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Null Effects of a Progressive Prosecution Policy on Marijuana Enforcement

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ABSTRACT AND ARTICLE INFORMATION

In the past decade, several U.S. prosecutors, elected on reform-oriented platforms, have implemented policies categorically declining to prosecute certain low-level offenses. These progressive prosecutors argue that their policies alleviate some of the disproportionate and racially biased consequences of broken windows policing. This article uses one case study to examine whether these policies affect the rate at which police make arrests for low-level crimes that prosecutors will decline to prosecute. With arrest and citation data from New York City, this article uses a differences-in-differences design to examine whether marijuana enforcement changed in Brooklyn as a result of District Attorney Ken Thompson's 2014 decision not to prosecute low-level marijuana possession. This analysis finds a null effect of that policy upon the rates of arrest and citation for low-level and more serious marijuana possession crimes. Arrests, even without prosecution, serve important functions for police and bring weighty consequences for arrestees; this null effect raises questions about how closely linked the purposes of arrests and prosecutions are in the view of patrol officers. Moreover, these findings might prompt questions about the ability of prosecutors to enact effective reforms on their own, given the highly siloed nature of discretion in the U.S. criminal legal system.

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In an address to federal prosecutors, then-Attorney General of the U.S. Robert Jackson summed up their role, saying, “The prosecutor has more control over life, liberty, and reputation than any other person in America” (Jackson, 1940, p. 2). Jackson highlighted the many powers prosecutors held — to launch investigations and bring criminal charges, to seek convictions, to influence sentences, and to shape parole decisions. Since his remarks, the power of prosecutors has grown, bolstered by mandatory minimum sentences, plea bargaining, and the expanding range of conduct that is criminalized. For much of this time, prosecutors have used that power to imprison more people for longer periods (Pfaff, 2017), causing the prison population of the U.S. to skyrocket; from 1977 to 2005, the U.S. prison population grew by over 400% (Pfaff, 2008).

Yet a recent trend has recognized that the near-unreviewable power of prosecutors can be used to reform an overbroad and inequitable criminal legal system. This phenomenon, progressive prosecution, hinges on the same prosecutorial discretion that was central to mass incarceration. Prosecutors can seek reduced sentences just as they could enhanced ones. They can revisit unjust convictions just as easily as they could influence parole boards. And just as they could seek the harshest charge possible, prosecutors can decline to prosecute entire classes of crimes.

This study focuses on that final facet of the new movement of progressive prosecutors in the United States — their stated commitment to not prosecute certain categories of offenses. These offenses tend to be low-level crimes, such as shoplifting, disorderly conduct, driving offenses, or drug possession, for which Black and Hispanic people are disproportionately arrested. While prosecutors have always declined to prosecute some crimes, what makes these prosecutors distinct is their categorical commitment. In declining to prosecute these crimes, many progressive prosecutors claim they are realigning their offices’ resources to focus on offenses that threaten public safety, rather than minor violations of biased laws (Rollins, 2019). Of course, people can still be arrested for committing these crimes, even if they are not prosecuted and convicted. Indeed, while prosecutors control the decision to prosecute, a different entity — the police — exercise discretion over whether to arrest someone. Police make those decisions on the street, often under pressure, and with little immediate oversight — what Goldstein (1960) terms “low visibility” work.

This project’s core research question is whether police alter the rate at which they make arrests for low-level crimes — particularly marijuana possession — based upon progressive prosecutors’ policies declining to prosecute those crimes. Do police

see these arrests as less useful when they are not prosecuted and make fewer of them? Or do they continue to make these arrests in similar numbers? Underlying this research question is a question about the functions of arrests. If arrests are primarily a step towards criminal prosecution, then one can expect arrests to decline with a progressive prosecution policy — arrests for offenses that police know will not be prosecuted would be purposeless. Police might make fewer arrests as a form of protest, or de-policing, against what they see as a misguided policy. Conversely, arrests serve many non-prosecutorial functions for police. Arrests allow police to monitor people of interest, give police leverage to interrogate arrestees, and might deter people from committing crimes even without prosecution. If the purposes of arrests are disconnected from prosecution, then one might expect minimal or no change in police arrest patterns, even with a progressive prosecutor who declines to prosecute many of those offenses.

To answer this research question, I examine evidence from an early progressive prosecution policy implemented by District Attorney Ken Thompson in Kings County (Brooklyn), New York. Thompson, who took office as district attorney in 2014, ran on a progressive, reform-oriented platform. One of his most publicized policies was to presumptively decline to prosecute low-level marijuana charges (Clifford, 2014; Feuer, 2016). This policy was formally rolled out in July 2014 (Clifford & Goldstein, 2014). Prosecution within New York City is handled by five separate district attorneys elected in each borough, which are their own counties, but the New York Police Department (NYPD) handles policing city-wide.¹ This set-up allows for a natural experiment to evaluate the effect of Thompson’s policy on arrests.

A growing body of evidence (Agan et al., 2021; Cho et al., 2021) shows that the marginal returns of increased policing and prosecution for low-level crimes are minimal. These arrests, though, have consequences for employment, health, and future criminal justice contact even without prosecution and conviction (Natapoff, 2018). Progressive prosecution, while minimizing the criminal justice involvement of those who commit low-level crimes, might not be as effective as its proponents claim if police enforcement of those crimes continues apace. The structure of the U.S. criminal legal system, where police and prosecutors possess great discretion but in separate silos, complicates a single actor’s ability to enact reform unilaterally.

Literature Review

Broken Windows and Order Maintenance Policing

Progressive prosecutors' declination policies respond to the low-level crime enforcement of *broken windows policing*. Coined by James Q. Wilson and George Kelling (1982), this type of policing rests on the assumption that if low-level disorder is permitted — the proverbial “broken window” — then more serious crime will flourish. In their theory, the presence of physical decay will lead to a breakdown in informal social control. Wilson and Kelling describe an unvirtuous cycle in which residents withdraw from their neighborhood due to fear of crime, and opportunities for crime therefore flourish. Historians of the theory argue that broken windows policing was ostensibly responsive to populist demands (Hopkins-Burke, 1998; Innes, 1999) and those from business and civic groups (Vitale, 2005). One of broken windows' chief acolytes, New York's police commissioner William Bratton, credits it with New York City's crime decline under his watch (Bratton & Knobler, 1998; Kelling & Bratton, 2015).

Broken windows policing, though, has encompassed several divergent approaches. Wilson and Kelling's focus on order maintenance raises two questions: to what extent is disorder linked to crime, and to what extent should crime be prevented by making arrests for disorder? As to the first question, the evidence is mixed. Sampson and Raudenbush (1999) found that for almost all types of crime, there is no significant association between minor disorder and crime rates, while Skogan (1990) did find a link between neighborhood disorder and crime in a study of several U.S. cities. Both analyses have faced methodological critique (Sousa & Kelling, 2019). New research posits that disorder might be linked to crime, but in a non-linear fashion — disorder begets crime once the former goes beyond a tipping point (De Biasi, 2021). Yet a focus on this first question perhaps misses the point (Thacher, 2004): Assessing aggressive broken windows policing depends on evaluating both whether it reduces crime and whether its moral and social costs are justified.

The most aggressive instantiation of broken windows policing involves frequent arrests for low-level crimes. Some evidence has shown that this style of policing reduces disorder (Katz et al., 2001) and deters those arrested from committing further low-level offenses (Golub et al., 2003). A Campbell systematic review, though, found this kind of policing does not reduce crime — though more collaborative, problem-solving approaches to order maintenance do (Braga et al., 2019). Critics have argued that broken

windows policing has no link to reducing major crime (O'Brien et al., 2019), brings minimal benefit to overall crime reduction (Cho et al., 2021; Eck & Maguire, 2000), and gives rise to excessive racial disparities (Manski & Nagin, 2017). The focus on minor crime incentivizes people to accept punishment for minor crimes they might not have committed (Natapoff, 2018) and criminalizes homelessness and mental illness without addressing their root causes (Foscarinis et al., 1999; Robinson, 2019).

Moreover, Hinkle and Weisburd (2008) argued that the harsh tactics of order maintenance policing discourage cooperation with police and can increase crime. Tyler and colleagues (2015) have similarly noted that broken windows policing decreases police legitimacy, making them less effective. This type of policing can encourage an “us versus them” mentality amongst police officers that discourages community cooperation and effective crime prevention (Herbert, 2001), and it ignores the need for police to depend on community cooperation to maintain order (Taylor, 2019). Broken windows policing has become “reassurance policing” (Crawford, 2007); it seeks to assure some of the public, who are often not those being arrested under the strategy, that the police are doing something. Indeed, public support for the police tracks most closely with the perception of crime risk, not actual crime rates (Jackson & Bradford, 2009).

Young Black and Hispanic men are disproportionately arrested under broken windows policing (Fagan & Davies, 2000; Golub et al., 2007), and this strategy particularly targets the urban poor (Wacquant, 2009). Arrests for minor disorder can exclude Black and Hispanic people from public and private housing, reifying residential segregation (Bell, 2020; Desmond & Valdez, 2012). Arrests have detrimental mental health consequences, particularly on the young minority men disproportionately subject to them (Geller et al., 2014; McLeod et al., 2020), and render some public spaces functionally off-limits to those who do not want to undergo police harassment (Haldipur, 2019).

A core feature of broken windows policing, particularly in New York City, is anti-drug enforcement. Broken windows' rise to prominence overlapped with the increasingly aggressive War on Drugs (Alexander, 2010). The NYPD and other police departments with a similar approach aggressively targeted drug possession and sale, even low-level marijuana use. Indeed, by 2000, 15% of all arrests in New York City were for minor marijuana use (Harcourt & Ludwig, 2007). These arrests had pronounced racial disparities, with Black and Hispanic New Yorkers being arrested much more frequently despite using marijuana at rates comparable to white

people (Golub et al., 2007). The consequences for such convictions could be steep, including loss of employment, housing, and immigration status (Howell, 2016). At the same time, popular support for marijuana enforcement had shrunk, as according to General Social Survey data, support for marijuana legalization grew steadily from 1990 onwards, reaching almost 50% support by 2010 (Stringer & Maggard, 2016). Indeed, Colorado had legalized recreational marijuana in 2012 via Amendment 64 to its state constitution.

Progressive Prosecution

Over the past decade, an increasing number of U.S. prosecutors have styled themselves progressive prosecutors, focused on criminal justice reform from within the system (Davis, 2019). This movement has tended to concentrate in major U.S. cities — notable examples include Rachael Rollins in Boston, Larry Krasner in Philadelphia, Kim Foxx in Chicago, George Gascón in Los Angeles, Aramis Ayala in Orlando, and Chesa Boudin in San Francisco. The term *progressive prosecutor* lacks formal definition (Levin, 2021) and includes a broad array of policy platforms and professional backgrounds. In general, though, the term encompasses prosecutors who use less punitive methods, such as diversion or declination, and not harsher, more traditional tools of their office such as high bail requests, the death penalty, and sentencing enhancements (Bazelon, 2019).

Progressive prosecution's reform potential relies upon the immense discretion of U.S. prosecutors. The legally defined powers and duties of district attorneys are usually broad and vague. In New York, for example, the law states that "it shall be the duty of every district attorney to conduct all prosecutions for crimes and offenses cognizable by the courts of the county for which he or she shall have been elected or appointed" (NY Consolidated Laws Art. 18 §700). Yet the scope of "all prosecutions" is unclear, and case law endorses a broad view of prosecutorial discretion in charging. In *Bordenkircher v. Hayes* (1978), the Supreme Court held that "so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." The Court reinforced this holding in *United States v. Goodwin* (1982), *Wayte v. United States* (1985), *Oyler v. Boles* (1962), *United States v. Armstrong* (1996), and *Linda R. S. v. Richard D.* (1973).

U.S. criminal statutes are broad and cover a wide array of conduct — the criminal law "covers everything and decides nothing" (Stuntz, 2001, p.

509). Prosecutors, therefore, gatekeep the system, determining which subset of the many people who violate some criminal law will be prosecuted (Roberts, 2013; Sklansky, 2016). Prosecutors are no longer devoted primarily to proving cases but to being "social engineers" (Levine, 2005) and administrators (Lynch, 1998), choosing whom to prosecute for what, knowing that nearly every case can end in conviction for something.

U.S. prosecutors are highly localized and elected. The nation has over 3,000 local prosecutors, the vast majority of whom are directly elected (Hessick & Morse, 2020). While this electoral system has often favored regressive, tough-on-crime policies (Simon, 2009) and has driven racial disparities, with Black and Hispanic defendants receiving harsher treatment (Davis, 2007; Howell, 2014; Radelet & Pierce, 1985; Rehavi & Starr, 2014), the logic of progressive prosecution is to reverse this trend — if prosecutors' unreviewable power got us into this mess, so the thinking goes, can that power also get us out of it? Could local elections, as they have several times in recent years, produce a new generation of progressive prosecutors?

There are critiques of centering the prosecutor as a means for criminal justice reform. Prosecutors have considerable discretion, but other criminal justice actors arguably have more power — prosecutors only appear the most powerful if one presumes everyone else is impotent (Bellin, 2019; Fryer, 2020). For example, while a prosecutor can decline to prosecute some crimes, the legislature can decriminalize them, a more powerful reform. A judge can reject unfair plea deals, rather than rubber-stamping those a prosecutor makes. The electoral strategy for progressive prosecutorial reform also has flaws. It tends to focus on big cities, whereas rural prosecutors — who currently drive much growth in incarceration — are often conservatives elected repeatedly without opposition (Hessick & Morse, 2020; Romero, 2020b). Indeed, prosecutorial elections often tend to focus on a few high-profile cases that occur near election years rather than on prosecutors' policy stances (Wright, 2009). While electing progressive prosecution has been a celebrated reform strategy, it has weaknesses.

The progressive prosecutorial reforms on which this study focuses are declination policies. Under these policies, progressive prosecutors identify charges, often misdemeanors, which their office will either always or presumptively decline to prosecute. These statements are not just vehicles for managing caseload but are an expressive act for prosecutors to make clear their priorities (Roth, 2020). They are part of a long tradition of populist criminal law localism in American history (Murray, 2021); while localities

cannot decriminalize most actions as states can (Fissell, 2022), declination policies allow progressive prosecutors to effectively decriminalize certain actions in response to local political demands (Wright, 2020).

While the recency of these policies means evaluations of them are scarce, some evidence points to their success. Agan and colleagues (2021) examined a cohort of defendants whom Rollins declined to prosecute under a new policy; they found that defendants who were not prosecuted were less likely to be re-arrested than ones who were. Another study in Texas found that diversion from prosecution reduced the likelihood of reoffending (Mueller-Smith & Schnepel, 2021). In both works, the authors theorized that prosecution itself can have criminogenic effects. Even low-level criminal records can hurt employment prospects (Uggen et al., 2014), which can in turn cause re-offending. Thus, initial evidence around declination and diversion does seem positive; it does not mean, though, that these policies have been warmly received by everyone in the criminal legal system.

The Reaction to Progressive Prosecution

Progressive prosecutors have faced opposition from police, line prosecutors, legislatures, judges, and the public. Police unions — which can vocally oppose police reform (Finnegan, 2020) — have often led this opposition. The Philadelphia Fraternal Order of Police chapter, for example, was one of Larry Krasner's most vocal opponents (Farr, 2017) and backed an unsuccessful primary challenger (Walsh et al., 2021). In Boston, a police organization filed a formal complaint against Rollins' license to practice law over her declination policy (Flanigan, 2018).

Progressive prosecutors have also faced opposition from within their own offices (Queally, 2021), lobbying from prosecutors' professional associations (Rice, 2018), and, in some cases, line prosecutors have even joined police unions (Romero, 2020a). Judges and state legislatures have resisted progressive prosecution. Some judges in Philadelphia have refused to allow Krasner's office to dismiss certain charges, and judges in Chicago have resisted Foxx's requests for lower bail (Barkow, 2021). Several state legislatures have tried to give the more conservative attorney general power to prosecute crimes that local progressive prosecutors will not (Caruso, 2019; Goldrosen, 2021). Fleming (2020) points to this resistance as a sign of a lack of legitimacy. Progressive prosecutors are perceived as outsiders without a stake in the community. As such, they face opposition from both below — police and line prosecutors — and above — legislatures and judges.

Police Reform and De-Policing

While police unions have publicly criticized these prosecutors, little research exists on how patrol officers respond to progressive prosecution policies in their daily work practices. Police officers have massive amounts of discretion; they are empowered to make choices about whether to stop, cite, or arrest those violating the law. Various ethnographic studies of the police have asserted that discretion is at the core of police work (Cohen, 1986; Manning & van Maanen, 1978; Muir, 1977). They must, as “street-level bureaucrats,” make choices that depart from a strict interpretation of the law or policy to effectively interact with the public and prevent crime (Lipsky, 2010). Rather than enforcing the law strictly, the police use the law as a tool. When they believe that someone should be arrested or cited, the law provides the means to do so — what Reiner (2010) terms “blue letter law” (p. 209). Indeed, Bowling and colleagues (2004) argue that the law is not really a meaningful constraint on the police at all — internal policies and norms dictate who gets arrested, and the law provides the reason. Police decision-making is “low visibility” compared to other criminal justice actors such as courts (Goldstein, 1960); this is doubly true when police decide not to arrest someone or otherwise take enforcement action, since their decision often produces neither a record nor the need for review by a superior. Even if progressive prosecutors move away from prosecuting low-level offenses, police still have great discretion over making arrests for those crimes.

Informal norms, especially amongst beat-level officers, govern how that discretion is used. As Manning (1977) observed, police are acculturated into a distinct set of workplace practices by their peers and mentors on the force. The low visibility (Goldstein, 1960) of police work aids in this acculturation — new officers make decisions removed from direct supervision, perhaps alongside a more experienced partner. Reuss-Ianni (1983) identifies two distinct police subcultures — one of street cops and another of supervisors, with sometimes conflicting attitudes about police work. These informal cultural practices can determine whether reform efforts, especially those imposed from above, are successful. Rubinstein (1973) identified a cycle of evasion wherein beat cops successively develop strategies to shirk off new policy decrees from superiors. Hausman and Kronick (2020) observed that police might informally switch tactics to evade reforms, such as changing to vehicle stops when they are barred from making as many pedestrian stops. The influence of street-level norms matters for this study — how beat cops react to progressive prosecution policies can have immense impacts in terms of arrests and enforcement.

In particular, recent U.S. police reform efforts have highlighted the supposed phenomenon of de-policing — when, in response to public criticism, police shy away from proactive policing and crime subsequently rises. Given the forceful reaction of police unions and leadership against progressive prosecutors, it is not infeasible to think they might view a declination policy as a critique of policing and therefore react in kind. This phenomenon has been discussed for some time. Sharp (1982) found that officers would back off from contentious encounters with the public when they knew it would attract scrutiny from supervisors. The perception of de-policing grew, though, after Officer Darren Wilson killed Michael Brown in Ferguson, Missouri, in 2014. Indeed, some commentators termed the alleged rise in crime afterwards the “Ferguson effect” (Mac Donald, 2015). Both command-level (Nix et al., 2018) and patrol officers (Phillips, 2020) claimed that this phenomenon existed. Some reduction in proactive policing occurs after public scrutiny; Shjarback and colleagues (2017) found this effect near Ferguson itself, and Capellan and colleagues (2020) observed a similar effect in New York.² Pyrooz and colleagues (2016), Rosenfeld (2016), and Rosenfeld and Wallman (2019), though, found no connection between U.S. homicide increases in 2015 and de-policing; instead, this rise was likely due to increased gun possession (Towers & White, 2016). Similarly, Agan and colleagues (2021) found no rise in reported crime after Rollins’ declination strategy was implemented.

All this is to say that, if police engage in de-policing as a result of progressive prosecution declination policies, it is unlikely that major crime would rise, and indeed this reaction might further the very goals of a declination policy — to reduce low-level contacts with the criminal legal system. Of course, if police react to these policies by continuing to aggressively make low-level arrests, that reaction has consequences too. If one goal of progressive prosecution is to reduce the impact of broken windows policing, how the police react to those policies will help determine how effectively that goal is met.

Method

In focusing on Thompson’s policy change in Brooklyn, I use a case study approach. The advantage of this method is that it offers greater depth of analysis and familiarity (Feagin et al., 1991), including attentiveness to the unique ways a city’s prosecutorial agencies and police departments are structured. Additionally, progressive prosecution is a new phenomenon and encompasses a range of practices; constructing a nationwide sampling frame would be

challenging. A focus on one high-profile jurisdiction, which implemented low-level declination policies fairly early on, improves the validity of the underlying construct of *progressive prosecution* being examined. While other offices might have informal policies, Thompson made an explicit, publicized choice. This precondition supports an assumption of police awareness — that is, for a progressive prosecution policy to affect police enforcement, one must assume the police know of the policy. The trade-off of the case study approach is representativeness (Geis, 1991). For example, New York has multiple elected prosecutors prosecuting cases but only one police department, which aids a quasi-experimental analysis but hinders generalizability. The case study approach is useful for this exploratory study of a new and loosely-defined phenomenon but might not be wholly generalizable.

This analysis relies upon two NYPD-produced datasets.³ The first dataset includes all arrests made by NYPD officers from 2006 through 2019, with the location, charge, precinct, date, and time for all arrests made. It also includes demographic information on the person arrested, including race, sex, and age group. The second dataset contains the same information for all criminal court summonses. Police officers may also issue civil summonses, but since those do not carry criminal penalties or common collateral consequences, they are excluded from this analysis. While there are reliability issues with using police data to measure crime rates (Skogan, 1999), the construct of interest here is police activity itself; using police-recorded data about their own arrests and citations is a valid measurement of this construct (Lösel, 2007) and the best-available data source.

The unit of analysis is the NYPD precinct, of which there are 76 — excluding the Central Park Precinct, which has no permanent population and therefore an artificially high rate of arrests and citations per capita. Other empirical literature on the NYPD also excludes this precinct, including Office of the Inspector General for the New York Police Department (2016). Arrests and citations from specialist units (e.g., transit districts) are recorded in the precinct of occurrence. Using precinct-level data is appropriate for theoretical and practical reasons. The precinct is the most granular division for arrest and citation data. Furthermore, the stability of precinct boundaries makes it possible to use panel data at multiple time steps — before and after Thompson’s policy shift. The precinct commander can implement policies, which drive aggressive or lax enforcement of marijuana laws, and the precinct constitutes a stable workgroup, whose informal norms might influence officer behavior. While the number of NYPD precincts might pose a challenge for statistical power, that unit of analysis is reliably used in difference-in-

differences studies of policing in New York (Capellan et al., 2020).

This study also uses a dataset of census-derived covariates, including the population and racial composition of each precinct.⁴ This pattern would be especially important given the racial disparities in marijuana enforcement (Golub et al., 2007). Some models also include the rate of reported index violent felonies (murder and non-negligent manslaughter, rape, felony assault, and robbery) per 100,000 people in the precinct as a covariate, derived from NYPD crime report data.⁵

To analyze the effect of Thompson's policy shift on marijuana enforcement, I use a difference-in-differences model (Lee, 2016). The quasi-experimental, difference-in-differences design measures the dependent variable both pre- and post-policy in Brooklyn as well as in a control group. This design offers advantages over designs that only measure the effect in the treated area, since those have no comparator (Shadish et al., 2002). These models were fit for three different types of police enforcement activity as dependent variables: low-level marijuana arrests, low-level marijuana citations, and felony marijuana arrests. Low-level marijuana charges are either violation-level or 5th degree misdemeanor infractions under New York Penal Law 221.05 or 221.10, which Thompson stated his office would either presumptively or categorically decline. Felony marijuana charges include all other marijuana arrests. Marijuana citations are any minor marijuana charge that ended in a summons, not an arrest. The "treatment" is whether a precinct was in Brooklyn and affected by Thompson's policy change. No NYPD precinct spans multiple boroughs, and prosecutors in every other borough continued to prosecute marijuana offenses as before, so each precinct was strictly either treated or untreated. This model observes the "treated" and "untreated" precincts before and after the 2014 policy change; July 2014 is the policy's implementation date. The equation for each model is

$$y_{pt} = \alpha + \lambda Post_t + \gamma Treat_p + \delta(Treat_p \times Post_t) + \theta C_{pt} + \varepsilon_{pt}$$

where y_{pt} is the number of enforcement actions (low-level arrests, felony arrests, or citation) taken in precinct p in time step t , $Post$ is a binary variable for time t being either before or after Thompson's July 2014 policy shift, $Treat$ is a binary variable for whether a precinct p is in the treatment group (Brooklyn) or not, C is a vector of covariates for precinct p at time t , and ε_{pt} is an idiosyncratic error term; δ is the difference-in-differences estimator, the interaction effect of $Treat_p$ and $Time_t$.

Precincts are assigned geographically — Thompson's treatment is thus not endogenous — and are contained within a single borough; precinct boundaries remained stable before and after the 2014 policy change. Furthermore, police officers generally patrol their assigned sector within one precinct. Hence, there is little reason to believe that the stable unit treatment value assumption is violated. The parallel trends assumption is validated qualitatively (see figures 2, 3, and 4), as well as with placebo models where each of the preceding 24 months is used as the simulated policy implementation date. None of these placebo models return a significant result for the difference-in-differences estimator.

Results

Thompson's progressive prosecution policy did not meaningfully alter the quantity of arrests or citations for marijuana possession. Arrests for low-level marijuana offenses as well as marijuana citations were unchanged by Thompson's policy. Arrests continued a steady decline that had begun well before his policy shift, while citations continued to rise slightly. Arrests for high level marijuana offenses, which Thompson continued to prosecute, did decline relative to other boroughs, though.

The mean numbers of enforcement actions taken per 100,000 people in precincts both inside and outside Brooklyn provide some insight into broader trends, as shown in tables 1 and 2. First, Brooklyn precincts issued citations for marijuana offenses at a lower rate than non-Brooklyn precincts. This difference was significant before and after Thompson's change (though at a borderline p -value, given a six-way Bonferroni correction for the multiple comparisons in tables 1 and 2). Additionally, Hedges' g for this difference was moderately large, at approximately 0.45. This difference, though, held both before and after Thompson's policy change. The numbers of low-level and felony arrests were not significantly different between precincts inside Brooklyn and those outside Brooklyn, both before and after July 2014. Finally, while low-level and felony arrests declined in all boroughs post- July 2014, citations rose both inside and outside of Brooklyn.

Also notable are the concentrations of per capita arrests and citations, as shown in the density plots in figure 1. Each enforcement measure, both before and after the 2014 policy shift, had a right skew. This skewness was most notable for citations, and perhaps least so for felony arrests pre-2014 in Brooklyn. Generally, a small number of precincts had a very high per-capita number of marijuana enforcement actions; most precincts had low rates of

Table 1: Comparison of average enforcement actions per 100,000 people, per NYPD precinct, July 2013 to July 2014

	<i>Brooklyn (SD)</i>	<i>Other Boroughs (SD)</i>	<i>t-statistic (p)</i>	<i>Hedges' g</i>
Citations	122.2 (93.8)	211.9 (231.0)	-2.404 (0.019)	0.447
Minor arrests	354.3 (276.1)	410.7 (374.6)	-0.729 (0.469)	0.162
Felony arrests	20.0 (16.1)	13.4 (9.9)	1.798 (0.082)	-0.538

Table 2: Comparison of average enforcement actions per 100,000 people, per NYPD precinct, July 2014 to July 2015

	<i>Brooklyn (SD)</i>	<i>Other Boroughs (SD)</i>	<i>t-statistic (p)</i>	<i>Hedges' g</i>
Citations	141.5 (91.3)	233.2 (231.5)	-2.474 (0.016)	0.458
Minor arrests	234.5 (188.1)	273.8 (255.4)	-0.746 (0.456)	0.165
Felony arrests	12.3 (12.0)	11.1 (10.5)	0.417 (0.679)	-0.110

Table 3: Minima and maxima of per-precinct enforcement actions per 100,000 people between Brooklyn and other boroughs

	<i>Year pre-policy</i>		<i>Year post-policy</i>	
	<i>Brooklyn</i>	<i>Other Boroughs</i>	<i>Brooklyn</i>	<i>Other Boroughs</i>
Citations	[28.5, 408.4]	[11.0, 1525.4]	[29.3, 354.6]	[10.1, 1414.0]
Minor arrests	[49.5, 1018.4]	[13.4, 1873.2]	[47.0, 763.3]	[10.6, 1272.0]
Felony arrests	[0.5, 49.7]	[0.0, 37.6]	[1.0, 48.6]	[0.0, 61.7]

Note: Each line is [minimum, maximum]. Policy implemented in July 2014; pre-policy year is July 2013 through July 2014, and post-policy year is July 2014 through July 2015.

low-level and felony arrests and citations for marijuana possession. The range of the number of enforcement actions taken per 100,000 people, per precinct was also considerable, as presented in table 3.

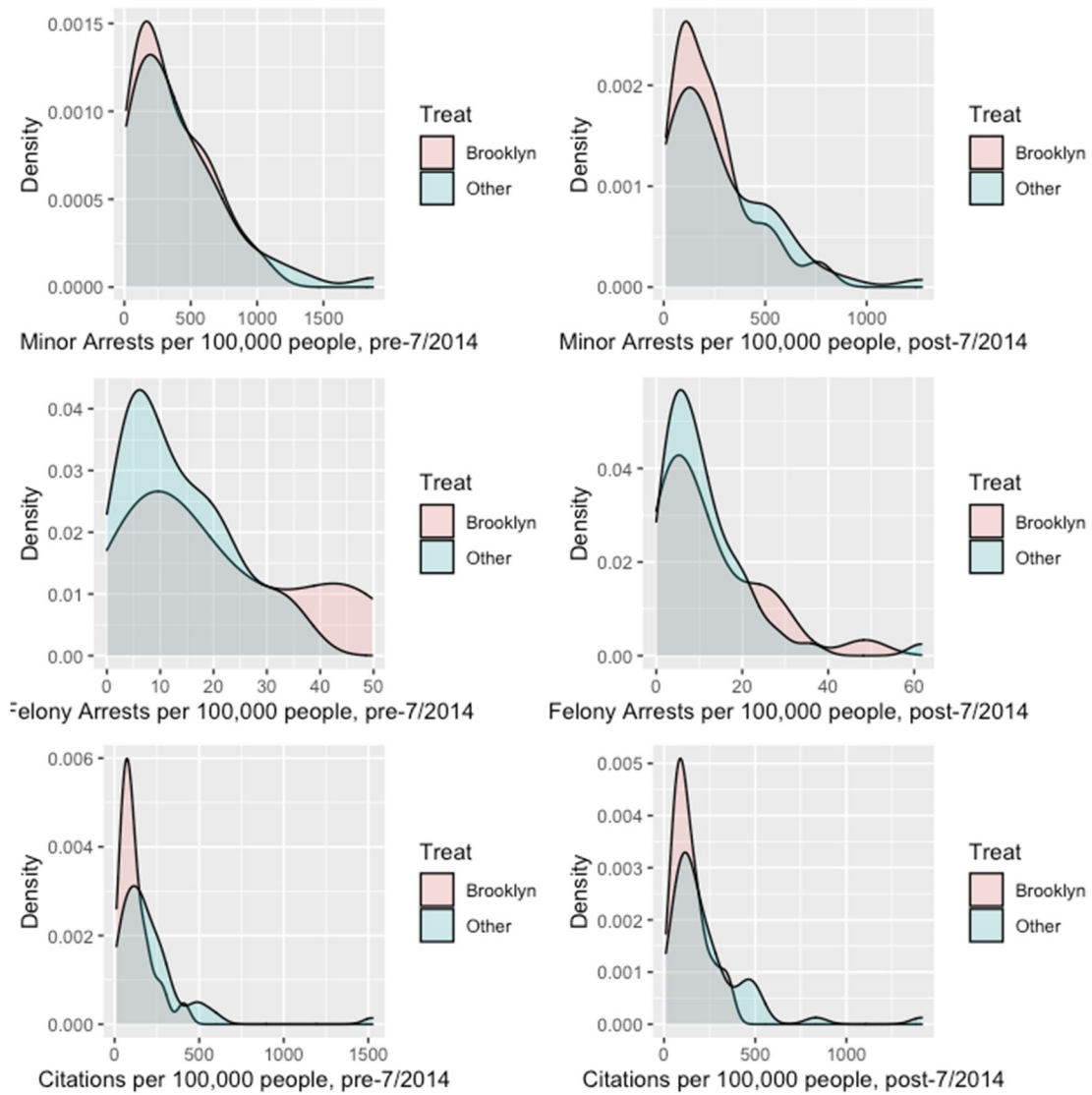
Figures 2, 3, and 4 depict the trends in each enforcement action, both in Brooklyn and elsewhere, before and after the 2014 policy change. Citations rose city-wide after the policy change, though at a lesser rate in Brooklyn. Low-level arrests were declining everywhere well before July 2014, and that decline continued afterwards before levelling off in 2015. Finally, felony arrests declined at a minimal slope before and after the change, before levelling off and perhaps even rising a bit. The overall trend was declining arrests and rising citations. There was a steep drop and then rise in enforcement activity at the end of 2014; this represents an intentional work slowdown by NYPD officers as a form of protest against criticism of the department, and the potential effects of this slowdown are considered in the discussion section.

Finally, the close parallel between Brooklyn and other boroughs for each enforcement action pre-July 2014 supports the parallel trends assumption for the difference-in-differences method.

Tables 4, 5, and 6 present the regression results for the difference-in-differences analysis of Thompson's policy change. These model the effect that the interaction of a precinct being in Brooklyn and the time being post-July 2014 — that is, a precinct being subject to Thompson's policy — has on the number of citations, low-level arrests, and felony arrests for marijuana possession. Model 1 is a simple difference-in-differences model predicting enforcement actions per 100,000 people based on the treatment group and time relative to the policy shift; model 2 incorporates measures of precinct racial composition, and model 3 incorporates the violent crime rate as well. Most crucially, in no model for any dependent variable was the difference-in-differences estimator significant. While the decline in low-level arrests outside of Brooklyn after 2014 was significant, as shown in table 5, the difference-in-differences estimator was not, showing that there is not enough evidence to assert any effect of Thompson's policy on these arrests. Therefore, one cannot conclude that Thompson's policy change affected the number of enforcement actions taken by NYPD officers for marijuana possession in Brooklyn.⁶

Furthermore, model 1 for each category of enforcement action explains a minimal proportion of the variance between precincts. Model 2, which incorporates racial composition of the precinct, explains a high degree of variance for arrests of both types, though not citations. Model 3 explains a greater degree of variance still. This degree of variance is not simply a statistical artifact from the addition of more predictors, as the adjusted R^2 value penalizes additional predictors unlike multiple R^2 . While the percent of Black and Hispanic residents either were insignificantly associated with citations or were associated with fewer citations, depending on the model, those percentages had strong, positive, and significant associations with both low-level and felony marijuana arrests, both with and without controlling for precinct rates of violent crime. This result indicates that marijuana enforcement actions might be harsher in precincts with greater Black and Hispanic populations.

I cannot conclude that Thompson's policy change had any effect on police behavior regarding marijuana enforcement — that is, the number of citations issued or arrests made for marijuana possession. Of course, this hypothesis testing format is also not sufficient to conclude that Thompson's policies had no effect.

Figure 1: Density plots of enforcement actions per 100,000 people per NYPD precinct, by borough and time**Table 4: Difference-in-differences regression predicting NYPD precinct marijuana citations per 100,000 people**

Predictor Variable	Model 1			Model 2			Model 3		
	β	SE	p	β	SE	p	β	SE	p
Treated (in Brooklyn)	-89.6	50.0	0.08	-95.2	51.9	0.07	-108.6	41.7	0.010
Post-7/2014	21.3	38.9	0.58	21.3	38.7	0.58	33.2	31.2	0.29
Bklyn. $\times$ Post 7/2014	-2.1	70.7	0.98	-2.1	70.4	0.98	10.9	56.7	0.85
Pct. Hispanic	--	--	--	0.7	0.8	0.43	-2.1	0.7	0.004
Pct. Black	--	--	--	1.0	0.7	0.13	-2.3	0.6	<0.001
Viol. Crime per 100k	--	--	--	--	--	--	0.44	0.05	<0.001
Adjusted R^2	0.03			0.03			0.38		

Table 5: Difference-in-differences regression predicting NYPD precinct low-level marijuana arrests per 100,000 people

Predictor Variable	Model 1			Model 2			Model 3		
	β	SE	p	β	SE	p	β	SE	p
Treated (in Brooklyn)	-56.3	74.4	0.45	-55.6	57.2	0.33	-69.2	47.9	0.15
Post-7/2014	-136.9	57.9	0.02	-136.9	42.7	0.002	-124.8	35.8	<0.001
Bklyn. $\times$ Post 7/2014	17.1	105.2	0.87	17.0	77.7	0.83	30.2	65.0	0.64
Pct. Hispanic	--	--	--	6.5	0.9	<0.001	3.6	0.9	<0.001
Pct. Black	--	--	--	5.9	0.7	<0.001	2.5	0.7	0.001
Viol. Crime per 100k	--	--	--	--	--	--	0.45	0.06	<0.001
Adjusted R^2			0.03			0.47			0.63

Table 6: Difference-in-differences regression predicting NYPD precinct felony marijuana arrests per 100,000 people

Predictor Variable	Model 1			Model 2			Model 3		
	β	SE	p	β	SE	p	β	SE	p
Treated (in Brooklyn)	6.5	2.9	0.03	4.1	2.2	0.07	3.9	2.2	0.08
Post-7/2014	-2.3	2.2	0.30	-2.3	1.7	0.17	-2.2	1.6	0.19
Bklyn. $\times$ Post 7/2014	-5.3	4.1	0.20	-5.3	3.0	0.08	-5.1	3.0	0.09
Pct. Hispanic	--	--	--	0.1	0.04	<0.001	0.1	0.04	0.03
Pct. Black	--	--	--	0.3	0.03	<0.001	0.2	0.03	<0.001
Viol. Crime per 100k	--	--	--	--	--	--	0.01	0.003	0.02
Adjusted R^2			0.04			0.47			0.48

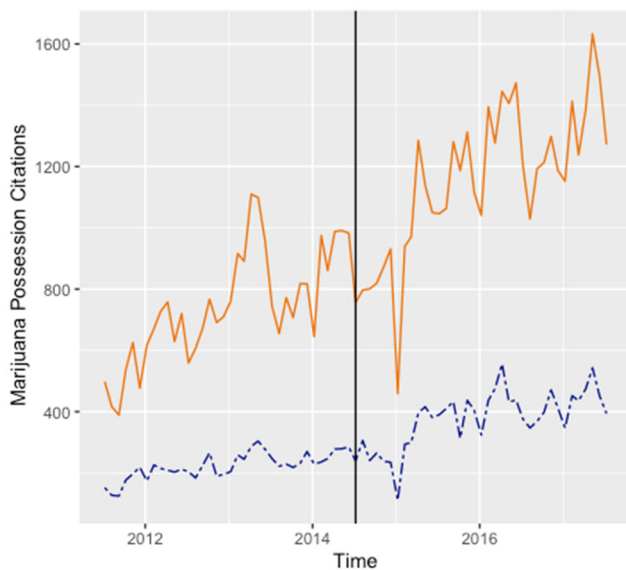
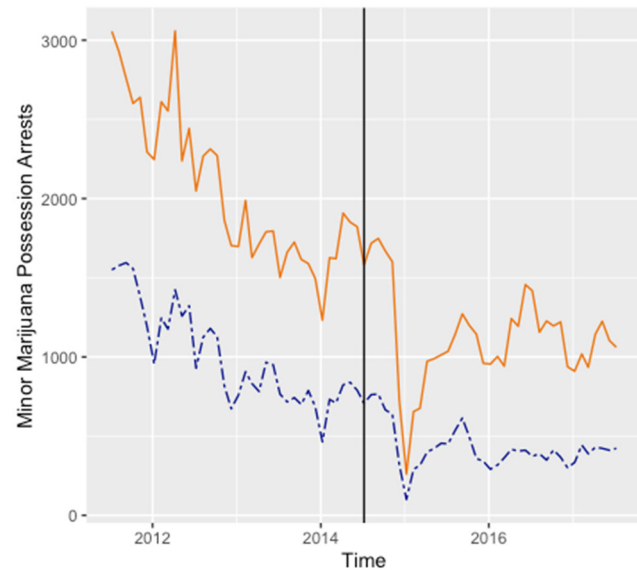
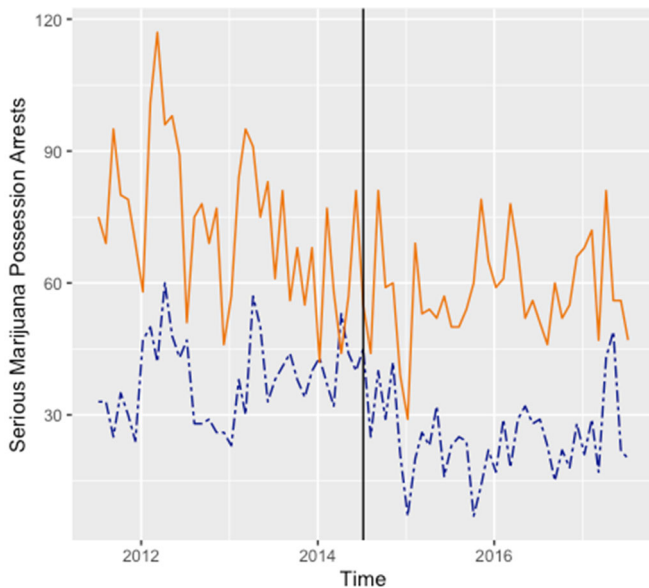
Figure 2: Total marijuana citations 2011-2017, Brooklyn (dashed blue) and citywide (solid orange)**Figure 3: Total marijuana misdemeanor arrests 2011-2017, Brooklyn (dashed blue) and citywide (solid orange)**

Figure 4: Total marijuana felony arrests 2011-2017, Brooklyn (dashed blue) and citywide (solid orange)



Discussion

The Prosecution-Arrest Disconnect

This case study fails to find evidence of an effect of progressive prosecution policies on police arrest rates for marijuana possession. In Brooklyn, arrests and citations for marijuana possession were comparable to the rates in other boroughs, even as Thompson's office did not pursue those charges while others did. Additionally, this policy shift explained very little of the variance in arrests. An absence of evidence is not evidence of absence, but null results are still important contributions to assessing the effectiveness of an intervention such as progressive prosecution (Mlinaric et al., 2017; *Nature* Editorial Board, 2020).

The distribution of arrests and citations did not change after Thompson's policy was implemented. A small number of precincts had an overwhelmingly large share of arrests and citations for marijuana possession, while many areas had no or few such arrests. This observation matches the well-replicated tendency of crime to be highly concentrated by place (Weisburd, 2015).⁷ Additionally, neighborhood type—the presence of residences, businesses, or other types of buildings—strongly influences the prevalence and type of disorder and crime (Wilcox et al., 2004). Moreover, the impact of broken windows policing is highly concentrated in areas with large Black and Hispanic populations (Fagan & Davies, 2000). This finding suggests that the policing of

marijuana heavily focuses on a few areas, and this feature remains steady even with a change in prosecution policy.

In Brooklyn, the effects of race were significant and large both before and after a progressive prosecutor implemented a declination policy. The proportion of Black and Hispanic residents in a precinct was significantly associated with fewer citations and more arrests for marijuana per 100,000 people, even though Golub and colleagues (2007) found marijuana usage rates to be similar amongst people of all races. These results indicate that the severity and prevalence of marijuana enforcement actions are inequitably distributed by race. Indeed, precinct racial composition significantly improved the R^2 value of the models in New York for arrest numbers; that variable had greater explanatory power than the change in prosecution policy alone. This finding raises a question of how progressive prosecution policies address the proportionality of sanctions as opposed the equitable distribution of sanctions. The Brooklyn declination policy addressed proportionality by reducing the sanctions for a minor offense, but did not address fairness, since even lower overall rates of marijuana enforcement could still be unequally racially distributed.

Police policies might have influenced these arrest rates; police could have continued to make arrests and issue citations, knowing these would not be prosecuted, because their bosses said to. For example, in reaction to Thompson's policy, then-NYPD commissioner Bratton said, "[O]ur police officers must enforce the laws of the State of New York uniformly throughout all five boroughs of the city" (as cited in Clifford & Goldstein, 2014, para. 8). He also stated, "[Thompson's policy] will not have any impact on our officers and the discretion they have as they go about their business" (as cited in Rose, 2014, para. 3). These departmental policies might have been more dispositive of police officers' actions than prosecutors' policies.

Statements by police leaders reacting to Thompson's policy suggest that broken windows-driven fear of a crime wave drove police reaction and continued arrests. For example, Bratton said, "Anytime someone is using drugs it has the potential to lead to other crimes. Marijuana is a drug" (as cited in Saul, 2014, para. 16). Bratton's logic is clear: Drugs beget serious crime. Marijuana is a drug. Ergo, marijuana causes serious crime. Even while progressive prosecution moved past this strategy, disavowing broken windows, police might not have. While the original intent of broken windows focused on disorder reduction (Wilson & Kelling, 1982), the idea became firmly enmeshed in policing as an arrest-centered strategy. This focus has sticking power,

though arrests nationwide declined during the pandemic and as the racial justice protests of 2020 brought new attention to over-policing. It remains to be seen, then, whether the declination of low-level arrests will continue to provoke police reactions as strong as those to the progressive prosecution policies studied here.

Interestingly, there is no evidence of the NYPD engaging in de-policing specifically in response to Thompson. In the trend lines for low-level arrests for Brooklyn, one can see a precipitous decline and rise at the end of 2014. This drop occurred during a union-organized work slowdown to protest what they perceived as excessive criticism in the wake of the murders of Officers Wenjian Liu and Rafael Ramos in December 2014 (Laughland, 2014). Almost all non-urgent, proactive enforcement activity ceased. The precipitous drop, though, seen in that instance of de-policing is quite distinct from the pattern of arrests after Thompson's policy shift.

The Differing Purposes of Arrest

These findings suggest that arrests and citations have different purposes for police and prosecutors. For prosecutors, arrests and citations are precursors to prosecution — someone is usually arrested or cited for a crime in order to be charged with it. For police, arrests and citations accomplish several things, regardless of whether they are prosecuted. Arrests allow police to remove people who might be causing disorder, and the police might hope the arrest itself will have a deterrent effect on future quality-of-life crime (Golub et al., 2003). De Lint (2003) and Kohler-Hausmann (2013) argued that arrests and citations have the function of “access” and “control”—more than any other purpose, they give the police a legally sound pretext to track people they wish to monitor for more serious criminal activity. For example, officers will check the identification of those they summons and check if they have outstanding warrants (NYPD, 2021d). Police gain valuable information by interrogating arrestees; they can also collect biometric data — such as fingerprints, DNA, and photographs — and search the arrestee, all regardless of prosecution.

Prosecution does still aid police in the investigative function of arrests. As one example, felony arrests for marijuana possession declined somewhat more in Brooklyn, compared to other boroughs, after Thompson's policy shift. These offenses were not covered under the new policy, but that does not necessarily mean they were unaffected. The plea-bargaining process for low-level possession cases might have given investigators leverage to extract information and make arrests for more serious possession offenses. By losing that leverage with the

change in prosecution policy, the ability to make felony arrests could have been impacted. This trend, though, while observable in the borough precinct means, was not significant in the difference-in-differences model.

Finally, police agencies have a bureaucratic self-interest in arrests, regardless of whether they are prosecuted. By making arrests, the police signal to other governmental agencies and to the public that they are necessary, functioning well, and deserving of resources. Indeed, the enforcement of low-level offenses is linked to department size (Chalfin, Hansen, et al., 2021); departments might justify additional officers with the increased crime for which those officers are then able to make arrests. For officers, making arrests shows their superiors and peers that they are proactive and can help them attain promotions and desirable work assignments (Bronstein, 2015). Thus, police have numerous reasons to make arrests that have little to do with whether those arrests are ultimately prosecuted.

The Impacts of Arrests

Just as arrests can assist police regardless of prosecution, for arrestees, arrests have consequences whether or not they are prosecuted. Declination policies do stop some of the most onerous collateral consequences that can follow from a criminal record such as employment difficulties (Pager, 2003), imprisonment (Bäckman et al., 2020), and parole and probation supervision (Miller, 2021). Moreover, Agan and colleagues (2021) show that prosecution can be criminogenic itself, and an arrest without prosecution subjects one to fewer collateral consequences than prosecution and conviction do.

Even an arrest that is not followed by prosecution, however, can lead to lost employment, adverse health consequences, and impacts on future employability (Howell, 2016; Natapoff, 2018; Uggen et al., 2014). People who are arrested and spend a night in jail before the prosecutor dismisses their cases might miss work and lose their jobs. They might fail to pick up children from school and have child protective services called. Police officers might target them for heightened surveillance and future arrests. They might feel themselves estranged from the legal system more broadly because of their arrest (Bell, 2017). Thus, if arrests continue apace, a progressive prosecution policy will not fully achieve its stated goal of minimizing the reach of the criminal legal system.

The data indicate that citations might substitute for arrests with regard to marijuana possession. Citations rose at the same time as arrests declined. Marijuana enforcement in New York City did not shrink — it shifted from arrests to citations. This tactical shift in response to reform has been

observed in other jurisdictions as well (Hausman & Kronick, 2020). From the standpoint of maximizing liberty and limiting undue intrusion (Sherman, 2009), the decline in marijuana arrests is hopeful. A citation is less intrusive than an arrest. The defendant is not handcuffed and kept in jail until arraignment. On the other hand, a defendant must still go to court, perhaps multiple times, to answer a citation. Childcare needs, transportation, and missed work can all negatively impact defendants who receive citations, becoming punishments in and of themselves (Feeley, 1979). While a shift away from arrests minimizes some collateral consequences, the substitution of citations does not eliminate those consequences.

Since arrests and citations have consequences even without prosecution, police departments affect the policy reforms that progressive prosecutors seek. Arrest and citation decisions are made by police officers and shaped by department policy, not prosecutorial policy, as the results show. It is an open question whether this behavior is better changed by cooperation with police agencies, legislative decriminalization, or political leadership from other actors that forces police to make fewer arrests. The overall policy problem is the same, though: If progressive prosecutors want to reduce criminal justice involvement for minor crimes, declining to prosecute those offenses does scale back collateral consequences, but reducing arrests also matters.

Progressive Prosecution and Policy Change

These results raise the question of whether progressive prosecutors are a cause or a result of the desire for reform. Low-level marijuana possession arrests were declining before Thompson's policy change and continued to decline afterwards, both in Brooklyn and in other boroughs of New York City. This result suggests that progressive prosecution might follow, rather than lead to, less severe treatment of low-level crimes. Other exogenous shocks to policing might cause the decline in arrests before a progressive prosecutor is elected. A substantial portion of the decline in marijuana arrests in New York post-2013 is likely attributable to the reduction in police *Terry* stops, colloquially known as stop-and-frisk. Using this technique, the NYPD searched large numbers of almost exclusively Black and Latino young men (Levchak, 2017, 2021). While few stops and searches recovered illegal weapons, many did recover marijuana (Dunn et al., 2013). Since that marijuana was in public view once an officer removed it from a pocket or jacket, the offense could then be charged as a more serious misdemeanor under New York law (Brennan & Devereaux, 2012). The *Floyd v. New York* (2013) ruling heavily curtailed stop and frisk, and the NYPD's use of this tactic steeply

declined. That ruling likely explains some of the reduction in arrests.

A progressive prosecution policy could reduce the number of stops that police make by deprioritizing minor drug crimes. The decline in NYPD stop-and-frisks begins in 2013, though, when the NYPD made roughly one-third of the stops it did the previous year (Dunn et al., 2019). Thompson took office in 2014. Hence, I believe it more likely that the reduction in stops – which occurred city-wide and not only in Brooklyn – stems from the *Floyd* ruling and not Thompson's policy. Additionally, while there were likely fewer marijuana enforcement actions resulting from stops-and-frisks post-*Floyd*, the distribution of these actions remained racially disproportionate, as these results show.

Another hypothesis is that progressive prosecutors might be elected because social attitudes toward minor offenses, including those of at least some police officers or leadership, have already softened; their declination policies are a reflection of, not the impetus for, this shift. Progressive prosecution policies are only implemented in cities that will elect progressive prosecutors; these cities might already be more open to, and indeed already implementing, reforms such as decreasing low-level arrests. While some research, such as Hessick and Morse (2020), studies prosecutorial elections, the factors prompting the election of progressive prosecutors are still understudied. These data cannot prove a link between arrest patterns and electoral results, but they are suggestive of this hypothesis.

Limitations

This study's conclusions have important limitations. With this frequentist approach, I can only fail to reject the null hypothesis that prosecution policies did not affect arrest numbers, which could also occur due to methodological limitations. The failure to reject the null hypothesis, though, is unlikely to be the result of a lack of statistical power. The precinct-level analysis is a more modest sample size, but one which has been used for other difference-in-differences analyses, as discussed in the method section.

Additionally, these models cannot control for the underlying crime rate for marijuana possession and use. The interpretation that consistent arrest rates before and after a declination policy means police activity was unchanged only holds if the base rates were unchanged. If, on the other hand, marijuana possession rose, equal numbers of arrests would signify diminished police activity; if the base rate fell, equal arrest rates would signal increased police activity. Most marijuana offenses only come to the attention of law enforcement via arrests (FBI, 2012);

furthermore, police data are not always inherently reliable (Skogan, 1999). The data available from the National Crime Victimization Survey (Bureau of Justice Statistics, 2019) cannot be used to validate this assumption about crime rates using victimization data, since there is usually no reported victim for marijuana possession. The use of a quasi-experimental design mitigates this concern, though. Any base rate change in Brooklyn likely occurred in other boroughs, too, and is therefore controlled for. There were no exogenous shocks around the time of policy implementation that would alter the underlying rates of marijuana use in only one part of New York City. There is the possibility that a progressive prosecution policy in one borough might spill over and lower arrest and citation rates in other boroughs, too. Given Bratton's statement on continued marijuana enforcement and the citywide decline in stop-and-frisk activity, though, it seems unlikely that Thompson's policy was responsible for a decline in marijuana enforcement in other boroughs.

Finally, these data only include arrests and not all police activity. Marijuana arrests are more often the result of proactive policing, rather than public reports. It is unclear how arrest rates might reflect police patrol behavior, given the discretion that police have; as Goldstein (1960) observed, policing is a low-visibility profession. For example, if police are patrolling less aggressively but arresting a higher proportion of those they encounter with marijuana, the overall arrest rate might be indistinguishable from more aggressive patrol coupled with a lower proportion being arrested or from unchanged patrol behavior and the same share being arrested. Since many of these sub-arrest encounters are not recorded, one cannot assess their frequency, who is subject to them, or where they are occurring (Knox et al., 2020).

Further research might gather primary qualitative data from patrol officers, such as via participant observation or interviews, to understand how they react to progressive prosecution policies. As the number of prosecutors adopting these policies grows, other research might broaden to include multiple prosecutors and other types of low-level offenses. Finally, given this article's focus on low-level declination, future work might also examine how police react to other parts of progressive prosecution policies. For example, one might study how a reduced willingness by prosecutors to seek bail affects the investigative and patrol practices of police officers. In sum, further research investigating the exact mechanism by which progressive prosecution policies influence police behavior is needed.

Conclusion

Progressive prosecution is going from strength-to-strength in parts of the United States. Krasner beat a less progressive primary challenger, his only main contest on the road to re-election (Brennan & Walsh, 2021). Alvin Bragg, a progressive, is the new district attorney for Manhattan (Bromwich, 2021). Rollins was recently appointed as United States Attorney for the District of Massachusetts, a vote of confidence by the Biden administration in her work in Boston (Becker, 2021). Yet backlash to criminal justice reform is growing. As the U.S. experiences a rise in homicides (MacFarquhar, 2021), many critics are seizing the opportunity to cast blame on progressive prosecutors and those who, they assert, deal too lightly with criminals. State legislatures are passing laws to preclude local reform (Pfaff, 2021). This patchwork of change and backlash highlights a key problem for reformers: The United States' criminal legal system is not one system but a conflicting mosaic of various actors. Each actor enjoys incredible amounts of discretion — within their own limited silo.

The results in this study focus on one such conflict caused by this fragmentation — between police and prosecutors — and on one policy issue, low-level drug crime. The declination policies of progressive prosecutors do not appear to meaningfully change the way police make arrests for these crimes, limiting the impact these policies can have. Additionally, marijuana enforcement actions still disproportionately affected Black and Hispanic areas even after this policy was implemented. The benefits of not being prosecuted and convicted, though, should not be understated. Moreover, progressive prosecution policies can be justified on their own moral terms — that one should not be convicted for violating minor, inequitably enforced statutes. Conversely, an arrest without prosecution is not meaningless or trivial. If progressive reformers want to minimize the impacts of broken windows policing — and if the United States wishes to move away from that strategy more broadly — that effort will require a broader policy shift than just progressive prosecution.

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Author's Note

Data for the project are all publicly available at the links in the endnotes; archived copies are available from the author if needed. Code for the project is available at <https://doi.org/10.17863/CAM.79685>

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Endnotes

- ¹ New York City also has an appointed citywide special narcotics prosecutor whose office handles a small number of major drug felonies but does not prosecute low-level marijuana charges. Some number of arrests are also made by other law enforcement agencies (e.g., New York State Police, Port Authority of New York and New Jersey Police, or Metropolitan Transportation Authority Police). Given the overwhelming size and mission of the NYPD, though, I focus only on arrests made by that agency.
- ² Sullivan and O’Keefe (2017) argue that major crime actually declined due to this shutdown. Chalfin, Mitre Becerril, and Williams (2021), though, have raised serious methodological concerns with that finding.
- ³ Available at <https://data.cityofnewyork.us/Public-Safety/NYPD-Arrests-Data-Historic-/8h9b-rp9u> (arrests) and <https://data.cityofnewyork.us/Public-Safety/NYPD-Criminal-Court-Summons-Historic-/sv2w-rv3k> (citations).
- ⁴ Available at: <https://johnkeefe.net/nyc-police-precinct-and-census-data>
- ⁵ Available at: <https://data.cityofnewyork.us/Public-Safety/NYPD-Complaint-Data-Historic/qgea-i56i>
- ⁶ To address the possibility of a lag effect, I also examined a series of further difference-in-differences regressions, where I used each of the 12 months following July 2014 as the effective implementation date of the policy. The difference-in-differences estimator was non-significant for all models except for a few models that predicted felony marijuana arrests with an effective implementation date of late 2014 or early 2015 and included the violent crime rate covariate. These were significant, though, at the $p=0.01$ to $p=0.05$ level, which is most likely an artifact of the high number of hypotheses tested by these models, rather than indicative of any real effect.
- ⁷ Weisburd (2015) and Weisburd and colleagues (2004) measured the concentration of incident reports, not arrests. Gaines and colleagues (2017) found, though, that for drug crimes, arrests, and self-reports of use are highly spatially correlated. Additionally, Golub and colleagues (2006) noted a high spatial concentration of drug arrests in New York City; Fagan and Davies (2000) found a high spatial concentration of quality-of-life enforcement in New York City. While most research on spatial concentration of crime has focused on incidents, this trend holds for arrests, at least for low-level and drug crime.