

## SUMMARY

### ***Misdemeanor Prosecution***

Amanda Y. Agan, Jennifer L. Doleac, and Anna Harvey

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#### Findings of greatest relevance (Bullet Points)

- Prosecution of marginal, nonviolent misdemeanors harms individuals, making them more likely to have future involvement with the criminal justice system and thereby reduces public safety.
- The effects are worst for individuals without previous criminal justice system exposure (analogous to risk principle in probation, net widening, and exposure to incarceration).
- Reducing prosecution of nonviolent misdemeanors *could have enormous impacts on racial disproportionality* in the criminal justice system.
  - In Suffolk County, 24% of residents are Black. However, 46% of nonviolent misdemeanor defendants are Black.
- “We may in fact be undermining public safety by criminalizing relatively minor forms of misbehavior.”

**Introduction and Background:** Suffolk County, MA is an urban county comprised of the cities of Boston, Chelsea, Revere and Winthrop. *Misdemeanor Prosecution* takes advantage of natural variation to isolate a key decision point – *the decision to prosecute* – and recent policy changes within the Suffolk County District Attorney’s Office to probe the effects of nonprosecution on later criminal justice system involvement (as measured by criminal complaints, prosecutions, and criminal records).

In Massachusetts, a defendant is officially charged at arraignment; the assistant district attorneys (ADAs) are on rotating schedules to arraignment courts, creating an effectively random assignment. The ADA has discretion at arraignment, to either dispose of a criminal complaint (“nonprosecution”) or to proceed with prosecution. Nonprosecution cases receive final disposition on that day – the vast majority (81%) are dismissed immediately and 2% receive pretrial probation (charge is dismissed after successful completion of pretrial probation). The study uses an “as-if random assignment,” taking advantage of natural variation within ADA decision making. The ADAs range from lenient to harsh (as measured by likelihood of nonprosecution) in their arraignment decisions, despite handling similar nonviolent misdemeanor defendants. In the sample of 315 arraigning ADAs, there was a mean nonprosecution rate of 21%, but the range of nonprosecution rate across ADAs was 18 percentage points.

The study uses a Local Average Treatment Effect (LATE) framework. It considers defendants on the margin of not being prosecuted – those whose prosecution decision would be changed by switching from a less to a more lenient ADA. The marginal individuals are charged with “nonviolent misdemeanors” (includes motor vehicle, drug, disorder/theft, and other).

The authors claim that this is the first estimate of causal effects of misdemeanor prosecution on individuals’ subsequent criminal justice involvement.

**Research question:** What is the effect of nonviolent misdemeanor nonprosecution on post-arraignment outcomes?

**Basic experimental design:** The researchers have a sample size of 67,553 nonviolent misdemeanor cases over more than a decade; at arraignment, 21% were not prosecuted and 79% were prosecuted (74% of those that go to prosecution are eventually disposed of without a conviction). Criminal justice outcomes, including criminal complaints and prosecutions, are tracked two years post-arraignment for both the prosecution and nonprosecution groups. The researchers are exhaustive in considering and eliminating other causal or intervening variables.

A second part of the research design looked at the impacts of a recent policy change in the Suffolk County District Attorney’s Office, which imposed a presumption of nonprosecution for nonviolent misdemeanors.

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**Results:** Nonprosecution reduces subsequent criminal justice involvement substantially and significantly, in all outcomes measured two years post-arraignment. Conversely, prosecuted defendants experienced much worse criminal justice outcomes than individuals who were not prosecuted. Compared to prosecuted defendants, within 2 years post arraignment, nonprosecuted nonviolent misdemeanor defendants were

- 58% less likely to receive a new criminal complaint
- 60% less likely to have a new misdemeanor complaint
- 47% less likely to receive a new felony complaint (although not statistically significant)
- 64% less likely to be charged with a violent offense
- 91% less likely to be charged with a disorder/property offense
- 63% less likely to be charged with a motor vehicle offense.

Nonprosecution reduces the number of subsequent criminal complaints by 2.1 (69%); misdemeanors by 1.2 (67%), and felonies by 0.7 (75%). Furthermore, nonprosecution decreases the probability of future prosecution by 66% and a criminal record by 69%.

The findings are similar when the authors assessed the impacts of the DA's new policy on nonviolent misdemeanors. As nonprosecution rates increased, there were decreases in new criminal complaints for nonviolent misdemeanors, and citizen reports of these offenses.

**Explanation:** The authors consider three possible mechanisms that are consistent with hypotheses from other studies demonstrating the harms of criminal justice system exposure. In Suffolk County, prosecuted individuals spent on average 185 days with an open case; time spent in criminal justice proceedings and appointments can disrupt work/home life and drive reoffending. Nonprosecution also eliminates the possibility of conviction in a case and the probability of a criminal record of the arrest; a criminal record creates collateral consequences, like damaging labor market prospects and increasing the probability of future arrest if law enforcement or employers access the record.

In particular, misdemeanor prosecution may have such negative effects because it pulls some defendants into the criminal justice system who otherwise would remain outside of it. Accordingly, the researchers demonstrate that first time defendants show the largest effects of nonprosecution. Nonprosecuted defendants without previous complaints are *80% less likely* to receive a new criminal complaint within 2 years, while the risk of criminal complaints for nonprosecuted repeat defendants is reduced by only 16%. Assuming that lack of criminal justice involvement is a proxy for risk here, these findings are consistent with other studies that show that individuals who are low risk experience the greatest harm when the criminal justice system overreaches (see, e.g., research on net widening, pretrial incarceration, and the risk principle in probation supervision).

**Caveat:** This is a working paper, provided for circulation and feedback. It has not been peer-reviewed. However, the statistical treatment and explanation of the data are exhaustive and rigorous.

**Context:** Fits in with emerging research about the harms of exposure to criminal justice system, deflection, racial justice, collateral consequences, and ultimately, public safety. It is also part of an increasing diversity of research exploiting variation in stakeholder decision making within systems, and exploring criminal justice impacts through traditional economic models.