

NEW YORK STATE SENATOR

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Perverted Justice:

*How Subway Grinders Continue
to Victimize New Yorkers*



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INTRODUCTION

As New Yorkers face increasing delays in their morning and evening subway commute, the last thing any person should need to worry about is the threat of a sexual predator. Yet over the past few years, thousands of women have been the victim of sexual abuse or sexual misconduct, causing emotional trauma long after the incident has occurred. Despite the diligent presence and increased patrol of the New York Police Department's Transit Bureau, these sex offenders continue to roam the city's subways. Senator Diane Savino has been promoting legislation to increase penalties against individuals that sexually abuse others on mass transit since 2014. This legislation has passed the New York State Senate multiple times, but has yet to be voted on by the Assembly. As this report shows, the number of incidents of sexual abuse and misconduct reported by mass transit users has been growing. It is imperative that Senator Savino's legislation, S.3861, be voted on and passed by both houses of the legislature so that law enforcement has the tools necessary to stop these menacing predators.

BACKGROUND

Over the past five years, more than 3,200 people in New York have been the victim of a sex crime in the city's transit system, with more than 600 women affected each year. More than 40% of reported sex crimes on the subway go unsolved. Further, based on the propensity of sex offenders to be repeat offenders, many of these perpetrators who are not arrested become repeat offenders. One such example is that of offender Darnell Hardware of The Bronx, who ejaculated on three victims in separate incidents on packed subway cars. The offender got probation in all three incidents. According to NYPD Transit Bureau Chief Joe Fox, 80% of public lewdness arrests are made when police officers witness the offense or are immediately notified of the offense by the victim of the crime or a witness to the crime.¹

Even more horrifying, on April 14, a young actress awaiting her Friday morning 1 train was groped by a sexual predator who then pushed her onto the subway tracks. The actress broke her wrist and suffered a torn ligament in her shoulder from the fall. Three brave bystanders were able to rescue her from the platform in time to avoid an oncoming train.

The need to strengthen the state's weak sex crime laws gained recognition with the 2012 New York Court of Appeals case of *People v. Mack*,² in which a 300-pound man pushed himself into a packed subway train and moved himself behind a teenage girl who was on her morning commute to school. She felt a touching sensation behind her but could not move due to the packed train. The offender left the subway car after one stop, but not before ejaculating on the girl's jeans and coat. Although the incident was reported to the police, the offender was not identified for another five years until the offender's DNA was added to the state's DNA database for an unrelated crime.

The offender was charged with sexual abuse in the first degree, a class D felony, punishable up to seven years imprisonment. A person is guilty of this crime when such offender subjects another

¹ Thomas Tracy & Dan Raivoli, *MTA Was Useless in Helping Woman Stalked By Masterbating Creep on Subway: Victim*, NY DAILY NEWS, Feb. 16, 2016.

² *People v. Mack* (NY 2012), <http://www.nycourts.gov/ctapps/Decisions/2012/Mar12/47mem12.pdf>

person to sexual contact by forcible compulsion. The offender was also charged in 2006 with sexual abuse in the third degree, a class B misdemeanor and punishable up to three months imprisonment, for sexual contact with another victim without the victim's consent. In the decision by the Court of Appeals, the Court held that the offender's conduct did not involve the use of physical force, only stealth to commit the crime, which does not constitute forcible touching under the statute, and therefore the defendant could not be convicted of sexual abuse in the first degree. Thus, the offender evaded the felony conviction, instead serving only a couple months of jail for the misdemeanor offense.

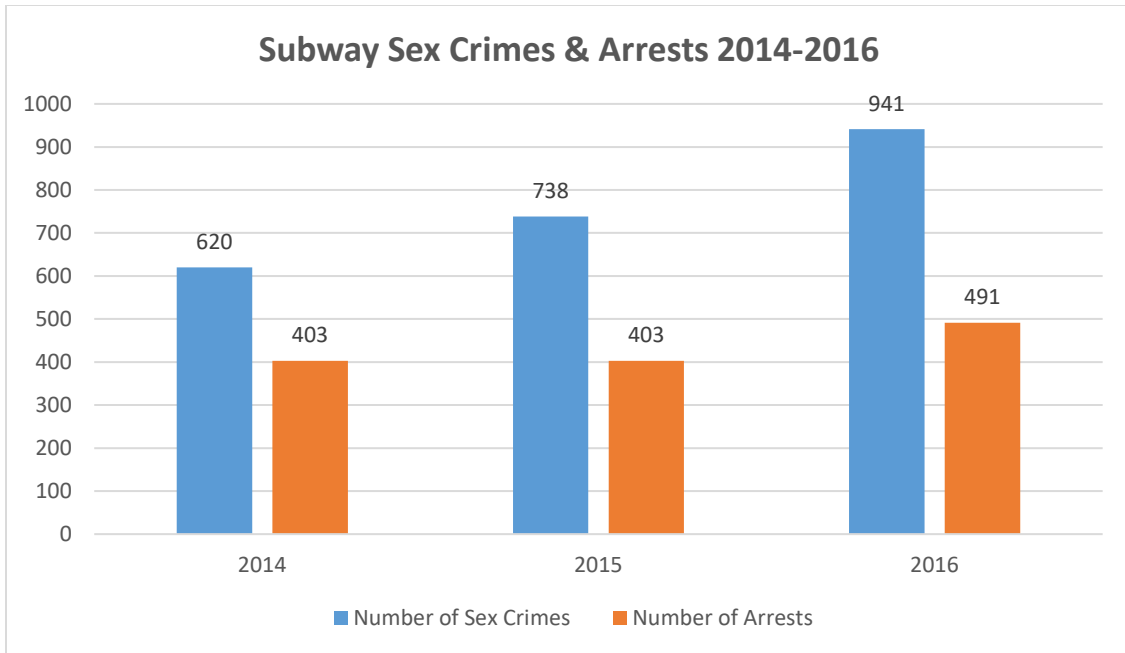
SEX CRIMES ON THE SUBWAY

Reporting of Sex Crimes

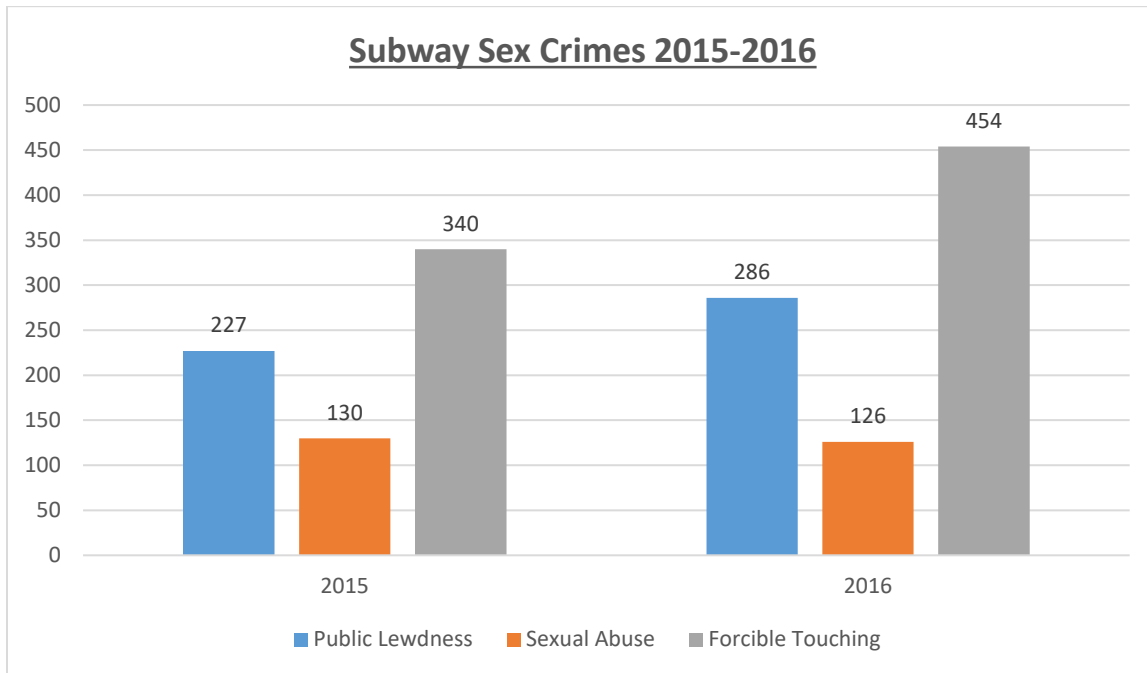
As the below chart demonstrates, there has been an annual increase over the past few years in the number of sex crimes reported in the city's subway system. There were 620 reported sex crimes in 2014, 738 reported incidents in 2015, and 941 reported incidents in 2016. This represents a 51.77% increase in reported sex crimes in the subway over a three-year period. There have also been 434 reported sex crimes this year from January 1, 2017 to May 28, 2017, representing a 9% increase in reported incidents from this point in time last year.

Over the past few years the MTA has made it easier to report alleged sex crimes. In 2014, the MTA established an online webpage³ to receive anonymous sex crime complaints, in which a photo or audio file of the perpetrator can be attached. Victims can also describe the incident or the perpetrator. Between 2014 and February 2016, the webpage received over 500 complaints of sex crimes, including 228 sex crime complaints in 2015. During this time, the NYPD's Transit Bureau also increased the number of plain-clothes police officers patrolling the subway cars to quickly locate victims who can report the crimes and identify perpetrators committing crimes. Arrests also ticked up from 403 arrests in 2015 to 491 arrests in 2016.

³ MTA, Report An Incident of Sexual Misconduct, http://mta-nyc.custhelp.com/app/ask_sh



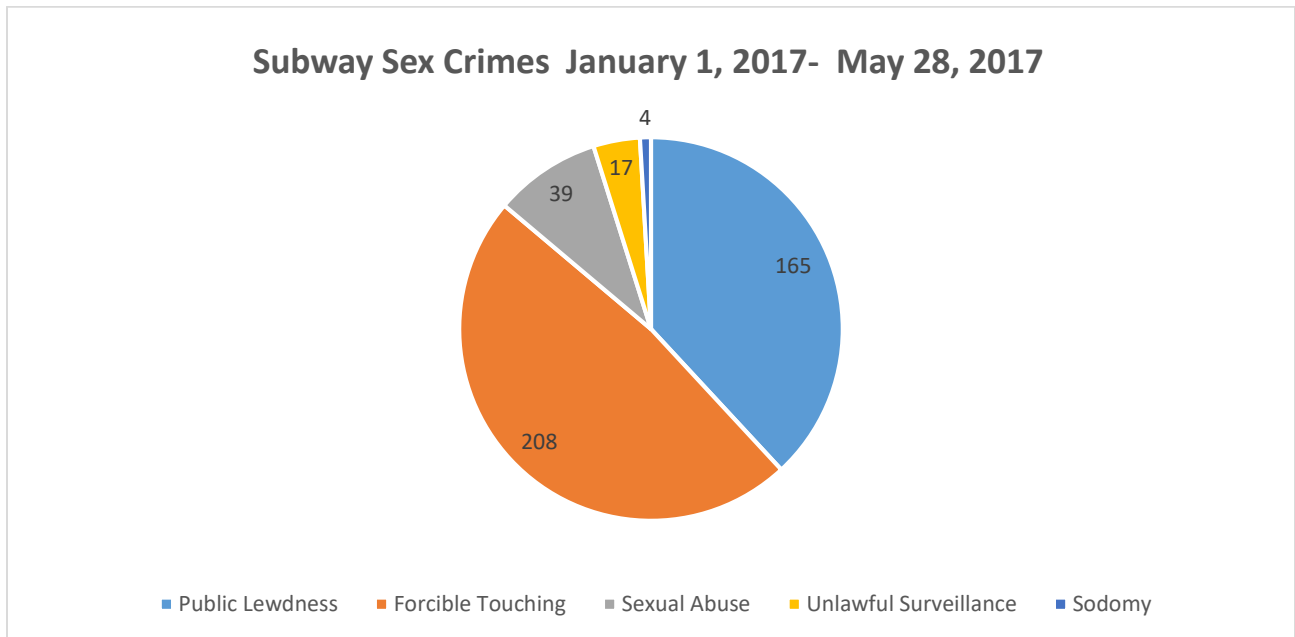
The overall increase in reported sex crimes is also demonstrated in most sex crime categories across the board from 2015 through 2016. Complaints of public lewdness rose from 227 in 2015 to 286 incidents in 2016, forcible touching reports increased from 340 in 2015 to 454 reports in 2016, although sexual abuse reports remained relatively stagnant with 130 reports in 2015 and 126 reports in 2016.



Data provided by the NYPD to Senator Savino’s office indicates that approximately one-third of arrested offenders have a prior sex crime arrest on their rap sheet. In 2016, 171 of the 491 offenders had a prior sex crime arrest (34.8%) and this year, through May 28, 2017, 67 of the 194 arrested offenders (34.5%) had a prior sex crime arrest. These repeat offenders have evaded criminal prosecution or served minimal incarceration, enabling them to victimize more unsuspecting women during their commute. Statistics this year also indicate that the NYPD has a 44.7% arrest ratio of sex crimes reported in the subway, meaning that more than half of cases will remain unsolved, and based on the one-third percentage of repeat offenders, many of these unsolved cases are likely caused by repeat offenders. This data demonstrates that elevated penalties are needed for first time arrested offenders.

Breakdown by Sex Crime Committed

As the below pie chart related to 2017 sex crimes shows, more than half of sex crimes that occur are attributable to forcible touching and public lewdness. Forcible touching accounted for 44.8% of all sex crimes reported to the NYPD’s transit bureau while public lewdness was 43% of all crimes. Sexual abuse was about 9% of crimes. Sexual abuse was about 9% of crimes.



In an effort to combat sexual predators on the subway, the NYPD has deployed both uniform and plain-clothes officers to certain subway stations where perpetrators are known to frequent. Victims are interviewed by a NYPD officer and detectives review video surveillance footage in subways to catch the perpetrators. Victims are also given a “statement of allegation” form to fill out to describe what occurred on the subway car by the offender. In addition, the MTA uses public service announcements over the train’s loudspeaker to encourage victims to come forward with reports of sexual misconduct.

LEGISLATIVE SOLUTION

In 2013, Senator Savino began working with the NYPD in reviewing sex crimes in the city’s transit system. Senator Savino introduced legislation that year to elevate penalties for subway perverts, which passed the Senate each year from 2014- 2016. Senator Savino has re-introduced this legislation for 2017, S.3861. First, the bill would expand section 130.65 of the penal law related to sexual abuse in the first degree. A person would be guilty of this offense if such offender intentionally subjects another person to sexual contact without the victim’s consent while being a passenger of public transportation, for the sole purpose of sexual gratification of the offender.

By amending the definition of sexual abuse in the first degree, this bill seeks to remedy the 2012 Court of Appeals case, which narrowly defines this first degree offense in relation to forcible compulsion. Under this legislation, an offender who makes sexual contact with a victim without the victim’s consent, such as ejaculating behind a person on a crowded subway car, would be punishable by a class D felony of up to seven years imprisonment and up to a \$5,000 civil penalty.

This same conduct is currently considered forcible touching, which is only a class A misdemeanor of up to one year imprisonment and up to a \$1,000 civil penalty. A person is guilty of forcible touching when such person intentionally subjects another person to sexual contact for the purpose of satisfying the offender’s sexual desire and with intent to degrade or abuse the victim of the offense, while such person is on a bus, train or subway car. A person is also guilty of forcible touching if such person touches the sexual or intimate parts of another person for the purpose of degrading or abusing the victim.

In addition, the bill amends section 245.03 of the penal law related to public lewdness in the first degree to include within the offense a person who commits public lewdness while being a passenger on public transportation. A person is currently guilty of public lewdness if such person intentionally exposes his or her intimate parts in a lewd manner or commits a lewd act in a public place or while trespassing, under circumstances in which the person would be readily observed. A person is also guilty under existing law of public lewdness if such person exposes his or her intimate part in a lewd manner or lewd act while in private premises under circumstances that the person would be readily observed from a public place or other private premises such that the person would be readily observed.

CONCLUSION

As New Yorkers travel to work each day on the subway, the last thing any woman should need to worry about is being groped or being ejaculated upon by a sexual predator. Sadly, that's been the experience of thousands of women over the past few years. Fortunately, an increased police presence in the subway system, greater awareness by the public and the courage of victims to come forward has led to more reporting of sexual misconduct to catch these perpetrators. The efforts of the NYPD and the victims are to be applauded for keeping our city safe and taking these sex offenders off our streets.

Senator Savino has led the fight in the Senate to combat these sexual predators with legislation to increase criminal penalties for public lewdness and sexual abuse in the first degree. Year after year, the Senate has passed this bill with bipartisan support. It's time for the Assembly to do its part and finally pass this important legislation into law.