

## 5.2: PART I- HOW DOES THE PENAL LAW CLASSIFY CRIMES?

NYS classifies crimes first by category which is based on the amount of possible incarceration time. There are three categories; felonies, where possible incarceration is more than one year, misdemeanors, where possible incarceration is one year or less, and violations, which technically are not crimes. NYS then classifies these three categories first by class and then by degree.

### Felonies

These are the most serious of all crimes and are punishable by more than one year in prison. They are classified from Class A-1 felonies being the most serious to Class E. felonies being the least serious. Below are the general guidelines for the possible incarceration sentence for these felonies when there is no previous criminal history.

Offense	Sentence
'A-I & II' Violent Felony	Life, 20-25 years
'B' Violent Felony	5-25 years
'B' Non Violent Felony	1-3, Max 25 years
'C' Violent Felony	3 1/2 to 15 years
'C' Non Violent Felony	No Incarceration, Probation, 1-2 years to 15 years
'D' Violent Felony	2-7 years
'D' Non Violent Felony	No incarceration, Probation, 1-3 to 7 years
'E' Violent Felony	No incarceration, Probation, 1 1/2 to 4 years
'E' Non Violent Felony	No incarceration, Probation, 1 1/3 to 4 years

#### A-I

- Murder in the First Degree
- Murder in the Second Degree
- Criminal sale of a controlled substance in the first degree

#### A-II

- Predatory sexual assault
- Predatory sexual assault against a child
- Criminal possession of a controlled substance in the second degree

#### B (Violent)

- Assault in the first degree
- Aggravated assault upon a police officer or a peace officer
- Burglary in the first degree

#### B (Non-Violent)

- Grand larceny in the first degree
- Aggravated vehicular homicide
- Sex trafficking

#### C (Violent)

- Burglary in the second degree
- Strangulation in the first degree
- Assault on a peace officer, police officer, fireman or emergency medical services professional

### C (Non-Violent)

- Forgery in the first degree
- Criminal possession of a controlled substance in the fourth degree
- Criminal possession of marihuana in the first degree

### D (Violent)

- Rape in the second degree
- Criminal possession of a weapon in the third degree
- Assault in the second degree

### D (Non-Violent)

- Burglary in the third degree
- Perjury in the first degree
- Unlawful fleeing a police officer in a motor vehicle in the first degree

### E (Violent)

- Aggravated sexual abuse in the fourth degree
- Falsely reporting an incident in the second degree

### E (Non-Violent)

- Menacing in the first degree
- Rape in the third degree

## Misdemeanors

Misdemeanors are crimes punishable by 364 days or less in jail. Class A misdemeanors are punishable by up to 364 days in jail and fines up to \$1,000. Class B misdemeanors are punishable by up to 90 days in jail and fines up to \$500. There are also unclassified misdemeanors. The incarceration time and fines vary depending on the crime committed.

Examples of each class of misdemeanors:

### Class A

- Petit larceny
- Carrying a gun without a permit
- Second-degree criminal impersonation
- Third-degree identity theft

### Class B

- Issuing a bad check
- Fortune-telling
- Prostitution

### Unclassified

- Aggravated unlicensed driving
- Driving while intoxicated

## Violations

These are not “crimes” in New York. While they are part of the Penal Law along with felonies and misdemeanors, they do not rise to the level of crimes. If convicted of a violation, you would not under the law have been convicted of a crime. So, even with a violation conviction, if asked on an employment form if you have ever been convicted of a crime, you would be answering honestly with a response of no. However, a violation conviction can include up to fifteen days in jail, fines, and community service.

Examples of violations:

- Disorderly conduct
- Unlawful possession of marijuana
- Trespass

## WHAT DETERMINES THE DEGREE OF A CRIME?

Aggravating factors generally influence the “degree” of the crime. The most serious crimes are labeled first degree, and they become less serious as the degrees increase. So, for example, assault in the third degree is less serious than assault in the second degree, which is less serious than assault in the first degree.

Examples of aggravating factors:

### **Weapons:**

The use of guns or knives greatly increases the chances that somebody will get hurt. If a person employs a weapon, it usually raises the level of the crime and results in greater punishment.

**Degree of physical injury:** If a person is hurt badly, it becomes a more serious crime. Assault would be the most common example of a crime having the level of physical injury as an aggravating factor.

### **Amount of damage or money or drugs :**

The higher the amount of damage caused, or money stolen, or drugs illegally possessed, the higher degree of the crime. For example, if you shoplift an item worth \$999, it is a misdemeanor. However, if you steal an item worth \$1,001, it is a felony. Unlawful possession (less than one ounce) of marihuana (also spelled marijuana) in the second degree (PL 221.05) is a violation punishable only by a fine of not more than fifty dollars. Criminal possession of marihuana in the fourth degree (more than 2 ounces) (PL 221.15) is a class A misdemeanor. Possess more than 8 ounces and you will be charged with criminal possession of marijuana in the third degree (PL 221.20), which is a class E felony.

### **Culpable mental state:**

Did the defendant intend to commit the crime or was he just reckless? Intent matters. The law considers crimes that are intentionally committed as more serious. For example, if you intend to kill someone and, in fact, you kill that person, this is Murder in the Second Degree, punishable by life imprisonment. If you only intended to hurt him but, in fact, he dies, this is Manslaughter in the First Degree, punishable by twenty-five years in prison. If you were merely acting recklessly, but without the intent to kill or harm another even though the death of another resulted, that would be Manslaughter Second Degree, punishable by a maximum of fifteen years.

### **Type of building:**

The law considers illegally entering certain buildings and areas more serious than others. If you were to illegally enter a fenced-in area, this would constitute Criminal Trespass in the Third Degree, a class A misdemeanor. Unlawfully enter a detached garage with the intent to commit a crime therein, constitutes Burglary in the Third Degree, a class D felony, punishable by up to seven years in prison. Unlawfully enter a person’s home and this is Burglary in the Second Degree, a class B felony, punishable by up to twenty-five years in prison.

### **Number of times a defendant has been convicted of a crime:**

Commit certain crimes more than once and the same action becomes more serious. For example, the first time you are arrested and convicted of Driving While Intoxicated, it is a misdemeanor (unless you have a minor in your vehicle while driving intoxicated, which makes it a felony). If, after this conviction, you are arrested for Driving While Intoxicated within the next ten years, you will be charged with a felony.

New York law allows for increased sentences of persons convicted of two or more felonies in a ten-year period, excluding time of incarceration. New York has several sentencing categories for felony offenders. They include non-predicate felony offenders, predicate felony offenders, violent felony offenders, persistent felony offenders, and persistent violent felony offenders. There are also categories for the number of times a person is convicted of certain drug offenses.

### **Age of the victim and defendant :**

Crimes committed against children, and by children, are treated differently under the law. When children are victims, the crime is considered more serious. When a person over the age of twenty-one has consensual sexual intercourse with a person whom they are not married to, and who is under the age of seventeen, it is Rape in the Third Degree. It is a crime because the victim is child. This law says that a child under the age of seventeen is incapable of making the decision to consent to the sexual act.

The age of children committing a crime also matters. Children under the age of seven cannot commit a crime regardless of their actions. Crimes committed by juvenile offenders, which is dependent on the age of the defendant and the seriousness of the crime

committed, will be heard in family court rather than a criminal court.

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