

Facts Over Fear

The benefits of declining to prosecute
misdemeanor and low-level felony offenses

ACLU of Massachusetts Briefing Paper

Facts Over Fear

ACLU OF MASSACHUSETTS BRIEFING PAPER
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Executive Summary

Suffolk County District Attorney Rachael Rollins campaigned on a pledge not to prosecute 15 misdemeanor offenses and low-level felonies, promising that under her watch, “We will no longer criminalize poverty, substance use disorder, and mental illness.”¹ Her pledge was hailed by progressives and criminal legal reform advocates, but sharply criticized by police lobby groups and others in law enforcement.

This paper provides empirical data to serve as a basis for comparison between how the previous administration of the Suffolk County District Attorney’s Office (SCDAO) prosecuted these types of offenses as compared to Rollins’ campaign statement proposing the “Decline to Prosecute” (DTP) list. This comparison is intended to inform the public about the role of district attorney (DA) prosecution decisions at a critical moment for criminal legal reforms in Massachusetts.

After analyzing cases prosecuted to a disposition by the Suffolk County District Attorney’s Office in 2013 and 2014, we made the following findings:

1. Black people were disproportionately charged with the misdemeanors and low-level felonies from the DTP list;
2. Over half of the DTP charges prosecuted to a disposition were dismissed, suggesting

they were not worthwhile prosecutions;

3. Significant questions remain about police charging practices and prosecutorial practices regarding plea negotiations with DTP charges.

This paper shows how prosecution of low-level offenses occurred in a racially disparate manner; highlights the unanswered questions this data raises; and provides recommendations to Rollins to support the implementation of the progressive policies from her campaign.

Black People Were Disproportionately Charged With Misdemeanors and Low-Level Felonies From the Decline to Prosecute List

Suffolk County prosecution data from 2013 and 2014 shows that misdemeanors and low-level felony charges from the proposed DTP list were disproportionately issued against people of color, particularly Black people. For some of the offenses on the DTP list such as trespass, resisting arrest, disorderly conduct, and drug possession with intent to distribute, Black people were charged three times more often than white people. For driving offenses, Black people were charged four times more often than white people. The

data also reveals that the SCDAO was more likely to resolve charges from the DTP list in a way that was adverse to Black defendants on certain offenses.

Over Half of the DTP Charges Were Dismissed, Suggesting They Were Not Worthwhile Prosecutions

The data shows that a majority of DTP charges and cases resulted in a non-adverse outcome (e.g., dismissed by prosecutors or judges). Nearly 60 percent of all the charges from the DTP list that were prosecuted to disposition in 2013 and 2014 ended in a dismissal. The high dismissal rate of these charges and the racial disparities in charging patterns indicate communities of color have been over-prosecuted in Suffolk County. The SCDAO's high dismissal rate of DTP charges undermines the supposed public safety argument; if there were a significant public safety concern, an overwhelming majority of these cases would likely be prosecuted to an adverse disposition. It also affirms the proposed practice Rollins intends to implement.

Significant Questions Remain About Police Charging Practices and Prosecutorial Practices With DTP Charges

Racial Disparities in Charging Data Raise Concerns About Racial Bias in Police Practices. Declining to Prosecute Misdemeanors and Low-Level Felonies Can Be a Check on Racially Disparate Policing.

The data reveals significantly higher rates of Black people prosecuted than white people for minor offenses historically associated with racial profiling. In the Boston Municipal Court Central Division, for example, Black people were 15 times more likely to be charged

with a driving offense, like driving with a suspended license, compared to their white peers. In the Allston-Brighton area, Black people were 14 times more likely than white people to be charged with trespass. This data is particularly worrisome in light of prior evidence of racial disparities in law enforcement in the Boston area, a problem documented in the ACLU's 2014 "Black, Brown, and Targeted" report which detailed racially disparate treatment of people of color by the Boston Police Department (BPD) during street encounters.

Although research professor Anthony Braga wrote in a 2015 BPD report that he could not "determine whether the identified patterns [of racially disparate treatment] were generated by bias or other processes of racial discrimination in BPD FIO² practices," the disparities raise significant concerns and require further research.³ Arguably, if police in Suffolk County know the District Attorney's Office will not prosecute charges like trespass and low-level driving infractions, racially disparate policing should decline. Without the threat of potential prosecution, police and communities will need to think creatively to address concerns related to disruptive behavior, without resorting to racially disparate policing and charging practices.

Analysis of Charging Decisions Raises Concerns About Prosecutors' Use of Superfluous Charges to Leverage Plea Deals.

The number of DTP charges that are ultimately dismissed warrants an inquiry into how and why they are dismissed. When people are charged with multiple offenses that far exceed the primarily alleged criminal conduct, prosecutors have an unfair advantage of having more charges to bargain away in exchange for a plea. Although plea bargains are a regular part of criminal proceedings, prosecutors leveraging plea deals with the

threat of lengthier sentences, in light of the multiple charges, troubles notions of due process and fairness.

are not to make arrests for these types of incidents.

Recommendations

Based on our review of prosecution data from Suffolk County in 2013 and 2014 and our findings, we recommend the following actions:

- District Attorney Rachael Rollins should implement her promised “Decline to Prosecute” policy and create internal structures for holding prosecutors accountable to the policy;
- DAs across the Commonwealth should invest in data science, research, staffing, and methods to keep track of how Assistant District Attorneys (ADAs)—or line prosecutors—are prosecuting cases across the county on a week-to-week basis. To the extent that any of these charges are prosecuted, the SCDAO should study the cost, benefit, and efficacy of prosecuting these cases.
- The SCDAO must work with Suffolk County residents, community organizers, health care advocates, drug treatment specialists, anti-poverty activists, small business owners, youth workers, and others to develop a robust network of community-led alternatives to prosecution.
- The prevalence of racial disparities among the DTP charges should be an impetus for police departments in Suffolk County and elsewhere to examine their arrest records, looking for racial disparities in arrests for these 15 types of offenses.
- Finally, police departments should enact “Decline to Arrest” policies similar to Rollins’ campaign pledge, and inform their officers that, in most circumstances, they

Glossary of Terms

Adversity: A judgment of guilty (pursuant to either a trial or guilty plea), continuance without a finding, pre-trial probation, or some equivalent where the resulting disposition was not an acquittal or dismissal of the case or charges.

Case: Any charges included in a criminal complaint or indictment that are issued a docket number as a single case.

Charge: The formal accusation made against an individual, alleging that the individual has committed a crime. In Massachusetts, police generally submit an application for complaint to the clerk of the criminal court, who will issue the charges in a document called a complaint. Alternatively, crimes not in the jurisdiction of the district court are presented to a grand jury that will issue a true bill and request an indictment be issued for the requested charges.

Continuance Without a Finding (CWOFF): A temporary disposition whereby after making an admission (but not entering a guilty plea), the case is continued for several months. If the person successfully completes the term without violating any of the conditions, the case will be dismissed. If the person fails to comply with the terms of the continuance, a hearing will be held, the continuance may be terminated, and a guilty finding can be entered on the person's record.

Dismissal: The resolution of a case that does not include a guilty finding, admission to sufficient fact, or some other form of court supervision. Cases can be dismissed by the DA's office or a judge for a variety of reasons including a DA office's prerogative that dismissal is in the interest of justice; insufficient evidence to proceed; or as a part of a plea bargain. Judges can also dismiss cases when the DA's office fails to prosecute the case.

Disposition: The outcome of a case. For the purposes of this analysis, the disposition represents the resolution of the open case that permanently or temporarily resolves the case.

Felony: A criminal offense that is eligible for a prison sentence. In Massachusetts, a felony offense allows for a sentence greater than 2 ½ years in state prison.

Misdemeanor: A criminal offense that is not eligible for a prison sentence. In Massachusetts, misdemeanor offenses carry up to 2 ½ years in the county jail or house of correction and/or a fine.

Nolle Prosequi: Latin for "we shall no longer prosecute." At trial, this is an entry made on the record by a prosecutor in a criminal case or a plaintiff in a civil case stating that they will no longer pursue the matter.⁴

Introduction

Over the last decade, America’s growing awareness of mass incarceration and the over-incarceration of people of color—specifically Black, Latinx, and First Nations people—has sparked nationwide advocacy and organizing efforts to demand sweeping reforms to the criminal legal system. In Massachusetts, this energy led to the passage of comprehensive criminal law reform legislation in 2018.⁵ At the same time, voters— informed by public education campaigns highlighting the power of prosecutors— are electing progressive, reform-minded prosecutors across the country. Still, questions remain about the capacity for progressive DAs to dramatically change the criminal legal system in a short period of time.

One crucial reform—district attorneys declining to prosecute certain misdemeanors— remains woefully misunderstood, despite a great deal of media attention. When DAs decline to prosecute certain misdemeanors and low-level felony offenses, and instead pursue social service or public health alternatives, the person and the community can benefit. Pursuing alternatives to prosecution through diversion to treatment, restorative justice programs, and counseling has been a valuable tool in reducing recidivism.⁶ Declining to prosecute these offenses is one step toward reducing racial disparities and over-policing in communities of color, and makes better use of prosecutorial resources. In place of investing time and resources in prosecuting

low-level offenses, district attorney offices could invest their limited resources in solving unsolved homicide cases. They could engage with community partners to develop solutions to address recidivism, working with victims and survivors of violent crimes to develop restorative practices that promote accountability and reduce recidivism.⁷

While the overall population of incarcerated people has declined in recent years, the rate of incarceration nationwide remains high, particularly for men of color. In Suffolk County, the rate of incarceration has been reported to be 204 people per 100,000 persons.⁸ There is increasing evidence that high rates of incarceration create more crime in communities, not less. To keep people safe, we need to rethink how we approach misdemeanor offenses and underscore that police who continue to arrest people for low-level offenses further endanger the safety of community members.⁹

During her successful campaign for Suffolk County District Attorney, Rachael Rollins pledged that her office would not prosecute 15 misdemeanor and low-level felony offenses, promising instead to focus resources on serious crimes like murder and on diverting people with substance use and mental health issues to treatment. While progressive commitments like this may have contributed to her victory at the polls, some critics—including some media and law enforcement—slammed

Rollins’ “Decline to Prosecute” list, claiming her office would endanger the public. This report examines data from the Suffolk County District Attorney’s Office for the years 2013 and 2014, providing—for the first time—concrete information to help Massachusetts residents understand the implications of this pledge and to ensure people are informed by facts, not fear.

We cannot prosecute our way out of poverty, drug use, or mental health crises.

Decline to Prosecute Charges

In Suffolk County, shortly before winning the Democratic primary in the Suffolk County District Attorney’s race and after meeting with community groups including those representing formerly incarcerated people, defense attorneys, and retired judges, then-candidate Rachael Rollins identified a list of charges the SCDAO would decline to prosecute if she were elected as the DA. Specifically, she indicated that, unless prosecutors obtained supervisor permission, they would decline to prosecute the following offenses:

Property Offenses

- Trespass;
- Shoplifting (including offenses that are essentially shoplifting but charged as larceny);
- Larceny under \$250;¹⁰
- Receiving stolen property;
- Breaking and entering (where it is into a vacant property or where it is for the

purpose of sleeping or seeking refuge from the cold and there is no actual damage to property);

- Wanton/malicious destruction of property

Public Order Offenses

- Disorderly conduct;
- Disturbing the peace;
- Resisting arrest (as a standalone charge, i.e., in cases where a person is charged with resisting arrest and that is the only charge);
- Resisting arrest (when combined with charges that all fall under the list of charges to decline to prosecute, e.g., a resisting arrest charge combined only with a trespass charge);
- Minor in possession of alcohol

Drug Offenses

- Drug possession;
- Drug possession with intent to distribute

Crimes Against the Person

- Threats (excluding domestic violence)

Driving Offenses

- Includes multiple driving offenses such as unlicensed operation, operating uninsured, operating on a suspended license, and negligent operation

Many of these offenses—as with most charges—are associated with poverty, trauma, substance use disorder, and mental health issues, and often do not warrant prosecution. Indeed, prosecution of these charges has no

net benefit in reducing crime rates, and wastes money and human capital.¹¹

Rollins’ decision to introduce a presumptive non-prosecution policy for certain misdemeanor and low-level felony offenses is within her authority as the district attorney. It is well within the discretion of the prosecutor to decide whether to prosecute a particular defendant.¹² Massachusetts courts have made clear that this prosecutorial discretion is exclusive to the executive branch¹³ and is not preempted by any right of action by a private party.¹⁴ Moreover, any notion that prosecutors do not have this authority or can be compelled by the court or the legislature to prosecute any defendant flies in the face of separation of powers between the branches of government and well-settled case law.¹⁵ As Harvard Law School professor William Stuntz points out, “[C]riminal law and the law of sentencing define prosecutors’ options, not litigation outcomes. They are not rules in the shadow of which litigants must bargain. Rather, they are items on a menu from which the prosecutor may order as she wishes. She has no incentive to order the biggest meal possible. Instead, her incentive is to get whatever meal she wants, as long as the menu offers it. The menu does not define the meal; the diner does. The law-on-the-street—the law that determines who goes to prison and for how long—is chiefly written by prosecutors, not by legislators or judges.”¹⁶

The gatekeeper role played by DAs is particularly influential in over-policed communities of color.

What a Difference a DA Makes

In 2018, the ACLU of Massachusetts led a public education campaign—What a

Difference a DA Makes—to raise awareness about district attorneys’ power to change the criminal legal system. Before the public education campaign, a statewide poll found that voters in Massachusetts were largely unaware of the role of the district attorney, and who holds them accountable for the decisions they make in office. From charging decisions, to bail requests, sentencing recommendations, holding police accountable, and influencing the legislature, DAs have the ability to impact the system and ultimately serve as gatekeepers to criminal prosecution.

DAs can divert people away from prosecution, limiting the strain on resources normally dedicated to prosecuting unnecessary cases. They can also speak out against institutional racism and abandon prosecution practices that perpetuate racial disparities. DAs can join communities in demanding a system that invests in non-punitive programming to address human needs as opposed to reflexively resorting to punishment.

Behind closed doors and in the public square, DAs can use their influence with the legislature and the executive branch to turn away from “tough on crime” laws and policies, and request investments in programming and services for people dealing with substance use disorders and mental health issues. They can choose to reserve their substantial power for investigating and prosecuting victim-based offenses like sexual assault and murder, instead of instructing their line prosecutors to blindly prosecute offenses like drug possession or trespass, particularly when the charge is used for social control by police to seek compliance with police directives. The choices elected prosecutors make have life-altering consequences for individuals, families, and communities, particularly for those who are Black, Latinx, and poor—choices that are largely invisible to people untouched by the system.

When people are prosecuted for low-level offenses that, like most crimes, are overwhelmingly related to poverty, substance use, or untreated mental health problems, the impacts extend far beyond the individual. Poor people charged with property or theft offenses are often left with unmanageable fines and fees that make it harder to survive, affecting their families and communities.

People struggling with substance use disorder—especially opioid use disorder—face an increased likelihood of dying from an overdose upon release from custody. In Massachusetts, the opioid-related overdose death rate for people released from incarceration is 120 times higher than the rest of the adult population.¹⁷ Incarcerating drug users can kill them.

People who are charged with offenses related to mental health issues do not benefit from chains, cages, or courtrooms, and using these tools to address mental health problems helps neither the person nor the larger community. People charged with offenses associated with poverty, substance use, and mental illness are left with criminal records that create additional barriers to employment, housing, treatment, loans, and educational opportunities; too often, criminal records set people even further back when they most need a helping hand. We cannot prosecute our way out of poverty, drug use, or mental health crises.

Of course, there are crimes not on the DTP list that are correlated to poverty as well, including some crimes that prosecutors may claim benefit public safety, but this generally is not the case for the misdemeanors and low-level felonies on the DTP list. Many in law enforcement have promoted a narrative that aggressive enforcement of so-called “quality of life” crimes helps keep the public safe. The “broken windows” policing theory introduced by James Q. Wilson and George

L. Kelling in 1982—and made popular under New York City Police Commissioner Bill Bratton in the 1990s—underscored the role and responsibility of police, as a form of social control, to prevent disruptive and criminal behavior. Subsequent studies of the broken windows theory of policing have shown that it is disproportionately applied to communities of color in ways that are disruptive and fail to promote public safety.¹⁸ Nonetheless, prosecutors’ cooperation with these policing tactics have likely contributed to the exponential increase in the incarcerated population, which further destabilizes communities and undermines public safety.¹⁹

The gatekeeper role played by DAs is particularly influential in over-policed communities of color. In the face of diminishing resources for social service programs, substance use treatment, and mental health services,²⁰ the criminal legal system has been the default service provider—to the detriment of many poor communities and communities of color. By prosecuting people who are charged—and often over-charged—with offenses that are largely related to conditions of poverty, trauma, substance use disorder, and mental health issues, DAs are not only wasting resources that could be better spent addressing the conditions that lead to a person’s arrest; they are also subjecting people to collateral consequences that further destabilize their lives, making it more difficult for people to be safe, healthy, and free.

Racial Disparities Throughout the Criminal Legal System in Massachusetts

In 2016, the Counsel of State Governments Justice Center analyzed available data from Massachusetts criminal justice agencies and determined that 74 percent of newly-convicted people who were incarcerated had a prior conviction.²¹ This finding does not necessarily

suggest that every entry on a person’s criminal history record includes a sentence of incarceration. Rather, if someone has prior convictions, it increases the likelihood that the DA’s office will recommend (and/or a judge will impose) a sentence of incarceration in future cases. Consistently prosecuting low-level offenses may increase the likelihood that a person will eventually receive a sentence of incarceration on subsequent arrests. In addition to the collateral consequences for these misdemeanors and low-level felonies that impact a person’s ability to get a job and secure housing, the multiplier effect can also force judges to sentence people to lengthy terms of incarceration based on federal sentencing guidelines.²²

For years, advocacy to reduce incarceration and racial disparities in Massachusetts has been met with the refrain that Massachusetts does not have a mass incarceration problem. After all, opponents of reform have said, the state has one of the lowest incarceration rates in the country. Yet, the United States’ incarceration rate far surpasses that of any other country on earth; if Massachusetts were its own nation, it would have the 11th highest incarceration rate in the world, incarcerating 324 residents per 100,000—more than the countries England, Spain, and Portugal.²³

Furthermore, racial disparities in the Massachusetts criminal legal system are worse than national trends. The per capita national incarceration rate disparity is 6-to-1 Black to white.²⁴ In Massachusetts, we have a shameful disparity of nearly 8-to-1 Black to white. Nationwide, Latinx people are incarcerated more than whites by a factor of 1.3-to-1, but in Massachusetts, the disparity is a shocking 4-to-1 Hispanic to white—one of the worst racial disparities in incarceration in the nation because we are incarcerating Latinx people at a rate more than three times the national rate.²⁵

Racial disparities in the Massachusetts criminal legal system are not limited to the incarceration rate. Across several indicators, Black and Latinx people are over-represented in the system, from the number of people detained on bail pretrial,²⁶ to those sentenced to incarceration, to the length of their sentences—in both houses of correction (county detention facilities) and Department of Correction (state prison) sentences.²⁷ In February 2019, the Massachusetts Supreme Judicial Court found that there was ample empirical evidence to support a prospective juror’s viewpoint that the criminal legal system was unfair to young African-American men is “factually true.”²⁸

Although much of this data shows statewide disparities, data also shows disparities at the county level. In 2009, the ACLU of Massachusetts responded to community concerns that Boston Police Department (BPD) stop-and-frisk practices were disproportionately impacting Black and Latinx communities by requesting data from the BPD on street encounters. The ACLU of Massachusetts and the BPD subsequently reached an agreement to have independent researchers study field interrogation, observation, frisk and/or search (FIO) reports, using data from 2007 to 2010. Those researchers found racially disparate treatment in how the BPD policed communities of color. The analysis found that Black people were subjected to 63 percent of these encounters, even though they made up just 24 percent of Boston’s population.²⁹ The analysis showed that, even after controlling for crime rates, Boston police officers were more likely to initiate encounters in Black neighborhoods and initiate encounters with Black people. A subsequent *Boston Globe* article in August 2017 revealed that the BPD continued to stop, frisk, and question Black residents at rates that far surpassed their population numbers.³⁰

Given this disproportionate street-level surveillance and targeting, it is hardly surprising that the available data also shows disproportionate rates of charging against Black residents of Boston. For example, between the years 2012 and 2016, Black people made up 60 percent of the people BPD arrested for license violations (e.g., driving with a suspended license), despite the fact that they only make up 24 percent of the city's population.³¹ These disparities in Boston are informative of countywide disparities, since almost 90 percent of Suffolk County prosecutions originate in Boston.³²

In sum, BPD data from recent years reveals racial disparities in stop-and-frisk, street-level surveillance, and arrest rates for certain low-level misdemeanors. What happens when those charges are presented to the Suffolk County District Attorney's Office for prosecution? District Attorney Rachael Rollins' commitment not to prosecute certain misdemeanors and low-level felonies offers an opportunity to analyze how the cases were handled under the previous administration and to see how her pledge of reform could change the criminal legal system in Suffolk County.

ACLU analysis of Suffolk County prosecution data from 2013 and 2014 shows that people of color were disproportionately charged with these misdemeanor and low-level felony offenses at a rate of 2.5-to-1, and that cases consisting only of those offense types were often dismissed and did not result in convictions. Declining to prosecute these types of cases could have a meaningful impact on reducing racially disparate policing practices if law enforcement leaders in Suffolk County work with the new DA to divert people away from the criminal legal system before arrest.³³

Methodology and Analysis

When then-candidate Rachael Rollins indicated she would not prosecute the list of 15 misdemeanors and low-level felonies, it created an opportunity to study who was being prosecuted for those offenses, the outcomes of those prosecutions, and the percentage those prosecutions represented of 2013-2014 cases brought by the Suffolk County District Attorney's Office prior to the DA election.

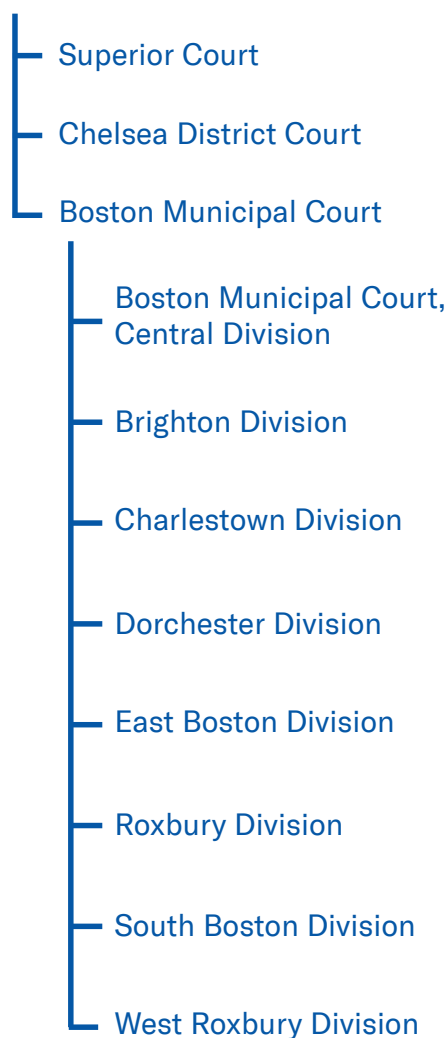
In 2017, the ACLU of Massachusetts received data pursuant to a public records request submitted by Suffolk County resident Carol Pryor.³⁴ The data, according to a letter in response to Pryor's request, "include[s] the following information for non-juvenile cases arraigned in 2013 and 2014 and now prosecuted to a disposition: the charges in each case; the race/ethnicity of the defendant; the disposition, by charge (e.g., commitment to custody, fine, probation, or dismissal); and whether the case was prosecuted in Superior or District court."³⁵ (See graph A)

Using this data, we conducted an analysis to understand how the charges that Rollins indicated her office would not prosecute were handled by the prior administration in 2013 and 2014. We began by identifying the unique list of charges that the SCDAO prosecuted to a disposition in those years, and selecting out the charges that we identified as falling into a specific DTP category.³⁶ We then identified by docket number all of the unique cases that had at least one DTP charge among all

Suffolk County Courts

The Massachusetts Trial Court system has seven departments, but only three major departments are represented in the data we received. Here is how they are structured.

Massachusetts Trial Court



GRAPH A

of the charges. The docket numbers issued by the various courts are based on a series of individual charges applied for by police in an application for complaint or in a true bill submitted by the grand jury at the request of the SCDAO. One case can include a single charge or multiple charges, which may be related to a single incident or a series of incidents.

After identifying the relevant docket numbers, we created flags using the outcomes—or dispositions—of each charge to determine whether a charge led to a dismissal or an adverse disposition. For the purposes of our analysis, we considered an “adverse disposition” to be a court judgment of guilty (pursuant to either a trial or guilty plea), continuance without finding, or some equivalent where the resulting disposition ended against the defendant. A case is considered to be adversely disposed if at least one of the charges (DTP or non-DTP) in the case had an adverse disposition.

The questions that guided our analysis were:

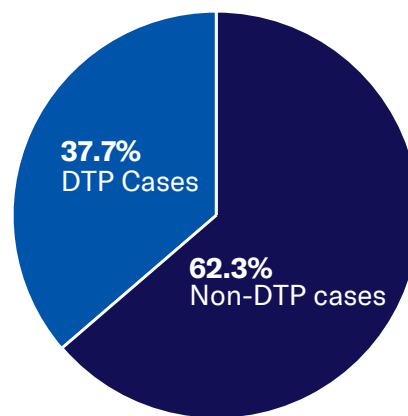
- How many total DTP charges and cases did the SCDAO prosecute to a disposition?
- Of the DTP charges and cases prosecuted to a disposition, what percent were resolved adversely against the defendants?
- Was there a racial disparity in who was prosecuted for DTP offenses? If so, which offenses had the greatest disparities?
- Was there a racial disparity in which defendants had the DTP charges and cases resolved adversely against them?

Our analysis shows SCDAO prosecuted to a disposition 49,033 unique cases, with 24,225 cases in 2013 and 24,808 cases in 2014. Those 49,033 cases collectively contained 95,671 unique charges, with 47,039 in 2013 and

48,632 in 2014, respectively. We do not know the total number of unique cases prosecuted by the SCDAO because open cases that were not disposed of were not included in the dataset provided in 2017. “DTP cases” are cases that are considered to be a subset of all cases prosecuted to a disposition and include at least one DTP charge. They account for 37.7 percent of all cases prosecuted to a disposition. “DTP exclusive cases” are cases where all the charges in the case are from the DTP list; these account for 16 percent of all cases prosecuted to a disposition between 2013 and 2014. (See graphs B and C)

Percent of all DTP Cases

Out of 49,033 cases prosecuted to a disposition by the SCDAO, only 18,508 cases are those that have at least one DTP charge.



GRAPH B

Our analysis also shows that SCDAO prosecuted 55 percent of DTP cases to a non-adverse disposition in 2013 and 2014. In other words, over half of the DTP cases prosecuted over that 2-year period resulted in dismissals or acquittals. (See graph D)

To assess whether there was a racial disparity in who was prosecuted for DTP offenses during 2013 and 2014, we looked at how the cases broke down by race. There were 18,508 total DTP cases that had one or more DTP charges prosecuted to a disposition. Black, Hispanic, and white people make up roughly 24.9 percent, 23 percent, and 61.7 percent of Suffolk

County's population respectively. In addition to the 33 percent of Black people prosecuted for DTP offenses being 8 percent higher than their representation in the population, the under-representation of Hispanic and white people at 14 percent and 33 percent, respectively, raises concerns about the missing race data. (See table A) Similarly, when considering the racial breakdown of DTP cases prosecuted to an adverse disposition, the cases missing race data are critical to determining the severity of the racial disparities. (See table B)

Even taking into account the cases that were missing race data, there were significant racial disparities in the number of Black people prosecuted for certain offenses³⁷—specifically, trespass at 42 percent, driving offenses at 36 percent, possession with intent to distribute drugs at 35 percent, and resisting arrest at 39 percent. In all DTP cases, Black people were prosecuted 9 percent higher than their representation in the Suffolk County population. Our findings discuss some of these disparities in charging, prosecution, and disposition.

Table A

DTP Cases Prosecuted to a Disposition in 2013 and 2014

Race	Count	% of Total	% of County Makeup
Asian	266	1.5%	9.1%
Black	6,007	33.7%	24.9%
Hispanic ³⁸	2,543	14.3%	22.9%
Middle Eastern ³⁹	41	0.2%	--
Other	8	0.04%	--
Unknown	148	0.8%	--
White	5,752	32.3%	61.7%
Missing Race Data	3,049	17.1%	--
Total	17,809	--	--

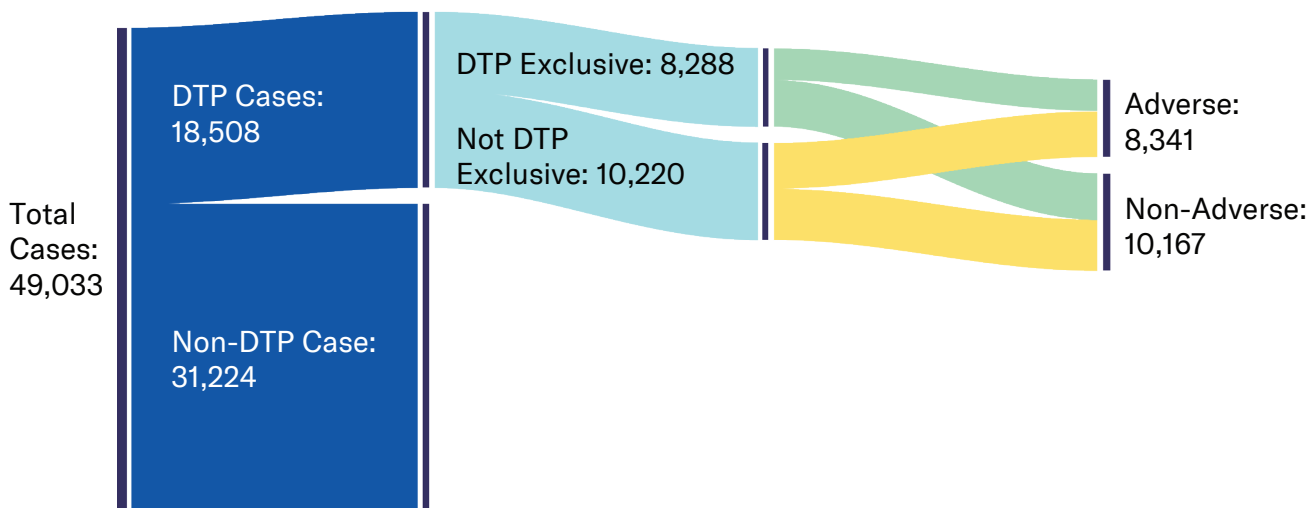
Table B

DTP Charges, by Race and Adversity

Race	# of DTP Charges That Are Adverse	# of DTP Charges	% of Charges That Are Adverse
Asian	76	304	25%
Black	2,607	7,283	35.8%
Hispanic	1,204	3,050	39.5%
Middle Eastern	10	44	22.7%
Other	1	9	11.1%
Unknown	100	180	55.5%
White	3,487	7,458	46.8%
Total	8,942	22,987 ⁴⁰	40.6%

Breakdown of All Decline to Prosecute Cases

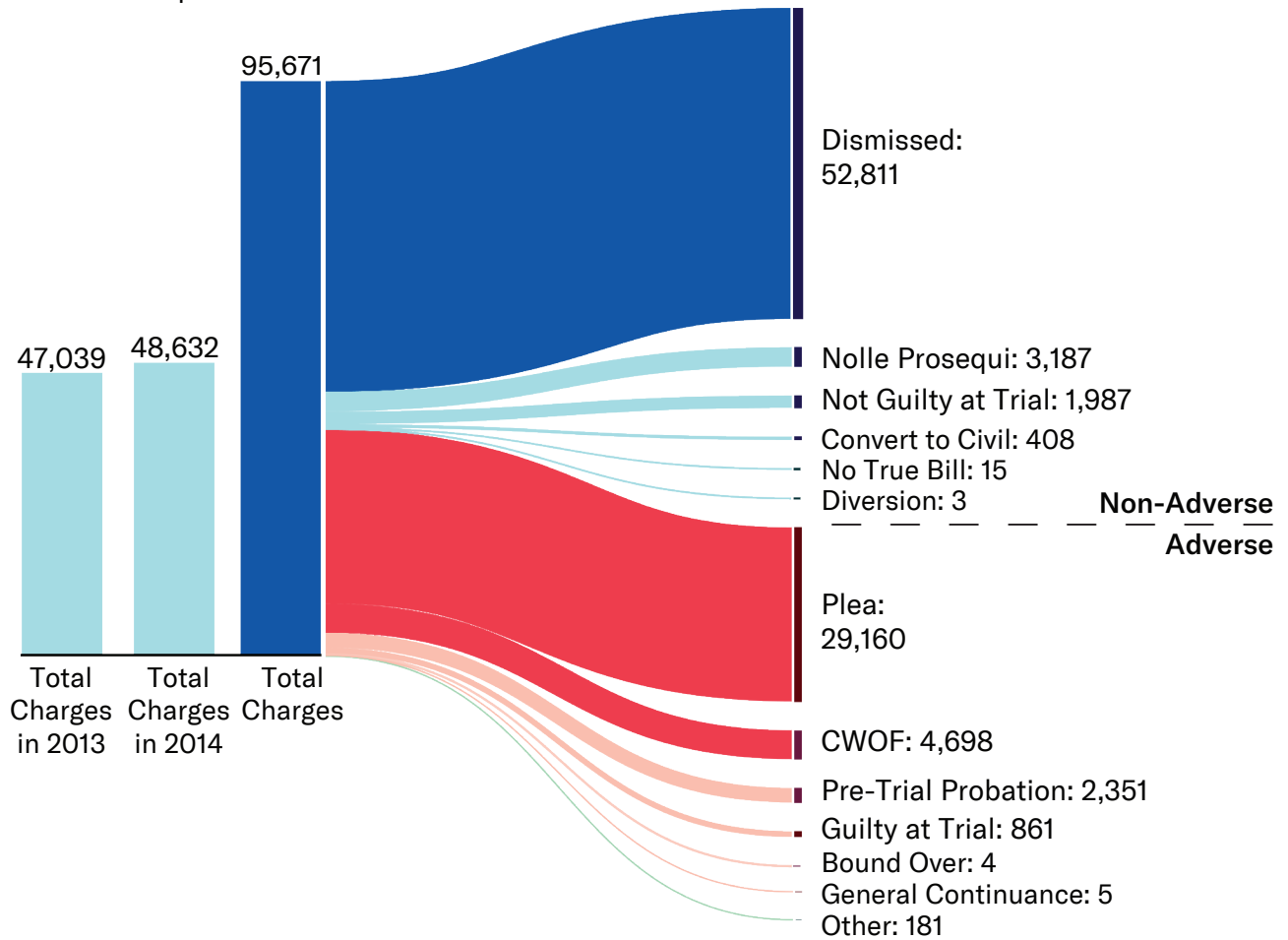
There are 49,033 total cases closed by the SCDAO in 2013 and 2014.



GRAPH C

Breakdown of All Charges Closed By SCDAO in 2013 and 2014

There were 95,671 charges closed by the SCDAO in 2013 and 2014. Most of them were either dismissed or pled out.



GRAPH D

Findings

Black People Were Disproportionately Charged With Misdemeanors and Low-Level Felonies From The Decline to Prosecute List

The data reveals significant racial disparities in the number of Black people charged with these offenses compared to other racial groups.⁴¹ The disparity between Black people and white people for certain offenses was staggering. For public order offenses like disorderly conduct or trespass, Black people were charged at a rate of 3-to-1 as compared to white people. Resisting arrest also had a 3-to-1 disparity. Motor vehicle offenses, which can be a key indicator of racial profiling, showed a higher disparity: 4-to-1 Black to white. (See graph E)

Black people were not only charged at higher rates; in many DTP offense categories, Black people were more likely to face an adverse disposition than their white counterparts.⁴² (See graph F)

These disparities have serious implications. Studies show that Black people with a criminal record are less likely to be hired compared to their similarly-situated white counterparts with criminal records. By prosecuting offenses that could otherwise be dismissed or diverted, DAs' offices reinforce the barriers many people face to employment and further exacerbate

conditions of poverty and higher rates of unemployment and underemployment in communities of color.

Prosecution of low-level misdemeanors and non-violent felonies thus perpetuates the criminalization of poverty. DAs' offices prosecute many poor people, resulting in collateral consequences that further complicate their lives. From the moment someone is arrested, the financial consequences begin to mount. When police take someone into custody, that person runs the risk of being held on bail until they can appear before a court. In many instances, even if a nominal bail is set, there is still a fee that the detained person must produce in order to post the bail. In the event the person cannot post bail, they end up detained and unable to go to work or attend other important appointments or commitments that may have financial implications. When a person is initially brought before the court and advised of the charges against them, they are entitled to a lawyer. If they cannot afford a lawyer because of their economic status, the court will appoint one. This comes at a cost, however, of \$150. The resolution of the case often includes fines and/or fees to pay for court-imposed programs and probation supervision.

Additionally, adverse dispositions on many low-level offenses can also trigger immigration consequences for non-citizens, even those who possess proper documentation. Even cases that

Charge Disparities Between White and Black People Across DTP Charge Categories

ALL CHARGES, REGARDLESS OF ADVERSITY



Black people were nearly **3 times** more likely to be charged with **drug possession with intent to distribute**.

*Black: 768 per 100,000 persons in Suffolk County
White: 280 per 100,000 persons in Suffolk County*

Black people were more than **3 times** more likely to be charged with **resisting arrest**, regardless of associated charges.

*Black: 395 per 100,000 persons in Suffolk County
White: 119 per 100,000 persons in Suffolk County*

Black people were more than **3 times** more likely to be charged with **trespass**.

*Black: 663 per 100,000 persons in Suffolk County
White: 203 per 100,000 persons in Suffolk County*



Black people were **4 times** more likely to be charged with a **motor vehicle offense**, a key indicator of racial profiling.

*Black: 1,331 per 100,000 persons in Suffolk County
White: 321 per 100,000 persons in Suffolk County*

GRAPH E

Outcome Disparities Between Black and White People Across DTP Charge Categories

CHARGES WITH ADVERSE OUTCOMES



Black people were nearly **3 times** more likely have an adverse outcome after being charged with **drug possession with intent to distribute**.

*Black: 245 per 100,000 persons in Suffolk County
White: 85 per 100,000 persons in Suffolk County*

Black people were nearly **3 times** more likely to have an adverse outcome after being charged with a **driving offense**.

*Black: 236 per 100,000 persons in Suffolk County
White: 83 per 100,000 persons in Suffolk County*



Black people were **2.5 times** more likely to have an adverse outcome after being charged with a public order offense like **trespass**.

*Black: 267 per 100,000 persons in Suffolk County
White: 91 per 100,000 persons in Suffolk County*

Black people were more than **2 times** more likely to have an adverse outcome after being charged with **resisting arrest**.

*Black: 215 per 100,000 persons in Suffolk County
White: 88 per 100,000 persons in Suffolk County*

GRAPH F

are disposed by an admission to sufficient facts—as opposed to a guilty plea or conviction—can trigger deportation proceedings.⁴³

Over Half of the DTP Charges Were Dismissed, Suggesting They Were Not Worthwhile Prosecutions

On December 27, 2018, the National Police Association (NPA) filed a state bar complaint against newly elected District Attorney Rollins, stating that she might be choosing to rely on the American Bar Association’s Criminal Justice Standards as a way of providing justification for this policy. The NPA alleged that Rollins’ decision to not prosecute crimes without any further consideration of circumstances was a “severe departure from the overwhelming obligation that Rollins has to increase public safety.”⁴⁴

The “further consideration of circumstances” can and should include the fact that—despite the public safety argument made in support of prosecuting every person arrested for these types of crimes—the data from the SCDAO for 2013 and 2014 shows a majority of those prosecutions were ultimately dismissed. (See table C)

Table C

% of Charges That Are “Non-Adverse” in DTP Charge Category

Charge Category	% of All Charges That are Non-Adverse
Driving Offense	76.5%
Disorderly Conduct	61.3%
Trespass	54.5%
Shoplifting	52.9%
Drug Possession with Intent to Distribute	52.4%
Drug Possession	50.6%
Breaking and Entering	49%
Larceny Under \$250	42.1%
Resisting Arrest	38.5%

While some of these dismissals of DTP charges occurred in the context of guilty pleas, others

were dismissed outright. Seventeen percent of all of the cases prosecuted to a disposition in 2013 and 2014 were DTP exclusive cases.⁴⁵ Of those DTP exclusive cases, 60.9 percent had non-adverse outcomes. In other words, 10 percent of all of the cases prosecuted to a disposition in 2013 and 2014 were DTP exclusive cases in which either the case was dismissed or the person was acquitted. It raises the question: Why were these cases brought in the first place?

There are 72,684 non-DTP charges; of them, roughly 39 percent were adverse. Therefore, the remaining 61 percent of non-adverse charges were arguably the more serious non-DTP charges. If those were dismissed at a higher rate than the DTP cases, the public safety rationale behind prosecuting all of these offenses is called into question. There are also concerns about the racial disparities in non-DTP charges that warrant further examination. (See table D)

Table D

Breakdown of Non-DTP Charges, by Race and Adversity

Race	# of Non-DTP Charges That Are Adverse	# of Non-DTP Charges	% of Charges That Are Adverse
Asian	418	1,107	38%
Black	9,570	27,255	35%
Hispanic	4,480	12,075	37%
Middle Eastern	31	159	20%
Other	10	22	45%
Unknown	215	544	40%
White	8,400	18,421	46%
Total	23,124	72,684 ⁵⁴	32%

Finally, for the cases that were resolved through trial, a significant number of them resulted in non-adverse outcomes. The SCDAO data reveals that only 3 percent of the 49,033 cases—or 1,326 cases—were resolved by trial. Looking only at the 188 DTP cases that were resolved by trial, over half—54 percent—resulted in acquittals. There were only 87 DTP cases, or 6.5 percent, that resulted in guilty

verdicts. Moreover, of the DTP exclusive cases, 72 percent resulted in acquittals. Considering the resources it takes to bring a case to trial and the failing conviction rate after presenting the facts to a jury or judge, it calls into question the efficacy of prosecuting so many of these charges. The significant number of these cases resulting in non-adverse dispositions raises serious concerns about the reasons police and prosecutors charge and prosecute these offenses in the first place. (See graph G)

Significant Questions Remain About Police Charging Practices and Prosecutorial Practices With DTP Charges

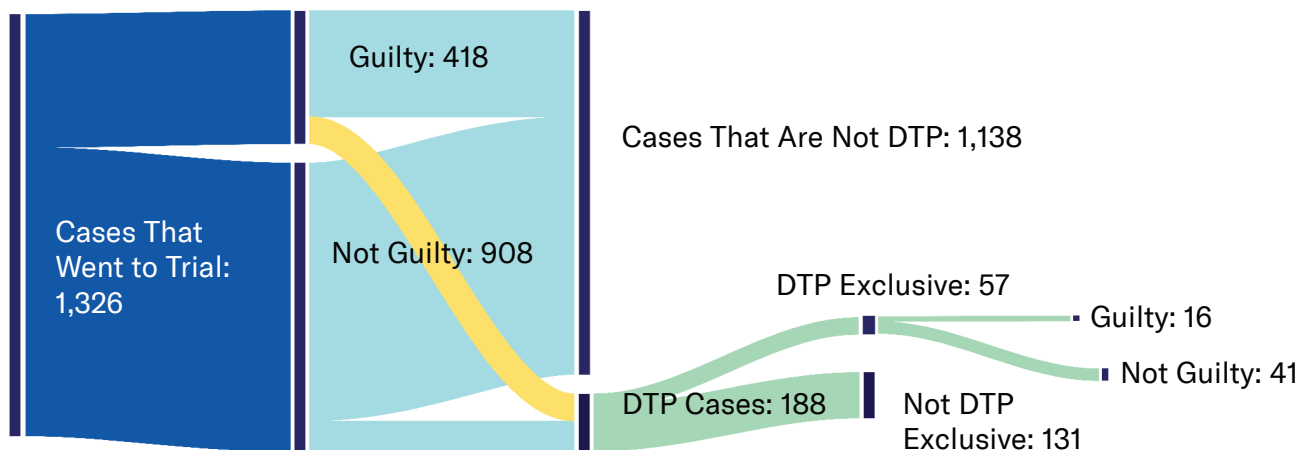
Racial Disparities in Charging Data Raise Concerns About Racial Bias in Police Practices. Declining to Prosecute Misdemeanors and Low-Level Felonies Can Be a Check on Racially Disparate Policing.

The SCDAO data also provide a window into racial disparities in policing in Suffolk County, particularly regarding specific offenses long associated with police racial profiling. The data reflects significant disparities between Black and white people charged with driving offenses,⁴⁶ trespass, and drug possession with intent to distribute. There is one thing these low-level offenses have in common: the high degree of officer discretion available to police when deciding whether or not to arrest and charge someone.

The data reveals that there was a Black to white disparity of 15-to-1 and 8-to-1 in the Boston Municipal Court Central and Roxbury divisions respectively. In other words—in the rapidly gentrifying Roxbury section of the city—for every one white person per 100,000 white residents, seven Black people per 100,000 Black residents were likely to be charged with driving offenses. The Roxbury division of the Boston Municipal Court encompasses the Mission Hill, Longwood, and

Breakdown of All Cases That the SCDAO Took to Trial

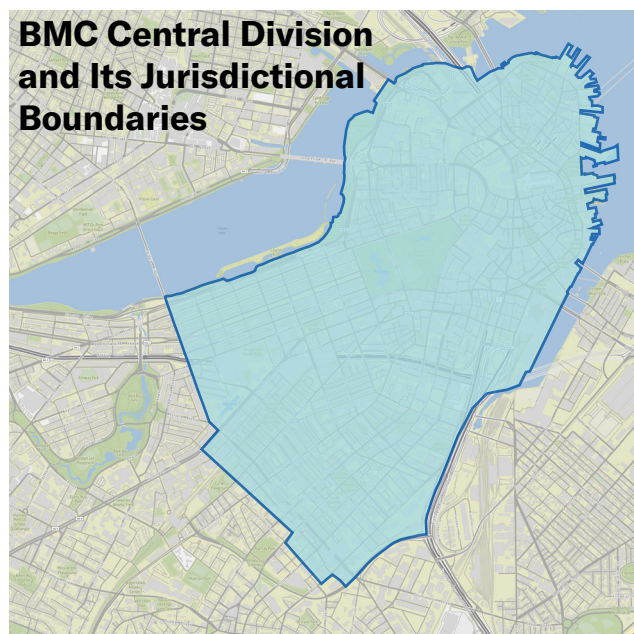
There are 49,033 total cases closed by the SCDAO in 2013 and 2014. Three percent of all cases ended up going to trial. This is how they break down. A “DTP exclusive” case is where all charges in the case fall into the DTP list.



GRAPH G. Approximately 3 percent of the cases (1,326 cases, representing 2,866 charges) were resolved by a trial. Of those cases that went to trial, 418 cases— 31 percent of the 3 percent—are adversely disposed. DTP cases made up 14 percent or 188 of the cases that went to trial. Less than half—46 percent—of the DTP cases that went to trial were adversely disposed with only 87 out of the 188 resulting in guilty verdicts.

Fenway areas, which even out the population of Black to white persons at a ratio of about nine Black persons for every 10 white persons. Despite this, Black people were charged with driving offenses like operating with a suspended license, or driving with expired registration, at a rate of seven times that of white people in the Roxbury division of the Boston Municipal Court.

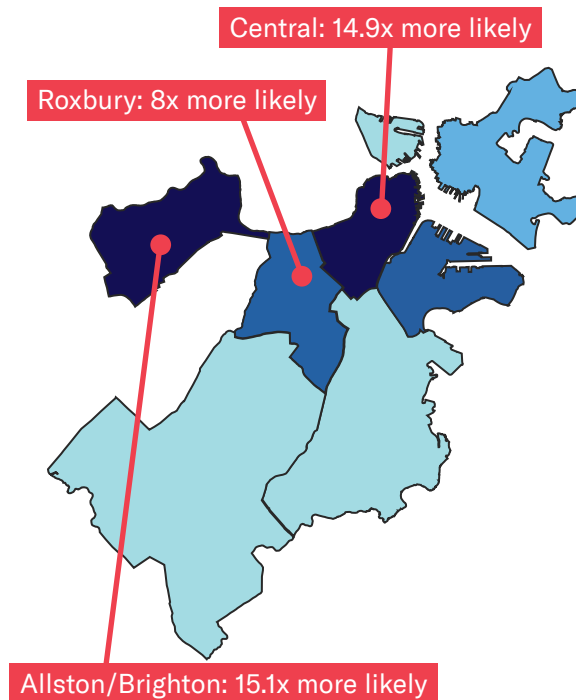
Meanwhile, the jurisdiction of the Central division of the Boston Municipal Court encompasses sections of Boston that are mostly white and affluent including Back Bay, Beacon Hill, and the North End. (See map A)



MAP A

The 2013 and 2014 data shows an alarming 15-to-1 disparity for driving offenses, raising serious concerns about the ways in which the BPD and the Massachusetts State Police enforced motor vehicle laws in certain segments of the city. This is particularly disturbing in light of the practical implications of disparate policing detailed above and the financial consequences these charges have on a person’s ability to restore driving privileges or to secure employment that requires a valid license. (See map B)

Likelihood of a Black Person to Be Charged with a Driving Offense, Compared to a White Person



MAP B

Similarly, so-called “quality of life” offenses like disorderly conduct, disturbing the peace, and trespass were disproportionately charged against people of color in certain segments of the city. For instance, the Black to white disparity for the charge of trespass in West Roxbury was 2-to-1, while in Roxbury it was 4-to-1. In Allston-Brighton, it was 14-to-1. The racially disparate use of these so-called “quality of life” offenses without justification erodes trust and rapport between law enforcement and people in the Black community and communities of color. Declining to prosecute these low-level offenses has the potential to nullify or otherwise impact a tool the police have used with racially disparate outcomes or in a racially disparate manner.

The way police choose to enforce criminal laws and use the power of arrest in communities of color has been an important topic in criminal

law reform conversations. The analysis of the SCDAO's 2013 and 2014 data shines a light on some of BPD's policing practices, since many of the arrests made during those years were prosecuted to a disposition. It is not clear whether the trespass charges in the SCDAO data are always an indicator of over-policing of Black people; in some cases, police may have charged a person in response to a resident's call. Since many of the charges were dismissed in court, and since Rollins has pledged not to prosecute the bulk of them, BPD should decline to arrest people for offenses like trespass moving forward. The charging disparities revealed in the SCDAO data should inspire BPD to examine racial disparities in its own arrest data related to the offenses from the DTP list.

The SCDAO data also reveals significant disparities in drug possession with intent to distribute charges—a specific type of charge involving a high degree of officer discretion. The SCDAO data shows no significant racial disparities in charges for drug possession alone. Yet, the data shows a 3-to-1 disparity between Black and white people charged with drug possession with intent to distribute. This disparity is deeply troubling because a police officer can exercise their discretion when they discover someone with drugs; depending on the circumstances of the discovery, the officer can choose to charge that person with drug possession or with possession with intent to distribute—a felony charge that carries heavier penalties.⁴⁷

Once an officer has charged a person with possession with intent to distribute, a conviction only requires proof that an individual possessed drugs—no matter the amount—with the intent to distribute them, because there is no weight threshold required to prove the offense. Intent can be inferred from packaging, statements, or other indicators that demonstrate an intent to distribute. The absence of racial disparities

in drug possession charges—particularly paired with the presence of racial disparities in possession with intent to distribute charges—highlights the need to interrogate the choices police officers made when they discovered someone in possession of drugs.

Often, police charge people with this offense for amounts that the person possesses for personal consumption or amounts they intend to consume with others. Although consuming with others may meet the technical definition of possession with intent to distribute, officers can and do use their discretion to charge simple possession. The racial disparities between people charged with possession of drugs versus those charged with possession with intent to distribute raise questions about how that discretion is exercised.

Similarly, prosecutors can reduce a possession with intent to distribute charge to a simple possession charge in order to negotiate a plea deal. The racial disparities between Black and white people charged with possession with intent to distribute raise serious concerns considering evidence shows Black and white people use and sell drugs at relatively the same rates.⁴⁸ Declining to prosecute these charges can provide a check on what may be an abuse of police and prosecutor discretion—or at least a disparate application of discretion.

Finally, the offense of resisting arrest was another charge that was disproportionately charged against Black people in Suffolk County relative to their population in the county.⁴⁹ Our analysis of the SCDAO data shows a 3-to-1 disparity between Black people and white people. Overall, Black people make up 39 percent of the people prosecuted for resisting arrest, though they only make up 24.9 percent of the Suffolk County population. This disparity does not account for the 15 percent of resisting arrest charges missing race data.

Despite these disparities, law enforcement organizations and officials took particular umbrage at Rollins' commitment to decline to prosecute resisting arrest charges.⁵⁰ Her commitment, however, was limited to instances where resisting arrest was the only charge, or was included in charges where all of the other offenses are from the decline to prosecute list. Looking at policing practices as a form of social control, resisting arrest is a charge that can be used to compel compliance. Ask most criminal defense attorneys and they can rattle off anecdotal accounts of clients whose only offense was disrespectful behavior towards a police officer, which led to an officer arresting them and charging them with resisting arrest in order to gain compliance or demonstrate their power. Rollins' presumptive non-prosecution of resisting arrest cases where it is either the only or one offense among other exclusively DTP charges, can serve as a check against police misuse of this charge.

Analysis of Charging Decisions Raises Concerns About Prosecutors' Use of Superfluous Charges to Leverage Plea Deals

There is also an outstanding question about whether prosecutors benefit from police charging practices by overcharging or "charge stacking" to leverage plea bargains. Charge stacking is the practice of charging an individual with every offense that there is probable cause to prove. Given that there are over 2,000 criminal charges in the Massachusetts General Laws, it's an easy task for an officer to find an offense to charge someone with. The stacked charges can be used as bargaining chips to leverage guilty pleas against individuals who now face potentially harsher penalties given the number of offenses they've been charged with.

It would be very difficult for the approximately 150 prosecutors in the SCDAO to competently

close out the roughly 25,000 cases they prosecuted to disposition each year in 2013 and 2014 without plea bargains.⁵¹ There are approximately 60 ADAs, or line prosecutors, in Suffolk County who handle district court cases. Data from 2013 and 2014 suggests that, on average, an ADA handled about 375 cases per year. These figures do not take into account the cases that were prosecuted but not disposed of during those years; therefore, the number of cases an ADA prosecuted over an average year may be substantially higher. That is an unreasonable caseload for any prosecutor. Faced with these enormous caseloads, prosecutors too often turn to their most powerful weapon to transform cases into guilty verdicts or adverse dispositions: plea negotiations.

Plea negotiation is the process used to resolve pending criminal matters short of trial. During the negotiation process, prosecutors offer shorter terms of probation or incarceration than what the accused person would face if convicted after trial, instead of offering them a fair and reasonable sentence throughout the case.

Prosecutors often use superfluous charges as a bargaining chip. Here's how it works: If an ADA prosecutes someone for trespass, disorderly conduct, resisting arrest, and possession with intent to distribute drugs, the ADA has a lot of power and flexibility during the negotiating process, enabling them to dismiss some of the charges in exchange for the accused person pleading guilty to the remaining charges. But if the accused exercises their constitutional right to go to trial, the ADA can warn them that—if found guilty—they will recommend the accused be sentenced based on all of these charges. It's often an impossible scenario for the accused, and results in astonishingly high percentages of plea agreements. Nationwide, over 90 percent of guilty findings—not including continuances without a finding, pre-trial

probation, or other admissions to facts—in state and local courts arise from plea agreements, not trials.⁵² The SCDAO data analyzed shows that guilty pleas accounted for 98 percent of all guilty findings, while the remaining 2 percent of guilty findings were the result of a trial.⁵³

Our analysis of the SCDAO data raises a question about how superfluous DTP charges were used in plea negotiations. If individual DTP charges are being dismissed at a rate greater than DTP cases, it suggests that individual charges are being dismissed in exchange for guilty pleas, admissions to sufficient facts, or other adverse findings on the case. Looking at the overall number of DTP charges, they appear to have non-adverse outcomes—or dismissals—at a rate greater than DTP cases. This is consistent with prosecutors using the superfluous DTP charges as bargaining chips to leverage guilty pleas or other adverse dispositions on the cases.

Our analysis of the SCDAO data shows that 45 percent of DTP cases were adversely disposed, yet the overall percent of adverse dispositions for DTP charges within those cases is 41 percent. This suggests that DTP charges were frequently dismissed in exchange for guilty pleas on other charges. Further analysis is warranted to determine if the difference between charge dismissal rates and case dismissal rates was the result of prosecutorial practices related to plea bargaining or another source. (See graphs H and I)

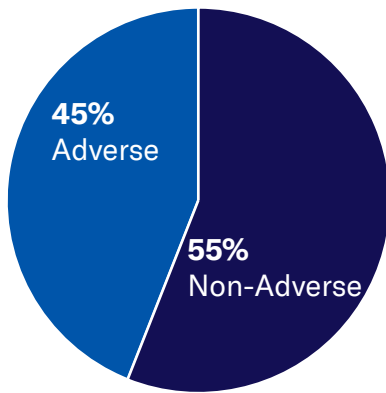
If police are charging and ADAs are prosecuting misdemeanor and low-level felony offenses like those on the DTP list in order to coerce or leverage guilty pleas or other adverse dispositions from the accused, the public should be informed. Charging people with offenses that will ultimately end up dismissed gives prosecutors more power to negotiate a resolution that the accused can accept or else

risk a conviction, a significant sentence due to the number of charges, and a longer criminal record.

It is true that plea negotiations are a well-accepted practice within the criminal courts and have generally been understood as a mechanism used to increase efficiency in busier courts. But the choice to prosecute these misdemeanor and low-level felony offenses in the first place is just that: a choice. The data indicates that prosecutors could save time, reduce harm, and build trust with the community by declining to prosecute lower-level offenses. The commitment to decline to prosecute these misdemeanor and low-level felony offenses is an important step towards ending our over-reliance on the criminal legal system to deal with issues related to poverty, trauma, substance use disorder, and mental health issues.

Percent of All DTP Cases with Adversity

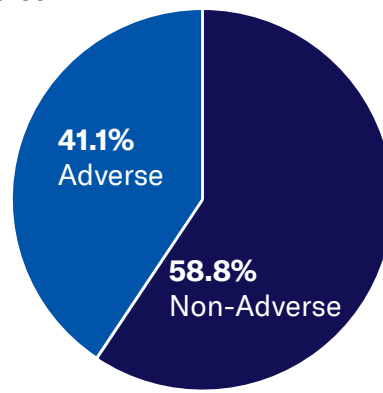
A large majority of the 18,508 DTP cases have a non-adverse outcome.



GRAPH H

Percent of all DTP Charges with Adversity

There are 22,987 total DTP charges in 2013 and 2014. A large majority of those charges are non-adverse.



GRAPH I

Recommendations

District Attorney Rachael Rollins' campaign pledge declining to prosecute 15 misdemeanors and low-level felonies has created an opportunity to take a deeper look into some of the practices of the SCDAO over the past several years. This closer look reveals significant racial disparities and the need for better data. In light of the significant disparities in who is charged with these offenses and the questions surrounding police and prosecutorial practices, we recommend Rollins use the power of her role as district attorney to do the following:

1. Rollins should fully implement her promised "Decline to Prosecute" policy. She must honor her campaign platform of presumptive non-prosecution of the 15 misdemeanors and low-level felonies. In the absence of robust community-based treatment facilities, restorative justice programs, and other services for people living with addiction, mental health issues and/or poverty, there may be a desire to continue to rely on the criminal legal system. That would be a serious mistake. To the extent that the SCDAO continues to pursue these misdemeanor charges in limited circumstances, they should make up no more than 1 percent of the total number of cases prosecuted, as opposed to the 38 percent of those prosecuted to a disposition in 2013 and 2014. In order to achieve this, Rollins must develop a clear policy that carves out the exceptions for

when a DTP case may be prosecuted, and establish clear accountability measures and structures to ensure compliance.

2. The SCDAO, as well as the other district attorney offices across the Commonwealth, should invest in data science, research, staffing, and methods to track of how ADAs prosecute cases across the county on a week-to-week basis. If any DTP charges are prosecuted, the SCDAO should study the cost, benefit, and efficacy of those prosecutions.

Rachael Rollins and DAs across the Commonwealth must improve record-keeping and data collection. Much of the data provided pursuant to the public records request was missing race data, sentencing data, and did not include the date or court event for each disposition. In order to have a better understanding of prosecution practices, there should be well-collected data that provides relevant information about the trajectory of a case through the entirety of prosecution. District attorney offices should also have staff with the expertise to consistently collect, analyze, and report on prosecution trends and disparities. Prosecution statistics should be analyzed and reported out on a week-to-week basis. Data should include but not be limited to prosecution statistics for each court, status of each case and next court date,

bail requests, charge breakdowns, plea offers, final disposition, as well as race and ethnicity data. This will ensure that DTP charges are being dismissed, and help identify trends, problems, and costs of prosecution. Consistent research and analysis will enable the SCDAO to identify opportunities to become more efficient and just by eliminating unnecessary prosecutions.

3. The SCDAO must work with Suffolk County residents, community organizers, health care advocates, drug treatment specialists, anti-poverty activists, local small business owners, youth and youth workers, and others to develop a robust network of community-led alternatives to prosecution. This will help ensure that there are appropriate services and programming for people who are in need. Often, people are charged with minor offenses because there are no available alternatives. People who are homeless, struggling with substance use disorder, or experiencing mental health issues may encounter the police more frequently than other Suffolk County residents. The police charge them with these offenses, which could otherwise be avoided. By identifying and supporting community-based programs and support services, the need to police individuals is significantly diminished.
4. The prevalence of racial disparities among the DTP charges should be an impetus for police departments in Suffolk County and elsewhere to examine their arrest records, and look for racial disparities in arrests for these 15 types of offenses. The SCDAO must work with the Boston Police Department, the Massachusetts State Police, and all other municipal and university law enforcement agencies in Suffolk County to ensure that people are not being charged unnecessarily or in a

racially disparate manner. By reviewing the number of people charged and looking at the racial disparities with an eye toward understanding policing practices, these agencies can identify patterns of racially disparate policing. Police should also increase involvement with Suffolk County residents, community organizers, health care advocates, drug treatment specialists, anti-poverty activists, local small business owners, youth, and youth workers.

5. Finally, police departments should enact “Decline to Arrest” policies similar to Rollins’ campaign pledge, and inform their officers that, in most circumstances, they are not to make arrests for these types of incidents. Absent empirical evidence and analysis of arrest data that show increased public safety, police departments should decline to make arrests for public order and other low-level offenses, and should instead study the benefits to public safety and invest greater resources into community-based crime prevention alternatives.

Law enforcement has been over-policing, over-charging, and over-prosecuting people of color, particularly Black people in Suffolk County. In light of the election of DAs who ran on platforms of reform, there is a tremendous opportunity to respond to over-policing in communities of color by leveraging the power of the district attorney’s office for the benefit of the people. Further study is needed into not only the 15 charges on the Decline to Prosecute list, but all charges that are brought. Consistent, rigorous, and transparent analysis of prosecution data will better equip the SCDAO—and any other prosecutor’s office—to identify ways to reduce over-incarceration and eliminate racial disparities. Cook County State’s Attorney Kim Foxx in Illinois has set a great example by making most of her office’s prosecution data available,⁵⁵ as has the Manhattan DA’s office who collaborated with

the Vera Institute to study racial disparities in the Manhattan criminal legal system.⁵⁶ Philadelphia District Attorney Larry Krasner, St. Louis County District Attorney Wesley Bell, and Baltimore State's Attorney Marilyn Mosby have also announced progressive policies regarding bail and non-prosecution of low-level drug offenses.

All DAs in Massachusetts should invest in alternatives to prosecution, and data collection and analysis. We cannot allow fear to compel us to continue using the criminal legal system to address our failures as a society to provide and meet the basic human needs of our neighbors, loved ones, and friends. Public safety can be achieved through investing in people, not prisons. We need fact-based solutions that are rooted in restoration, transformation, and healing, not outdated fear-based tactics that cause harm and disrupt people's lives. A small step forward is declining to prosecute.

Research Addendum

What follows is a research addendum that was used as the basis for the analysis in this report.

Total Charges Processed

The SCDAO processed:

- 95,671 total charges in 2013 and 2014
- 47,039 charges in 2013
- 48,632 charge in 2014

Total Cases Processed

The SCDAO processed:

- 49,033 total cases in 2013 and 2014
- 24,225 in 2013
- 24,808 in 2014

DTP Case and Charge Counts

Of the 95,671 total charges processed by the SCDAO in 2013 and 2014, 22,987 of them fall into the DTP category. That is 24 percent.

- 11,265 DTP charges in 2013
- 11,722 DTP charges in 2014

Of the 49,033 total cases processed by the SCDAO in 2013 and 2014, 18,508 of them fall into the DTP category. That is 37.7 percent.

- 9,087 cases with at least one DTP charge in 2013
- 9,421 cases with at least one DTP charge in 2014

DTP Case and Charge Counts by Category

Trespass (See table E)

- Of 95,671 total charges in 2013 and 2014, 2,639 are for trespass.
- Of 49,033 total cases in 2013 and 2014, 2,619 cases include at least one charge for trespass.
- Of 95,671 total charges in 2013 and 2014, 1,202 are trespass charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 1,195 cases include trespass charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 1,530 cases contain only a trespass charge and other charges on the DTP list.

Table E**Trespass Charges, by Race**

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	21	0.8%	33.6	0.2
Black	1,087	41.2%	655.7	3.2
Hispanic	321	12.2%	205.3	1.0
Middle Eastern	2	0.1%	--	--
Unknown	21	0.8%	--	--
White	843	31.9%	202.4	--
Missing	344	13%	--	--
Total	2,639	--	--	--

Shoplifting (See table F)

- Of 95,671 total charges in 2013 and 2014, 1,469 are for shoplifting.
- Of 49,033 total cases in 2013 and 2014, 1,414 cases include at least one charge for shoplifting.
- Of 95,671 total charges in 2013 and 2014, 699 are shoplifting charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 672 cases include shoplifting charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 1,018 cases contain only a shoplifting charge and other charges on the DTP list.

Disorderly Conduct (See table G)

- Of 95,671 total charges in 2013 and 2014, 2,765 are for disorderly conduct.
- Of 49,033 total cases in 2013 and 2014, 2,676 cases include at least one charge for disorderly conduct.
- Of 95,671 total charges in 2013 and 2014,

1,071 are disorderly conduct charges that resulted in an adverse disposition.

- Of 49,033 total cases in 2013 and 2014, 1,048 cases include disorderly conduct charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 1,143 cases contain only a disorderly conduct charge and other charges on the DTP list.

Table F**Shoplifting Charges, by Race**

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	2	0.1%	3.2	0.0
Black	442	30.1%	266.6	2.0
Hispanic	193	13.1%	123.5	0.9
Middle Eastern	3	0.2%	--	--
Other	2	0.1%	--	--
Unknown	15	1.0%	--	--
White	559	38.1%	134.2	--
Missing	190	12.9%	--	--
Total	1,469	--	--	--

Table G**Disorderly Conduct Charges, by Race**

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	48	1.7%	76.7	0.4
Black	994	35.9%	599.6	2.9
Hispanic	304	11%	194.5	--
Middle Eastern	6	0.2%	--	--
Other	2	0.1%	--	--
Unknown	18	0.7%	--	--
White	871	31.5%	209.1	--
Missing	522	18.9%	--	--
Total	2,765	--	--	--

Driving Offenses (See table H)

- Of 95,671 total charges in 2013 and 2014, 6,296 are for driving offenses.
- Of 49,033 total cases in 2013 and 2014, 5,952 cases include at least one charge for a driving offense.
- Of 95,671 total charges in 2013 and 2014, 1,478 are driving offense charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 1,413 cases include driving offense charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 2,059 cases contain only a driving offense charge and other charges on the DTP list.

Table H

Driving Offense Charges, by Race

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	132	2.1%	211	0.6
Black	2,239	35.6%	1350.6	4.1
Hispanic	1,014	16.1%	648.7	2.0
Middle Eastern	27	0.4%	--	--
Other	2	0%	--	--
Unknown	61	1%	--	--
White	1,359	21.6%	326.3	--
Missing	1,462	23.2%	--	--
Total	6,296	--	--	--

Breaking and Entering⁵⁷ (See table I)

- Of 95,671 total charges in 2013 and 2014, 153 are for breaking and entering.
- Of 49,033 total cases in 2013 and 2014, 151 cases include at least one charge for breaking and entering.
- Of 95,671 total charges in 2013 and 2014,

78 are breaking and entering charges that resulted in an adverse disposition.

- Of 49,033 total cases in 2013 and 2014, 77 cases include breaking and entering charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 76 cases contain only a breaking and entering charge and other charges on the DTP list.

Table I

Breaking and Entering Charges, by Race

Race	Count	% of Total	Per Capita	Ratio to White Persons
Black	55	35.9%	33.2	2.5
Hispanic	18	11.8%	11.5	0.9
Other	1	0.7%	--	--
Unknown	1	0.7%	--	--
White	55	35.9%	13.2	--
Missing	23	15%	--	--
Total	153	--	--	--

Larceny (Under \$250) (See table J)

- Of 95,671 total charges in 2013 and 2014, 710 are for larceny.
- Of 49,033 total cases in 2013 and 2014, 648 cases include at least one charge for larceny.
- Of 95,671 total charges in 2013 and 2014, 411 are larceny charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 375 cases include larceny charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 227 cases contain only a larceny charge and other charges on the DTP list.

Table J**Larceny Under \$250 Charges, by Race**

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	7	1%	11.2	0.1
Black	221	31.1%	133.3	1.7
Hispanic	73	10.3%	46.7	0.6
Unknown	3	0.4%	--	--
White	328	46.2%	78.8	--
Missing	76	10.7%	--	--
Total	710	--	--	--

Drug Possession (See table K)

- Of 95,671 total charges in 2013 and 2014, 3,838 are for drug possession.
- Of 49,033 total cases in 2013 and 2014, 3,248 cases include at least one charge for drug possession.
- Of 95,671 total charges in 2013 and 2014, 1,864 are drug possession charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 1,621 cases include drug possession charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 1,808 cases contain only a drug possession charge and other charges on the DTP list.

Drug Possession With Intent to Distribute (See table L)

- Of 95,671 total charges in 2013 and 2014, 3,652 are for drug possession with intent to distribute.
- Of 49,033 total cases in 2013 and 2014, 2,775 cases include at least one charge for drug possession with intent to distribute.

- Of 95,671 total charges in 2013 and 2014, 1,736 are drug possession charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 1,371 cases include drug possession charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 836 cases contain only a drug possession charge and other charges on the DTP list.

Table K**Drug Possession Charges, by Race**

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	28	0.7%	44.8	0.1
Black	803	20.9%	484.4	1.0
Hispanic	440	11.5%	281.5	0.6
Middle Eastern	4	0.1%	--	--
Other	1	0%	--	--
Unknown	34	0.9%	--	--
White	2,006	52.3%	481.7	--
Missing	522	13.6%	--	--
Total	3,838	--	--	--

Table L**Drug Possession With Intent to Distribute Charges, by Race**

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	46	1.3%	73.5	0.3
Black	1,274	34.9%	768.5	2.7
Hispanic	710	19.4%	454.2	1.6
Middle Eastern	4	0.1%	--	--
Unknown	17	0.5%	--	--
White	1,167	32%	280.2	--
Missing	434	11.9%	--	--
Total	3,652	--	--	--

Table M**Individual Drug Possession Charges**

Drug Charge	Count
DRUG, POSSESS CLASS A c. 94C s. 34	1
DRUG, POSSESS CLASS A c94C §34	987
DRUG, POSSESS CLASS A, SUBSQ. OFF. c. 94C s. 34	1
DRUG, POSSESS CLASS A, SUBSQ.OFF. c94C §34	87
DRUG, POSSESS CLASS B c. 94C s. 34	7
DRUG, POSSESS CLASS B c94C §34	1,661
DRUG, POSSESS CLASS B, SUBSQ. OFF. c. 94C s. 34	1
DRUG, POSSESS CLASS B, SUBSQ.OFF. c94C §34	207
DRUG, POSSESS CLASS C c94C §34	450
DRUG, POSSESS CLASS C, SUBSQ.OFF. c94C §34	16
HEROIN, BEING PRESENT WHERE KEPT c. 94C s. 35	1
HEROIN, BEING PRESENT WHERE KEPT c94C §35	166
HEROIN, POSSESS c94C §34	9
OTHER POSSES CL B DRUG SUBSQ OFF	6
POSSESSION OF CLASS B, DRUGS	57
POSSESSION OF CLASS D, DRUGS	9
DRUG, POSSESS CLASS D c. 94C s. 34	5
DRUG, POSSESS CLASS D c94C §34	159
DRUG, POSSESS CLASS D, SUBSQ.OFF. c94C §34	8
Total	3,838

Destruction of Property (See table O)

- Of 95,671 total charges in 2013 and 2014, 326 are for destruction of property.
- Of 49,033 total cases in 2013 and 2014, 317 cases include at least one charge for destruction of property.
- Of 95,671 total charges in 2013 and 2014, 102 are destruction of property charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 97 cases include destruction of property charges that resulted in an adverse disposition.
- Of 49,033 total cases in 2013 and 2014, 77 cases contain only a destruction of property charge and other charges on the DTP list.

Table N**Individual Drug Possession With Intent to Distribute Charges**

Drug Charge	Count
DRUG, DISTRIBUTE OR POSSESS WITH INTENT CLASS E c. 94C s. 32D(a)	1
DRUG, DISTRIBUTE OR POSSESS WITH INTENT, CLASS A c. 94C s. 32(a)	6
DRUG, DISTRIBUTE OR POSSESS WITH INTENT, CLASS B c. 94C s. 32A(a)	10
DRUG, DISTRIBUTE OR POSSESS WITH INTENT, CLASS B, SUBSQ. OFF. c. 94C s. 32A(b)	1
DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a)	494
DRUG, POSSESS TO DISTRIB CLASS A, SUBSQ. c94C §32(b)	102
DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a)	983
DRUG, POSSESS TO DISTRIB CLASS B, SUBSQ. c94C §32A(b)	217
DRUG, POSSESS TO DISTRIB CLASS C c94C §32B(a)	326
DRUG, POSSESS TO DISTRIB CLASS C, SUBSQ. c94C §32B(b)	37
DRUG, POSSESS TO DISTRIB CLASS D c94C §32C(a)	986
DRUG, POSSESS TO DISTRIB CLASS D, SUBSQ. c94C §32C(b)	103
DRUG, POSSESS TO DISTRIB CLASS E c94C §32D(a)	273
DRUG, POSSESS TO DISTRIB CLASS E, SUBSQ. c94C §32D(b)	21
POSSESSION W/I TO DISTRIBUTE, CLASS B, DRUGS	50
Total	3,652

Table O**Breakdown of the Destruction of Property Charges, by Race**

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	32	0.6%	3.2	0.2
Black	129	39.6%	77.8	4.1
Hispanic	55	16.9%	35.2	1.8
Unknown	3	0.9%	--	--
White	80	24.5%	19.2	--
Missing	57	17.5%	--	--
Total	326	--	--	--

Resisting Arrest (See table P)

From Rachael Rollins' website:

A resisting arrest charge combined with only charges that all fall under the list of charges to decline to prosecute, e.g., resisting arrest charge combined only with a trespassing charge.

Essentially, this policy would mean that the SCDAO would only move to decline to prosecute a resisting arrest charge if:

- It is the only charge in a case, or;
- There is a charge for resisting arrest, and all other charges in the case are on the DTP list.

Of the 49,033 total cases in 2013 and 2014, there are 401 cases that contain only a resisting arrest charge or a resisting arrest charge with other charges on the DTP list.

- Of the 401 cases, there are 855 charges; 402 charges are for resisting arrest and the remaining 453 are other charges on the DTP list.

Table Q

All Cases Prosecuted to a Disposition by SCDAO in 2013 and 2014, by Court Division

Court	Number of Cases
Boston Municipal Court Central Division	10,158
Brighton Division	2,303
Charlestown Division	1,164
Chelsea District Court	6,523
Dorchester Division	9,513
East Boston Division	2,990
Roxbury Division	7,784
South Boston Division	2,808
Superior Court	1,634
West Roxbury Division	4,156
Total	49,033

Table P

Breakdown of the Resisting Arrest Charges, by Race

Race	Count	% of Total	Per Capita	Ratio to White Persons
Asian	3	0.7%	4.8	0.1
Black	158	39.3%	95.3	2.9
Hispanic	37	9.2%	23.7	0.7
Middle Eastern	1	0.2%	--	--
Unknown	5	1.2%	--	--
White	136	33.8%	32.7	--
Missing	62	15.4%	--	--
Total	402	--	--	--

Appendix A

Charges found in the 2013 and 2014 SCDAO data that the ACLU of Massachusetts identified as being included on the “Decline to Prosecute” list⁵⁸:

B&E FOR MISDEMEANOR c266 §16A

COCAINE, POSSESS TO DISTRIBUTE c94C §32A(c)

COUNTERFEIT DRUG, DISTRIBUTE OR POSSESS WITH INTENT c. 94C s. 32G

DESTRUCTION OF PROPERTY -\$250, MALICIOUS c266 §127

DESTRUCTION OF PROPERTY -\$250, WANTON c266 §127

DISORDERLY CONDUCT c272 §53

DISTURBING THE PEACE c272 §53

DRUG, DISTRIBUTE OR POSSESS WITH INTENT CLASS E c. 94C s. 32D(a)

DRUG, DISTRIBUTE OR POSSESS WITH INTENT, CLASS A c. 94C s. 32(a)

DRUG, DISTRIBUTE OR POSSESS WITH INTENT, CLASS B c. 94C s. 32A(a)

DRUG, POSSESS CLASS A c94C §34

DRUG, POSSESS CLASS B c94C §34

DRUG, POSSESS CLASS C c94C §34

DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a)

DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a)

DRUG, POSSESS TO DISTRIB CLASS B, SUBSQ. c94C §32A(b)

DRUG, POSSESS TO DISTRIB CLASS C c94C §32B(a)

DRUG, POSSESS TO DISTRIB CLASS C, SUBSQ. c94C §32B(b)

DRUG, POSSESS TO DISTRIB CLASS D, SUBSQ. c94C §32C(b)

DRUG, POSSESS TO DISTRIB CLASS E c94C §32D(a)

DRUG, POSSESS TO DISTRIB CLASS E, SUBSQ. c94C §32D(b)

HEROIN, BEING PRESENT WHERE KEPT c94C §35

HEROIN, POSSESS c94C §34

LARCENY UNDER \$250 c266 §30(1)

LICENSE SUSPENDED, OP MV WITH c90
§23

OTHER | SHOPLIFTING BY CONCEALING
MDSE 266:30A

POSSESSION OF CLASS D, DRUGS

REGISTER MV OPERATED +30 DAYS YEAR,
FL * c90 §3

REGISTRATION LEFT IN TRANSFERRED
MV * c90 §2B

REGISTRATION NOT IN POSSESSION * c90
§11

REGISTRATION STICKER MISSING * 540
CMR §2.05(6)(a)

REGISTRATION STICKER MISSING * 540
CMR §2.24(3)

REGISTRATION SUSPENDED, OP MV
WITH c90 §23

RESIST ARREST (Common Law)

RESIST ARREST c268 §32B

SHOPLIFTING \$100+ BY ASPORTATION
c266 §30A

SHOPLIFTING \$100+ BY CONCEALING
MDSE c266 §30A

SHOPLIFTING BY ASPORTATION c266
§30A

SHOPLIFTING BY CONCEALING MDSE
c266 §30A

SHOPLIFTING OF SHOPPING CART c266
§30A

TRESPASS c266 §120

Endnotes

- 1 “Policy.” Rachael Rollins for Suffolk DA, rollins4da.com/policy/.
- 2 FIO stands for “Field Interrogation, Observation, Frisk and/or Search.” FIOs are reports that police officers create after they interrogate, observe, stop, frisk, and/or search someone.
- 3 Fagan, J. Braga, A. Brunson, R. Pattavina, A. (2015, June) Final Report - An Analysis of Race Ethnicity Patterns in Field Interrogation, Observation, Frisk, and/or Search Report. Retrieved from <https://raceandpolicing.issuelab.org/resources/25203/25203.pdf>.
- 4 “Nolle Prosequi.” Nolo, <https://www.nolo.com/dictionary/nolle-prosequi-term.html>.
- 5 *An Act Relative to Criminal Justice Reform*, Chapter 69 of the Acts of 2018. Massachusetts Legislature, malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter69. Retrieved March 7, 2019.
- 6 Beitsch, R. (2016, July) Victims and Offenders Come Together to Make Their Own Justice. Retrieved from <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/07/20/victims-and-offenders-come-together-to-make-their-own-justice>. Retrieved on February 28, 2019. See also E. K. Drake, S. Aos, and M. G. Miller Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State. *Victims and Offenders*, Vol. 4, No. 1, November 2008. Retrieved from <http://www.cebma.org/wp-content/uploads/Drake-et-al-Evid-Based-Pub-Pol.pdf>.
- 7 Common Justice promotes a victim-centered restorative justice practice, focusing on young men of color who are disproportionately victims of violent crime. See more at <https://www.commonjustice.org/healingworks>.
- 8 “Incarceration Trends.” Vera Institute of Justice, trends.vera.org/rates/suffolk-county-ma. Retrieved on March 7, 2019.
- 9 Clear, Todd R, et al. “Predicting Crime Through Incarceration: The Impact of Rates of Prison Cycling on Rates of Crime in Communities,” 27 May 2014, www.ncjrs.gov/pdffiles1/nij/grants/247318.pdf.
- 10 *An Act Relative to Criminal Justice Reform* changed the felony threshold from \$250 to \$1,200.
- 11 Natapoff, A. (2015, May) Misdemeanor Criminalization. 68 *Vand. L. Rev.* 1055, 1072. Retrieved from <https://www.vanderbiltlawreview.org/wp-content/uploads/sites/89/2015/05/Misdemeanor-Decriminalization.pdf>; See also Braga, A., Bond, B. Policing Crime And Disorder Hot Spots: A Randomized Controlled Trial. *Criminology* Volume 46 Number 3 2008. Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.575.7298&rep=rep1&type=pdf>.
- 12 *Commonwealth v. Taylor*, 428 Mass. 623 (1999).
- 13 *Commonwealth v. Pellegrini*, 414 Mass. (1993).
- 14 *In re Carroll*, 453 Mass. 1006 (2009).
- 15 *Pellegrini* at 404.
- 16 Stutz, William J., Plea Bargaining and Criminal Law’s Disappearing Shadow, 117 *Harv. L. Rev.* 2548 (2004).
- 17 Massachusetts Department of Public Health (2017, August) An Assessment of Opioid-Related Overdoses in Massachusetts 2011-2015. Retrieved from <https://www.mass.gov/files/documents/2017/08/31/data-brief-chapter-55-aug-2017.pdf>.
- 18 The Sentencing Project (2015) Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System. Retrieved from <https://sentencingproject.org/wp-content/uploads/2015/11/Black-Lives-Matter.pdf>.
- 19 Pfaff, J. (2017) Locked In: The True Cause of Mass Incarceration.
- 20 Cramer, M., Russell, J., Rezendez, M., Helman, S., Wallack, T. (2016, November 25) There may be no worse place for mentally ill people to receive treatment than prison. *The Boston Globe*. Retrieved from <https://apps.bostonglobe.com/spotlight/the-desperate-and-the-dead/series/prisons/>.
- 21 People with three to 10 prior convictions make up 33 percent of all new sentences to incarceration and 38 percent of new house of correction sentences. CSG Justice Center. (April 12, 2016) Justice Reinvestment in Massachusetts: Second Working Group Presentation pg. 22. Retrieved from <https://csgjusticecenter.org/wp-content/uploads/2016/04/MASecondPresentation.pdf>.

- 22 See *United States v. Leviner*, 31 F. Supp. 2d 23 (D. Mass. 1998), the federal judge was constrained by the sentencing guidelines that blindly included multiple motor vehicle offenses to calculate a lengthy sentence. Only through a judge’s insight about racial disparities - among other issues - and her use of downward departure was the sentence reduced and crafted to include treatment for the defendant’s substance use disorder.
- 23 Wagner, P., Sawyer, W. (2018, June) State of Incarceration: The Global Context 2018. Retrieved from <https://www.prisonpolicy.org/global/2018.html>. Retrieved on March 6, 2019.
- 24 Massachusetts Sentencing Commission (2016, September 27) Selected Race Statistics. Retrieved from <https://www.mass.gov/files/documents/2016/09/tu/selected-race-statistics.pdf>
- 25 Id.
- 26 Forman, B., Jones, A. (2015, September) Exploring the Potential for Pretrial Innovation in Massachusetts. Retrieved from https://massinc.org/wp-content/uploads/2015/09/bail.brief_.3.pdf.
- 27 CSG Justice Center. (2016, July 12) Justice Reinvestment in Massachusetts: Research Addendum to Third Presentation Retrieved from <https://csgjusticecenter.org/wp-content/uploads/2016/07/MA-Interim-Report-3-Research-Addendum.pdf>.
- 28 *Commonwealth v. Quinton K. Williams* (SJC 12549) (February 13, 2019).
- 29 ACLU of Massachusetts. (2014) Black, Brown and Targeted: A Report on Boston Police Street Encounters from 2007 – 2010 Retrieved from <https://www.aclum.org/sites/default/files/wp-content/uploads/2015/06/reports-black-brown-and-targeted.pdf>; See also endnote 2 supra.
- 30 Ransom, Jan (2017, August 29) Blacks Remain Focus of Boston Police Investigations, Searches. *The Boston Globe*. Retrieved from <https://www.bostonglobe.com/metro/2017/08/28/blacks-remain-focus-boston-police-investigations-searches/PDbFr2QZexCEi3zJTO9mOJ/story.html>.
- 31 Boston Police Department arrest data, obtained by the ACLU of Massachusetts via public records request submitted on April 18, 2017.
- 32 There are 95,671 total charges in 2013 and 2014. Of those, 11,641 are in Chelsea District Court (which includes Chelsea, Revere and Medford). The total number of charges inside Boston (including Superior Court) is 84,030, or 87.8 percent.
- 33 Pre-arrest diversion also carries immigration benefits, because every person arrested in Boston presents an opportunity for U.S. Immigration and Customs Enforcement (ICE) to detain that person. When BPD takes fingerprints in the booking process post-arrest, the prints are sent to the FBI. Under a Bush-era program called “Secure Communities,” the FBI automatically shares the prints with ICE. This practice has led to the ICE detention and deportation of untold members of our communities, merely because of arrests—many of which never resulted in criminal convictions. Read more about how low-level arrests can lead to deportations: Crockford, K. (2018, March 21) Beyond Sanctuary: Local Strategies for Defending Civil Liberties. Retrieved from <https://tcf.org/content/report/beyond-sanctuary/>.
- 34 Pryor, Carol (2018, August 29) In DA races, commitment to transparency is crucial: Voters should demand regular release of data to gauge fairness of system. *Commonwealth Magazine*. Retrieved from <https://commonwealthmagazine.org/criminal-justice/in-da-races-commitment-to-transparency-is-crucial/>.
- 35 Regarding race, the Suffolk County DAs’ office included this addendum to clarify the reporting and recording of race data: “Entries in the ‘Rc’ field reflect racial/ethnic information when provided by police in reports and other documents, subject to whatever standards are in place within each department (i.e., self-identification, visual observation, or some other method). DAMION does not have the capacity to select more than one option at a time for race or ethnicity, even if more than one race were to be indicated on police department materials. Prosecutors do not make any independent inquiry into a defendant’s race or ethnicity.” DAMION is the case management system currently used by the Suffolk County District Attorney’s Office.
- 36 See Appendix A.
- 37 See Research Addendum for breakdown of offenses prosecuted by race.
- 38 A person of Hispanic origin can be of any race. Therefore, the sum of the percentages in this column will be greater than 100 percent.
- 39 People of Middle East/North African ethnicity are classified as white, under the Census. See: https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_02.pdf.
- 40 In the SCDAO, 3,673 DTP charges are missing race data. Of those charges, 1,547 were adverse.
- 41 To calculate per capita charge rates, we divided the number of charges (that a particular race was charged with) by their respective population in Boston. We then multiplied the result by 100,000 to determine the charge rate per 100,000 persons. We repeated this for each racial group.
- 42 Pager, D., Western, B., and Sugie, N. (2009, May) Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records. *Annals of the American Academy of Political and Social Sciences* 623, pages 195-213. Retrieved from https://scholar.harvard.edu/files/pager/files/annals_sequencingdisadvantage.pdf.
- 43 CPCS Immigration Impact Unit. Immigration Consequences of Massachusetts Criminal Convictions. May 2018, www.publiccounsel.net/iiu/wp-content/uploads/sites/15/IIU-Guide-May-2018.pdf.
- 44 National Police Association. “Formal Complaint and

Demand for Investigation of Alleged Attorney Misconduct by Suffolk County District Attorney-Elect, Ms. Rachael Rollins.” 23 Dec. 2018, nationalpolice.org/dev/wp-content/uploads/2018/12/DA_Rachael_Rollins_Complaint.pdf.

- 45 A case is considered to be “DTP exclusive” if all the charges in the case fall into a DTP category.
- 46 Research shows that police stop Black and Latinx motorists more often relative to their representation in the population and police are more likely to aggressively engage them. These disparities persist despite the fact that law enforcement officers are more likely to discover contraband in the cars of white motorists. See “Findings: The Results of our Nationwide Analysis of Traffic Stops and Searches,” Stanford Open Policing Project, <https://openpolicing.stanford.edu/findings/>; See also Sharon LaFraniere & Andrew W. Lehren, “The Disproportionate Risks of Driving While Black,” *N.Y. Times*, Oct. 24, 2015; See also Charles R. Epp et al., *Pulled Over: How Police Stops Define Race and Citizenship*, 60-61, 72-73, 155 (2014).
- 47 Massachusetts General Laws chapter 94C sections 32 and 32A designate possession with intent to distribute a felony by nature of the allowable sentence being greater than two and a half years.
- 48 “Rates of Drug Use and Sales, by Race; Rates of Drug Related Criminal Justice Measures, by Race.” The Hamilton Project, www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice.
- 49 According to the 2010-2014 five-year ACS estimates, Black people have a population of about 160,000 in Suffolk County, and white people about 416,000. Yet, out of the 395 resisting arrest cases, which contained 838 charges, that would potentially fall into DA Rollins’ plan, 155 cases are those where Black people were charged, and 134 where white people were charged. Adjusted per capita, this means that about 97 Black people per 100,000 were charged for resisting arrest alone, or with other charges that fell into the DTP list, while only 40 white people had been charged. In other words, Black people were 2.4 times more likely to have had a case brought against them which contained a resisting arrest charge and might have contained other charges in the DTP list. This disparity does not account for the resisting arrest cases that are missing race data and cannot account for non-Suffolk County residents.
- 50 Cramer, M. (2018, September 13) DA candidate Rachael Rollins hailed nationally, but locally her plan not to prosecute petty crimes alarms some. *The Boston Globe*. Retrieved from <https://www.bostonglobe.com/metro/2018/09/12/candidate-hailed-nationally-but-locally-her-plan-not-prosecute-petty-crimes-alarms-some/pyQX8MT4iWpyJ8XMi6SsFO/story.html>.
- 51 The data from the Suffolk County District Attorney’s Office for 2013 and 2014 shows the vast majority of prosecutions undertaken by the office occurred in district, not superior court. Of all of the cases that were prosecuted to a disposition in 2013 and 2014, roughly 96 percent were handled in the district courts of Suffolk County. District courts generally handle lower-level cases, while superior courts in Massachusetts handle more serious prosecutions like murder.
- 52 *Missouri v. Frye*, 566 U.S. 134, 143 (2012) citing Department of Justice Bureau of Justice Statistics that 97 percent of all federal and 94 percent of all state convictions are obtained via guilty plea.
- 53 The 98 percent calculation is based on all guilty outcomes, where the defendant either pled guilty, or was found guilty by trial. Our definition of “adverse” includes CWOFF and pre-trial probation, which may lead to an outcome of guilty or may not. CWOFF and pre-trial probation are not included in the 98 percent calculation.
- 54 13,101 non-DTP charges are missing race data.
- 55 2017 Data Report. Cook County State’s Attorney Office, 2017 Data Report. Retrieved from www.cookcountystatesattorney.org/sites/default/files/files/documents/ccsao_2017_data_report_180220.pdf.
- 56 “DA Vance and Vera Institute of Justice Announce the Release of Study Examining Racial Disparities in the Manhattan Criminal Justice System.” July 8, 2014. Retrieved from www.vera.org/newsroom/press-releases/da-vance-and-vera-institute-of-justice-announce-the-release-of-study-examining-racial-disparities-in-the-manhattan-criminal-justice-system.
- 57 For Breaking and Entering (B&E), DA Rollins notes on her website that she will only decline to prosecute a B&E charge “where it is into a vacant property or where it is for the purpose of sleeping or seeking refuge from the cold and there is no actual damage to property.” The data did not indicate which B&E charges fit that description, so we included all misdemeanor B&E offenses in the decline to prosecute list.
- 58 Because of inaccuracies or inconsistencies in SCDAO data entry, we excluded duplicate offenses that were entered multiple times.

