

Misdemeanor Enforcement Trends in New York City, 2016–2022

Diminished Caseloads and
Persistent Racial Disparities

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Introduction

When people think of the American criminal justice system, they think of prisons, lengthy sentences, and parole hearings. They also think of serious offenses such as murder, aggravated assault, and rape. But the majority of cases are less serious offenses, as defined in statute, including drug possession, shoplifting, gambling, public drunkenness, disorderly conduct, vandalism, speeding, simple assault, and driving with a suspended license.¹ For many Americans, minor offenses — that is, misdemeanors, violations, and infractions — are the primary entry point into the criminal justice system.² Entanglement in this part of the system is anything but minor.

The costs of resolving a case are often high and can require months of court appearances or other compliance requirements.³ These obligations take people away from family duties, jobs, and community responsibilities. Arrests, let alone convictions, can have lifelong consequences, including restricted access to jobs, places to live, health care, and education.⁴ For example, a 2020 Brennan Center report found that annual earnings for people with a misdemeanor conviction decrease on average by 16 percent.⁵ The harm falls disproportionately on communities of color, many of which already struggle with concentrated poverty and other forms of social disadvantage.⁶ These mutually reinforcing realities can propel people back into the system.⁷

Despite its broad reach, the minor offense system is difficult to quantify. Government officials often do not collect data on infractions, civil violations, and other offenses they consider too trivial to count.⁸ The data that is collected — typically data on misdemeanors — is likely an undercount.⁹ Even so, in the United States, misdemeanors amount to roughly three-quarters of all criminal cases filed each year.¹⁰ Every day, tens of thousands of people are ticketed, arrested, or arraigned for a misdemeanor, making it a central feature of the United States' crisis of overcriminalization and an engine of its overreliance on incarceration.¹¹

In recent years, scholars and legal practitioners have brought attention to the need to rein in the sprawling minor offense system.¹² Misdemeanor adjudication has earned a reputation of assembly-line justice that lacks meaningful public defense or due process protections.¹³ Some researchers have described it as a means to mark and manage disadvantaged groups deemed potential risks, whereby the “process is punishment.”¹⁴ In addition to the degradation of arrest, the imposed obligations and sanctions — frequent court appearances, the opportunity cost of lost wages, fines and fees, collateral consequences of a criminal record, and even jail detention — are frequently disproportionate to the severity of the crime.¹⁵

Minor offense enforcement also consumes an inordinate amount of government resources. Existing estimates for the policing and court costs of a single misdemeanor offense

range from \$2,190 to \$5,896.¹⁶ And the overall public safety benefit is questionable. A 2021 study found that on average, people charged with nonviolent misdemeanors who were *not* prosecuted were 53 percent less likely to face new criminal charges than those who were prosecuted. Even more, those without a prior criminal record were 81 percent less likely to receive a new complaint.¹⁷

As concern about the minor offense system has grown, efforts to shrink it have proliferated.¹⁸ At the same time, since the start of the Covid-19 pandemic, many people in urban areas have perceived or experienced increased physical and social disorder in public spaces — petty theft, open drug use, public intoxication, people suffering mental health crises, homeless encampments, defacement of property, transit fare evasion, and public urination.¹⁹ Petty and nuisance offenses, visible poverty, and public displays of disorderly and unpredictable behavior, coupled with high-profile media coverage of violent crimes and harassment, have renewed calls for stronger enforcement of lower-level offenses.²⁰

This report seeks to shed light on minor offense enforcement — what has changed in recent years, what has not, and what can be done to fix it. Building on previous scholarship, it offers an updated national snapshot of the scale of misdemeanor cases filed between 2018 and 2021, highlighting changes over the Covid-19 pandemic.

The analysis then homes in on New York City, a jurisdiction at the center of many debates about how to best deploy finite law enforcement resources to achieve more security and orderliness in public spaces. New York was the birthplace of “broken windows” policing — a 1990s-era law-and-order strategy based on the idea that police can mitigate the growth of more serious crime by aggressively targeting minor crimes and violations of public order. But the city also has a rich history of criminal justice reform, particularly in shrinking unnecessarily punitive responses to minor offenses.²¹ Such reforms include diversion programs and other alternatives to incarceration, decriminalization of some minor offenses (e.g., low-level marijuana possession), and crisis response and other restorative strategies for addressing safety

concerns.²² Many of these initiatives, though small, may be instructive for other jurisdictions. This study investigates how efforts to shrink the system changed the enforcement of minor criminal offenses in New York City from 2016 to 2022.

Misdemeanors still compose the bulk of criminal cases filed in New York City — around 75 percent. However, in the city and across the country, the absolute number of such cases declined across nearly all years under review. This continued a downward trend from at least 2007 nationwide and from 2010 in New York City.²³ Substantial decreases were observed in 2020, unsurprising given lockdown orders in many jurisdictions including New York City. Enforcement rebounded in 2021 both nationally and in the city after pandemic restrictions were lifted, though they stayed below 2019 levels. These trends may reflect important differences in both offending and enforcement patterns.

One troubling pattern, however, remained remarkably stable. Despite reduced unnecessary enforcement and increased use of more effective alternative responses, profound racial disparities in minor offense cases in New York City proved stubbornly consistent, as seen elsewhere.²⁴ Between 2016 and 2022, Black and Latino people made up just under 50 percent of the city’s population but consistently comprised more than 80 percent of people charged with low-level offenses.²⁵

To understand better why racial disparities in enforcement persist in New York City, Brennan Center researchers

engaged police, prosecutors, court officials, city government officials, criminal justice advocates, community-based service providers, and community leaders impacted by misdemeanor enforcement. Supported by previous research as well as new Brennan Center data analysis, these stakeholders shed light on the drivers of interactions with the minor offense system that perpetuate concentrated enforcement among Black and Latino

populations in some low-income communities.²⁶ These include social disadvantages such as poverty, housing insecurity, mental illness, and substance use; poor conditions and a lack of resources in some of those communities; and the criminal justice system’s persistent inability to address social problems and community needs.

Addressing these complex problems requires looking beyond a simple binary of aggressive enforcement versus inaction. This report illustrates new data about a shrinking minor offense system, one that also features persistent racial disparities and

geographic concentration in enforcement. The findings are intended to help state and local policymakers more appropriately deploy resources to reduce crime and build safety and community well-being. Although rooted in New York City, these findings are applicable to other jurisdictions around the country that aim to accomplish this goal while eschewing a return to an overly punitive and wasteful approach to enforcement of minor criminal offenses.

This report seeks to shed light on minor offense enforcement — what has changed in recent years, what has not, and what can be done to fix it.

I. National Misdemeanor Trends

Jurisdictions define misdemeanor offenses inconsistently, making national case estimates extraordinarily difficult. Most often, the term *misdemeanors* refers to offenses that are considered less serious than felonies. They generally expose people to punishment of up to one year in local jail, though in some places, such as Maryland and Pennsylvania, incarceration can be much longer and people can be sentenced to a state-run institution.²⁷

In addition, most places do not collect misdemeanor data or do so inconsistently, and data on violations and infractions is even more sporadic. When jurisdictions do collect data, they often do not include detailed information on charge types or demographics.²⁸ Three notable attempts have been made to estimate the annual number of misdemeanor cases nationwide — 10.5 million in 2006, 13 million in 2015, and 13.2 million in 2016.²⁹

To analyze the change in misdemeanors at the national level between 2018 and 2021, Brennan Center researchers obtained public data for most states from the National Center for State Courts (NCSC), the primary clearinghouse for national court data, which publishes state-level caseload data each year based on information voluntarily shared by state court systems.³⁰ To fill the gaps, Brennan Center researchers also contacted states that did not report to NCSC to obtain data, either from public annual reports (for

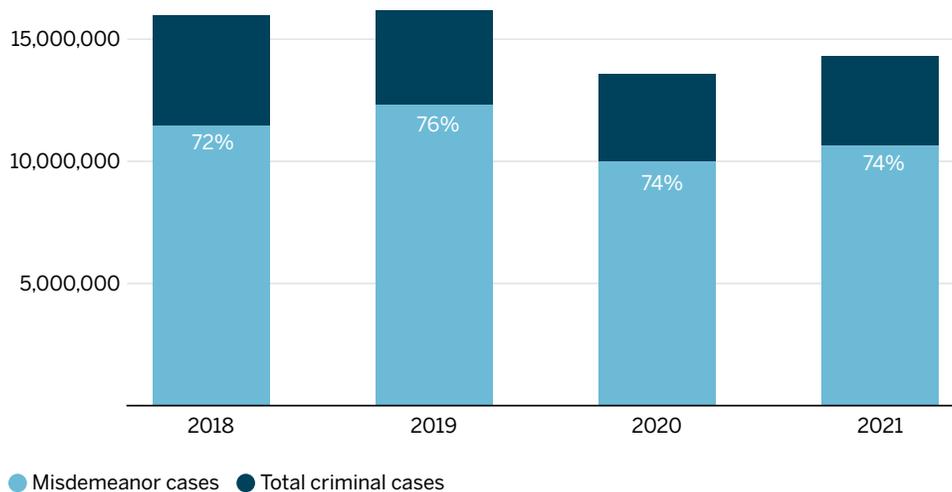
Georgia and Kansas) or directly from state courts (for Washington State). In total, they obtained data for 44 states and Washington, DC, in 2018 and 2021, and 45 states and Washington, DC, in 2019 and 2020.³¹

For states with available data, the total number of misdemeanor cases filed rose from 11.5 million in 2018 to 12.3 million in 2019 but decreased by nearly 20 percent, to 10.0 million, in 2020, likely due to court closures and restrictions on public activities during the pandemic.³² In 2021, the number of cases increased by 6 percent from the previous year to 10.6 million (see figure 1 and appendix 1).

Despite the increase, total misdemeanor cases filed in 2021 remained below pre-pandemic levels. Still, the overall proportion of misdemeanor cases filed constituted around 75 percent of all criminal court cases. These estimates are in line with prior studies analyzing the scale of misdemeanor justice.³³

FIGURE 1

National Criminal Cases



Source: National Center for State Courts (2018–2021); Georgia Administrative Office of the Courts (2018); Kansas Judicial Branch (2019); Washington State Administrative Office (2018–2021); Brennan Center analysis.

The five states with the highest numbers of misdemeanor cases in 2021 — California, Georgia, Michigan, North Carolina, and Texas — are among the most populous in the country. Georgia and North Carolina have among the highest rates of misdemeanor cases filed per capita, largely due to traffic enforcement (see appendix 1).³⁴ But overall, between 2018 and 2021, misdemeanor caseloads in nine out of the ten highest states decreased by 14 to 33 percent.³⁵

California, for example, saw substantial reductions in misdemeanor arrests in 2020 and 2021, especially for drug and traffic offenses, due to a deliberate but temporary cutback in enforcement practices and court operations and the decrease in public movement due to Covid-19 lockdown rules. In 2020, California's biggest local law enforcement agencies made 35 percent fewer stops than the year prior and began to prioritize citing and releasing stopped individuals rather than formal enforcement.³⁶ Some enforcement reductions appear to have stuck, as California's misdemeanor arrest numbers have continued to tick down.³⁷ This decline may also be due to some local prosecutors concurrently changing their charging practices. For example, George Gascón, the Los Angeles County district attorney elected in 2020, instructed prosecutors to decline or dismiss cases involving several categories of misdemeanors (including driving on a suspended license, drug possession, and public intoxication).³⁸ In the first year under this policy, prosecutors filed charges in just 13 percent of eligible cases (opening more

than 38,000 cases), in contrast to 89 percent of cases under the second term of Gascón's predecessor, Jackie Lacey.³⁹

In Texas, changes in enforcement of marijuana possession may have contributed to the steep decline — more than 50 percent — in the number of misdemeanor drug cases between 2019 and 2021.⁴⁰ New laws were enacted in 2018 and 2019 that legalized hemp, cannabis plants grown for medicinal and industrial uses that contain less than 0.3 percent tetrahydrocannabinol (THC), the psychoactive component in marijuana.⁴¹ The new laws require prosecutors

to prove that seized plants or plant products carry THC content above that threshold. Texas labs were not prepared to handle this influx, and many prosecutors dismissed charges for low-level possession rather than undertake onerous and expensive testing.⁴² Meanwhile, the number of Class C misdemeanor traffic and parking cases dropped from 5.5 million to 3.7 million (a 34 percent decrease) between 2017 and 2021, despite no publicly discernable policy changes to trigger or explain this drop.⁴³ Class C misdemeanors are punishable by fine only, yet in 2017, for example, more than 30,000 people in Texas were

arrested and booked into jail for them.⁴⁴

The number of discretionary actions and links in the causal chain that lead to misdemeanor arrest and prosecution makes it challenging to isolate cause and effect. As the data shows, misdemeanor justice is complex and influenced by many factors; more research into its changing dynamics would be valuable.

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II. New York City Minor Offense Trends

New York City has been shaped by competing concerns about minor offense enforcement.⁴⁵ As with national trends, enforcement has decreased in recent years, in part due to substantive reforms in the state. These include the reduction of stop-and-frisk practices, the legalization of marijuana, and the proliferation of court alternatives and prosecutor diversion programs for people with specific needs such as substance use or mental illness treatment.

At the same time, policymakers have had to respond to constituents who have criticized what they perceived as the underenforcement of quality-of-life offenses. In the past, this led to the adoption of overbroad enforcement policies. For example, stop and frisk — the practice of temporarily detaining, questioning, and searching individuals — too often swept predominantly Black and Latino people into the criminal justice system for minor offenses such as marijuana possession.⁴⁶ With expanding enforcement of quality-of-life offenses, misdemeanor marijuana arrests increased from 1,649 in 1993 to more than 51,589 in 2011, a 3,029 percent increase.⁴⁷ Overall misdemeanor arrests increased steadily from roughly 65,000 in 1980 to 126,000 in 1993, peaking at more than 249,000 in 2010. Court-ordered changes to policing and the appointment of a monitor to oversee New York Police Department (NYPD) reductions of unconstitutional stop-and-frisk practices in 2013 yielded a gradual decline in the number of

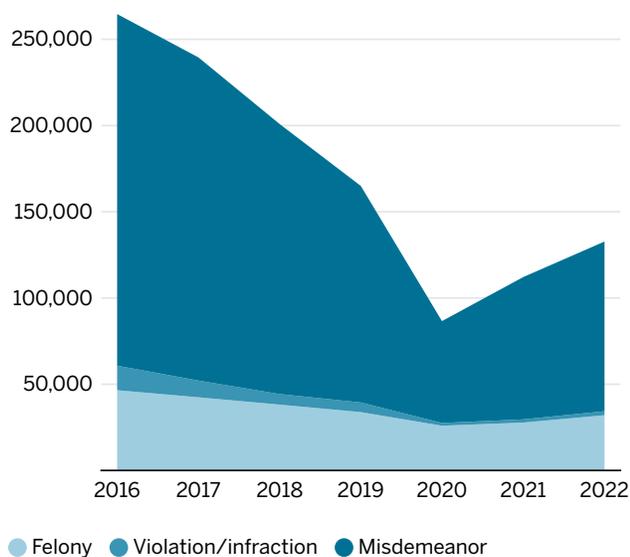
misdemeanor arrests, though racial disparities remained.⁴⁸ In addition, state lawmakers enacted major changes around marijuana possession, culminating in legalization in 2021.⁴⁹

To understand New York City minor offense case trends in recent years, Brennan Center researchers obtained de-identified public data from the Census Bureau and the NYPD (e.g., arrest contacts, by charge type and location), and de-identified non-public data from the Office of Court Administration of the New York State Unified Court System (e.g., court cases by demographics, charge types, case outcomes) from 2016 to 2022. This internal court data allowed for a wider study period than was possible for the national analysis. Data analysis was conducted at the case level and focused on misdemeanors, violations, and infractions (collectively, minor offenses).⁵⁰

The findings reveal the size of New York City's minor offense system, the most prevalent charges, and the most common case outcomes. They also shed light on the populations that get tangled in the system and the neighborhoods most impacted by enforcement practices.

FIGURE 2

New York City Criminal Cases



Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

Case Filing Trends

Misdemeanor cases made up the vast majority of all criminal cases in New York City. The proportion of misdemeanor cases out of all criminal cases was similar to the national snapshot. In New York City, misdemeanor cases filed made up approximately 75 percent of all court cases for all study years, with the exception of 2020 (see figure 2 and appendix 2).⁵¹

In 2022, the number of minor offense cases was significantly lower than in 2016. While at the national level the number of misdemeanor cases in 2018 and 2019 increased, in New York City, by contrast, it was already decreasing before the pandemic. In fact, the absolute number of cases related to low-level offenses in the city declined from more than 218,000 cases in 2016 to roughly 100,000 in 2022 — a 54 percent drop. Policy choices to shrink the minor offense enforcement footprint, including decriminalization of marijuana and the constellation of historical and more recently enacted diversion programs now in use across the

Data Limitations

Most New York City data analysis in this report reflects cases that began as misdemeanors, violations, or infractions based on arraignment information, including top charges and charge severity at arraignment, except for specific case outcomes (i.e., dispositions and sentences) and where otherwise noted, using internal data obtained from the New York State Unified Court System’s Office of Court Administration from 2016 to 2022.

- Case data reflects court cases that proceeded from fingerprintable or custodial arrests (arrests that require fingerprinting or that result in detention by police). It also includes minor offense cases of non-fingerprintable arrests, which may not result in jail detention, such as desk appearance tickets for eligible low-level offenses (e.g., assault in the third degree, petit larceny, unlicensed driving, possession of a controlled substance in the seventh degree, and fare evasion). It excludes offenses for which criminal summonses were issued. Criminal summonses can be issued by agencies other than law enforcement, usually for low-level violations of the administrative code, penal law, or health code (e.g., public consumption of alcohol, disorderly conduct, public urination, park offenses, and riding a bicycle on the sidewalk). Case totals exclude cases with missing data and other exceptions as defined in the appendixes.
- Court data does not indicate whether cases have been diverted, for example, to an alternative-to-incarceration program or to a special docket such as the Manhattan Misdemeanor Mental Health Court. This information is hard to approximate unless data is also obtained directly from alternative programs. Brennan researchers were unable to trace the number of overall cases sent to diversion programs.
- Court data does not indicate domestic violence–related cases, but Brennan Center researchers derived this information by examining domestic violence arraignment types (at case start) and cases resolved in domestic violence court parts at disposition (approximate case end). These cases were also categorized as those involving harm. However, this analysis likely undercounted these cases, as not all cases may have been accurately identified at these stages as being related to domestic violence.
- The data presented below separates race and ethnicity into three categories: Black, Latino, and white. It omits data on Asian and other racial or ethnic groups, for which numbers were too small to permit statistically meaningful comparisons.
- Sentencing data is complex, as cases often result in multiple sentences (e.g., time served, fines, and conditional discharge). In addition, cases that have a surcharge, fine, or community service order attached may still ultimately be dismissed. This analysis presents sentencing data for convicted cases as reported at that time (whereas later data may contain updated case information, such as a dismissal).
- Court data was missing significant geographic information. As a result, for neighborhood analyses, Brennan Center researchers did not use court data and instead analyzed public police data with geographic coordinates.
- Jail data was not available for this study. While court sentences for jail and time served are reported, lengths of time served, including pretrial detention, are unknown.

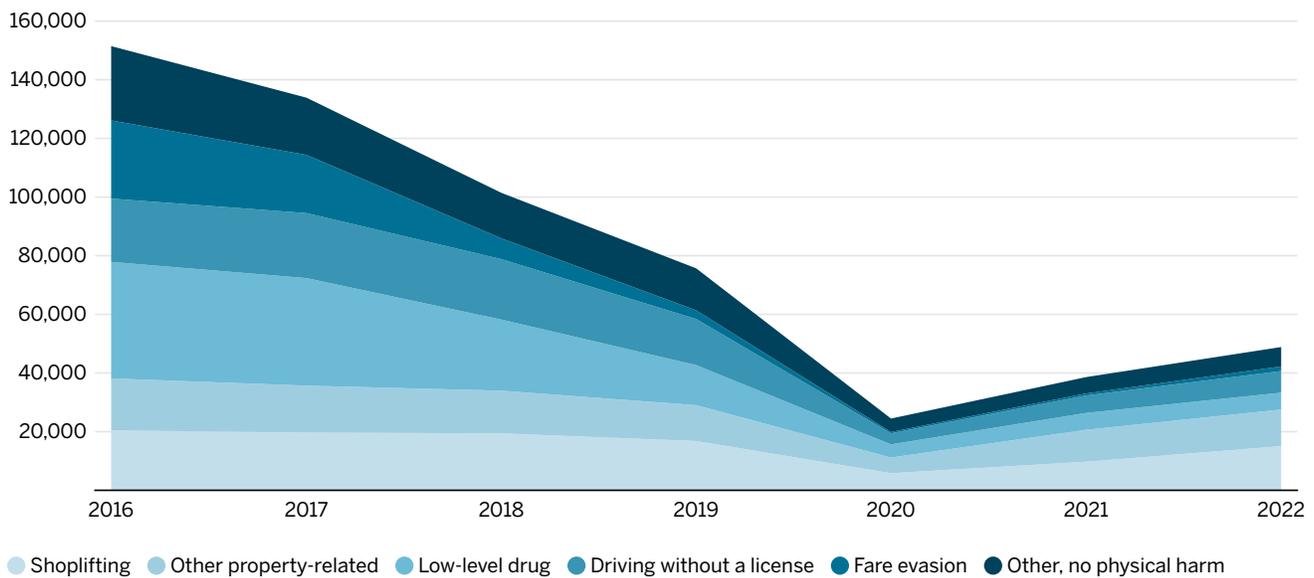
city, likely propelled pre-pandemic declines, which in turn were likely magnified under altered enforcement practices related to the pandemic during 2020 and 2021.⁵²

Beneath this broad trend of decline, however, 2021 and 2022 saw a notable uptick, even though cases stayed well below pre-pandemic levels. In 2020, at the height of the pandemic restrictions, minor offense cases decreased from the previous year by 54 percent to roughly 60,000 cases. Cases subsequently rose by 40 percent in 2021 and 19 percent in 2022. Recent rises in low-level cases may be attributed to the relaxation of social distancing practices as people started leaving their homes more, increasing

potential police contact, and as courts reopened and law enforcement agencies returned to routine pre-pandemic enforcement practices.

Top Charges at Arraignment

A substantial proportion of top charges for minor criminal offenses at arraignment did not involve direct physical harm to people. Of the 200 most common

FIGURE 3**New York City Minor Offense Cases: No Physical Harm**

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

charges for all minor offense cases at arraignment over the seven-year study period, roughly 60 percent did not involve physical harm to a person (see figure 3 and appendix 3).⁵³ Specifically, the most common minor charges included low-level drug possession, such as possessing up to half a gram of powder cocaine or more than 25 grams of marijuana (14 percent of all charges); shoplifting (11 percent); low-level traffic infractions, such as driving without a license (10 percent); and other property-related charges, such as criminal possession of stolen property, usually charged with shoplifting, or criminal mischief, often associated with graffiti (9 percent).

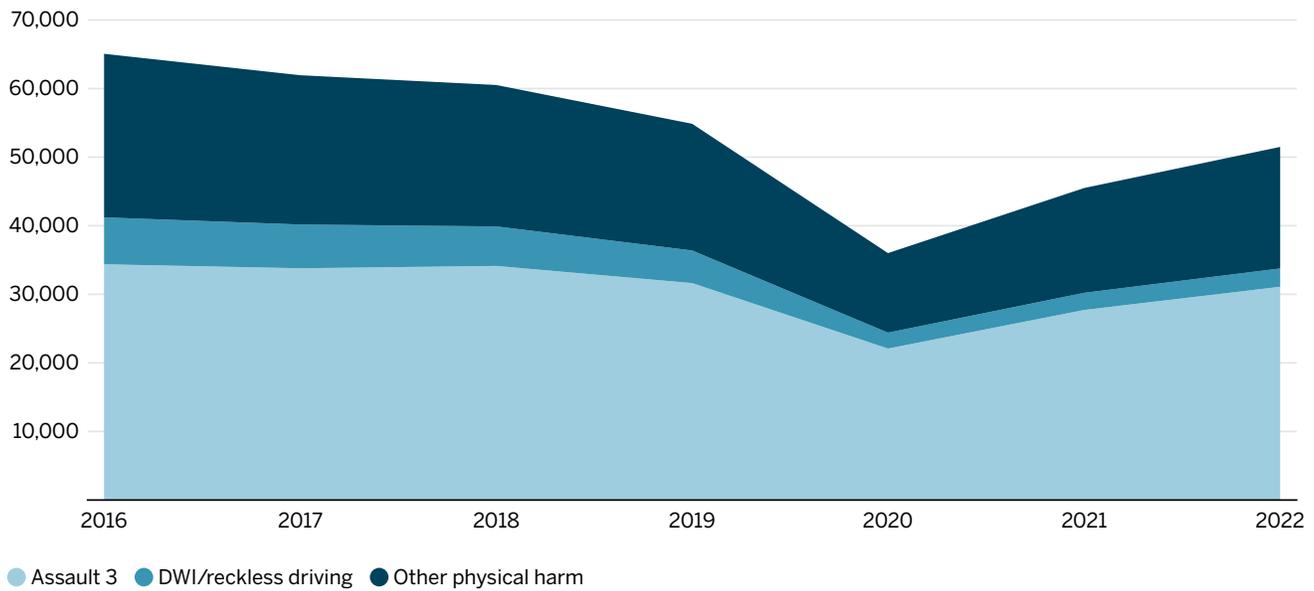
Charges not involving physical harm declined and remained below pre-pandemic levels. Between 2016 and 2022, charges for petty theft and other property-related offenses declined by more than 25 percent.⁵⁴ Traffic charges related to driving without a license dropped by 65 percent. Following sharp decreases in 2020, petit larceny and other property offense charges increased in the last two years, though numbers remained below pre-pandemic levels (e.g., shoplifting cases were at 16,807 in 2019 versus 15,069 in 2022). Further, between 2016 and 2022, low-level drug possession declined from 18 to 6 percent of all minor offense cases, while fare evasion plunged from 12 to 2 percent. These trends reflect recent reforms, such as efforts to decriminalize fare evasion and to legalize marijuana.⁵⁵

Simple assault made up a little less than a quarter of all minor offense cases at arraignment. Misdemeanor assault (also called simple assault) in New York is defined as intentionally or recklessly causing physical injury to another person.⁵⁶ The threshold for establishing physical injury is relatively low and encompasses a wide spectrum of harm, from very minor to more serious injury. While the proportion of offenses involving physical harm, most of which were simple assault cases, increased over the study period, the absolute number of these cases in 2022 remained lower than in 2016 (physical harm cases: 65,069 in 2016 versus 51,497 in 2022; simple assault cases: 34,380 in 2016 versus 31,103 in 2022; see figure 4).

Domestic violence — a component of several arraignment charges, including assault, menacing, harassment, and contempt — formed a substantial proportion of assault cases. New York State does not have a domestic violence-specific charge in the penal code; all intimate-partner violence is charged under generally applicable offenses, the most common of which are assault, menacing, and stalking.⁵⁷ As previously noted, Brennan Center researchers identified domestic violence cases by counting cases classified as domestic violence at arraignment or resolved in a court part devoted to dealing with such cases and also categorized these as cases involving harm.

FIGURE 4

New York City Minor Offense Cases: Physical Harm



Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

Domestic violence cases made up 42 to 48 percent of all minor offense cases involving physical harm. Domestic violence also accounted for between 45 and 49 percent of misdemeanor assault cases across the study period (see appendix 3).

Criminal contempt offenses are also commonly applied when a person charged with an offense violates an existing order of protection in a prior domestic violence case. Each year under examination, 66 to 72 percent of all contempt cases, 61 to 66 percent of harassment cases, and 23 to 26 percent of menacing cases involved domestic violence.

The proportion of domestic violence–related cases increased sharply in 2020 and remained at similarly high levels afterward. The percentage of cases flagged as related to domestic violence slowly ticked up between 2016 and 2019, from 13 to 18 percent of all minor offense cases each year. In 2020, such cases made up 29 percent of all cases at arraignment, though, like all other minor offense case types, the absolute number of domestic violence cases was at its lowest point over the study years. Although the proportion of domestic violence cases slightly declined in the next two years, the number of domestic violence cases increased and was higher in 2022 than in 2019. Overall, they accounted for 17 percent of all minor offense cases.

Just as elsewhere, the trends in domestic violence in

New York City were likely due to the increased incidence of risk factors related to stay-at-home guidelines, including isolation from networks of personal support systems and community-based resources (many services were closed), elevated alcohol and drug consumption, increased financial insecurity because of income loss and unemployment, and higher risk of conflict and abuse during confined periods at home.⁵⁸ A recent survey of Covid-19 impacts on domestic violence in New York City similarly reflected survivors’ struggles around increased abuse, housing or shelter, employment, child care, and lack of access to existing resources.⁵⁹

People Charged with Offenses

Men ages 25 to 44 were involved in nearly half of all minor offense cases. The proportion increased from 43 percent in 2016 to 49 percent in 2021 and 2022, though absolute numbers were much lower in later years (e.g., 91,347 in 2016 versus 49,425 in 2022). Meanwhile, the percentage of men ages 18 to 24 declined from 21 percent in 2016 to 11 percent in 2022 (see appendix 4). This may be due to recent shifts in policing and prosecution, such as the decriminalization of low-level offenses including possession of marijuana, and increased diversion opportunities

such as Project Reset for people facing first-time minor offenses, who are more likely to be younger.⁶⁰

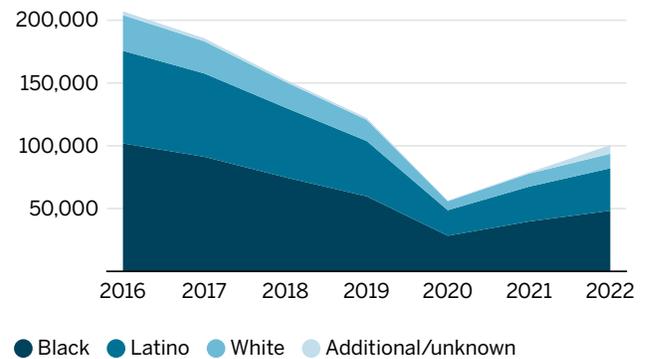
Black and Latino people were overrepresented. Despite overall declines in minor offense cases, between 2016 and 2022, Black Americans in New York City were, at arraignment, nearly six times more likely than white people — and Latinos three times more likely — to be charged with a minor offense (see appendix 4).⁶¹ More than 8 in 10 minor offense cases at arraignment involved Black and Latino people, ranging between 82 and 86 percent annually (see figure 5).

Racial disparities were present across all five boroughs, particularly in Manhattan. Racially disparate enforcement held across all five boroughs but was particularly stark in Manhattan, the wealthiest borough and the one with the greatest income disparities. There, from 2016 to 2019, Black people were 11 times more likely than white people to be charged with a minor offense case (see figure 6 and appendix 4).⁶² Between 2020 and 2022, they were around 15 times more likely. The differences in racial disparities between boroughs were seen even though the numbers of minor offense cases were similar in Manhattan and Brooklyn — and to an extent, Queens — across the study period (see appendix 4). Further, in the zip codes with the most minor arrests across the city, 67 to 97 percent of arrests involved Black and Latino people (see appendix 5).

Minor offense arrests were largely concentrated in low-income Black and Latino communities. The spatial distribution of minor offense arrests between 2016 and 2022 reveals steep racial disparities in enforcement.⁶³ Arrests were highly concentrated in neighborhoods in upper Manhattan (e.g., East Harlem) and the South Bronx (e.g., Crotona, Grand Concourse, and Mott Haven), and

FIGURE 5

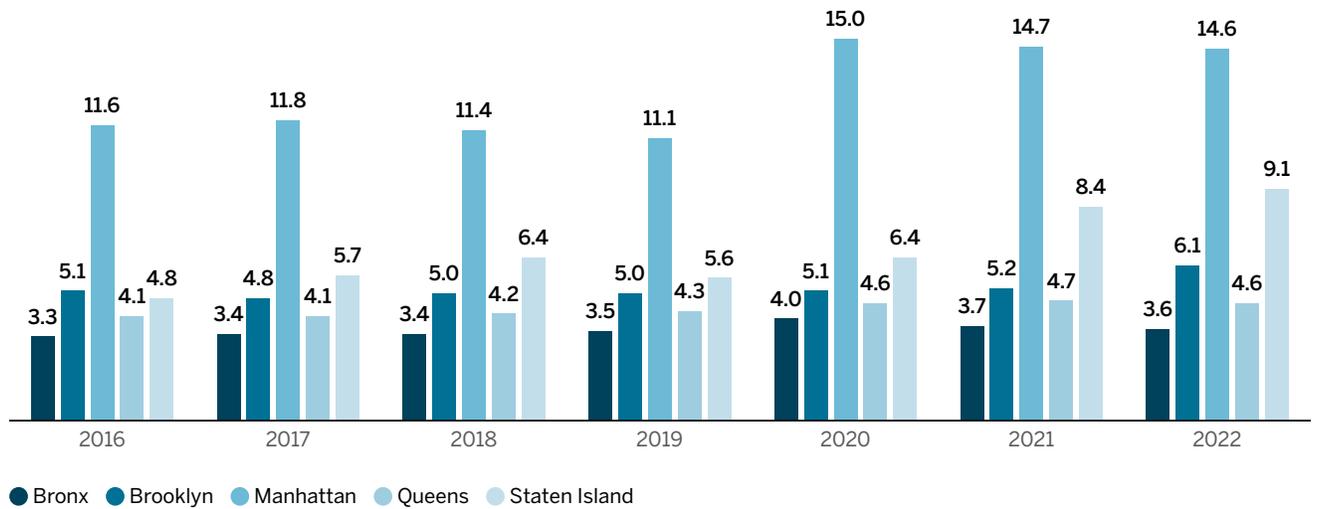
New York City Minor Offense Cases by Race or Ethnicity



Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

FIGURE 6

Disparities in Minor Offense Enforcement Against Black and White People

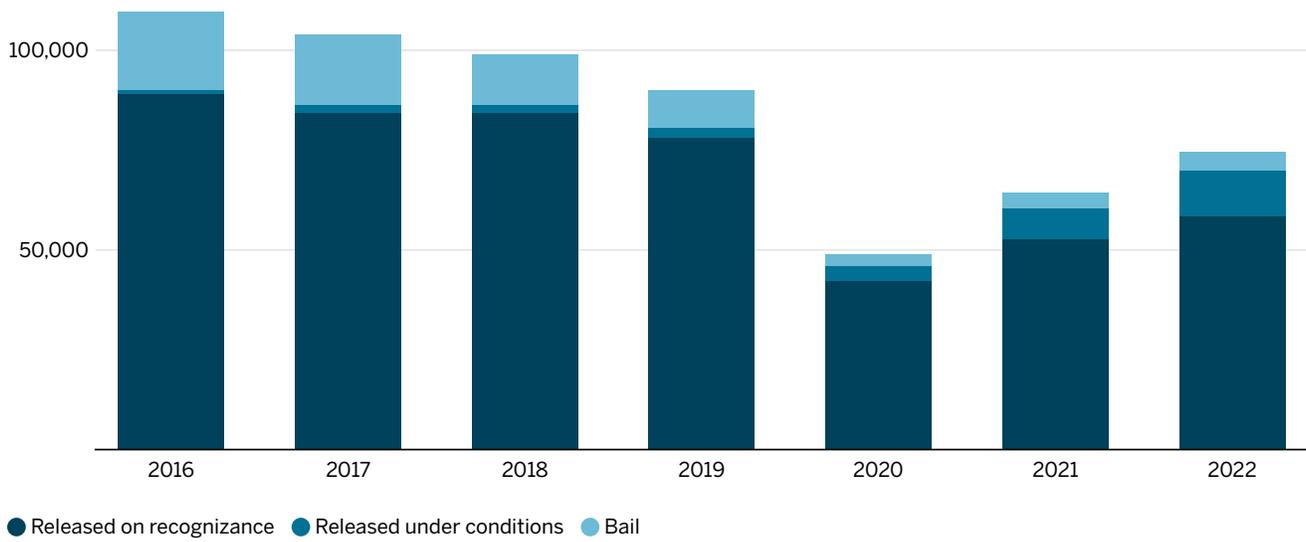


Note: Values indicate how many times more likely a Black person is than a white person to be charged with a minor offense case. A value of 1 indicates no disparity.

Source: New York State Office of Court Administration non-public data (2016–2022) and U.S. Census (2016–2022); Brennan Center analysis.

FIGURE 7

Release Status at Arraignment



Note: Cases remanded to jail (less than 1 percent) were excluded.

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

in the Jamaica section of Queens, all of which are predominantly low-income Black or Latino communities (see maps below and appendix 5).

Release Status After Arraignment

The proportion of people released after arraignment grew, mostly due to increases of those released into the community on conditions. After arraignment, some people are allowed to return to the community under nonmonetary conditions, most commonly pretrial court supervision (including prosecutor-led diversions or court alternatives to incarceration that assign case management and support, community services, and referrals to treatment) or probation issued on another court case. The proportion of such cases increased dramatically during the study period, from 1 percent in 2016 to 16 percent in 2022 (i.e., 930 to 11,630 cases). Meanwhile, the proportion of people released without conditions decreased slightly. In 2016, 81 percent of minor offense cases (89,115 cases) resulted in people being released on their own recognizance, meaning they were released from custody without any supervised conditions or bail when first arraigned in court. This increased in 2019 to 87 percent (though the

absolute number decreased to 78,088 cases) before declining to 78 percent by 2022 (58,371 cases; see figure 7 and appendix 6).

The number of people with bail set at arraignment fell substantially. Bail is a set monetary amount determined by a judge for certain cases that, when paid, secures a person's release from jail.⁶⁴ Many people who have court cases cannot afford to pay bail and are jailed during their court case (i.e., pretrial detention), though they are presumed innocent.⁶⁵ In 2016, more than 19,500 people had bail set as of their first appearance in court. By 2022, this number had fallen to just over 4,600 — a 76 percent decline. This trend is most likely due to reduced enforcement in the pandemic and recently implemented criminal justice reforms. These include a significant expansion of court-supervised release that began in 2016, as well as bail reform in 2020 that prevented the use of money bail and pretrial detention for nearly all misdemeanor charges and nonviolent felony charges.⁶⁶ Since 2020, because of roll-backs to bail reform, judges have had more discretion to use bail and pretrial detention for people accused of repeat minor offenses, including nonviolent charges such as petit larceny.⁶⁷ As seen in a recent study, this may have led to fewer releases without conditions for misdemeanors.⁶⁸

Case Outcomes

In 2020, non-convictions overtook guilty pleas as the most prevalent case resolution. Between 2016 and 2022,

the share of noncriminal convictions on a violation or infraction from guilty pleas — the most common outcome in early years of the study — fell from 36 percent to 19 percent of all minor offense cases (see figure 8 and appendix 7). Misdemeanor convictions — the vast majority through a guilty plea — fell from 16 percent to 6 percent. Throughout the study period, between 20 and 29 percent of cases received adjournments in contemplation of dismissal (ACD), in which a case is moved to a future date and is later automatically dismissed and sealed if the person charged with the offense is not arrested during the adjournment period.

In 2021 and 2022, approximately half of all minor offense cases were dismissed. Overall, the proportion of non-convictions increased steadily from 47 percent in 2016 to 70 percent in 2022.

Between 2016 and 2022, across all cases, dismissals for Black people increased from 9 to 25 percent; for Latino people, from 6 to 17 percent; and for white people, from 2 percent to 5 percent (see appendix 7). While the percentage of non-convictions increased, the total number of non-convictions for all groups remained

below 2016 levels (103,994 in 2016 versus 72,003 in 2022).

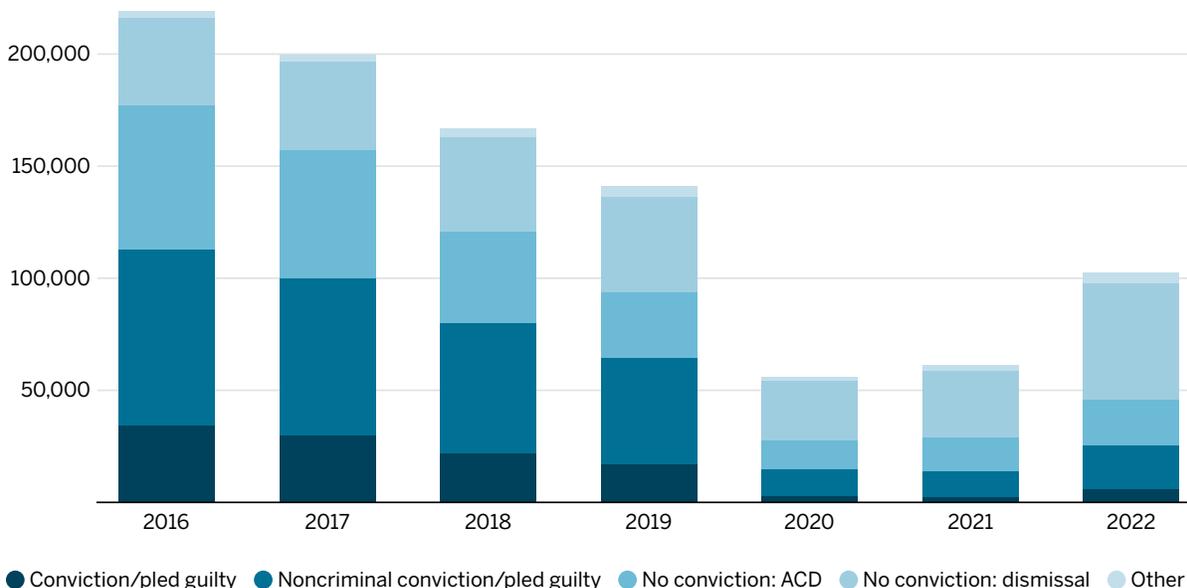
One area for further research is whether cases with no conviction are due to Black and Latino people being initially charged more often or more harshly than white people.⁶⁹ For example, cases later found to have no reasonable basis or insufficient evidence may explain higher dismissal rates in minor offense cases, though lack of victim participation in cases involving physical harm and domestic violence should also be explored. Another is the impact of 2020 changes to New York’s discovery law (specifically, the shortening of timelines related to prosecutors sharing evidence with defense counsel) on case dismissal rates.⁷⁰ The law came into effect shortly before the state suspended time limits for court proceedings in the pandemic, making it impossible, in this report’s period of examination, to distinguish the impact of the pandemic from that of discovery reforms on case outcomes.

Few minor criminal cases went to trial. In 2016, 513 cases (less than 1 percent) were disposed either by misdemeanor conviction at trial (179), noncriminal violation conviction at trial (82), or acquittal (252). In 2022, these numbers fell to 36, 14, and 56 cases, respectively. Trials for low-level offenses were nearly nonexistent in 2021, likely due to court

In 2021
and 2022,
approximately
half of all minor
offense cases
were dismissed.

FIGURE 8

Disposition Outcomes for New York City Minor Offense Cases



Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

delays during the pandemic: just four cases resulted in convictions at trial, while three resulted in acquittals.⁷¹

The most common sentences did not involve incarceration or probation supervision.

Three common sentences are imposed in New York City for minor criminal cases that result in a conviction (see table 1 and appendix 8). The first is a conditional discharge, which usually comes with mandated conditions such as avoiding new arrests, undertaking treatment, maintaining employment, or completing community service. Conditional discharges made up 43 percent of all sentences over the study period,

largely for noncriminal convictions (35 percent of all sentences). Across all years, 19 percent of total cases resulted in conditional discharge for Black people and 16 percent resulted in conditional discharges for Latino

people, compared with about 7 percent for white people (see appendix 8).

The second type of sentence, fines, made up 24 percent of all sentences, mostly for noncriminal convictions (22 percent of all sentences). Across the study period, about 10 percent of all convicted cases resulted in fines for Black and Latino people, respectively, while 4 percent of all cases resulted in fines for white people.

Sentences for “time served,” the third type of sentence, accounted for 23 percent

Between 2016
and 2019,
incarceration
made up about
9 percent of
sentences.

TABLE 1

Key Sentences for Convicted Minor Offense Cases

SENTENCES FOR MINOR CONVICTED CASES	2016	2017	2018	2019	2020	2021	2022	TOTAL
Conditional discharge	41%	41%	43%	45%	46%	49%	47%	43%
Misdemeanor conviction	7%	7%	9%	9%	6%	6%	8%	8%
Noncriminal conviction	34%	34%	34%	37%	41%	43%	39%	35%
Fines	23%	25%	27%	25%	21%	21%	20%	24%
Misdemeanor conviction	2%	2%	3%	2%	1%	2%	2%	2%
Noncriminal conviction	20%	23%	24%	23%	20%	19%	18%	22%
Time served	22%	22%	20%	22%	27%	31%	32%	23%
Misdemeanor conviction	11%	11%	9%	9%	7%	7%	10%	10%
Noncriminal conviction	11%	11%	11%	13%	20%	25%	22%	13%
Jail	11%	10%	8%	7%	3%	2%	3%	8%
Misdemeanor conviction	8%	8%	6%	5%	2%	2%	3%	7%
Noncriminal conviction	2%	2%	2%	1%	1%	1%	1%	2%
Order of protection	12%	13%	14%	17%	21%	22%	20%	15%
Misdemeanor conviction	3%	3%	3%	3%	2%	3%	3%	3%
Noncriminal conviction	10%	10%	12%	15%	18%	19%	17%	12%
Community service	12%	10%	8%	7%	4%	2%	2%	8%
Misdemeanor conviction	2%	2%	1%	1%	0%	0%	0%	1%
Noncriminal conviction	10%	8%	7%	6%	3%	1%	2%	7%
Probation	0%	0%	0%	0%	0%	0%	1%	0%
Misdemeanor conviction	0%	0%	0%	0%	0%	0%	1%	0%
Noncriminal conviction	0%	0%	0%	0%	0%	0%	0%	0%
Total sentences	117,242	103,873	82,854	66,473	16,054	18,923	26,064	431,483

Note: Most cases involve multiple sentences, so percentages exceed 100 percent. Additional sentences were excluded, such as prison (less than 1 percent).

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

of convicted cases. Time served (also a proxy for pretrial detention) considers any jail days already served over the course of the case before sentencing, effectively subtracting them from a proposed sentence of detention and resulting in release. It usually is the tally of the hours or days spent in police detention or central booking after arrest, when people charged with an offense are processed for arraignment. (For reference, 24 hours is the typical arrest-to-arraignment time in New York City, unless an arrest occurs on a weekend.)⁷² Over the study period, the share of time-served sentences increased from 22 percent of convicted cases in 2016 to 32 percent in 2022, once again mostly for noncriminal convictions. In 2022, this outcome was more common for charges related to petit larceny than for other property-related charges, low-level drug possession, and cases involving physical harm, especially assault cases. Across all study years, 17 percent of cases involved Black people sentenced to time served, 10 percent involved Latino people sentenced to time served, and 4 percent involved white people with the same sentence (see appendix 8).

Jail sentences were rare. Between 2016 and 2019, incarceration made up about 9 percent of sentences. The use of jail declined from 2020 onward — dropping to between 2 and 3 percent of sentences.

Time to Case Resolution

More than a third of minor offense cases were resolved at arraignment, but the proportion of such cases declined. Over the study period, 38 percent of all cases were resolved at arraignment, and 18 percent of all cases were resolved and resulted in a non-conviction. However, quick disposition at arraignment decreased from 48 percent in 2016 to just 25 percent in 2022 (see appendix 9).

For most minor offense cases, resolution took a long time. Between 2016 and 2022, the average case time was about four and a half months for convicted misdemeanors and noncriminal convictions (137 and 136 days, respectively; see appendix 9). Cases that did not result in conviction had a similar time frame: four months (120 days) for misdemeanors that ended in a dismissal or an ACD, and slightly less than three and a half months (104 days) for violations that ended in a dismissal or an

ACD. The median for all cases was around three months.

Such lengthy case resolution, despite the small percentage of cases that result in misdemeanor conviction or incarceration, confirms that the “process is punishment.”⁷³ Prior research indicates that heavy caseloads and limited court resources, which were exacerbated over the pandemic, cause delays in case resolution. Time spent in court appearances increases collateral consequences (e.g., lost jobs and earnings, lost child care, and lost housing due to court involvement).⁷⁴

Lengthy case resolution, despite the small percentage of cases that result in misdemeanor conviction or incarceration, confirms that the “process is punishment.”

III. Community Views on Enforcement and Race

Examining court data provides only a partial view of New York City’s minor offense system. One also must understand how enforcement operates from the perspective of those most affected — the communities that bear the impact of aggressive enforcement practices and the related service providers embedded in those neighborhoods, including law enforcement officials and other frontline civil servants.

To contribute to this understanding, Brennan Center researchers conducted semi-structured interviews, focus groups, and meetings with 166 business leaders, government officials, service providers, researchers, advocates, and community stakeholders who live, work, and have ties in the New York City area. This in-depth engagement allowed researchers to identify shared themes that could inform efforts to reduce the number of people who become unnecessarily entangled in New York City’s minor offense system and to address persistent racial inequities in enforcement.

Brennan Center researchers held 55 fact-finding meetings with 131 experts from 41 organizations between September 2021 and October 2023, covering a range of topics including study planning, site selection, and suggested data sources, as well as subject matter expertise, feedback, and recommendations on draft findings and promising solutions. Researchers followed up with 17 community stakeholders to review findings and recommendations.

Between October 2022 and April 2023, researchers also conducted 15 semi-structured interviews and 7 focus groups with 35 participants, including 15 leaders of law enforcement, municipal, nonprofit, or advocacy groups and 20 community experts who were recommended by a range of mental health, substance use, employment, housing, and violence prevention organizations. Each expert was someone who had lived, professional, or leadership experience related to minor offense enforcement and the criminal justice system generally. Researchers paid community experts for their time and knowledge and paid select community-based organizations an honorarium for study recruitment, staff time, and space provided.⁷⁵ For qualitative analysis, themes were identified by Brennan Center researchers and reviewed by community and law enforcement stakeholders in feedback sessions.⁷⁶

Despite the proliferation of reforms in New York City and the downward trend in minor offense enforcement, policies need to go further in addressing root causes of regulated behavior to counter an overreliance on punitive practices and reduce persistent racial disparities. A consensus among interviewees was that not enough resources are focused on preventing crime and supporting the most disadvantaged community members, and that the criminal justice system relies too strongly on arrest

and prosecution to solve problems. Participants emphasized that social disadvantages drive people’s involvement in the minor offense system. These disadvantages — what some researchers refer to as the “social determinants of justice” — in part explain the spatially concentrated and racially disparate enforcement practices that persist, despite recent reforms.⁷⁷ In short, a punitive-only approach to enforcement fails to address root causes of lawbreaking and thus will not effectively deter crime or address disparities.

The perspectives of affected communities and frontline service providers can help policymakers explore reasons underlying racial disparities in enforcement. They help identify other resources that are needed to address persistent social problems (e.g., housing instability, mental illness, substance use, poverty) and the problematic behaviors that lead to involvement in the minor offense system. These perspectives also help government leaders determine how and when the criminal justice system should intervene, how community resources and services could be more equitably dispersed, and where crime prevention strategies can be more effectively utilized.

Social Disadvantage

Participants generally agreed that people who struggle with often overlapping structural factors — such as underemployment or unemployment, housing instability, food insecurity, and poor access to health care — live in communities with more police surveillance, where circumstances stemming from those factors are more likely to be criminalized. These communities, as the data shows, are disproportionately Black and Latino neighborhoods.

One Harlem community leader and advocate discussed how poverty and substance use can drive criminal behavior, noting, “I’m not making [an] excuse for anything that they do, but if they had more money, there would not be so much crime because most of the people . . . are locked up for trying to get some money. They [are] either selling drugs or using drugs. . . . And some people are pushed by legitimate reasons. . . . You got to pay bills. You got to pay your rent or you’re going to get kicked out. . . . A lot of us did things that if we had more money,

we would not have done.” A local assistant district attorney observed, too, that criminalized behaviors are correlated with “lack of housing stability [and the] lack of jobs.”

Community experts in Harlem, Brooklyn, and the Bronx said that part of the problem is the lack of investment in community resources. “There’s a lot of drug use,” a Brooklyn community leader said. “They definitely need to get cleaned up. . . . But there’s also no facilities. . . . I don’t know no drug facilities that’s out here really setting the groundwork. . . . Drugs is tearing it down. We definitely need some help.”

The Covid-19 pandemic disproportionately impacted historically marginalized communities and greatly exacerbated risk factors of criminal justice system involvement.⁷⁸ One former NYPD officer said: “Like everyone says, Covid really just amplified things that already existed: So the basic needs, the housing, food security, employment, education, and the mental health piece.” A former city official working in crisis response said, “Just thinking about substance use . . . people from the same communities who are out now, using on the streets, who are now being picked up for that and being disproportionately brought in for these minor offenses — I think that has to do with the fact that some of the substance use programs closed. There’s nowhere for folks to go, and there’s more street homelessness because people lost their jobs. Folks are in a worse off economic situation, and they don’t have somewhere to go.” A community expert in Harlem directly connected the consequences of economic hardships and pandemic-era rises in crime: “At the beginning of Covid, I noticed there was a lot of theft going on. . . . People were broke. People had lost their jobs.”

Neighborhood Disinvestment

Interviewees and focus group participants consistently recognized that certain neighborhoods in New York City, often those with low-income Black and Latino populations, lack access to resources and face specific physical conditions that perpetuate racial disparities in minor criminal offense enforcement. Brennan Center research confirms that Black and Latino people, as well as low-income neighborhoods with significant numbers of Black

and Latino residents, experience much higher rates of enforcement.⁷⁹ At least three primary risk factors — higher household poverty, lower median household income, and higher unemployment rates — map directly onto most zip codes in New York City that both have a significant majority of Black and Latino residents and experience highly concentrated minor offense arrests (see figures 9 through 14 and appendix 5).

From 2016 to 2022, the neighborhoods with the most minor offense arrests were in Harlem, the South Bronx, and Jamaica, Queens. The 2021 unemployment rates for these neighborhoods range from 10.8 to 14.2 percent — in some places, nearly twice the citywide rate of 7.5 percent and triple the national rate of 5.5 percent.⁸⁰ Family poverty rates (defined as 200 percent of the federal poverty level) in the South Bronx and Harlem range from 36 to 66

percent (it is highest in Mott Haven) — compared with the citywide rate of 30 percent and the national rate of 23 percent.⁸¹ Interviewees from many of these neighborhoods reported poor perceived mental health. Unsurprisingly, these are the same neighborhoods that face the highest risks to childhood well-being, risks related to health, housing, and education.⁸²

A former police officer of 20 years noted that racial disparities in misdemeanor enforcement “exist because of disinvestment. They exist because of poverty. They exist because of lack of effective institutions in some communities. So, it is inequity in schools in some neighborhoods versus the other, inequity in parks

availability, inequity in programming.” A former city official explained minor offense enforcement as being “about the Black and brown folks, mainly, who lived in communities that were . . . impacted by this institutional abandonment, lack of resources, disenfranchisement. . . . How about we figure out why are they doing that, and what can we do to support? If it’s economic, how much are you making from that? How much do you feel like you need to make to support your family? How can we get you in an opportunity that’s going to give you more than what you’re getting from putting your life and your freedom at risk?”

The former officer noted too how physical differences in where people live may also exacerbate the problem of disproportionate enforcement, referencing marijuana and additional low-level offenses like trespassing. (Though marijuana is now legal in New York State, racial disparities in marijuana arrests increased between 1990 and 2017 despite declines in the number of cases since 2010.)⁸³ Specifically, the officer outlined how increased police

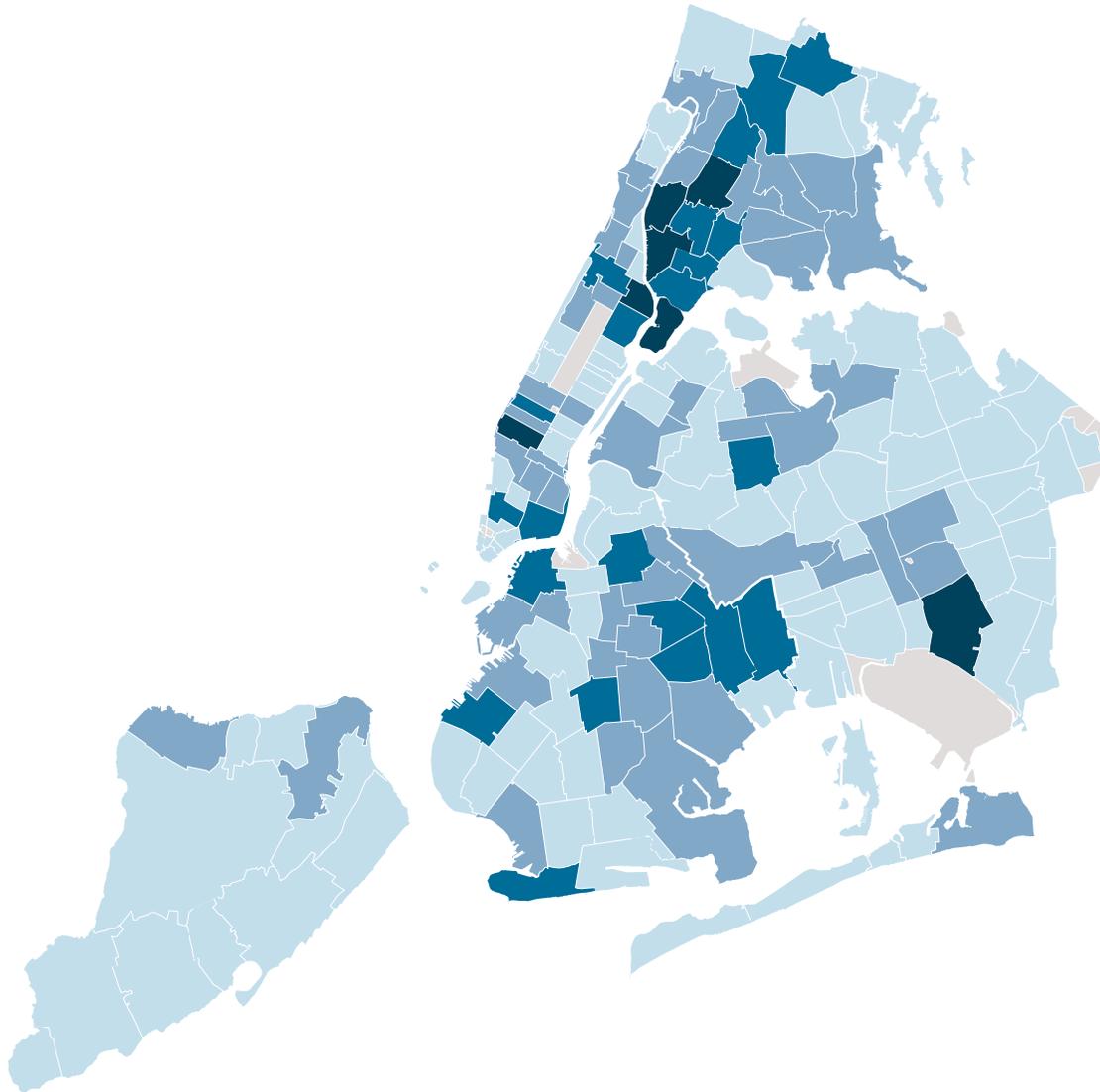
A punitive-only approach to enforcement fails to address root causes of lawbreaking and thus will not effectively deter crime or address disparities.

FIGURE 9

Minor Offense Arrests by Zip Code

2016–2022

● 0–5,000 ● 5,001–10,000 ● 10,001–15,000 ● 15,001–20,000



Note: Researchers defined top zip codes as those with the highest minor arrests over 2016–2022 to examine where minor offense enforcement occurred over the entire study period. Subsequent maps reflect the latest year for which reliable data is available (i.e., 2021 or 2022). Zip codes with fewer than 2,500 residents were excluded.

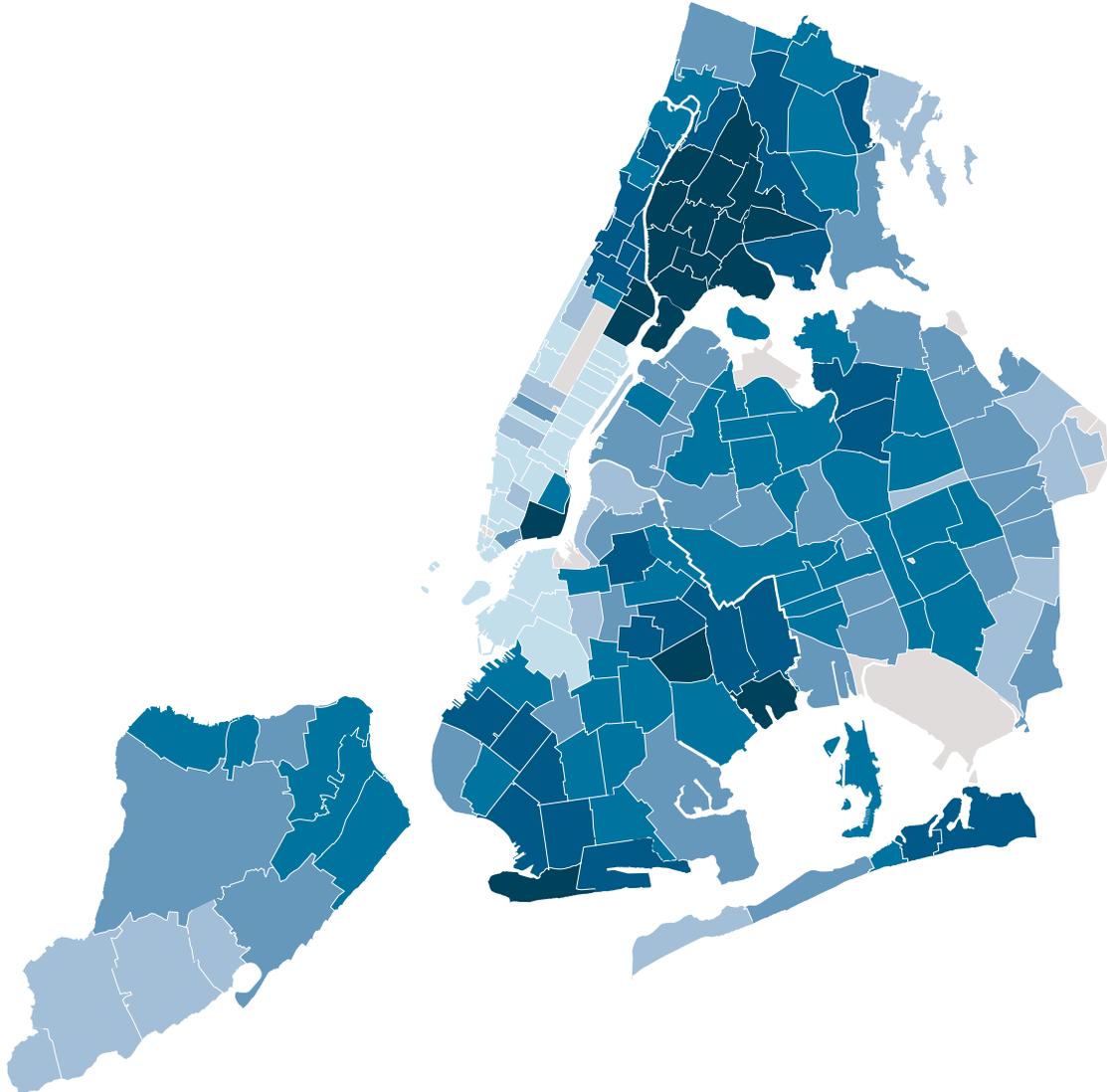
Source: NYC Open Data (NYPD arrests, 2016–2022); Brennan Center analysis.

FIGURE 10

Median Annual Household Income by Zip Code

2021

● ≤ \$40,000 ● \$40,001–\$60,000 ● \$60,001–\$80,000 ● \$80,001–\$100,000 ● \$100,001–\$120,000 ● ≥ \$120,001



Note: Zip codes with fewer than 2,500 residents were excluded.

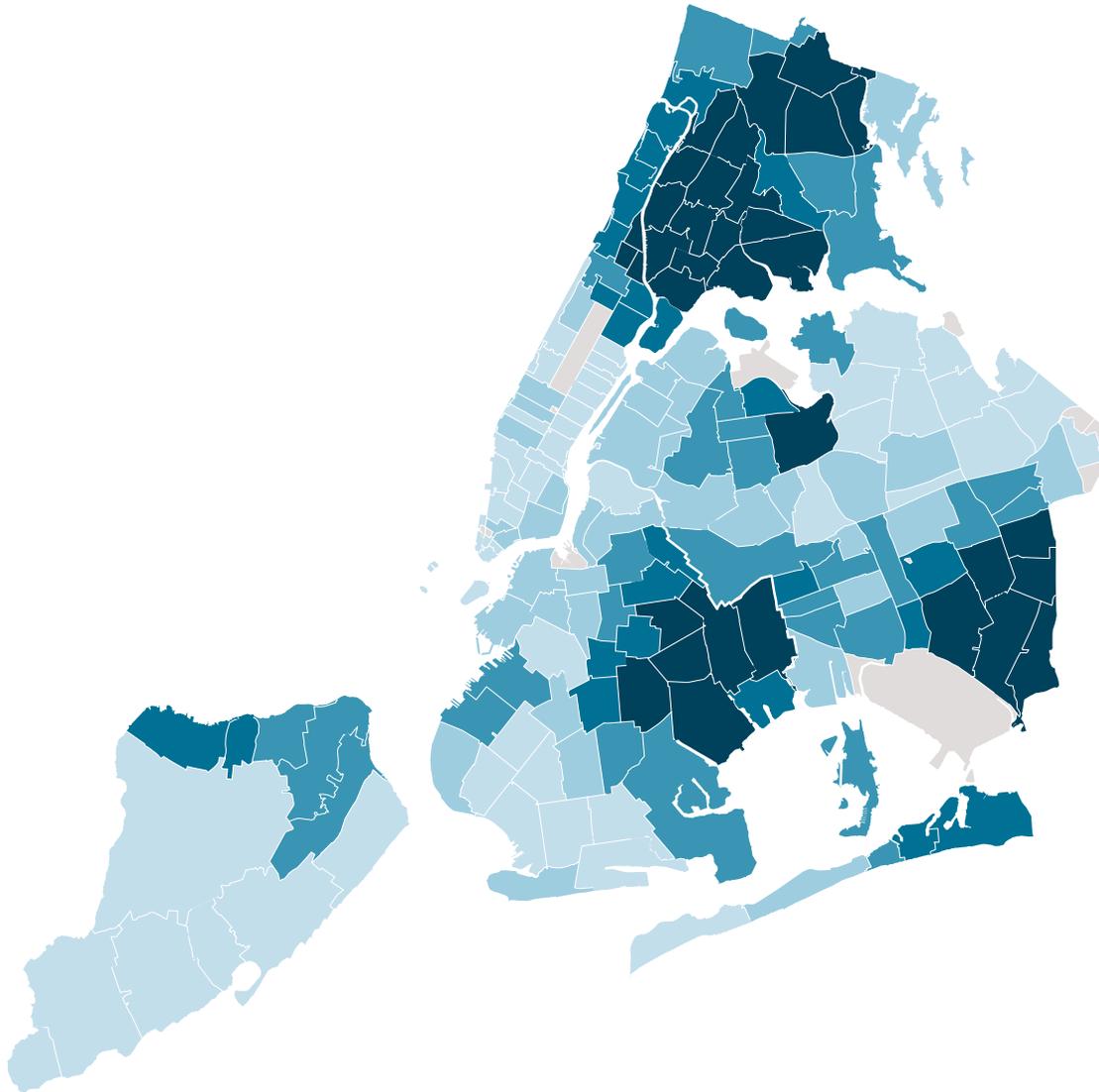
Source: U.S. Census Bureau (ACS 2017–2021 via PolicyMap); Brennan Center analysis.

FIGURE 11

Black or Latino Population by Zip Code

2022

● ≤ 20% ● 20.1%–40% ● 40.1%–60% ● 60.1%–80% ● ≥ 80.1%



Note: Zip codes with fewer than 2,500 residents were excluded.

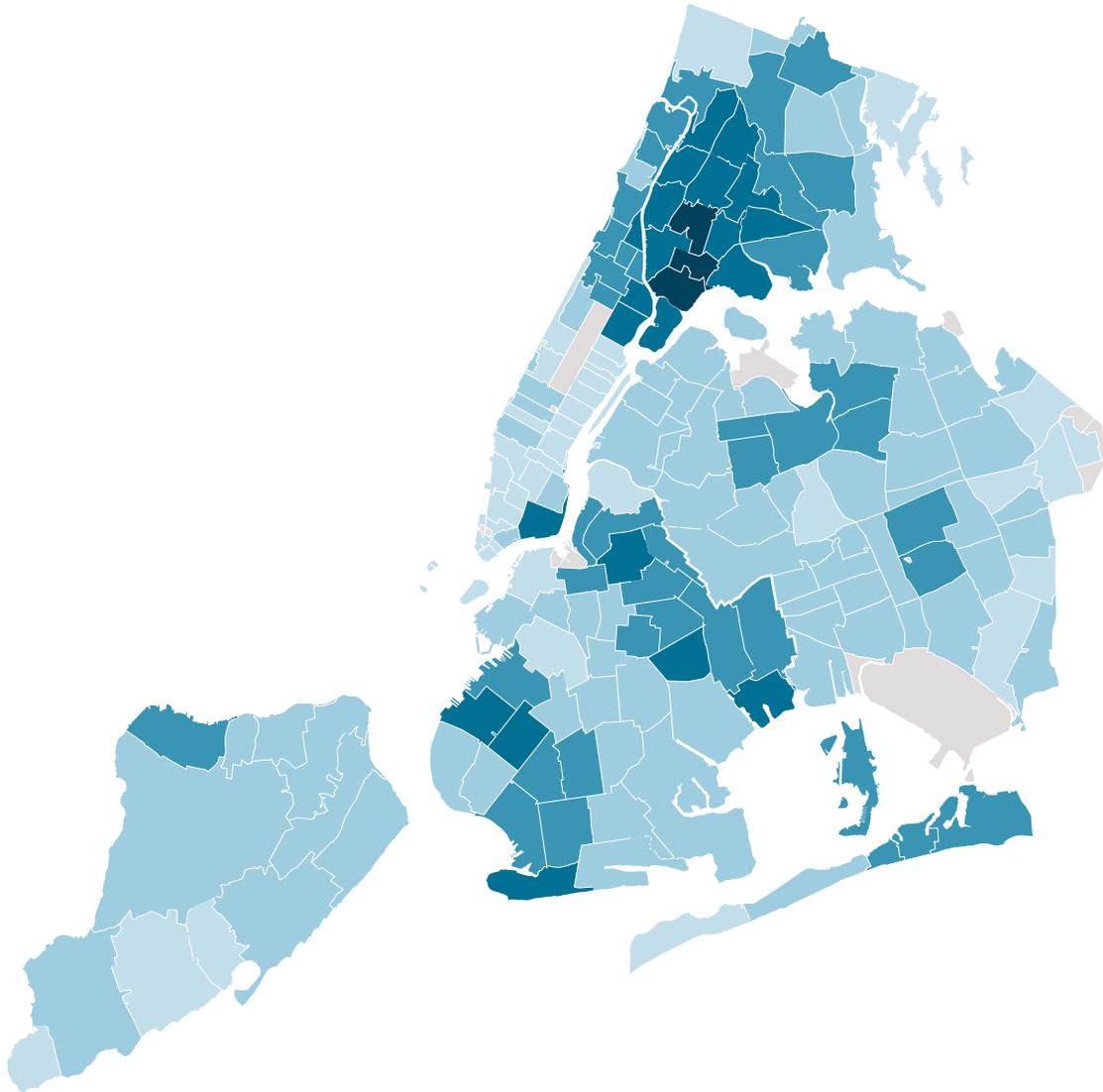
Source: U.S. Census Bureau (ACS 2018–2022); Brennan Center analysis.

FIGURE 12

Family Poverty at or Below 200% of Federal Poverty Level by Zip Code

2021

● ≤ 15% ● 15.1%–30% ● 30.1%–45% ● 45.1%–60% ● ≥ 60.1%



Note: Two hundred percent of the 2021 federal poverty threshold is \$27,576 for an individual and \$55,480 for a family of four. Zip codes with fewer than 2,500 residents were excluded.

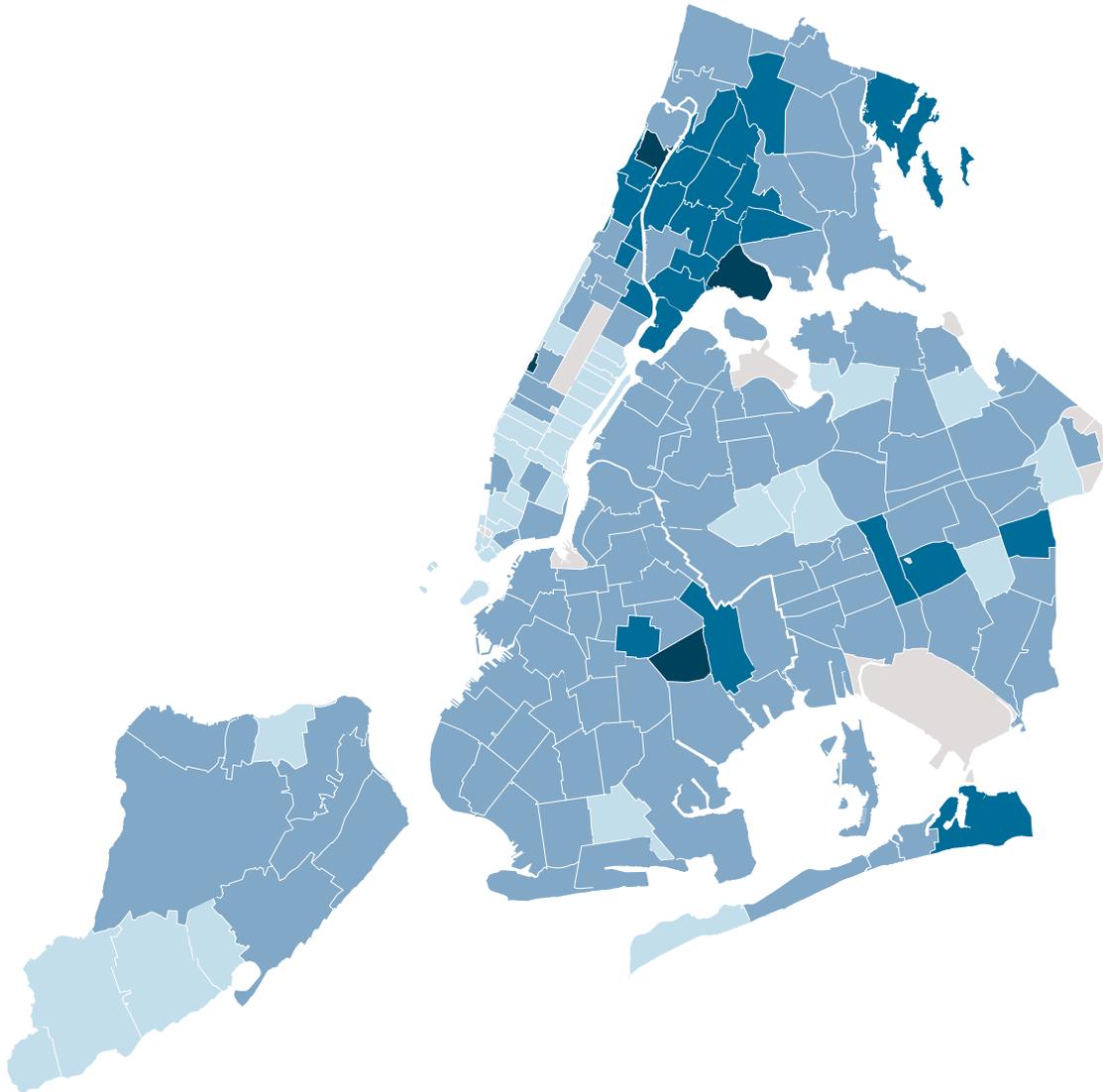
Source: U.S. Census Bureau (ACS 2017–2021 via PolicyMap); Brennan Center analysis.

FIGURE 13

Unemployment Rate by Zip Code

2021

● ≤ 5% ● 5.1%–10% ● 10.1%–15% ● ≥ 15.1%



Note: Zip codes with fewer than 2,500 residents were excluded.

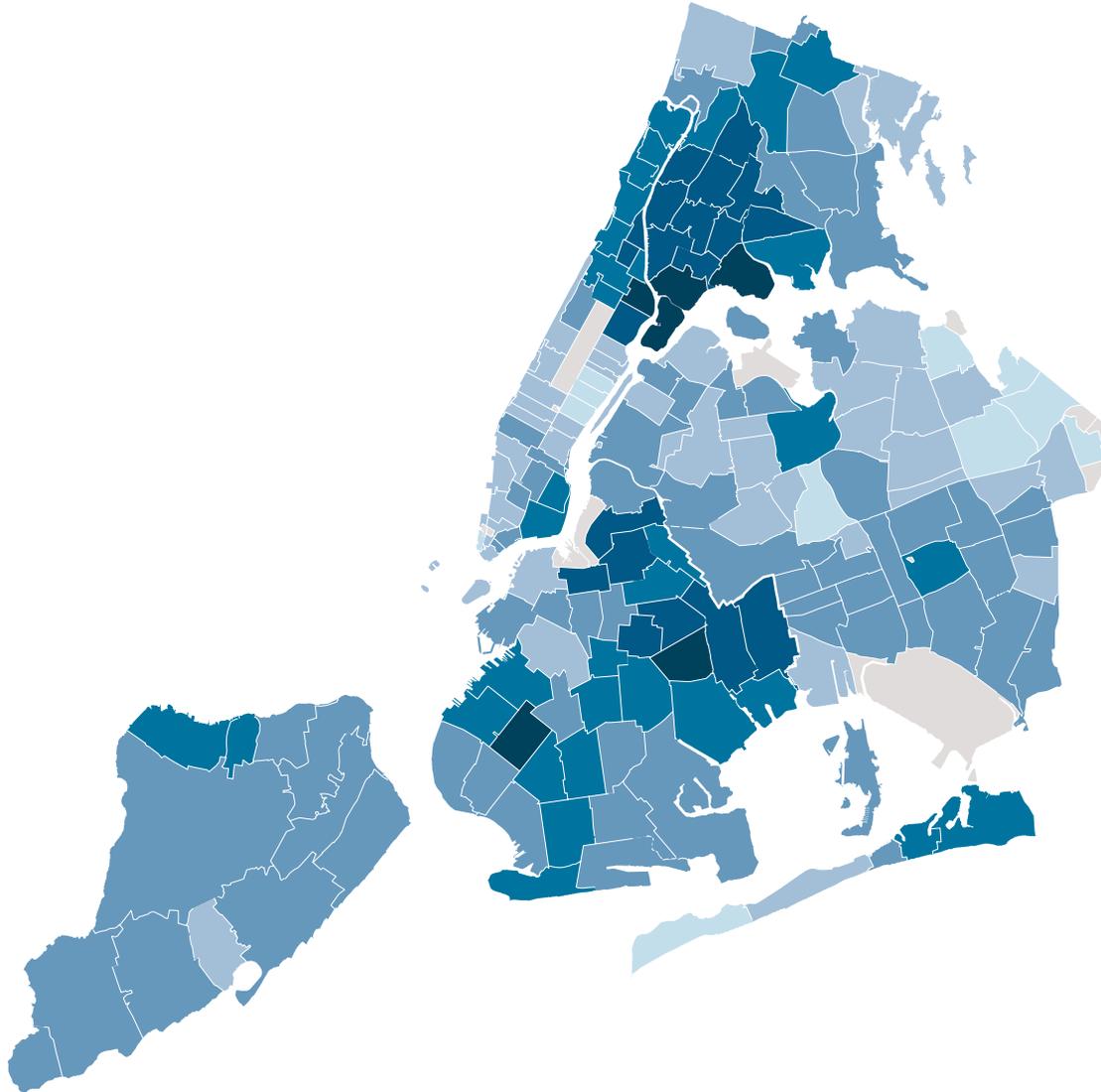
Source: U.S. Census Bureau (ACS 2017–2021 via PolicyMap); Brennan Center analysis.

FIGURE 14

Population Reporting Mental Health Issues by Zip Code

2021

● ≤ 12% ● 12.1%–14% ● 14.1%–16% ● 16.1%–18% ● 18.1%–20% ● ≥ 20.1%



Note: Map details percentage of residents reporting that their mental health was not good in at least 14 of the past 30 days. Zip codes with fewer than 2,500 residents were excluded.

Source: Center for Disease Control and Prevention (Behavioral Risk Factor Surveillance System, 2021); Brennan Center analysis.

presence and surveillance of public spaces contributed to these disparities in some low-income communities:

The enforcement response creates these inequities, because if I live in the Bronx and I want to smoke weed, I live in a vertical building, and my mother don't want me in her house, and so I'm going to come outside. But if I live in the suburban area, I can go in my backyard, or maybe my mother doesn't care if I smoke in her basement. So . . . if all I have is public spaces to go out and get away from my family or whatever, then I'm probably even more likely going to be [there]. . . . It's going to be a disproportionate enforcement. Same thing with trespassing and all of those things, because [there] wasn't really a collective, cohesive response to the challenges. So, we basically criminalized populations, and generations of people, in the name of public safety.

A former public defender also pointed to how the minor offense system responds to community needs, as opposed to individual behaviors, in low-income Black and Latino communities, in line with recent research.⁸⁴ “Of course, there are lots and lots of mental health and trauma-related needs, concerns, issues that lead folks into the system. In many cases, though, it is simply living in a certain neighborhood and looking ‘a certain way’ that has nothing to do with the person’s intrinsic qualities at all. And of course, [it’s] overwhelmingly low-income communities.”

Limitations of the Criminal Justice System

All respondents drew particular attention to the limits of the criminal justice system in addressing the underlying social issues that lead most people into contact with the minor offense system. One former public defender deemed criminal justice “a system of surveillance” in which “low-level offenses and enforcement is really about police enforcement rather than people’s behavior.” A community member in Harlem called it a “tracking device” that is disproportionately applied to low-income Black and Latino communities. This concept aligns with research that has characterized misdemeanor enforcement as a means for law enforcement to monitor people’s system contacts and behavior via their criminal justice history (e.g., tickets or summonses, warrants,

arrests, open cases, or convictions), regardless of legal outcomes.⁸⁵

The defining aspect of New York City’s minor offense system is one of waste. Participants described it as a “waste of people’s time,” “a slap on the wrist,” “giving you the chance to go out and do it again without addressing the real problem,” and “not effective.” One Harlem youth expert observed, “You see a homeless person trying to steal food, and you as a police officer [have] no resources to help them or anything. And you are rather trying to arrest them knowing they’re probably not even all the way there, or they’re hungry.”

Interviewees noted that because the criminal justice system is not built to directly address identified social risk factors of criminalized behavior or behavioral or mental health issues, enforcement of low-level crimes leads to future interactions with the system — the revolving door. One respondent who had experience with the criminal justice system disclosed, “I’ve had numerous misdemeanors. And had I had someone to really talk to me back then, when I first started all of this, I think that my life would’ve been much different.” This person noted that while they were going through the cycle of criminalized behavior, authorities “knew that I was homeless. They did nothing to help me. They just let me go right back out there.” Another community expert in Brooklyn observed, “I think when you see that a person keep[s] on racking up misdemeanors in the neighborhood, displaying a certain type of behavior that needs to be addressed, instead of just criminalizing the person [and] pushing him through a system where you know [those] needs are not being addressed? I think the system needs to look at it from that end.” However, a local assistant district attorney pointed to the system’s limitations in addressing health, employment, education, and housing, saying that “a D.A.’s office is inherently not in the best position to do a holistic kind of approach to that because we have a limited role to play directly.”

Some interviewees acknowledged positive aspects in certain corners of the criminal justice system, specifically court- and community-based alternatives to enforcement. Several programs in New York City — some of which have been in operation for decades — channel people away from traditional criminal processing by adopting a nonpunitive approach aimed at addressing root causes of criminal behavior, such as by providing mental health treatment, job training, and housing resources.⁸⁶ One community leader, whose struggle with drug addiction brought him into the criminal justice system, relayed his 16-month experience with three programs: the Center for Alternative Sentencing and Employment Services, a court

The defining aspect of New York City’s petty offense system is one of waste.

alternative-to-incarceration program; the Behavioral Health Emergency Assistance Response Division, the city's non-enforcement crisis response team; and the East Harlem Support and Connection Center run by Project Renewal, a community resource with short-term housing and wrap-around services. He felt he had gotten the "care and concern that I needed, to energize me to doing the right thing. And that's what's giving me the strength. . . . I do everything I most possibly can to get better, because I want to be that productive member of society again." A Bronx respondent said that therapy and engagement at the Bronx's Save Our Streets (S.O.S.), a community violence prevention and intervention program, helped him see a different way of life, provided access to the resources he needed (e.g., mental health services, jobs, and GED assistance), and motivated him to help build up his community as a youth

Despite the proliferation of reforms in New York City and the downward trend in minor offense enforcement, current policies need to go further in addressing root causes of regulated behavior.

leader, conducting peer outreach and community events.

A judge at Manhattan's Midtown Community Justice Center (MCJC) observed that his court uses trauma-informed strategies to "give support and meet clients where they're at." Such strategies include motivational interviewing, explanations of the court process, and court graduation ceremonies when cases are completed, to promote a sense of belonging and achievement. A former police officer, frustrated by being deployed to handle social problems that police are not equipped to manage, expressed support for these approaches, having seen firsthand how resources and help at the MCJC and the Red Hook

Community Justice Center prevented future police contact.⁸⁷ "I spent a lot of time arresting people on the street [but] not solving any problems. So I became open to something that can solve the problem."

IV. Future Directions

The policing and processing of low-level offenses constitutes most of the criminal justice system in the United States. This broad and sometimes arbitrary arm of the law entangles enough people in the system each year that if the nationwide misdemeanor system became its own state, it would be one of the 10 most populous.⁸⁸ As this study reveals, these types of offenses comprise roughly three-quarters of all criminal cases filed, requiring substantial time and resources from a vast and sprawling network of lower criminal courts. And the likelihood of people encountering the system may be predicted as much by the social determinants of justice as by their actual behavior.⁸⁹ At the same time, as this analysis has uncovered, the absolute number of such cases has been declining since at least 2016.⁹⁰

These overall national patterns held true in New York City. In 2022, less than half as many minor criminal cases were processed through the courts as in 2016.⁹¹ Approximately two-thirds of overall cases were nonviolent in nature, not involving direct physical harm to a person. Nearly half of cases that did involve physical harm related to intimate partner violence.

While fewer cases filed has meant fewer people swept up in the minor enforcement process, disparate treatment across race and ethnicity remains a troubling and enduring feature of the system in New York City. Despite overall case reductions during the period studied, racial disparities in cases filed did not change. As this analysis highlights, enforcement was highly concentrated in precincts with elevated levels of social disadvantage that are home to predominantly Black and Latino populations — a finding that reinforces previous research.⁹² Minor offense enforcement patterns have been fairly consistent over time and concentrated in relatively few locations within the city — primarily upper Manhattan, the South Bronx, and a few neighborhoods in Queens and Brooklyn. Put together, this suggests that overlapping factors of disadvantage work together to make these places — and some of the people who live in them — more at risk of criminal justice system involvement.

Study participants pointed not only to the visible problems of housing instability and drug addiction, but also to high unemployment, the lack of community-based resources, and the absence of neighborhood investment as factors that heighten the probability of contact with the minor offense system. The pandemic exacerbated the influence of these drivers. The criminal

justice system is ill equipped to address these problems directly. As the qualitative and quantitative data suggests, the stock punitive tools in response to low-level offenses in New York City reinforce existing social inequalities.

When underlying issues aren't addressed, people cycle in and out of the system, deepening the existing law enforcement presence in their lives and communities. When finite crime-fighting dollars are allocated toward the punitive enforcement of low-level offenses, fewer resources are apportioned to tackle more serious crime or to scale up proven crime prevention strategies in precincts known to suffer high concentrations of gun violence and other serious offenses.⁹³ For reference, one can look at index crimes — crimes reported to the FBI, which include serious violent offenses such as homicide, aggravated assault, robbery, rape, and burglary, as well as arson and other serious property crimes. In 2022, the NYPD's average rate of making an arrest associated with a report of an index crime was just under 29 percent.⁹⁴

The qualitative findings of this report support existing research indicating that both crime and disorder stem from structural characteristics specific to certain neighborhoods, again most notably concentrated poverty and the associated absence of social resources.⁹⁵ If left unaddressed, the known economic and social buffers that can help protect against unwanted behaviors weaken.⁹⁶ As a matter of efficiency, governments should move from a punitive approach to minor offenses toward amelioration of these root causes. This may

also help reduce the persistent racial disparities in minor offense enforcement this analysis uncovered in New York City.

Research demonstrates that targeted community problem-solving approaches can successfully reduce social and physical disorder.

Examples of how to address these drivers already exist in New York City, from problem-solving courts to crisis and non-crisis response units to community-based risk prevention programs. Yet such an approach is not necessarily assured. As calls for stronger enforcement of lower-level offenses grow louder, New York City — and the nation — are at a crossroads. While stronger enforcement may provide neighborhoods with an immediate reprieve from disorderly behavior, no strong empirical evidence demonstrates its effectiveness in either changing disorderly behavior or reducing serious crime downstream. In particular, one 2019 meta-analysis refutes the assumed causal connection between disorder and crime.⁹⁷ Another meta-analysis found that aggressive order-maintenance enforcement that targets individual disorderly behaviors does not significantly reduce crime, whereas community and problem-solving approaches do.⁹⁸ Such approaches involve partnerships with community stakeholders to help identify problems and solutions and can include non-criminal justice responses, outreach and social service referrals, and strengthened relationships between residents and law enforcement.

Addressing minor offenses, disorder, and emergent quality-of-life issues requires long-term analysis and systemic solutions, not reactionary policies and practices — in response to high-profile media coverage of individual incidents of crime or short-term changes in crime trends — that do not take into account either historical trends or normal fluctuations. Locally tailored crime prevention and law enforcement strategies, as well as larger-scale investments in particular neighborhoods, can reduce both crime and enforcement disparities. Such efforts will likely require policymakers to invest in several tangible areas that are beyond the direct remit of criminal justice, including affordable housing and residential stability, employment and educational opportunities, health care, and early intervention strategies to reduce factors that may subject youth to criminal justice contact. They will also likely require policymakers and communities to contemplate ways to build and encourage social cohesion (e.g., block parties or community cleanup days) or support social organizations that exert informal social control, as well as improve local infrastructure, core community institutions, and amenities (e.g., libraries, senior centers, and community gardens), all of which can help reduce crime and improve communities.⁹⁹ While many of these changes will be costly, in the long term they may prove more effective and less wasteful than aggressive enforcement of low-level offenses. Policymakers and

communities will need to decide what to prioritize.

At the same time, because research demonstrates that targeted community problem-solving approaches can successfully reduce social and physical disorder, law enforcement responses should adopt a “community co-production” model.¹⁰⁰ Rather than a zero-tolerance policing model that targets only a subset of social incivilities, such as street vagrancy or open drug use, a successful law enforcement approach would consult and rely on community members, city agencies, and others to develop and implement tailored strategies for reducing disorder and building trust within the community.

Reversing reforms that have helped shrink the minor offense system would mean undoing the benefits of fewer people unnecessarily shackled with the negative consequences of criminal justice system involvement and fewer government resources devoted to this wasteful system. Simply arresting, booking, processing, and clogging courts with people charged with minor criminal offenses is at best a temporary fix, not a long-term solution to the social problems that drive offenses. At worst, it may intensify the social ills underlying criminalized behaviors. Likewise, overly punitive measures are likely to undermine police–community relationships in the very places where police need community cooperation to prevent and solve crimes.¹⁰¹ New York City and other jurisdictions can build on existing strategies that research has shown to reduce crime and disorder. They can begin by scaling up successful diversion programs and innovations in law enforcement approaches to behavioral health and crisis response. Further down the line, city governments should consider increasing investments in community problem-solving approaches in which police work in tandem or collaboration with the neighborhoods they aim to make safer.¹⁰²

Policymakers and communities will need to supplement this commitment with increased investments in historically underserved neighborhoods. This may include improvements to local infrastructure such as the creation and maintenance of urban gardens, the cleanup of vacant lots, and the repair of old or abandoned buildings — all of which have been shown to reduce crime, especially low-level offenses like drug use and possession.¹⁰³ It could also involve sustained investments in neighborhoods and in a variety of mediating institutions of society — including families, schools, churches, and nongovernmental organizations — that, when supported with social and financial resources, are correlated with reductions in crime.¹⁰⁴

Appendixes

APPENDIX 1, TABLE 1

National Criminal and Misdemeanor Cases

	2018	2019	2020	2021
Total criminal cases	15,979,770	16,176,780	13,580,029	14,305,764
Misdemeanor cases	11,501,732	12,321,175	10,025,126	10,649,742
Percent misdemeanors	72%	76%	74%	74%

Note: Data reflects sources available for 44 states and Washington, DC, in 2018 and 2021, and 45 states and DC in 2019 and 2020, and may be an undercount. In 2018, seven states were missing (Mississippi, Montana, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia). In 2019, six states were missing (Alabama, Mississippi, Montana, Tennessee, Virginia, and West Virginia). In 2020, six states were missing (Kansas, Mississippi, Montana, Oklahoma, Tennessee, and Virginia). In 2021, seven states were missing (Kansas, Mississippi, Montana, Oklahoma, South Dakota, Tennessee, and Virginia).

Source: National Center for State Courts (2018–2021); Georgia Administrative Office of the Courts (2018); Kansas Office of Judicial Administration (2020–2021); and Washington Administrative Office of the Courts (2020–2021); Brennan Center analysis.

APPENDIX 1, TABLE 2

Top 10 States by Misdemeanor Cases, 2021

STATE	2018	2019	2020	2021	2021 RESIDENT POPULATION	2021 MISDEMEANOR RATE PER 100,000 RESIDENTS
Texas	2,147,431	2,096,817	1,571,748	1,547,551	29,527,941	5,241
Georgia ^a	910,434	1,788,920	1,107,091	1,351,977	10,799,566	12,519
North Carolina	1,232,107	1,305,531	1,021,983	1,058,990	10,551,162	10,037
California	961,271	863,955	760,800	642,034	39,237,836	1,626
Michigan	693,207	663,538	489,183	541,568	10,050,811	5,388
Ohio	592,467	538,357	423,929	435,529	11,780,017	3,697
Florida	532,037	490,582	365,736	405,183	21,781,128	1,860
New Jersey	498,809	511,328	425,269	370,580	9,267,130	3,999
Arizona	419,028	387,013	334,549	293,253	7,276,316	4,030
New York	326,660	277,396	156,793	222,435	19,835,913	1,121

Note: States are ranked by 2021 totals, which were the most recent data available during the time of the study. Arkansas and South Carolina were excluded from this list due to data quality issues. NCSC data for South Carolina lacked reporting from general courts, which correspond to criminal courts that see misdemeanors and felonies. NCSC data was unavailable for Arkansas from 2018–2019.

^aGeorgia did not report to NCSC in 2018, and data reported to NCSC in 2019–2021 shows wide variability, so trends should be interpreted with caution.

Source: National Center for State Courts (2018–2021); Georgia Administrative Office of the Courts (2018); U.S. Census Bureau (2021); Brennan Center analysis.

New York City Criminal Cases at Arraignment

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Felonies	46,540	42,413	38,172	33,828	25,937	27,772	32,029	246,691
	18%	18%	19%	21%	30%	25%	24%	21%
Misdemeanors	203,894	187,374	156,565	125,568	59,063	82,534	98,389	913,387
	77%	79%	78%	76%	68%	74%	74%	76%
Violations/infractions	14,212	9,701	6,124	5,589	1,594	1,865	2,312	41,397
	5%	4%	3%	3%	2%	2%	2%	3%
Total criminal cases	264,646	239,488	200,861	164,985	86,594	112,171	132,730	1,201,475
Total minor offense cases	218,106	197,075	162,689	131,157	60,657	84,399	100,701	954,784

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

New York City Minor Offense Cases: No Physical Harm Charge Types

	2016	2017	2018	2019	2020	2021	2022	TOTAL
All charges not involving physical harm	151,467	133,877	101,439	75,689	24,466	38,616	48,855	574,409
	70%	68%	63%	58%	40%	46%	49%	60%
Shoplifting ^a	20,438	19,698	19,413	16,807	5,831	9,754	15,069	107,010
	9%	10%	12%	13%	10%	12%	15%	11%
Other property-related ^b	17,711	15,990	14,555	12,224	5,340	10,891	12,477	89,188
	8%	8%	9%	9%	9%	13%	12%	9%
Low-level drug possession ^c	39,737	36,672	24,255	13,667	4,488	5,744	5,742	130,305
	18%	19%	15%	10%	7%	7%	6%	14%
Traffic: driving without a license ^d	21,588	22,167	20,606	15,713	3,770	5,956	7,391	97,191
	10%	11%	13%	12%	6%	7%	7%	10%
Fare evasion ^e	26,673	19,863	7,091	2,966	452	688	1,576	59,309
	12%	10%	4%	2%	1%	1%	2%	6%
Other	25,320	19,487	15,519	14,312	4,585	5,583	6,600	91,406
	12%	10%	10%	11%	8%	7%	7%	10%
Total minor offense cases	216,536	195,820	161,961	130,557	60,473	84,122	100,352	949,821

Note: Charges that do not involve physical harm to a person include N.Y. Penal Law § 155.25 (petit larceny), N.Y. Penal Law § 220.03 (criminal possession of a controlled substance in the seventh degree), N.Y. Veh. & Tr. Law § 511 and subsections (unlicensed operation of a motor vehicle), N.Y. Penal Law § 165.15 (fare evasion), N.Y. Penal Law § 221.10 (criminal possession of marihuana, fifth degree; repealed in 2021 under the Marihuana Regulation and Taxation Act [MRTA]), N.Y. Penal Law § 145.00 (criminal mischief in the fourth degree), N.Y. Penal Law § 215.50 (criminal contempt in the second degree in cases not involving domestic violence), N.Y. Penal Law § 170.20 (criminal possession of a forged instrument in the third degree), N.Y. Penal Law § 140.10 (criminal trespass in the third degree), N.Y. Penal Law § 140.15 (criminal trespass in the second degree), N.Y. Penal Law § 221.40 (criminal sale of marihuana in the fourth degree), N.Y. Penal Law § 165.40 (criminal possession of stolen property in the fifth degree), N.Y. Penal Law § 205.30 (resisting arrest), N.Y.C. Admin. Code § 10-125 (open container violation), N.Y. Penal Law § 195.05 (obstruction of government administration), and all other charges that do not involve physical harm.

^aN.Y. Penal Law § 155.25 (petit larceny).

^bN.Y. Penal Law § 145.00 (criminal mischief in the fourth degree), N.Y. Penal Law § 170.20 (criminal possession of a forged instrument in the third degree), N.Y. Penal Law § 140.10 (criminal trespass in the third degree), N.Y. Penal Law § 140.15 (criminal trespass in the second degree), N.Y. Penal Law § 165.40 (criminal possession of stolen property in the fifth degree).

^cN.Y. Penal Law § 220.03 (criminal possession of a controlled substance in the seventh degree), N.Y. Penal Law § 221.10 (criminal possession of marihuana, fifth degree; repealed in 2021).

^dN.Y. Veh. & Tr. Law § 511 and subsections (unlicensed operation of a motor vehicle), N.Y. Penal Law § 165.05 (unauthorized use of a vehicle), N.Y. Veh. & Tr. Law § 512 (driving while license is suspended or revoked).

^eN.Y. Penal Law § 165.15 (theft of services), N.Y. Penal Law § 165.16 (unauthorized sale of transportation services).

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

New York City Minor Offense Cases: Physical Harm Charge Types

	2016	2017	2018	2019	2020	2021	2022	TOTAL
All physical harm charges	65,069	61,943	60,522	54,868	36,007	45,506	51,497	375,412
	30%	32%	37%	42%	60%	54%	51%	40%
Misdemeanor assault ^a	34,380	33,800	34,140	31,639	22,089	27,724	31,103	214,875
	16%	17%	21%	24%	37%	33%	31%	23%
Reckless driving ^b	6,839	6,376	5,763	4,753	2,322	2,501	2,671	31,225
	3%	3%	4%	4%	4%	3%	3%	3%
Other	23,850	21,767	20,619	18,476	11,596	15,281	17,723	129,312
	11%	11%	13%	14%	19%	18%	18%	14%
Total minor offense cases	216,536	195,820	161,961	130,557	60,473	84,122	100,352	949,821

Note: Charges that involve physical harm to a person include N.Y. Penal Law § 120.00 (assault in the third degree), N.Y. Penal Law § 215.50 (i.e., criminal contempt in the second degree in cases flagged for domestic violence; indicates a violation of an order of protection), N.Y. Penal Law § 120.14 (menacing in the second degree), N.Y. Penal Law § 240.30 (harassment in the second degree), N.Y. Penal Law § 265.01 (criminal possession of a weapon in the fourth degree), all other physical harm charges, and cases flagged for domestic violence.

^aN.Y. Penal Law § 120.00 (assault in the third degree).

^bN.Y. Veh. & Tr. Law § 1192 and subsections (e.g., driving under the influence), N.Y. Veh. & Tr. Law § 1212 and subsections (reckless driving).

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

New York City Minor Offense Cases: Domestic Violence (DV) Cases

	2016	2017	2018	2019	2020	2021	2022	TOTAL
All minor offense cases	216,536	195,820	161,961	130,557	60,473	84,122	100,352	949,821
DV flag	27,134	25,890	25,172	23,394	17,370	21,798	24,808	165,566
	13%	13%	16%	18%	29%	26%	25%	17%
Physical harm to person	65,069	61,943	60,522	54,868	36,007	45,506	51,497	375,412
DV flag	27,134	25,890	25,172	23,394	17,370	21,798	24,808	165,566
	42%	42%	42%	43%	48%	48%	48%	44%
Misdemeanor assault	34,380	33,800	34,140	31,639	22,089	27,724	31,103	214,875
DV flag	16,598	15,785	15,446	14,094	10,740	13,437	15,144	101,244
	48%	47%	45%	45%	49%	48%	49%	47%
Criminal contempt	4,539	4,480	4,461	4,483	3,149	3,375	4,173	28,660
DV flag	3,279	3,054	2,950	2,963	2,132	2,329	2,829	19,536
	72%	68%	66%	66%	68%	69%	68%	68%
Harassment	3,364	3,338	3,052	2,967	1,968	2,564	2,760	20,013
DV flag	2,139	2,020	1,873	1,785	1,219	1,701	1,817	12,554
	64%	61%	61%	60%	62%	66%	66%	63%
Menacing	3,322	3,138	3,145	3,070	2,482	3,328	4,136	22,621
DV flag	867	783	720	707	586	789	984	5,436
	26%	25%	23%	23%	24%	24%	24%	24%

Note: Court data do not indicate domestic violence–related cases, so Brennan Center researchers derived this information by flagging cases marked “domestic violence” as arraignment type or resolved in a DV court part devoted to dealing with such cases. These cases are also categorized as those involving harm. These estimates may be an undercount, as not all cases have been identified as DV-related at these stages. See charge types: N.Y. Penal Law § 120.00 (misdemeanor assault in the third degree), N.Y. Penal Law § 215.50 (criminal contempt; in DV flag cases, this charge indicates a violation of an order of protection), N.Y. Penal Law § 240.30 (aggravated harassment in the second degree), and N.Y. Penal Law § 120.14 (menacing in the second degree).

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

New York City Minor Offense Cases by Race or Ethnicity

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Black	101,881	91,255	74,868	59,751	28,329	39,725	48,300	444,109
	49%	49%	49%	49%	50%	50%	48%	49%
Latino	73,812	66,333	55,507	44,136	20,369	27,753	33,810	321,720
	36%	36%	36%	36%	36%	35%	34%	36%
White	28,390	25,615	20,502	16,776	7,209	10,382	11,573	120,447
	14%	14%	13%	14%	13%	13%	12%	13%
Additional	2,999	2,420	1,682	1,624	433	962	6,868	16,988
	1%	1%	1%	1%	1%	1%	7%	2%
Total	207,082	185,623	152,559	122,287	56,340	78,822	100,551	903,264

Note: Additional race or ethnicity includes people identified as non-Latino Asian, Native American, or Pacific Islander.

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

New York City Minor Offense Cases by Gender and Age Group

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Men by Age	175,852	159,134	130,079	105,142	49,431	68,328	81,431	769,397
	83%	83%	82%	81%	82%	81%	81%	82%
18–24	44,762	37,632	26,166	18,896	8,066	10,649	11,524	157,695
	21%	20%	16%	15%	13%	13%	11%	17%
25–44	91,347	85,761	72,358	59,851	29,589	40,946	49,425	429,277
	43%	45%	45%	46%	49%	49%	49%	46%
45–64	37,644	33,753	29,540	24,410	10,834	15,300	18,721	170,202
	18%	18%	19%	19%	18%	18%	19%	18%
65+	2,099	1,988	2,015	1,985	942	1,433	1,761	12,223
	1%	1%	1%	2%	2%	2%	2%	1%
Women by Age	36,040	33,256	29,526	25,258	11,210	16,040	19,242	170,572
	17%	17%	18%	19%	18%	19%	19%	18%
18–24	9,971	8,611	6,602	5,230	2,139	2,811	3,228	38,592
	5%	4%	4%	4%	4%	3%	3%	4%
25–44	18,855	17,814	16,594	14,604	6,940	9,863	11,995	96,665
	9%	9%	10%	11%	11%	12%	12%	10%
45–64	6,848	6,455	5,909	5,063	1,998	3,107	3,713	33,093
	3%	3%	4%	4%	3%	4%	4%	4%
65+	366	376	421	361	133	259	306	2,222
	0%	0%	0%	0%	0%	0%	0%	0%
Total	211,893	192,399	159,609	130,412	60,643	84,375	100,679	940,010

Note: Gender identities reported as "unknown" (less than 1 percent) were excluded.

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

New York City Minor Offense Cases by Borough

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Bronx	43,017	38,274	34,100	26,425	12,419	13,880	17,562	185,677
	20%	19%	21%	20%	20%	16%	17%	19%
Brooklyn	61,785	56,082	45,954	36,794	16,711	22,435	27,990	267,751
	28%	28%	28%	28%	28%	27%	28%	28%
Manhattan	62,458	54,912	40,997	31,821	13,004	22,649	25,833	251,674
	29%	28%	25%	24%	21%	27%	26%	26%
Queens	42,626	40,441	35,290	30,831	15,682	20,975	24,222	210,067
	20%	21%	22%	24%	26%	25%	24%	22%
Staten Island	8,220	7,366	6,348	5,286	2,841	4,460	5,094	39,615
	4%	4%	4%	4%	5%	5%	5%	4%
Total	218,106	197,075	162,689	131,157	60,657	84,399	100,701	954,784

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

Rates of Racial Disparities in Minor Offense Cases

	2016	2017	2018	2019	2020	2021	2022
Citywide							
Black versus white	5.2	5.2	5.4	5.3	5.9	5.8	6.2
Latino versus white	2.9	2.9	3.0	2.9	3.1	3.0	3.1
Bronx							
Black versus white	3.3	3.4	3.4	3.5	4.0	3.7	3.6
Latino versus white	1.9	1.9	2.0	2.0	2.1	1.8	1.9
Brooklyn							
Black versus white	5.0	4.8	5.0	5.0	5.1	5.2	6.1
Latino versus white	3.3	3.1	3.3	3.3	3.4	3.4	3.6
Manhattan							
Black versus white	11.6	11.8	11.4	11.1	15.0	14.6	14.6
Latino versus white	4.4	4.4	4.2	3.9	5.0	4.7	4.6
Queens							
Black versus white	4.1	4.1	4.3	4.3	4.6	4.7	4.6
Latino versus white	2.4	2.3	2.5	2.5	2.6	2.7	2.8
Staten Island							
Black versus white	4.1	4.7	5.2	4.7	5.3	6.9	7.6
Latino versus white	0.9	1.0	1.0	1.1	1.2	1.3	1.5

Note: Additional race/ethnicity (2 percent) was excluded. Racial disproportionality rates analyze whether a racial group's representation in minor offense cases is proportionate to their representation in the overall population. A value of 1 indicates equal representation in the courts, a value less than 1 indicates underrepresentation, and a value greater than 1 indicates overrepresentation. For example, a rate ratio of 14.6 in Manhattan means that Black people are more than 14 times more likely to have a minor offense compared with white people, when accounting for resident population.

Source: New York State Office of Court Administration non-public data (2016–2022) and U.S. Census Data (2016–2022); Brennan Center analysis.

Enforcement Metrics for Top 20 Zip Codes by Total Minor Offense Arrests

ZIP CODE	BOROUGH	NEIGHBORHOOD	MINOR ARRESTS (2016–2022)	MINOR ARRESTS PER 100,000 RESIDENTS (2022)	PERCENTAGE OF POPULATION, BLACK OR LATINO (2022)	PERCENTAGE OF ARRESTS, BLACK OR LATINO PEOPLE (2022)
10457	Bronx	East Tremont/Morrisania	19,071	3,080	96%	96%
10035	Manhattan	East Harlem	17,767	4,070	80%	90%
11434	Queens	Jamaica	16,795	2,069	90%	82%
10451	Bronx	Mott Haven/Concourse	16,712	3,223	92%	95%
10001	Manhattan	Chelsea/Midtown West	16,528	7,084	27%	73%
10452	Bronx	Concourse/Morrisania	15,861	2,185	94%	96%
10027	Manhattan	Morningside Heights/Harlem	14,985	2,334	59%	92%
10467	Bronx	Allerton/Wilmsbridge	14,893	1,483	82%	92%
10029	Manhattan	East Harlem	14,842	1,695	71%	92%
10036	Manhattan	Hell's Kitchen/Midtown	13,948	2,942	27%	78%
11201	Brooklyn	Downtown Brooklyn	13,465	2,047	22%	85%
11212	Brooklyn	Brownsville	13,442	1,708	90%	97%
10454	Bronx	Mott Haven	13,402	4,312	95%	96%
10455	Bronx	Mott Haven/Morrisania	13,041	3,517	95%	96%
10002	Manhattan	Lower East Side	12,967	1,916	34%	73%
11207	Brooklyn	Bushwick/East New York	11,949	1,200	89%	95%
10456	Bronx	Morrisania/Melrose	11,840	1,149	95%	98%
11233	Brooklyn	Bedford-Stuyvesant	11,557	1,363	82%	96%
10013	Manhattan	Tribeca/Chinatown	11,519	4,770	11%	67%
11226	Brooklyn	Flatbush	11,509	1,093	78%	94%

Note: Researchers defined top zip codes as those with the highest minor arrests over 2016–2022 to examine where minor offense enforcement occurred over the entire study period. Researchers also calculated minor arrest rates, the proportion of Latino and non-Latino Black residents, and those arrested, using the 2022 Census population data and 2022 NYPD arrest data.

Source: NYC Open Data (NYPD Arrests 2016–2022); U.S. Census Bureau (ACS 2018–2022); Brennan Center analysis.

Neighborhood Metrics for Top 20 Zip Codes by Total Minor Offense Arrests

ZIP CODE	BOROUGH	NEIGHBORHOOD	MINOR ARRESTS (2016–2022)	PERCENTAGE AT 200% OF FEDERAL POVERTY THRESHOLD (2021)	MEDIAN ANNUAL HOUSEHOLD INCOME (2021)	UNEMPLOYMENT RATE (2021)	PERCENTAGE REPORTING NEGATIVE MENTAL HEALTH (2021)
10457	Bronx	East Tremont/Morrisania	19,071	53%	\$38,066	13%	20%
10035	Manhattan	East Harlem	17,767	49%	\$32,555	10%	20%
11434	Queens	Jamaica	16,795	22%	\$66,546	9%	15%
10451	Bronx	Mott Haven/Concourse	16,712	53%	\$33,945	10%	18%
10001	Manhattan	Chelsea/Midtown West	16,528	18%	\$101,409	4%	14%
10452	Bronx	Concourse/Morrisania	15,861	58%	\$33,877	13%	19%
10027	Manhattan	Morningside Heights/Harlem	14,985	36%	\$58,435	9%	18%
10467	Bronx	Allerton/Williamsbridge	14,893	44%	\$42,639	12%	17%
10029	Manhattan	East Harlem	14,842	52%	\$33,901	9%	18%
10036	Manhattan	Hell's Kitchen/Midtown	13,948	20%	\$98,177	6%	14%
11201	Brooklyn	Downtown Brooklyn	13,465	13%	\$148,282	6%	13%
11212	Brooklyn	Brownsville	13,442	48%	\$30,733	17%	21%
10454	Bronx	Mott Haven	13,402	66%	\$21,846	11%	20%
10455	Bronx	Mott Haven/Morrisania	13,041	60%	\$30,741	13%	19%
10002	Manhattan	Lower East Side	12,967	51%	\$37,093	8%	16%
11207	Brooklyn	Bushwick/East New York	11,949	41%	\$45,616	12%	19%
10456	Bronx	Morrisania/Melrose	11,840	61%	\$31,166	15%	20%
11233	Brooklyn	Bedford-Stuyvesant	11,557	36%	\$52,380	6%	19%
10013	Manhattan	Tribeca/Chinatown	11,519	15%	\$137,572	3%	13%
11226	Brooklyn	Flatbush	11,509	28%	\$66,173	5%	17%

Source: NYC Open Data (NYPD Arrests 2016–2022); U.S. Census Bureau (ACS 2017–2021 via PolicyMap); Centers for Disease Control and Prevention (BRFSS 2021); Brennan Center analysis.

Release Status at Arraignment for New York City Minor Offense Cases

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Released	90,045	86,214	86,416	80,680	46,036	60,406	70,001	519,798
	82%	83%	87%	90%	94%	94%	94%	88%
Released on recognizance	89,115	84,362	84,418	78,088	42,183	52,754	58,371	489,291
	81%	81%	85%	87%	86%	82%	78%	83%
Released under conditions	930	1,852	1,998	2,592	3,853	7,652	11,630	30,507
	1%	2%	2%	3%	8%	12%	16%	5%
Bail	19,506	17,640	12,654	9,231	2,949	3,951	4,676	70,607
	18%	17%	13%	10%	6%	6%	6%	12%
Remanded to jail	280	265	204	192	77	92	42	1,152
	0%	0%	0%	0%	0%	0%	0%	0%
Total minor offense cases	109,831	104,119	99,274	90,103	49,062	64,449	74,719	591,557

Note: Cases disposed at arraignment are excluded, because closed cases do not report release status.

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

Disposition Outcomes for New York City Minor Offense Cases

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Conviction	112,964	100,144	80,480	64,707	15,094	14,049	25,824	413,262
	51%	50%	48%	46%	27%	23%	25%	44%
Misdemeanor conviction	34,581	30,242	22,265	17,164	2,733	2,314	6,248	115,547
	16%	15%	13%	12%	5%	4%	6%	12%
Guilty plea	34,402	30,049	22,114	17,061	2,720	2,310	6,212	114,868
	16%	15%	13%	12%	5%	4%	6%	12%
Conviction by trial	179	193	151	103	13	4	36	679
	0%	0%	0%	0%	0%	0%	0%	0%
Noncriminal conviction	78,383	69,902	58,215	47,543	12,361	11,735	19,576	297,715
	36%	35%	35%	34%	22%	19%	19%	31%
Guilty plea	78,301	69,800	58,122	47,480	12,357	11,735	19,562	297,357
	36%	35%	35%	34%	22%	19%	19%	31%
Conviction by trial	82	102	93	63	4	0	14	358
	0%	0%	0%	0%	0%	0%	0%	0%
No conviction	103,994	97,273	82,832	71,859	39,453	44,849	72,003	512,263
	47%	49%	50%	51%	70%	73%	70%	54%
ACD	64,529	57,418	40,567	29,149	12,475	14,886	20,432	239,456
	29%	29%	24%	21%	22%	24%	20%	25%
Dismissal	39,213	39,601	42,012	42,527	26,959	29,960	51,515	271,787
	18%	20%	25%	30%	48%	49%	50%	29%
Acquittal by trial	252	254	253	183	19	3	56	1,020
	0%	0%	0%	0%	0%	0%	0%	0%
Other	252	254	253	183	19	3	56	1,020
	1%	1%	2%	3%	3%	4%	5%	2%
Total	219,794	200,155	167,273	141,311	56,222	61,453	102,490	948,698

Note: Other dispositions include cases transferred to another jurisdiction (1 percent), consolidated with another case (1 percent), or covered on another case disposition (less than 1 percent).

Source: New York State Office of Court Administration (2016–2022); Brennan Center analysis.

Disposition Outcomes by Race or Ethnicity

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Black								
No conviction: ACD	28,128	25,076	18,088	12,682	5,343	6,432	9,100	104,849
	13%	13%	11%	10%	10%	11%	9%	12%
No conviction: dismissal	19,299	19,406	20,340	20,227	13,018	14,528	25,683	132,501
	9%	10%	13%	15%	25%	25%	25%	15%
Noncriminal conviction/guilty plea	34,484	30,562	25,142	20,221	5,313	5,661	9,069	130,452
	16%	16%	16%	15%	10%	10%	9%	15%
Misdemeanor conviction/guilty plea	18,243	15,560	10,972	8,290	1,237	1,077	2,930	58,309
	9%	8%	7%	6%	2%	2%	3%	6%
Latino								
No conviction: ACD	22,524	19,730	13,808	9,380	4,284	4,976	6,972	81,674
	11%	10%	9%	7%	8%	9%	7%	9%
No conviction: dismissal	12,849	13,119	14,060	14,114	9,004	9,813	16,675	89,634
	6%	7%	9%	11%	17%	17%	17%	10%
Noncriminal conviction/guilty plea	27,402	24,243	20,436	16,741	4,419	3,918	6,821	103,980
	13	13	13	13	8	7	7	12
Misdemeanor conviction/guilty plea	10,472	9,286	7,058	5,507	890	756	2,084	36,053
	5%	5%	4%	4%	2%	1%	2%	4%
White								
No conviction: ACD	8,480	7,349	4,972	3,883	1,609	2,094	2,598	30,985
	4%	4%	3%	3%	3%	4%	3%	3%
No conviction: dismissal	4,457	4,286	4,391	4,267	2,922	3,192	5,106	28,621
	2%	2%	3%	3%	6%	6%	5%	3%
Noncriminal conviction/guilty plea	10,740	9,706	7,968	6,419	1,656	1,484	2,529	40,502
	5%	5%	5%	5%	3%	3%	3%	5%
Misdemeanor conviction/guilty plea	4,796	4,362	3,306	2,668	464	375	95	16,066
	2%	2%	2%	2%	1%	1%	0%	2%
Total	209,453	189,626	157,920	131,945	52,289	57,274	101,014	899,521

Note: Additional race or ethnicity (2 percent of cases), other dispositions (1 percent of cases), and trial-related dispositions (less than 1 percent) were excluded.

Source: New York State Office of Court Administration (2016–2022); Brennan Center analysis.

Sentences for New York City Minor Offense Cases by Race or Ethnicity

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Conditional Discharge								
Black	20,487	17,886	14,865	12,197	2,895	3,943	5,180	77,453
	18%	18%	19%	20%	19%	22%	20%	19%
Latino	17,099	15,071	12,751	10,828	2,743	3,270	4,466	66,228
	15%	15%	16%	17%	18%	18%	17%	16%
White	7,031	6,419	5,385	4,581	1,168	1,470	1,811	27,865
	6%	6%	7%	7%	8%	8%	7%	7%
Fines								
Black	10,594	10,388	8,489	6,255	1,280	1,687	2,158	40,851
	9%	10%	11%	10%	9%	9%	8%	10%
Latino	9,696	9,738	8,590	6,647	1,374	1,429	2,117	39,591
	9%	10%	11%	11%	9%	8%	8%	10%
White	3,986	3,711	3,173	2,227	438	583	578	14,696
	4%	4%	4%	4%	3%	3%	2%	4%
Time Served								
Black	14,178	12,264	8,697	7,140	2,114	3,095	4,308	51,796
	13%	12%	11%	11%	14%	17%	17%	13%
Latino	7,608	6,366	4,777	4,481	1,459	1,866	2,485	29,042
	7%	6%	6%	7%	10%	10%	10%	7%
White	3,232	2,956	2,197	1,955	583	677	1,146	12,746
	3%	3%	3%	3%	4%	4%	4%	3%
Total	112,336	98,942	78,347	62,392	15,050	17,990	25,658	410,715

Note: Additional race or ethnicity (2 percent of cases) was excluded.

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

Time Served Sentences by Charge Type

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Physical harm*	3,154	2,882	2,719	2,835	1,073	1,155	1,476	15,294
	3%	3%	3%	4%	7%	6%	6%	4%
Misdemeanor assault ^b	1,292	1,258	1,201	1,381	587	571	761	7,051
	1%	1%	1%	2%	4%	3%	3%	2%
Petit larceny ^c	2,838	3,250	3,382	3,252	967	1,598	3,193	18,480
	2%	3%	4%	5%	6%	8%	12%	4%
Other property-related ^d	2,697	2,369	2,025	1,574	490	909	1,114	11,178
	2%	2%	2%	2%	3%	5%	4%	3%
Low-level drug possession ^e	6,840	6,742	4,698	3,470	857	854	1,039	24,500
	6%	6%	6%	5%	5%	5%	4%	6%
Total sentenced minor offense cases	117,827	104,431	83,229	66,741	16,111	19,003	26,151	433,493

^aPhysical harm to a person top charges include N.Y. Penal Law § 120.00 (misdemeanor assault in the third degree), N.Y. Penal Law § 215.50 (i.e., criminal contempt in the second degree; in cases flagged for domestic violence indicates a violation of an order of protection), N.Y. Penal Law § 120.14 (menacing in the second degree), N.Y. Penal Law § 240.30 (harassment in the second degree), N.Y. Penal Law § 265.01 (criminal possession of a weapon in the fourth degree), all other physical harm charges, and cases flagged for domestic violence.

^bN.Y. Penal Law § 120.00.

^cN.Y. Penal Law § 155.25.

^dOther property-related top charges include N.Y. Penal Law § 145.00 (criminal mischief in the fourth degree), N.Y. Penal Law § 170.20 (criminal possession of a forged instrument in the third degree), N.Y. Penal Law § 140.10 (criminal trespass in the third degree), N.Y. Penal Law § 140.15 (criminal trespass in the second degree), N.Y. Penal Law § 165.40 (criminal possession of stolen property in the fifth degree), N.Y. Penal Law § 140.35 (possession of burglar's tools), N.Y. Penal Law § 145.60 (making graffiti), N.Y. Penal Law § 140.05 (trespass), N.Y. Penal Law § 145.15 (criminal tampering in the second degree), N.Y. Penal Law § 225.30 (possession of a gambling device), and N.Y. Penal Law § 225.15 (possession of gambling records).

^eLow-level drug top charges include N.Y. Penal Law § 220.03 (criminal possession of a controlled substance in the seventh degree), N.Y. Penal Law § 221.10 (criminal possession of marihuana, fifth degree; repealed in 2021), N.Y. Penal Law § 221.40 (criminal sale of marihuana in the fourth degree), N.Y. Penal Law § 221.05 (criminal possession of marihuana in the second degree; repealed in 2021), N.Y. Penal Law § 221.15 (criminal possession of marihuana in the fourth degree; repealed in 2021 under MRTA), N.Y. Comp. Codes R. & Regs. tit. 10, § 9-2 (synthetic phenethylamines or cannabinoids prohibited), N.Y. Penal Law § 220.50 (criminal use of drug paraphernalia), and N.Y. Comp. Codes R. & Regs. tit. 10, § 9-1.2, N.Y.C. Admin. Code § 10-203 (unlawful manufacture, distribution, or sale of synthetic phenethylamines or cannabinoids).

Source: New York State Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

APPENDIX 9, TABLE 1

New York City Minor Offense Cases Disposed at Arraignment

	2016	2017	2018	2019	2020	2021	2022	TOTAL
Minor offense cases disposed at arraignment	106,226	93,662	63,450	40,643	11,924	20,127	25,950	361,982
	48%	46%	38%	29%	21%	33%	25%	38%
Misdemeanor conviction	18,362	15,786	10,239	7,053	1,072	1,082	2,816	56,410
	8%	8%	6%	5%	2%	2%	3%	6%
Noncriminal conviction	38,258	33,730	25,301	18,138	4,805	7,231	9,722	137,185
	17%	17%	15%	13%	9%	12%	9%	14%
No conviction	49,542	44,045	27,795	15,297	5,903	10,924	12,566	166,072
	23%	22%	17%	11%	10%	18%	12%	18%
Other	64	101	115	155	144	890	846	2,315
	0%	0%	0%	0%	0%	1%	1%	0%
Total minor cases disposed	219,794	200,155	167,273	141,311	56,222	61,453	102,490	948,698

Note: Other dispositions include cases transferred to another jurisdiction, consolidated with another case, or covered on another case disposition.

Source: Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

APPENDIX 9, TABLE 2

New York City Minor Offense Cases: Time to Disposition

	2016	2017	2018	2019	2020	2021	2022	TOTAL
All minor offense cases								
Mean days	135	131	125	119	149	96	117	126
Median days	95	96	96	95	111	95	96	96
Misdemeanor conviction								
Mean days	132	132	136	134	168	117	183	137
Median days	75	81	97	98	127	104	136	92
Noncriminal conviction								
Mean days	145	136	130	124	144	99	161	136
Median days	94	93	95	94	107	85	111	95
No conviction: misdemeanor								
Mean days	131	128	121	115	150	96	107	120
Median days	97	97	96	95	112	96	96	96
No conviction: violation/infracton								
Mean days	109	105	100	91	148	85	101	104
Median days	68	66	64	66	122	92	92	76

Note: Case length is calculated as the number of days between arraignment (approximate case start) and disposition (approximate case end). Cases exclude those disposed at arraignment (seen in table 1 above), other dispositions (e.g., transferred, consolidated with another case), and outlier cases exceeding 1,825 days (less than 1 percent).

Source: Office of Court Administration non-public data (2016–2022); Brennan Center analysis.

Glossary for New York City Cases

arraignment. An arraignment is the first step in a criminal proceeding, when an individual appears in court and is informed of the charges. In some jurisdictions, the individual is asked to enter a plea at that time (of either guilty or not guilty); in other jurisdictions (like New York City criminal courts), an individual is not asked to enter a plea.¹⁰⁵

arraignment charge versus disposition charge. Arraignment charges are detailed in the formal charging document that an individual receives at arraignment. Typically, arraignment charges will have a “top count,” or highest-degree charge, along with other, lesser charges. A disposition charge is the charge an individual pleads guilty to if a plea is entered or if convicted.¹⁰⁶

charge. A charge refers to the formal accusation made by a government authority asserting that someone has committed a crime. A charging document will typically detail one or more criminal charges (or counts). This document can take several forms.

desk appearance ticket. A desk appearance ticket (DAT) is often the start of the criminal process for individuals charged with some minor offenses in New York City. DATs are issued in lieu of putting someone through the formal custodial arrest process. A physical DAT is issued to an individual who has been arrested and will indicate the specific time and date that the individual should appear in court to be arraigned on the charges. If someone fails to appear at the criminal court designated on the DAT, a judge can issue a warrant for that person’s arrest.¹⁰⁷

infraction. In New York, *infraction* refers to a traffic infraction as defined in the vehicle and traffic law, but definitions can vary across jurisdictions.¹⁰⁸

misdemeanor. In most jurisdictions, *misdemeanor* refers to offenses that are less serious than felonies; generally, any crime with a maximum penalty of a year or less of incarceration is considered a misdemeanor.¹⁰⁹ In New York City, a misdemeanor is defined as any crime with a possible jail sentence of 364 days or less. New York City has two classes of misdemeanors, class A and B, and a category of unclassified misdemeanors.¹¹⁰

violation. This is defined differently across jurisdictions. In New York City, *violation* refers to a noncriminal offense, other than a traffic infraction, for which the maximum term of imprisonment cannot exceed 15 days.¹¹¹

sealing. When a criminal action or proceeding against a person is terminated, the record of the action or proceed-

ing is sealed, meaning all photographs, palm prints, fingerprints, official records, and papers related to the arrest or prosecution are sealed from the public and not made available to any person or any public or private agency.¹¹²

supervised release. The supervised release program is a nonmonetary release condition the court can order; it provides community-based supervision and support for those with pending cases in New York City Criminal or Supreme Court.¹¹³ The purpose of supervised release is to ensure that an individual returns to court on the scheduled court date and avoids new arrests, and to connect the individual with resources and support systems in the community.

Typical Minor Offenses

domestic violence charges (assault third degree, menacing, harassment, contempt, stalking). New York State does not have a specific charge for domestic violence, though cases may be flagged as related to domestic violence, as appropriate. The most common charges for a misdemeanor domestic violence case are assault in the third degree, menacing, harassment, criminal contempt in the second degree, and criminal obstruction of breathing or blood circulation.

low-level drug offenses (controlled substance seventh degree, marijuana fifth degree). Low-level drug offenses are misdemeanor charges related to possession of a small amount of a controlled substance, usually stemming from personal use. These charges are determined by the weight of the substance. If the possession does not weigh enough to charge the individual with a felony, then the charge is a misdemeanor.¹¹⁴ On March 31, 2021, New York State legalized the possession of up to 3 ounces of marijuana and up to 24 grams of marijuana concentrate for people who are at least 21 years old.¹¹⁵ This effectively ended the enforcement of misdemeanor marijuana possession in New York.

petit larceny. According to New York Penal Law, “a person is guilty of petit larceny when he steals property.” This theft does not require force, and no value amount is stipulated.¹¹⁶

unlicensed driving charges (aggravated unlicensed driving, facilitating aggravated unlicensed driving, operation of vehicle on a suspended/revoked license). A common misdemeanor charge in New York City, unlicensed driving includes various degrees.¹¹⁷ Offenders are

guilty of unlicensed operation of a motor vehicle when they operate a motor vehicle on a public roadway while they know (or should know) their license is suspended or revoked. This charge becomes more serious and can even rise to the level of a felony if the driver has previously been convicted of driving without a license, if the suspension is based on a prior refusal to submit to a chemical breath test, or if the driver has a substantial number of previous suspensions.

violent versus nonviolent. A case is deemed violent or nonviolent not by the facts of a particular case but by a statutory definition under the New York Penal Law. The law does not classify any misdemeanor as violent, even though some misdemeanor charges may involve harm to an individual, such as assault in the third degree.¹¹⁸ As a result, Brennan Center researchers categorized minor charges as involving either physical harm to persons or non-harm to persons (see appendix 3).

Common Outcomes for Minor Offense Cases

acquittal. Though rare for minor offense cases, if someone goes to trial and the judge or a jury finds that person not guilty, the person is acquitted.¹¹⁹

adjournment in contemplation of a dismissal (ACD). A common outcome for misdemeanor, violation, and infraction cases in New York City, an ACD is an adjournment of a case to a future date on which the case will be automatically dismissed and sealed if the person charged with the crime does not get arrested during the adjournment period, unless the prosecution moves to reopen the matter.¹²⁰ For an individual to receive an ACD, the prosecution and defense must both agree. In accepting an ACD, an individual do not admit any guilt. Once the case is dismissed, it is deemed a nullity and public records of charges and resolution are sealed. The individual is returned to their status prior to arrest and prosecution and can legally deny ever having been arrested.¹²¹ ACDs (and outright dismissals) are also known as “dispositions in favor of the accused.”

community service order. Community service may be authorized as a sanction for certain individuals as a part of a disposition as an alternative to incarceration. A sentence of community service is typically measured in days. The service is for a public or not-for-profit corporation, association, institution, or agency.¹²²

conditional discharge. This is a type of sentence imposed by a court that does not include incarceration or

any period of probation supervision. The court determines the conditions that an individual must follow as part of the sentence, which typically include having no new arrests, participating in a treatment program or community service, and abiding by the parameters of any order of protection that is issued as part of the sentence.¹²³

dismissal. When a criminal case is dismissed, the charges are dropped and sealed. In most circumstances, information regarding the arrest is no longer publicly available. Dismissal can occur for various reasons; a prosecutor may move to have a case dismissed if it has been determined that the case is no longer viable, there is insufficient evidence to proceed, or a dismissal would be in the interest of justice. A judge may dismiss a case upon a defense motion that the charges are legally insufficient, or when the prosecutor has gone beyond certain legal time constraints that mandate a dismissal.

fine. Fines are financial obligations imposed on an individual as a penalty.¹²⁴

misdemeanor conviction. A person who pleads guilty or, in rare cases, is found guilty by trial on a misdemeanor charge receives a criminal conviction. In New York State, the maximum sentence for a misdemeanor conviction is 364 days in jail. Additional sentencing options may include adjournment in contemplation of dismissal, conditional discharge, fines, community service, and/or suspension of a driver’s license.¹²⁵

noncriminal conviction. A noncriminal conviction occurs when a person pleads guilty, or in rare cases is found guilty by trial, on a violation or infraction charge. These are not considered criminal charges and do not result in a permanent record. The maximum sentence for a violation conviction is 15 days in jail. Common sentences may include adjournment in contemplation of dismissal, conditional discharge, fines, community service, and/or suspension of a driver’s license. A case that receives a conditional discharge, like a conviction for driving without a license infraction or a disorderly conduct violation, is sealed after one year with no new arrest.¹²⁶

order of protection. If a case involves a complaining witness, an order of protection is typically issued when an individual is arraigned.¹²⁷ The judge will inform the individual in court of the specifics of the order, which usually include refraining from contacting the complaining witness directly or through a third party.

probation. This refers to a period of supervision ordered by a court as part of an individual’s sentence, often in lieu of incarceration.¹²⁸ An individual sentenced to probation is ordered to follow certain conditions set forth by the

court, often under the supervision of a probation officer. During the term of probation, an individual faces the possibility of being incarcerated for the maximum duration allowed by law for the charge for which guilt has been established if the court-ordered conditions are not followed.

time served. *Time served* is used colloquially within the court system to represent a sentence that is deemed to be satisfied by an individual's time already spent in custody while awaiting case resolution. Often the time an individual will be credited for is the time spent in custody between arrest and arraignment.

Endnotes

- 1 Alexandra Natapoff, "Misdemeanors," *Annual Review of Law and Social Science* 11 (2015): 255–57, <https://www.annualreviews.org/doi/pdf/10.1146/annurev-lawsocsci-120814-121742>.
- 2 Jenny Roberts, "Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts," *University of California Davis Law Review* 45 (2006): 277–372, 280–82, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1292&context=facsch_lawrev. Also see Issa Kohler-Hausmann, *Misdemeanorland* (Princeton, NJ: Princeton University Press, 2018), 1.
- 3 See, e.g., Josh Bowers, "Punishing the Innocent," *University of Pennsylvania Law Review* 156, no. 5 (2008): 1117, 1144, 1132–34 (discussing process costs in low-stakes cases), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1233&context=penn_law_review. Also see Malcolm Feeley, *The Process Is Punishment* (New York, NY: Russell Sage Foundation, 1979), 31–33.
- 4 See, e.g., Eisha Jain, "Arrests as Regulation," *Stanford Law Review* 67, no. 4 (2015): 809, 826–44, <https://scholarship.law.georgetown.edu/facpub/1415/> (noting that low-level arrests and convictions can result in sex offender registration, license suspension, pension loss, loss of public housing, and deportation; and that even old or minor arrests and convictions can pose a barrier to accessing and retaining work). Also see Alexandra Natapoff, *Punishment Without Crime* (New York, NY: Basic Books, 2018), 3; Issa Kohler-Hausmann, "Managerial Justice and Mass Misdemeanors," *Stanford Law Review* 66, no. 3 (2014): 611, 691, https://www.stanfordlawreview.org/wp-content/uploads/sites/3/2014/03/66_Stan_L_Rev_611_Kohler-Hausmann.pdf; and Terry-Ann Craigie, Ames Grawert, and Cameron Kimble, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Brennan Center for Justice, September 15, 2020, 2, 6, 11–12, <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.
- 5 See Craigie, Grawert, and Kimble, *Conviction, Imprisonment, and Lost Earnings*, 2, 6–7, 11, 14–15.
- 6 See, e.g., Fred Butcher and Michael Rempel, *Racial Disparities in Misdemeanor Justice: Data for New York City, 2019–2020*, Center for Justice Innovation, January 2022, https://www.innovatingjustice.org/sites/default/files/media/document/2022/NYC_Misdemeanor_Justice_Data_Report_NYC.pdf; and Shamena Anwar et al., *Creating a Path Forward to Reduce Racial Disparities in the Criminal Justice System in Allegheny County*, RAND Corporation, RTI International, December 2023, https://iop.pitt.edu/sites/default/files/Documents/RAND_RTI_Final_Report.pdf
- 7 See, e.g., Alexi Jones and Wendy Sawyer, "Arrest, Release, Repeat: How Police and Jails Are Misused to Respond to Social Problems," Prison Policy Initiative, August 2019, <https://www.prisonpolicy.org/reports/repeatarrests.html>.
- 8 For example, limited jurisdiction courts deal with the lowest-level misdemeanors, violations, and infractions. They go by a variety of other names, including "municipal," "town," "summary," "justice," "mayor," and "police" courts. They collect and report very little data and are often not included in databases such as the National Center for State Courts' Court Statistics Project. See Alexandra Natapoff, "Criminal Municipal Courts," *Harvard Law Review* 134, no. 3 (2021): 966, 975–77, 981–82, <https://harvardlawreview.org/print/vol-134/criminal-municipal-courts>.
- 9 Megan Stevenson and Sandra Mayson, "Misdemeanors by the Numbers," *Boston College Law Review* 61 (2020): 971, 976–78, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3395&context=faculty_scholarship.
- 10 Megan Stevenson and Sandra Mayson, "The Scale of Misdemeanor Justice," *Boston University Law Review* 98 (2018): 731, 746, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3394&context=faculty_scholarship (estimating that in the years 2008–2016, misdemeanors represented 74 to 83 percent of total criminal caseloads for states reporting data).
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25 See “Estimated Population, Between 2017–2021” in PolicyMap, data from U.S. Census Bureau, American Community Survey, accessed November 21, 2023, <http://www.policymap.com>; “Estimated Number of Black or African American People Not Hispanic or Latino, Between 2017–2021” in PolicyMap, data from U.S. Census Bureau, American Community Survey, accessed November 21, 2023, <http://www.policymap.com>; and “Estimated Number of Hispanic or Latino People, Between 2017–2021” in PolicyMap, data from U.S. Census Bureau, American Community Survey, accessed November 21, 2023, <http://www.policymap.com>.

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28 For data limitations, see Stevenson and Mayson, “The Scale of Misdemeanor Justice,” 733–35; Alexandra Natapoff, “Misdemeanors,” *Southern California Law Review* 85 (2012): 108–109, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2010826; and Natapoff, “Criminal Municipal Courts,” 974–78.

29 For the three previous estimates, see Boruchowitz, Brink, and Dimino, *Minor Crimes, Massive Waste*, 11 (estimating that there were 10.5 million misdemeanor cases nationally, extrapolating 2006 data from 12 states); Natapoff, *Punishment Without Crime*, 41 (estimating that there were 13 million misdemeanor cases nationally, using National Center for State Courts (NCSC) data for 35 states, data

separately collected from 13 states and the District of Columbia, and extrapolated data for the remaining 3 states); and Stevenson and Mayson, "The Scale of Misdemeanor Justice" (estimating that there were 13.2 million misdemeanor cases nationally using data from 32 states and the District of Columbia).

30 See Sarah Gibson et al., eds., "CSP STAT Criminal," NCSC Court Statistics Project for Criminal Courts, last updated October 9, 2023, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-criminal>. Brennan Center researchers consulted with NCSC to discuss data standardization methods and definitions. NCSC standardizes state data and publishes verifiable data both in coordination with state courts and by the established definition of a *misdemeanor*, an offense for which the maximum sentence is one year or less of jail. However, states define the term differently and may assign punishment that is different from this definition. Further, due to voluntary reporting standards, some states fail to include caseloads for courts of limited jurisdiction that often adjudicate the bulk of misdemeanor cases each year. The missing data also varies year by year, which may affect comparisons over time. Little to no public data is available on violation and infraction cases, demographics, or top charges.

31 In 2018 seven states were missing (Mississippi, Montana, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia). In 2019 six states were missing (Alabama, Mississippi, Montana, Tennessee, Virginia, and West Virginia). In 2020 six states were missing (Kansas, Mississippi, Montana, Oklahoma, Tennessee, and Virginia). In 2021 seven states were missing (Kansas, Mississippi, Montana, Oklahoma, South Dakota, Tennessee, and Virginia). National court data reflects 44 states (2018 and 2021) and 45 states plus the District of Columbia (2019 and 2020), primarily from the NCSC. See Gibson et al., "CSP STAT Criminal." Researchers also obtained public data for Georgia (2018) and Kansas (2019) from publicly available sources. Georgia Administrative Office of the Courts, "Georgia Magistrate Court Caseload Calendar Year 2018," Judicial Council of Georgia, 2021, <https://research.georgiacourts.gov/wp-content/uploads/sites/3/2021/08/8.10.21-updated-2018-Magistrate-Caseload-Report.pdf>; and Kansas Judicial Branch, "Annual Report of the Courts of Kansas," fiscal year 2019, <https://www.kscourts.org/KSCourts/media/KsCourts/Case%20Statistics/Annual%20Reports/2019/19-T-OF-C-for-web.pdf>. The Washington Administrative Office of the Courts provided public data for Washington State (2018–2021).

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51 Charges and charge types reported in these analyses are from the original top charge case arraignment, which is the start of a court case. Violations and infractions comprised 2 to 5 percent of all criminal cases over the study period. In 2020, misdemeanors made up 68 percent of all criminal cases, reflecting decreased enforcement in New York City and nationwide. Brennan Center analysis of internal court data obtained from the New York State Office of Court Administration, 2016–2022.

52 See New York State Unified Court System, Office of Justice Initiatives, “Problem-Solving Courts”; Center of Justice Innovation, “Diversion”; and NYC Mayor’s Office for Criminal Justice, “Alternatives to Incarceration.” See also review of drug treatment courts — among the first diversions since the 1970s and 1980s — in Arthur Lurigio, “The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact,” *Federal Probation* 72, no. 1 (June 2008): 1–2, https://www.uscourts.gov/sites/default/files/72_1_2_0.pdf.

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