016. Similarly, offenses involving time served decreased from 6,840 in 2013 to 6,128 in 2016, and offenses involving a jail sentence imposed decreased from 1,883 offenses in 2013 to 902 offenses in 2016.

Although these numbers are trending in the right direction, criminal records and jail time should not be the result based on inability to pay a transit fare. The combined data for a jail sentence and time served indicates that in 7,030 proceedings, a person spent at least one day in a correctional facility, likely Rikers Island.



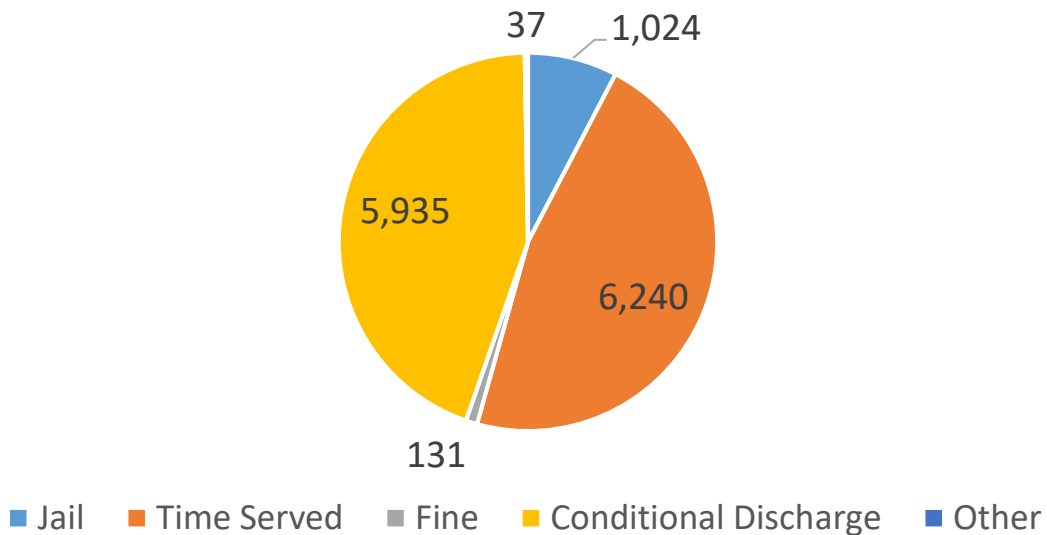
In relation to dispositions from theft of service offenses involving more than 26,000 arrests in the City of New York, the data from DCJS shows that in 2016, there were 13,099 convictions or sentences handed out, and 13,534 proceedings involving a dismissal of the charges, usually by adjournment in contemplation of dismissal. The remaining 305 proceedings involved an acquittal or the district attorney declined to prosecute. In sum, a person was convicted or sentenced half of the time that charges were filed, while the other half of the time the charges were dismissed.

NYC Theft of Services -Dispositions 2016



In relation to the 13,367 convictions or sentences in 2015 for theft of services, that amount comprised of 1,024 jail sentences, 6,240 proceedings where time served was granted, 131 fines imposed without jail time, and 5,935 proceedings involving a conditional discharge. The pie graph below captures this breakdown. Data for the 13,099 convictions or sentencing in 2016 was similar to 2015 with 902 jail sentences, 6,128 proceedings where time served was granted, 107 fines imposed without jail time, and 5,937 conditional discharges.

NYC Theft of Services- Sentencing 2015



LEGISLATIVE SOLUTION

Senator Hamilton has introduced legislation, S.4841-B, sponsored by Assemblymember Tremaine Wright, which would amend the theft of services statute under the penal law, to remove subways, buses and railroads from the statute. Thus, turnstile jumping on the subway or intent to use bus or railroad service without payment would no longer result in arrest as a class A misdemeanor. Instead, proceedings would be handled as a civil matter by the public authority or municipality's administrative bureau, such as the MTA's Transit Adjudication Bureau. The MTA currently imposes a \$100 fine for turnstile jumping.

Currently, the MTA's Transit Adjudication Bureau processes summons issued to turnstile jumpers by police officers in the NYPD Transit Bureau or issued by New York City Transit Inspectors. Summonses can be issued for any violation of the MTA's rules of conduct governing use of public transportation including fare evasion (\$100), smoking (\$50), interference with a public transit vehicle (\$100), unauthorized movement between subway cars (\$75), and seat obstruction (\$50).

In the meantime, other district attorneys should follow the example of District Attorneys Vance and Gonzalez by declining to prosecute persons for turnstile jumping and theft of services involving public transportation. Finally, additional funding should be provided to subsidize the cost of metro cards for low-income New Yorkers, which would help low-income New Yorkers obtain daily services without being penalized for inability to pay.

CONCLUSION

Turnstile jumping and theft of public transportation services is an offense that should be handled as a civil matter, not with an arrest and criminal record. For low-income New Yorkers struggling to earn a living, a misdemeanor conviction or a day spent incarcerated is an unjust punishment for being unable to afford a one-way metro card of \$2.75. Senator Hamilton's legislation to decriminalize turnstile jumping so that the offense is handled by the MTA's Transit Adjudication Bureau, is a far better way for New Yorkers to be treated in our justice system. Senator Hamilton urges the legislature to pass this bill upon its return to Albany in 2018.