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**PRESUMPTIVE DECLINATION
AND DIVERSION IN
SUFFOLK COUNTY, MA**

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for Greater Boston

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The [Rappaport Institute for Greater Boston](#) at Harvard's Kennedy School of Government strives to improve the region's governance by attracting young people to serve the region, working with scholars to produce new ideas about important issues, and stimulating informed discussions that bring together scholars, policymakers, and civic leaders. The Rappaport Institute was founded and funded by the Phyllis and Jerome Lyle Rappaport Foundation, which promotes emerging leaders in Greater Boston.

About the Program in Criminal Justice Policy and Management

Established in 1980 by the Daniel and Florence V. Guggenheim Foundation, the [Program in Criminal Justice Policy and Management](#) in the Malcolm Wiener Center for Social Policy at Harvard Kennedy School seeks to promote sound policy and effective management in the pursuit of safety for all individuals, families, and communities, and in the administration of justice, rooted in principles of proportionality, parsimony, citizenship, and social and racial equity.

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Contents

Executive Summary.....	2
Background.....	3
Impacted Cases.....	4
Results - Prosecution.....	7
Results - Recidivism.....	15
Discussion.....	17

Executive Summary

The Suffolk County District Attorney's Office (SCDAO) has taken steps to limit its use of criminal sanctions for individuals charged with nonviolent offenses, including identifying 15 common charges that arraigining Assistant District Attorneys (line ADAs) should presumptively decline to prosecute (DTP) or divert when possible. These changes, driven by policies introduced by District Attorney (DA) Rachael Rollins after her inauguration in January 2019, reflect mounting evidence that relying on policing, criminal adjudication, and incarceration to address non-violent offenses is costly, exacerbates racial disparities, and is often ineffective at improving public safety. Others are concerned, however, that increasing leniency for even minor offenses will embolden people who commit crimes and lead to more serious misconduct.

Below I attempt to analyze the impact of these policy changes on case adjudication as well as future offending behavior for those whose cases were impacted. I primarily rely on administrative data from the SCDAO's internal case management database as well as criminal records from the Department of Criminal Justice Information Services (DCJIS).

Using an event study design, I find that after DA Rollins' inauguration, prosecution rates declined by roughly 5 percentage points on average for cases consisting of charges included in the declination and diversion policy (DTP list cases) and nearly 10 percentage points for cases involving nonviolent misdemeanors more generally. These average decreases mask substantial heterogeneity by offense category and defendant race. Prosecution rates declined substantially less for cases involving Black defendants, and decreases in prosecution rates were concentrated among a subset of DTP list offenses like driving with a suspended license. Consistent with the scope of the policy, prosecution rates for cases involving felonies or violent offenses were not similarly impacted. I also explore the impact of the declination and diversion policy on reoffending using a difference-in-differences design to account for unobserved factors that could impact recidivism throughout the policy's implementation. Consistent with past research, I find that the introduction of the declination and diversion policy was associated with small (although statistically indistinguishable from zero) decreases in overall reoffending and violent reoffending.

Background

The Suffolk County District Attorney's Office (SCDAO) has recently taken steps to limit their use of criminal sanctions for individuals charged with non-violent offenses. From the time of her election campaign,¹ District Attorney Rachael Rollins committed to, among other changes, a policy of dismissing, declining to prosecute, or otherwise diverting common nonviolent offenses. These changes reflect mounting evidence that relying on policing, criminal adjudication, and incarceration to address non-violent offenses is costly, exacerbates racial disparities, and is often ineffective at improving public safety.² DA Rollins also argued that limiting the prosecution of less serious cases would allow her office to "allocate more of [their] prosecution resources to serious offenses that harm people, families, and the community as a whole."³

As described in the comprehensive guidance released when DA Rollins took office, these goals were realized through a policy that created the presumption of nonprosecution for 15 common nonviolent charges identified in consultation with law enforcement, the criminal defense bar, the judiciary, and community members.⁴ This means that except in the case of specifically enumerated exceptions and with the approval of a supervisor, impacted charges "should always be declined, even when attached to another charge."⁵ The Assistant District Attorney handling the case (line ADA) retains discretion to deviate from this policy if they determine the defendant "poses an identifiable threat to another individual or other circumstances of similar gravity."⁶ Beyond creating the presumption of non-prosecution for these offenses, the policy prompts ADAs to consider alternatives to criminal adjudication that focus on treatment, diversion to address underlying causes, and restitution for victims.

One notable exception in the offenses included in this policy is drug possession with intent to distribute (PWID). PWID is the only category of felony offenses included in the policy, and as such is subject to different guidance. ADAs are instructed to identify "clear indicia of intent to distribute beyond mere quantity."⁷ Cases without such indicia are instructed to proceed under the policy guidance for drug possession charges (i.e. dismissal without exception for marijuana possession and connection with social workers or therapeutic clinicians for other controlled substances).

1. See <https://rollins4da.com/policy/charges-to-be-declined/>

2. See for example: Weaver, V.M. and Lerman, A.E., 2010. Political consequences of the carceral state. *American Political Science Review*, pp.817-833; Sewell, A.A., Jefferson, K.A. and Lee, H., 2016. Living under surveillance: Gender, psychological distress, and stop-question-and-frisk policing in New York City. *Social science & medicine*, 159, pp.1-13; Pager, D., 2003. The mark of a criminal record. *American journal of sociology*, 108(5), pp.937-975; and Aizer, A. and Doyle Jr, J.J., 2015. Juvenile incarceration, human capital, and future crime: Evidence from randomly assigned judges. *The Quarterly Journal of Economics*, 130(2), pp.759-803.

3. See <https://www.suffolkdistrictattorney.com/rachael-rollins-policy-memo> for a memo detailing the policies DA Rollins introduced.

4. See <https://www.suffolkdistrictattorney.com/rachael-rollins-policy-memo>.

5. Ibid

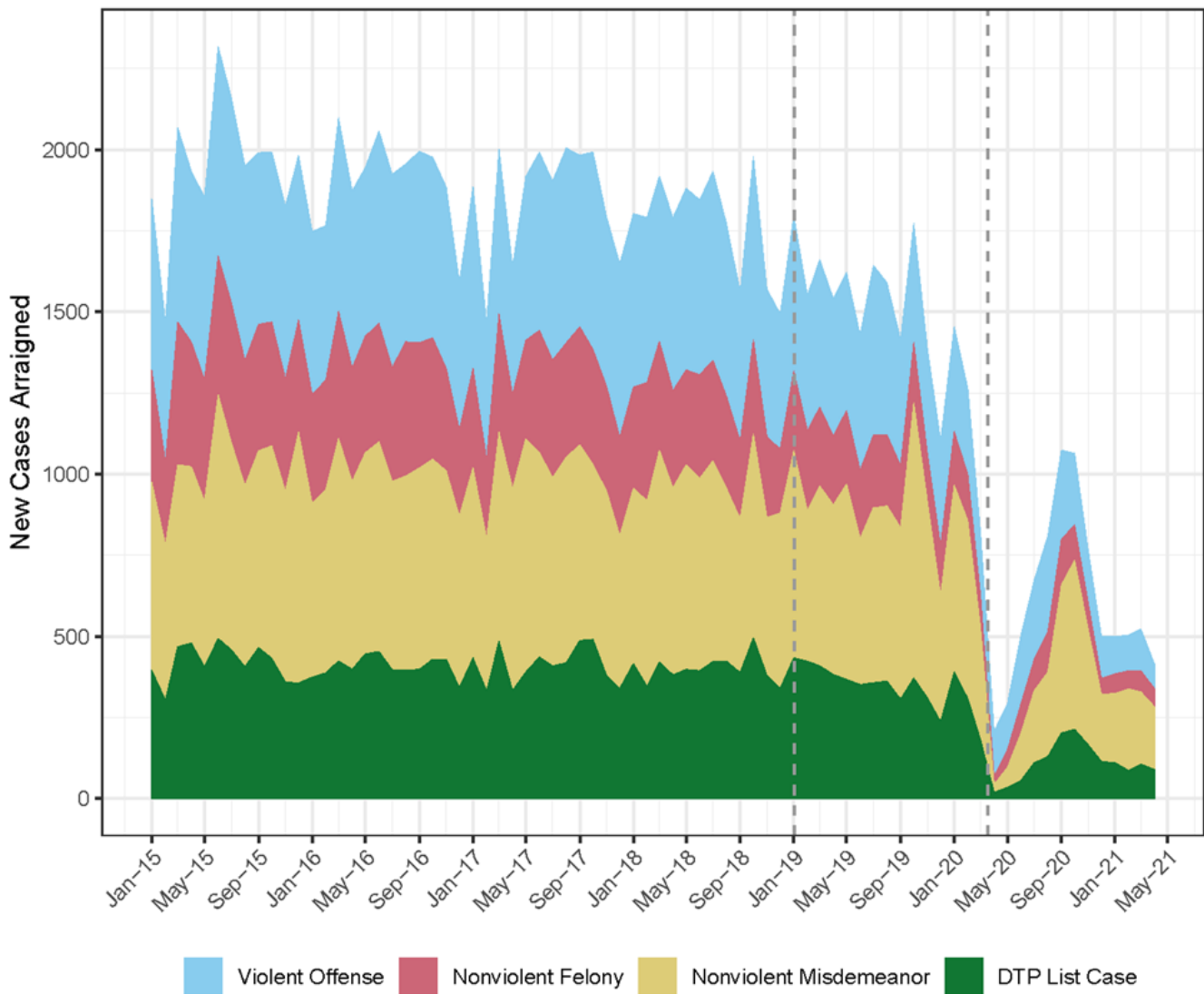
6. Ibid

7. Ibid

Impacted Cases

Figure 1 below shows the monthly caseload over time, disaggregated by case severity. Cases that include only charges included on the DTP List make up a substantial portion of the overall caseload, accounting for roughly 22% of cases over the period. Arraignments for all new cases declined substantially with the start of the COVID-19 emergency, likely reflecting a combination of changes in offending, policing, and trial court capacity.⁸

Figure 1: Monthly Caseload by Severity



Note: A case can include multiple charges, and so cases are categorized here by the most serious charge included. For example, nonviolent felony cases may also include misdemeanors or DTP list offenses, but not violent offenses. The dotted drop lines indicate the date that DA Rollins was inaugurated (1/2/2019) and the effective date of the Standing Order for the MA Trial Court to reduce in-person court traffic (3/18/2020).

8. Effective March 18, 2020, There was a Standing Order to "...significantly reduce the number of people who come into [their] courts" in effect. See <https://www.mass.gov/news/trial-court-announces-triage-plans-to-reduce-numbers-of-persons-coming-to-courts>.

Figure 2 focuses on the charges named in the declination policy and details the types of offenses included. Driving with a suspended license is by far the most commonly charged offense over this period that is included in the declination policy, followed by drug possession offenses (with and without the intent to distribute).

Figure 2: DTP List Offenses by Category & Race, 1/2015 – 4/2021

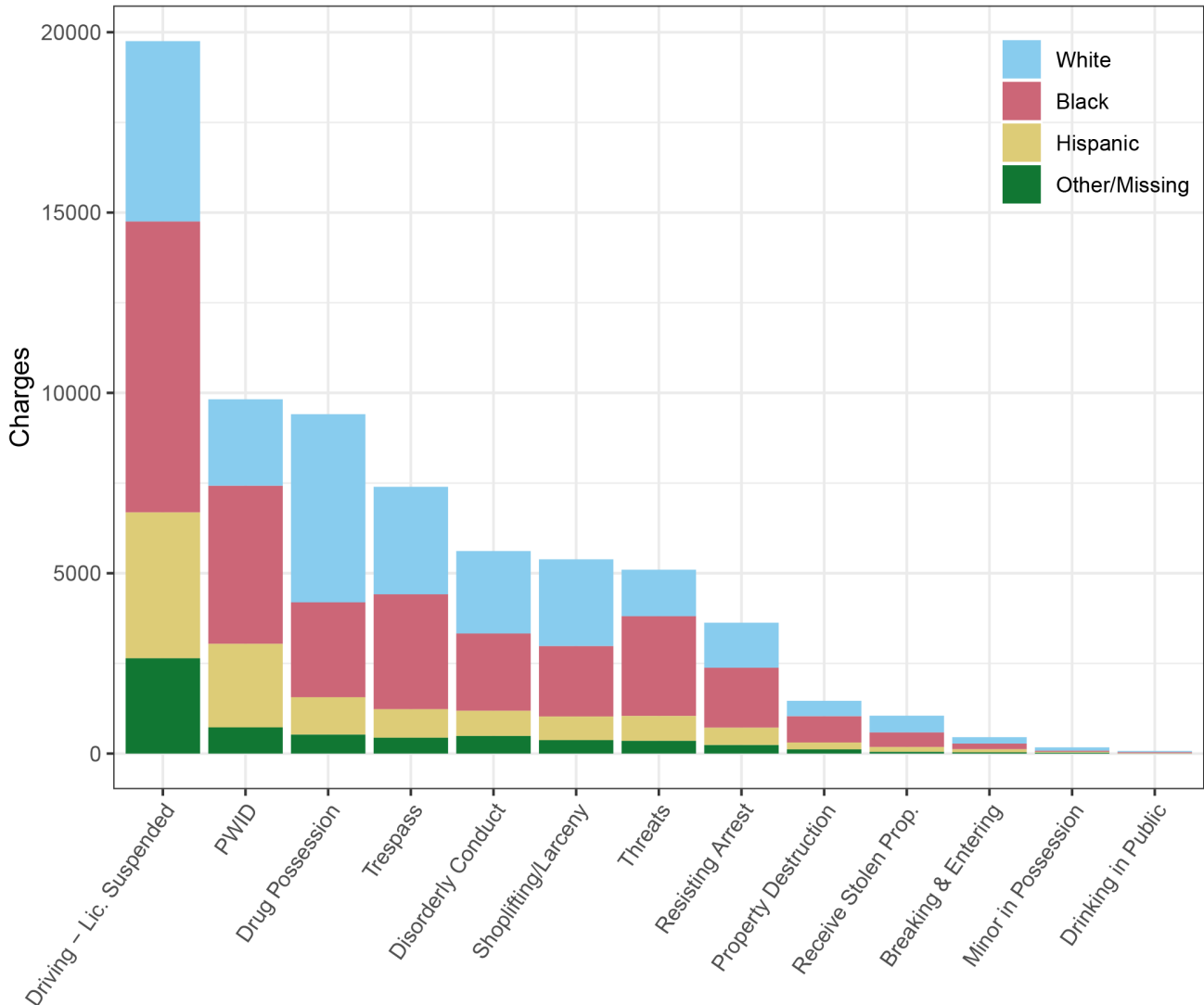


Table 1 explores racial disparities in the rate at which defendants are charged with offenses on the DTP list in Suffolk County.⁹ Black and Hispanic defendants are substantially overrepresented among those facing these charges as compared to their representation in Suffolk County's population. The disparities among charges impacted by the presumptive declination policy are roughly in line with disparities in the overall caseload, however, with Black defendants being slightly less overrepresented among impacted charges than in the overall caseload. These disparities are large, but they are consistent with previous research considering racial disparities in the criminal caseload statewide.¹⁰

9. Defendant race and ethnicity are determined using a combination of data from the SCDAO's internal case management database and DCJIS criminal records. These fields are recorded by police or court staff and may not reflect how defendants would self-identify.

10. Bishop, E.T., Hopkins, B., Obiofuma, C. and Owusu, F., 2020. Racial disparities in the Massachusetts Criminal System. *Criminal Justice Policy Program, Harvard Law School*.

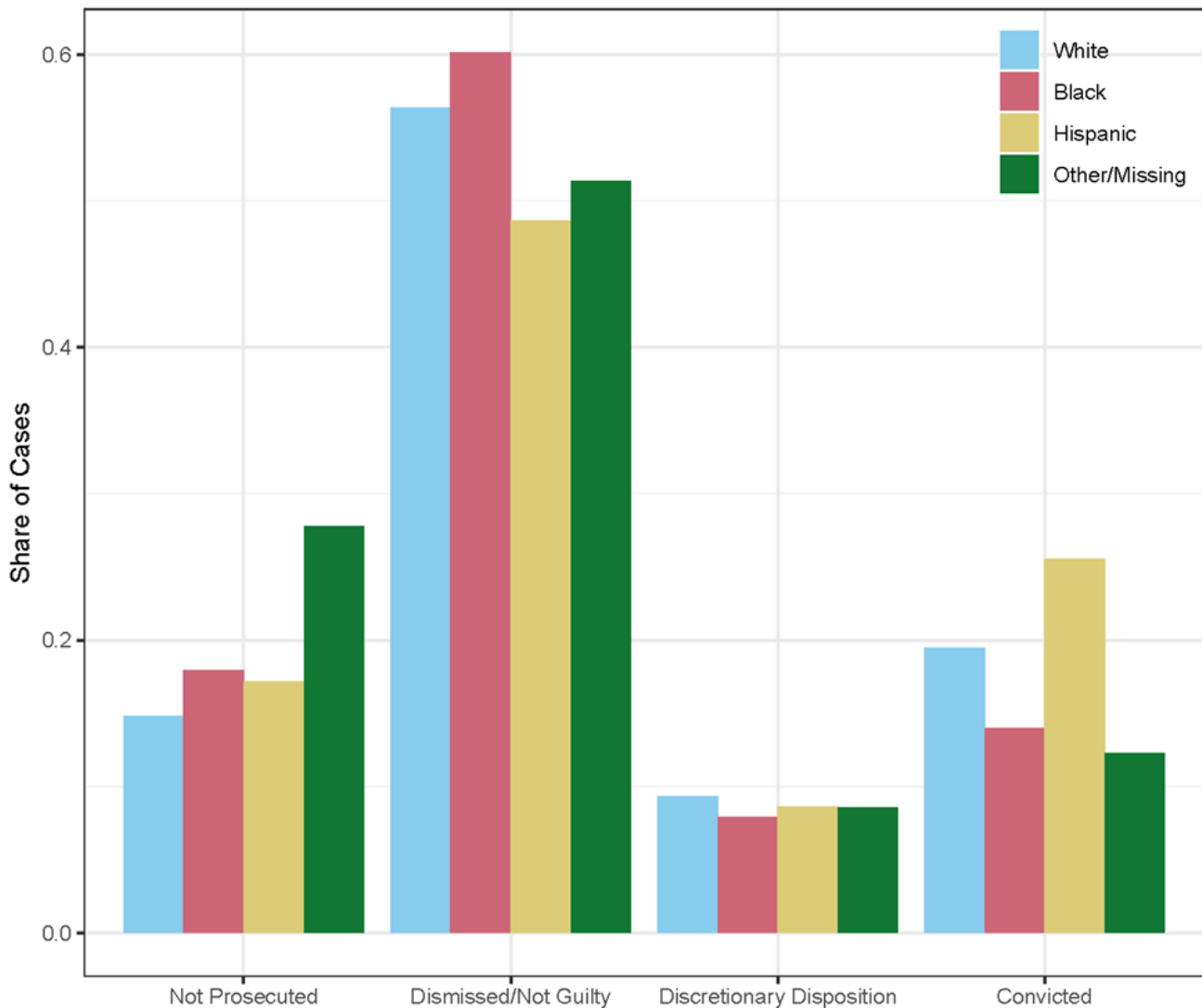
Table 1: Impacted Charges by Race 1/2015 - 4/2021

Race / Ethnicity	DTP List Offenses -		DTP List Offenses -		Percent - All Offenses	Percent - Suffolk County Population
	Prior to Policy	Percent	After Policy	DTP List Offenses - % Change After Policy		
Black	21,848	40.24%	41.98%	1.74%	42.47%	24.30%
White	18,974	34.94%	33.52%	-1.42%	29.07%	45.20%
Hispanic	9,028	16.63%	14.15%	-2.48%	18.90%	23.30%
Other/Missing	4,447	8.19%	10.35%	2.16%	9.55%	—
Total	54,297	100.00%	100.00%	—	100.00%	92.80%

Note: Data on the Suffolk County population were obtained from the US Census Bureau's American Community Survey five year population estimates spanning 2014 - 2019.

Figure 3 details how charges impacted by the DTP policy are disposed prior to the declination policy's implementation. Charges are disposed individually, but a defendant's case may include multiple charges and is considered disposed when all charges are disposed.

Figure 3: DTP List Case Dispositions by Race, 2015 – 2019



Note: A case can include multiple charges, and so cases are categorized by the most serious disposition included. Nonprosecution is considered the least serious disposition, followed by dismissals and not guilty findings in cases that were prosecuted, discretionary dispositions, and convictions.

A case is defined as having been prosecuted if it includes a guilty disposition (whether obtained through plea or a guilty finding at trial) or an admission of sufficient facts, or if it extends beyond the date of arraignment, regardless of the eventual disposition.¹¹ The "Dismissed/Not Guilty" category includes prosecuted cases in which all charges are disposed through dismissal, prosecutorial declination (i.e. *nolle prosequi* motions), or a not guilty finding. A defendant is considered to have been convicted if they are found guilty of any charge against them, either by jury verdict, guilty plea, guilty filed, or a converted civil infraction.

The discretionary disposition category primarily includes the Continuance without a Finding (CWO) and Pretrial Probation dispositions. A CWO disposition is entered when a defendant admits to sufficient facts to warrant a guilty finding but does not receive a conviction for that charge. These cases are continued to a later date, and the court may impose certain conditions, such as the payment of court costs, participation in counseling, community service, or noncontact with the criminal legal system. A CWO does not appear as a conviction or guilty finding on the individual's criminal record, but it is considered a prior offense in regard to some future criminal charges. Pretrial probation as a disposition (PPAD) is similar to a CWO, with a main difference being that PPAD does not require an admission to sufficient facts.¹²

Below I turn to exploring how the declination and diversion policy impacted case adjudication.

Results – Prosecution

I follow previous research in considering the declination and diversion policy's impact on the rate at which cases are prosecuted.¹³ Prosecution is a relevant outcome for understanding the impact of the declination and diversion policy for two reasons. First, decreasing prosecution is an explicitly stated objective of the policy, which instructs line ADAs that "[c]harges on the list of 15 should be declined or dismissed *pre-arraignment without conditions*" [emphasis added].¹⁴ Second, prosecution is an outcome that is primarily determined by the line ADA's decisions, whereas downstream outcomes like diversion, conviction, and sentencing involve input from other parties such as defendants, their attorneys, and judges. It is thus more difficult to attribute changes in these downstream outcomes solely to prosecutorial discretion.

I use an event study framework to estimate the impact of the policy changes that were introduced with DA Rollins' inauguration on prosecution rates. The event study design allows one to understand how prosecution rates changed after DA Rollins was inaugurated

11. The category also includes a small number of cases where the reported disposition was "Diversion," although details about diversion programming are not available.

12. Defendants on PPAD are subject to probation-like conditions for a designated period of time, and compliance with these conditions may result in the criminal charges being dismissed. Failure to comply with PPAD conditions results in reopening of the individual's criminal case, rather than an automatic conviction. The prosecutor must consent PPAD.

13. Agan, A.Y., Doleac, J.L. and Harvey, A., 2021. *Misdemeanor Prosecution* (No. w28600). National Bureau of Economic Research.

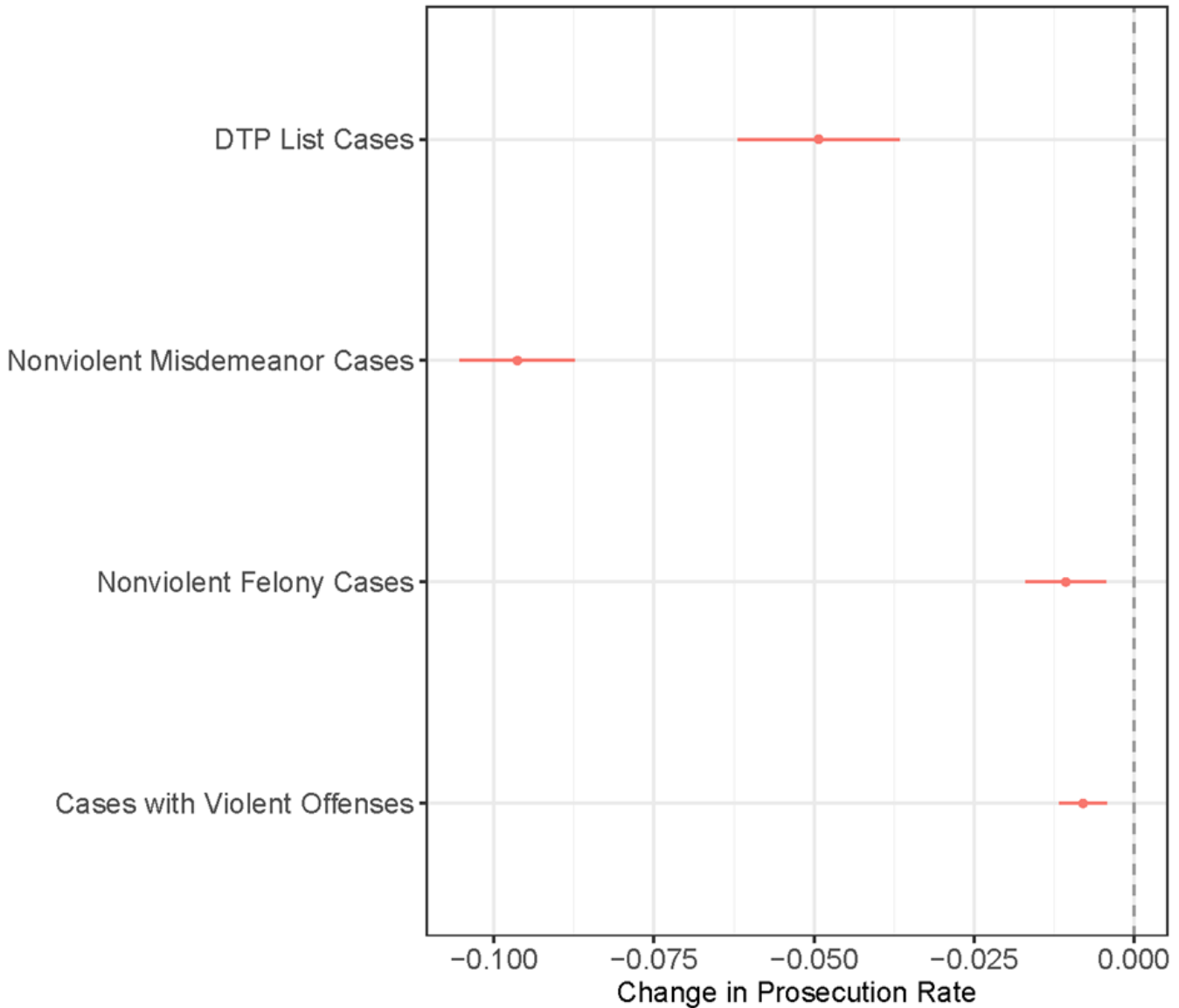
14. See <https://www.suffolkdistrictattorney.com/rachael-rollins-policy-memo> page C-1.

while controlling for other observable factors that could influence prosecution rates, such as changes in defendant or case characteristics over time and seasonal trends. The analysis includes cases arraigned between 12/1/2016 & 4/30/2021, and the model is estimated separately for cases that consist of just offenses impacted by the declination policy (DTP list cases), all nonviolent misdemeanors, nonviolent felonies, and violent offenses.

Each model includes controls for defendant demographics (age, sex, race, citizenship status), indicators for charge type (motor vehicle, drug, property/disorder, person, weapons, or other), indicators for whether the defendant was convicted of any misdemeanors, felonies, or violent offenses in Suffolk County in the year prior to the current case, the number of charges included in the case, and fixed effects for the court of adjudication, arresting law enforcement agency, and the arraignment month and day of week. Robust standard errors are clustered by defendant, and 95% confidence intervals are shown throughout.

Figure 4 reports estimates from event studies of the effects of DA Rollins' inauguration and the subsequent policy changes on prosecution rates for DTP list cases, all nonviolent misdemeanors, nonviolent felony cases, and cases with violent offenses. The estimates shown correspond to the decrease in average prosecution rates in each sample after DA Rollins' inauguration after controlling for the factors listed above. Consistent with the scope of the policy, I estimate large and statistically significant decreases in prosecution rates for DTP list cases and nonviolent misdemeanor cases and much smaller changes for cases involving felonies and violent offenses. Interestingly, the estimated effect in the sample of all nonviolent misdemeanor cases is larger and more negative, and I will explore that result further below.

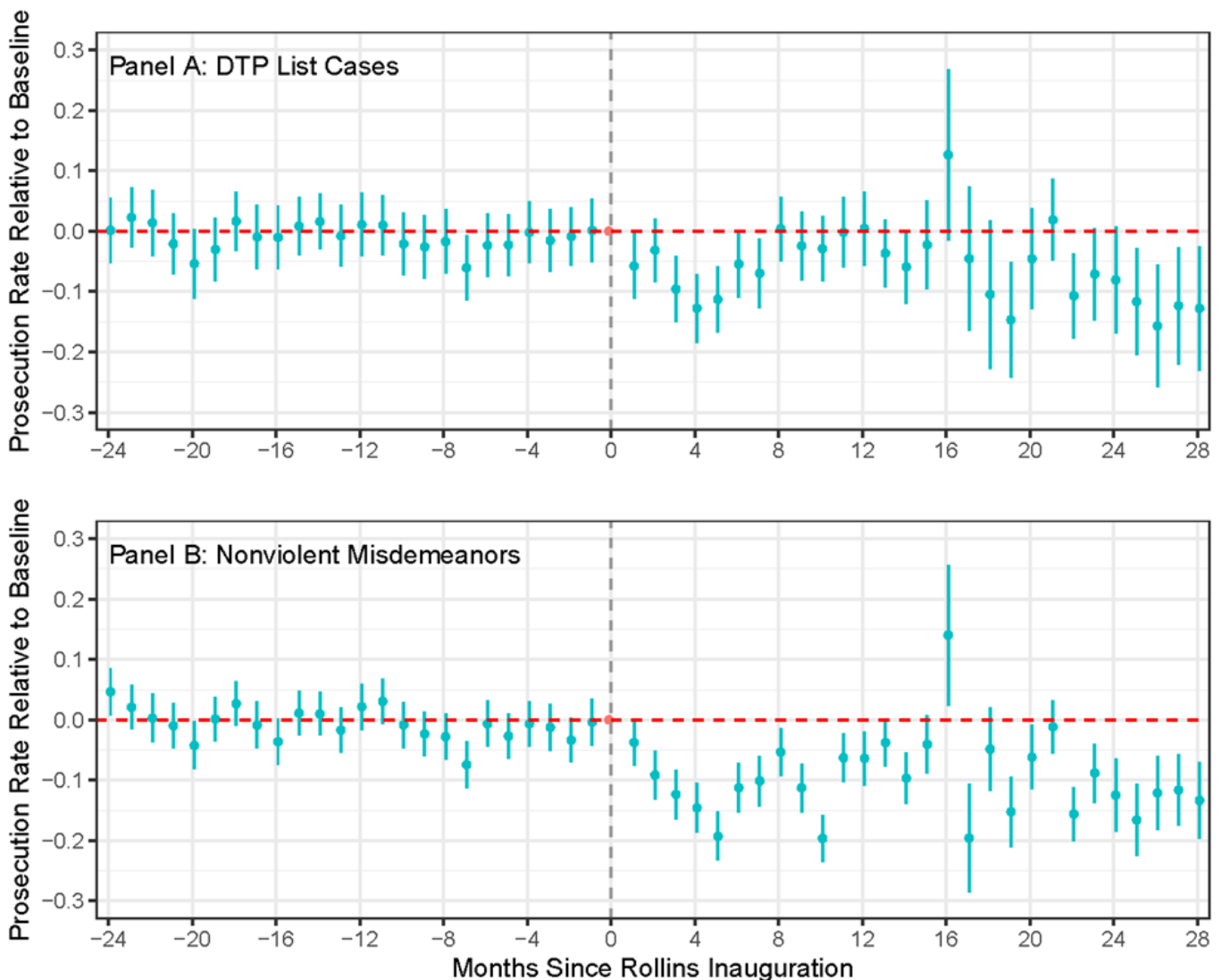
Figure 4: Effect of Rollins Inauguration on Prosecution



Figures 5 and 6 report estimates from dynamic event study models that explore how the effects of DA Rollins' inauguration varied over time. The estimates shown correspond to the monthly change in the prosecution rate relative to the baseline month of December 2018 after controlling for the factors listed above. As shown in Panel A, event study estimates of the prosecution rate for cases consisting of offenses indicated in the declination and diversion policy were lower than the baseline in nearly every month after DA Rollins' inauguration.

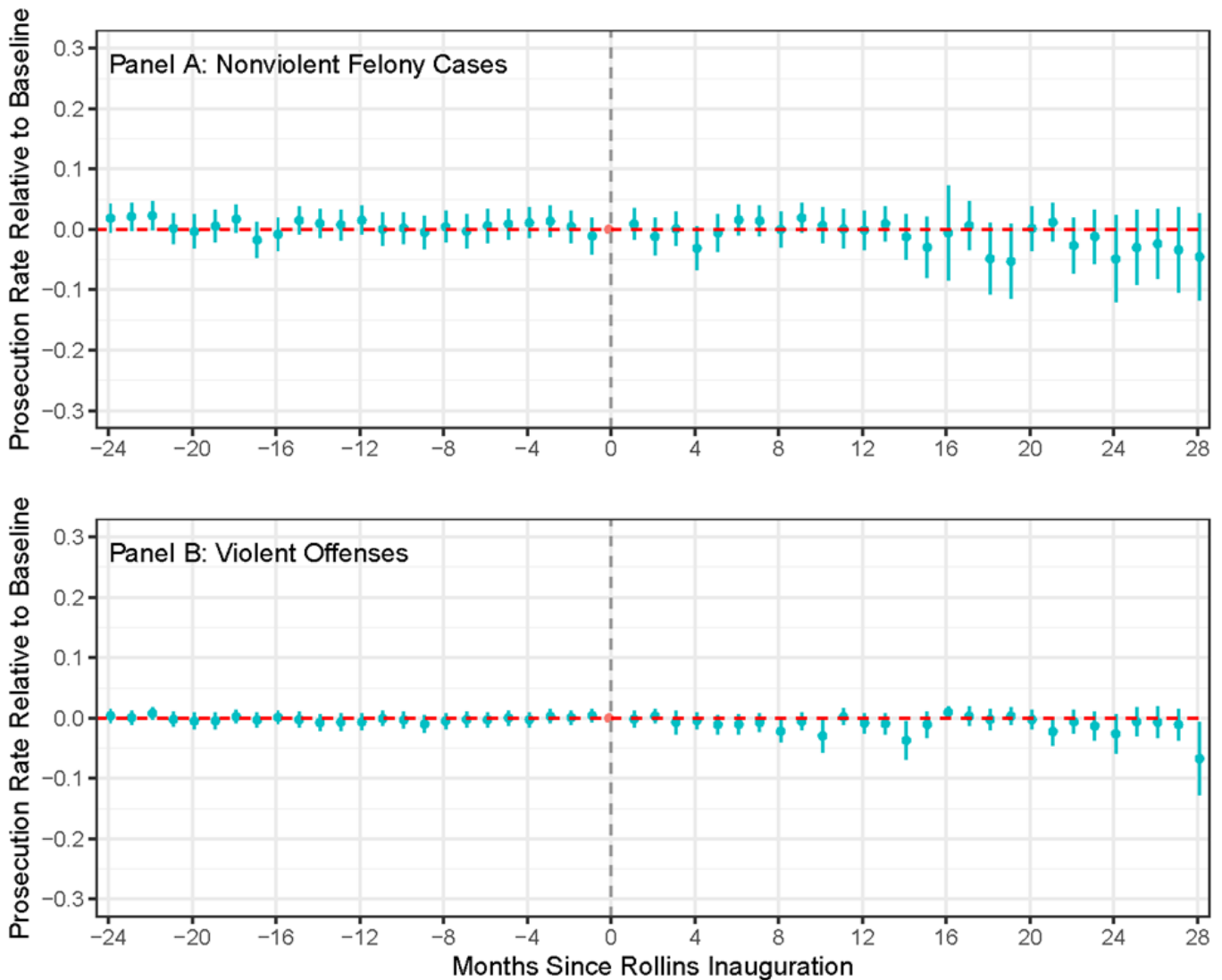
Consistent with the results of the static model presented in Figure 5, the estimated effect in the sample of all nonviolent misdemeanors are generally larger, more negative, and more likely to be statistically significant. The declination and diversion policy's effect on prosecution rates for cases involving felonies and violent offenses is much less pronounced, and the estimated effects shown in Figure 6 are typically not statistically distinguishable from zero. These findings are consistent with the stated scope of DA Rollins' policy guidance, which included allocating more prosecution resources to serious cases.¹⁵

Figure 5: Effect of Rollins Inauguration on Prosecution



15. Cases involving violent crimes and felonies are almost always prosecuted before and after DA Rollins' inauguration. In the samples used above, cases involving felonies are prosecuted 97.4% of the time and cases involving violent offenses are prosecuted 98.6% of the time.

Figure 6: Effect of Rollins Inauguration on Prosecution

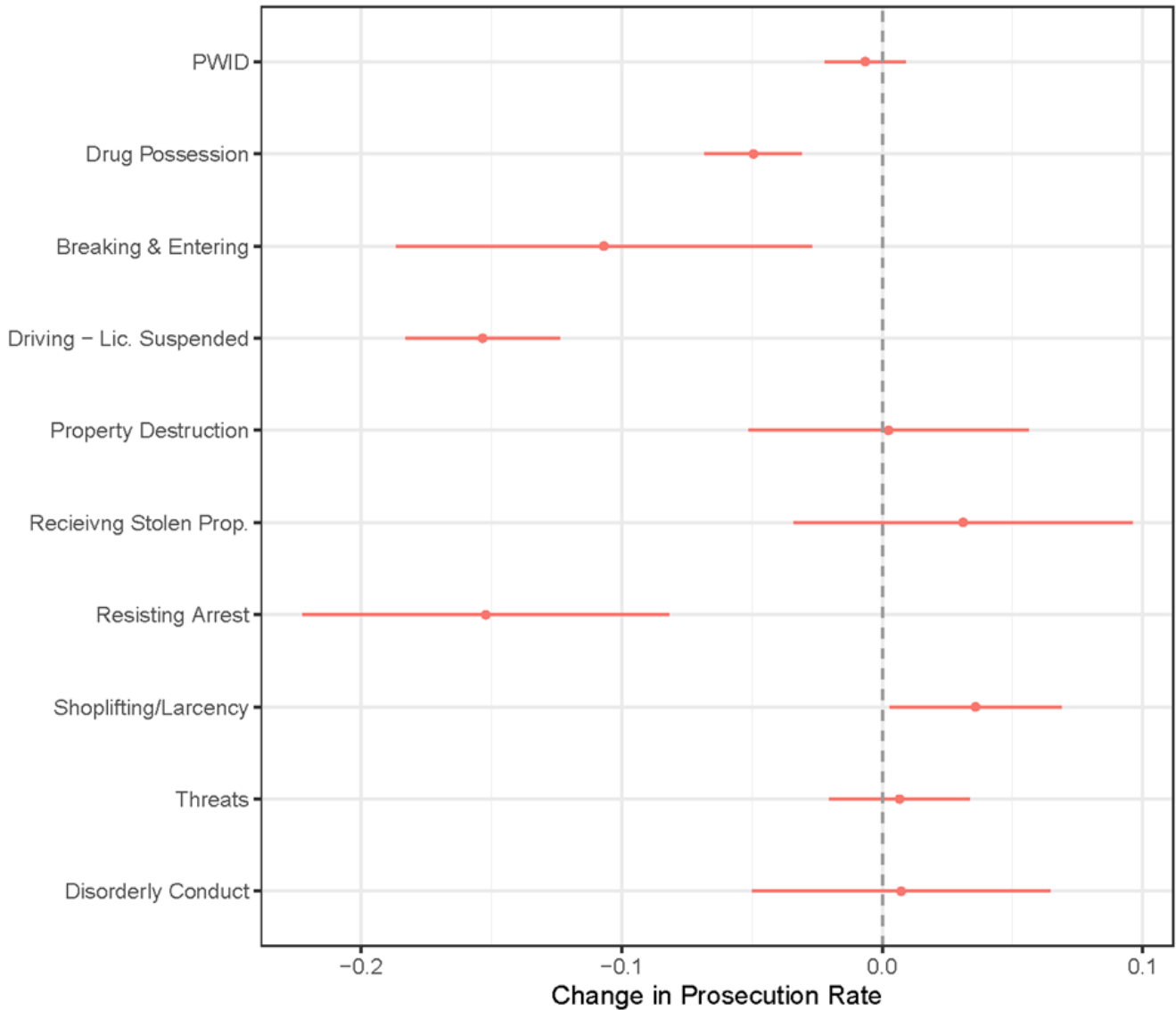


Treatment Effect Heterogeneity

Figure 7 shows the results of an additional event study exploring the impact of DA Rollins' inauguration on prosecution rates for specific offense categories indicated in the declination policy. The model is estimated using a sample of DTP list cases, and it includes the same controls and time frame as the event studies above.

This model estimates a treatment effect over the entire period following DA Rollins' inauguration as in Figure 4, but it adds interaction terms that estimate offense-specific deviations from that overall treatment effect. Figure 7 plots offense category-specific estimates of the change in prosecution rates after DA Rollins' inauguration, which are estimated as the sum of the overall treatment effect and the corresponding offense-specific interaction terms.

Figure 7: Effects by Offense Category, DTP List Cases



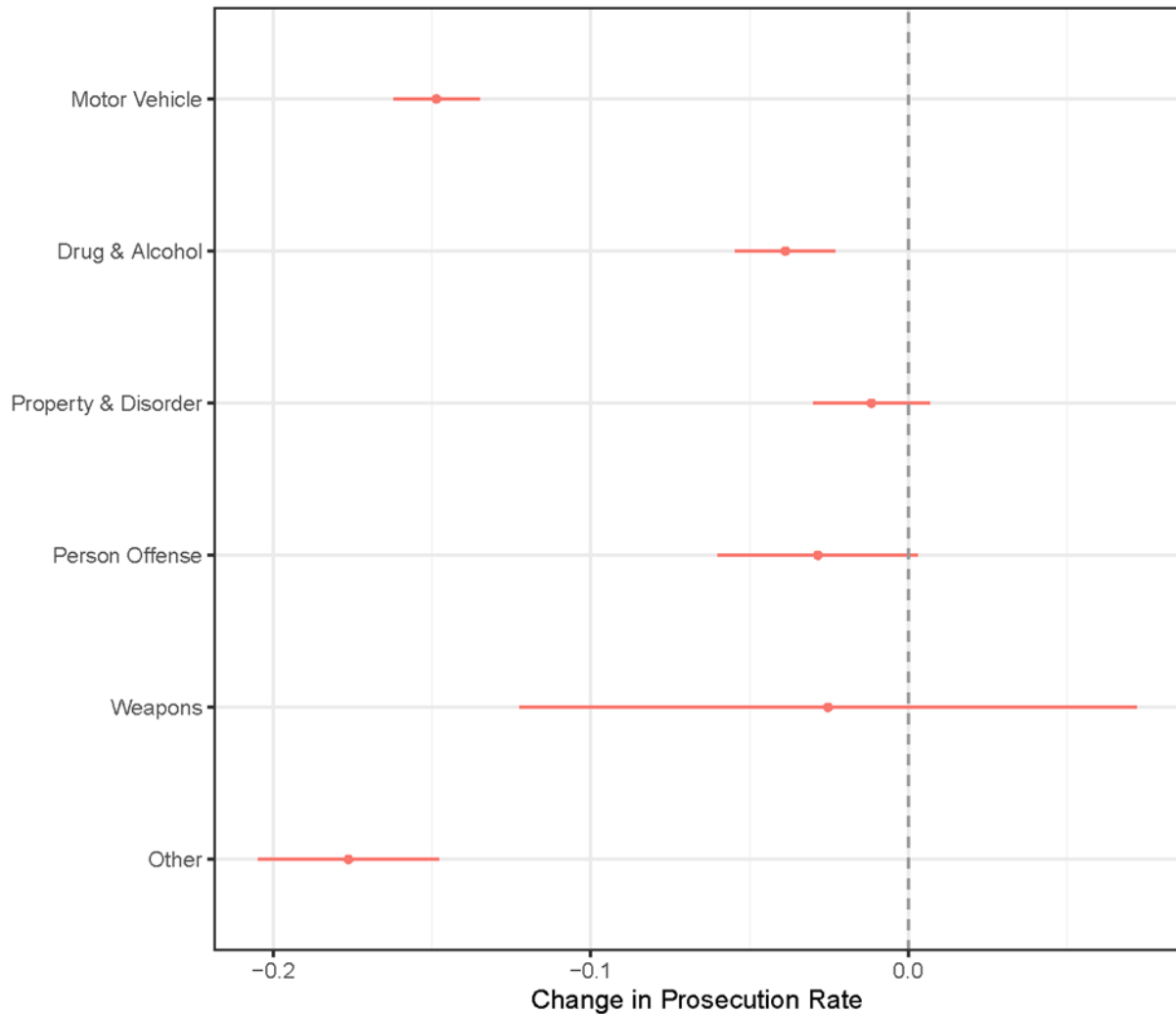
This analysis indicates that the impact of the policy varied substantially by offense category, with decreases in prosecution rates concentrated among a few offense categories. The decrease in prosecution rates attributable to the declination and diversion policy was particularly large for defendants charged with driving with a suspended license (which was also the most commonly charged offense included in the DTP list), resisting arrest, and breaking and entering. The change in prosecution rates is statistically indistinguishable from zero for several offense categories included in the policy, and the change is actually positive and statistically significant for cases involving shoplifting and larceny offenses.¹⁶

It is worth reiterating that this analysis is limited to cases that only involve charges impacted by the policy, so any defendants charged with resisting arrest in connection with offenses not included in the declination and diversion policy are excluded.

16. Prosecuted cases may still have all of their charges dismissed, declined, or diverted after arraignment. Further research on the policy's impact on dismissal rates and time to disposition would be useful in understanding how adjudication may have changed for cases that were still prosecuted.

Figure 8 details the policy's effects by offense category in the sample of all nonviolent misdemeanors using a similar approach as Figure 7. The coefficients shown are from a model that estimates an overall effect of the inauguration as well as offense category-specific interactions, the sum of which are plotted in Figure 8. I use a more general set of offense categories here, as there are far more nonviolent misdemeanor offenses than offenses on the DTP list, many of which do not fit into any of the offense categories included on the list.

Figure 8: Effects by Offense Category, Nonviolent Misd.

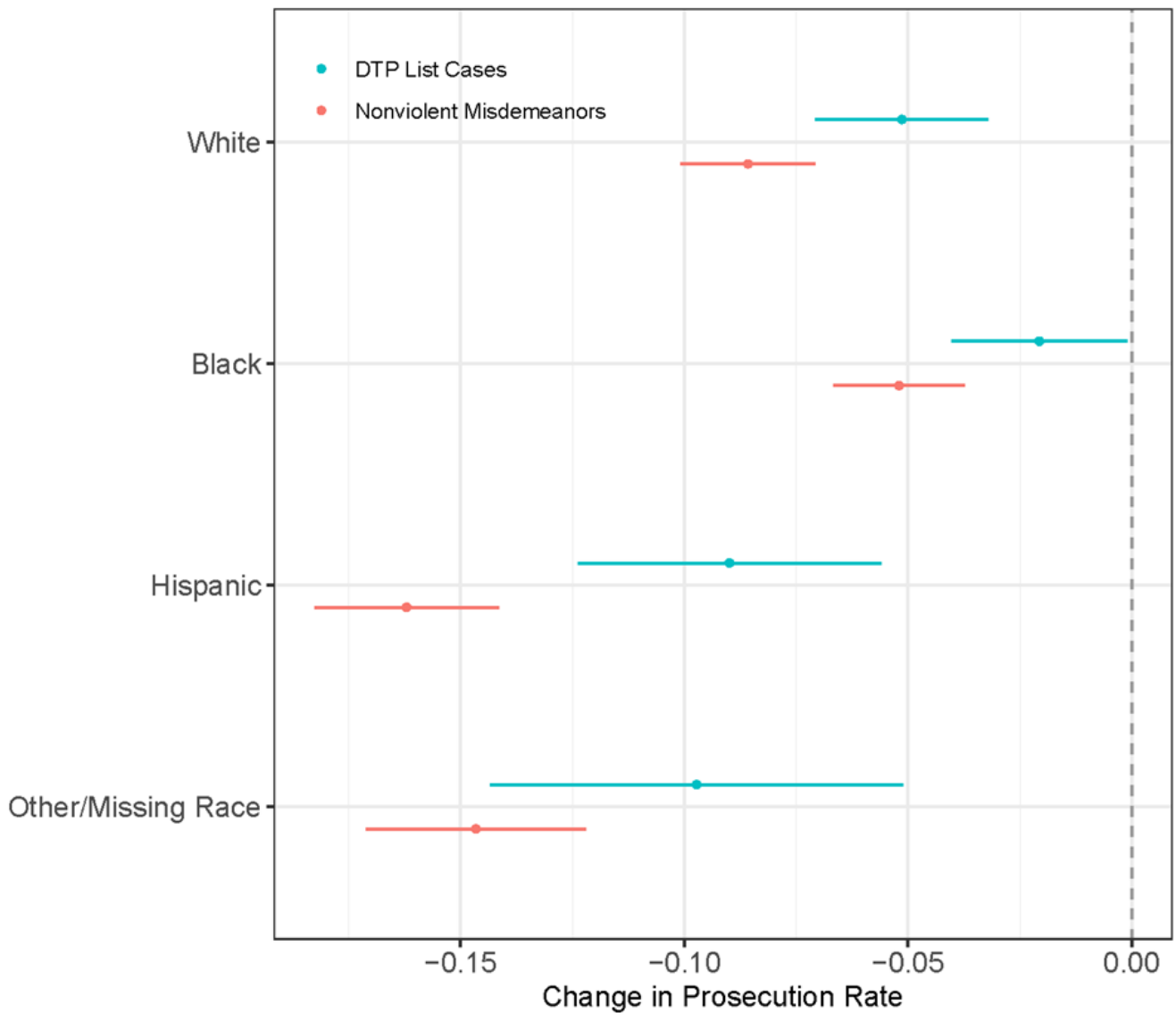


As shown in Figure 4, the estimated overall effect of DA Rollins' inauguration on prosecution rates in these cases is actually larger than the effect estimated for cases consisting of offenses explicitly included on the DTP list. Disaggregating this result by offense category reveals that the large decrease in prosecution rates for nonviolent misdemeanor cases was driven almost entirely by a decrease in the prosecution of motor vehicle and traffic offenses, which are by far the most common type of nonviolent misdemeanor charged. Motor vehicle offenses are included in nearly 57% of the cases in this sample, and so the substantial decrease in prosecution rates for cases with those offenses seems to drive the overall result.¹⁷

17. There is also a large decrease in prosecution rates for "Other" offenses, which appear in roughly 12% of nonviolent misdemeanor cases in this sample. Offenses in this category mostly consist of unspecified municipal ordinance and bylaw violations and court-based offenses like jurors failing to appear.

Figure 9 details the results of an event study analysis that disaggregates the policy's impact on prosecution rates by defendant race. The model includes the same controls as the previous event studies and as above uses interaction terms to estimate race-specific deviations from the overall treatment effect. As above, Figure 9 plots the sum of the overall treatment effect and the corresponding race-specific interaction terms.

Figure 9: Effect by Defendant Race/Ethnicity



While the Rollins inauguration is associated with decreases in prosecution rates for defendants of all races charged with impacted offenses, the decrease was substantially smaller for Black defendants. The nonprosecution policy's introduction is associated with a 5.1 percentage point decrease in the prosecution rate for White defendants with cases consisting of DTP list offenses, more than twice as large as the roughly 2.1 percentage point decrease for Black defendants charged with those same offenses. Hispanic defendants and those with other racial/ethnic identifications saw even larger decreases in prosecution rates

than White defendants. I find a similar pattern when considering all nonviolent misdemeanors, with Black defendants facing a 5.2 percentage point decrease in prosecution rates compared to 8.6 percentage points for White defendants. Thus, while the nonprosecution policy reduced prosecution rates for defendants of all races, the impact was much smaller for Black defendants than for all others. Below I turn to analyzing the declination and diversion policy's impact on recidivism.

Results – Recidivism

One common concern with policies that limit criminal prosecution is that increasing leniency, even for low level nonviolent offenses like those included in DA Rollins' declination policy, will embolden people who commit crimes and lead to more serious misconduct.¹⁸ To explore this possibility, I analyze the impact of the declination and diversion policy on future criminal offending by impacted defendants using a difference-in-differences (DiD) research design.

Difference-in-differences designs are similar to event studies in that they are effective at estimating the impact of discrete policy changes that occur at specific times. The DiD design builds on the event study model by introducing a control group to account for unobserved factors that may influence the outcome of interest and change over time. For example, given increasing scrutiny of the criminal legal system prompted by recent high profile police murders, as well as the ongoing pandemic that began within a year of DA Rollins' inauguration, we might be particularly concerned about changes that impact recidivism in Suffolk County over time beyond the changes introduced by DA Rollins. To address these concerns, I include defendants with cases involving nonviolent felony offenses as a control group.

An ideal control group would be one that is not directly impacted by the declination and diversion policy but that experienced similar trends in recidivism prior to its introduction. The event studies above provide clear evidence that prosecution rates did not change systematically for cases involving nonviolent felonies.

Figure 10 plots one-year recidivism rates for DTP list cases, nonviolent misdemeanor cases, and nonviolent felony cases over time.¹⁹ Panel A plots the overall recidivism rate within these groups, and Panel B plots the recidivism rate for new cases involving violent offenses specifically. Recidivism rates have been relatively stable over time with some apparent seasonality, and trends are quite similar across these groups.

18. See Foster, J.E., 2019. Charges to Be Declined: Legal Challenges and Policy Debates Surrounding Non-Prosecution Initiatives in Massachusetts. *BCL Rev.*, 60, p.2511 for a review of such arguments.

19. Here recidivism is defined as a defendant being charged in a new criminal case in Suffolk County for conduct that occurred or was arraigned within a year of the current case's initiation. Violent recidivism follows the same definition but only includes new cases that include at least one violent offense. This definition of recidivism is particularly expansive in that a defendant is considered to have recidivated if they are charged with a new offense within one year, even if it is eventually dismissed or they are found not guilty. I cannot observe new cases brought in jurisdictions outside of Suffolk County, however.

Figure 10: Recidivism Over Time

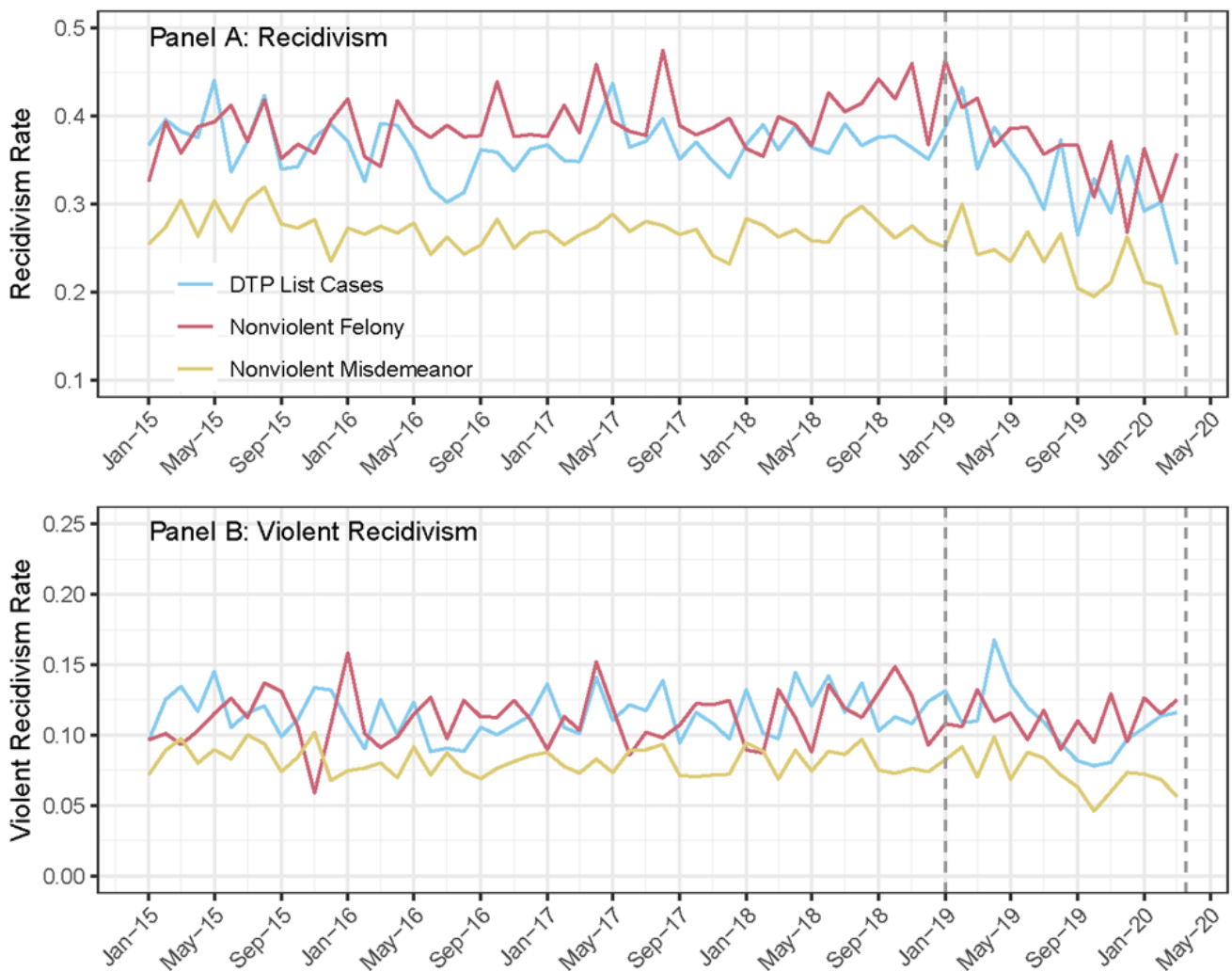
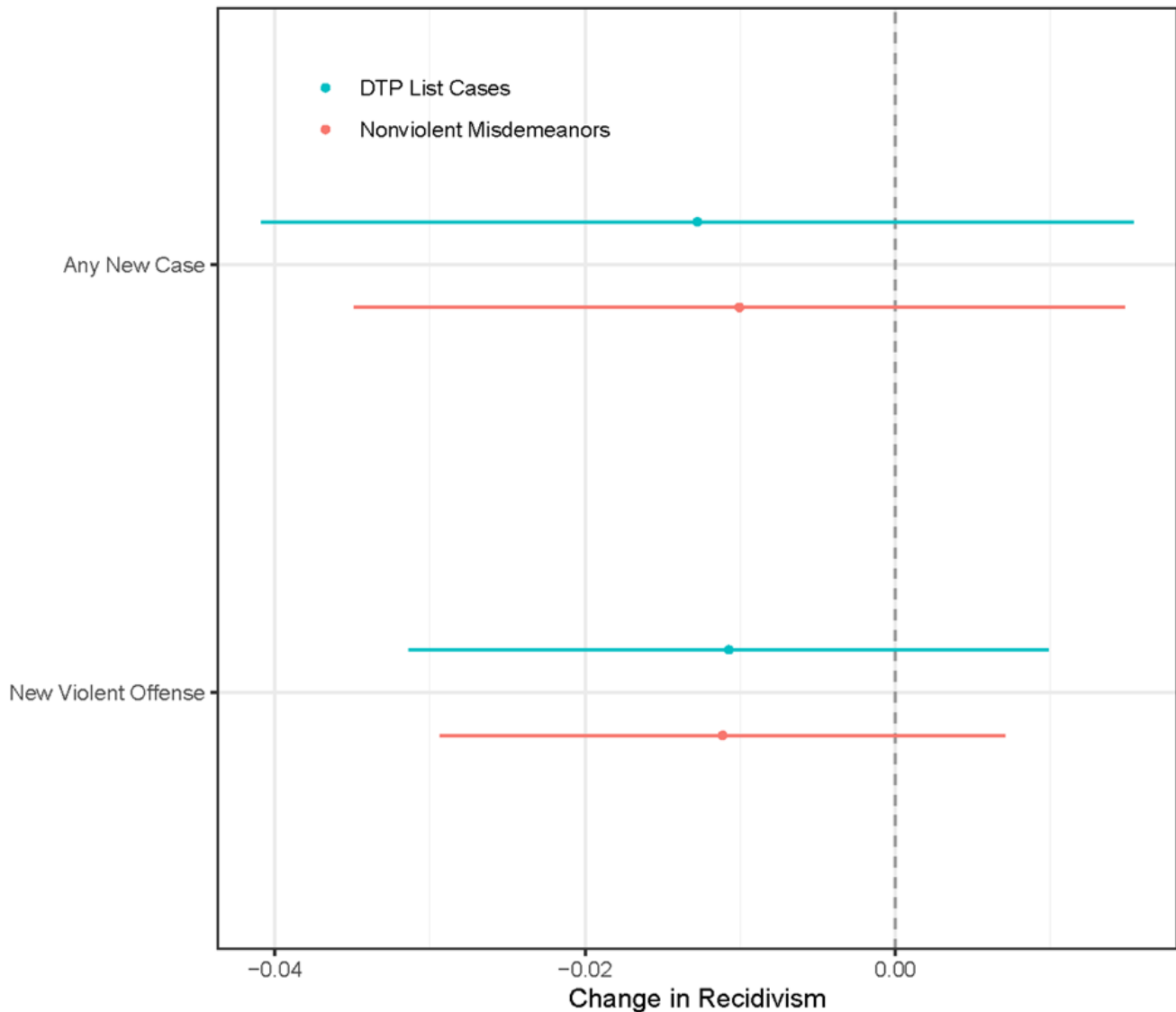


Figure 11 presents DiD estimates of the impact of DA Rollins' inauguration on the one-year recidivism and violent recidivism rates for DTP list cases and nonviolent misdemeanor cases. They are estimated using samples of cases arraigned between 12/01/2016 and 4/30/2020 rather than between 12/01/2016 and 4/30/2021 as in the event study analyses in order to allow for at least a full year of subsequent data to observe future offending. The DiD model includes the same controls as in the previous event study models.

Figure 11: Difference-in-differences Estimates



All point estimates are small, negative, and statistically indistinguishable from zero at the 95% confidence level. Still, these results are precise enough to rule out substantial increases in overall recidivism and violent recidivism due to DA Rollins' inauguration, and there is suggestive evidence that the policies may have actually slightly *reduced* the rate at which defendants face new criminal cases if anything.

Discussion

Based on the analysis above, it appears likely that the policy guidance provided by DA Rollins upon her inauguration significantly reduced prosecution rates for defendants charged with the offenses indicated in the policy and nonviolent misdemeanors in general with no increase in recidivism or violent recidivism. While the decrease in prosecution rates was substantial, many cases with offenses on the DTP list continued to be prosecuted after

DA Rollins' inauguration. There were also several offense categories included in the policy that nevertheless saw essentially no change in prosecution rates (and in one case a slight increase).

One might expect larger or less heterogeneous decreases in prosecution for these offenses given the nature of the policy, but the pattern of results here indicates that the line ADAs charged with implementing this policy retained substantial discretion in how they responded to the overall guidance. While they readily adopted the policy for common low-risk cases like minor traffic offenses and non-Black defendants, responses were more muted for other types of offenses and Black defendants.

One potential explanation for this heterogeneity by offense category may be found in the enumerated exceptions and alternatives to prosecution laid out in the policy. As discussed above, the presumption of non-prosecution is subject to a variety of offense-specific exceptions and coupled with a call for line ADAs to consider alternatives that focus on treatment and diversion to address underlying causes. It is possible that the decrease in prosecution was driven by motor vehicle offenses because they are relatively low risk, have no victims, and are generally not associated with serious treatment needs. Declining to prosecute other types of offenses may imply substantial follow-up work to connect defendants with the appropriate resources, and that may serve as a barrier to line ADAs with limited time and resources.

If this is true, then diversion and declination policies may be more effective if paired with investments in easily accessible support resources so that line ADAs can be confident that alternatives are in place if they choose to decline to prosecute a case. Further qualitative research exploring how line ADAs decide which cases warrant prosecution would be informative here.

The fact that line ADAs more readily use their new discretion to decline to prosecute cases with non-Black defendants is not surprising given the substantial racial disparities that characterize the criminal legal system in Suffolk County and Massachusetts more broadly.²⁰ These results highlight the limitations of using discretion to reform the criminal legal system given the prevalence of racial discrimination and bias throughout. While DA Rollins' declination and diversion policy unambiguously led to less prosecution for defendants of all races facing DTP list offenses, the substantial racial disparities in this caseload persist and may even be exacerbated by increasing discretion. These limitations should be considered when comparing de facto decriminalization policies like this one to alternatives like legislative decriminalization and reclassification.

Contributions and Limitations

The results of the analysis above are consistent with those presented in a recent working

20. Bishop, E.T., Hopkins, B., Obiofuma, C. and Owusu, F., 2020. Racial disparities in the Massachusetts Criminal System. *Criminal Justice Policy Program, Harvard Law School*.

paper by Agan, Doleac, and Harvey that explores misdemeanor prosecution in Suffolk County including providing early evidence of the impact of the declination and diversion policy.²¹

This study builds on this past research in several ways. First, I detail the characteristics of impacted defendants and their cases. In addition to providing more context on the impacted caseload, I leverage this information to identify substantial heterogeneity in the extent to which the nonprosecution policy was implemented across offense types and defendant demographics. In particular, I highlight substantial racial disparities in implementation, with much smaller effects for cases involving Black defendants, and I identify several offense categories that saw essentially no change in prosecution rates despite being included on the DTP list. This analysis also directly addresses concerns that the policy contributed to increases in violent crime by estimating its impacts on violent recidivism in addition to overall recidivism. Finally, this analysis uses more recent data that allow me to estimate impacts over a somewhat longer period.

While the event study and DiD designs used here are well suited for this context, there are still some factors that may introduce bias into the estimates presented above that are worth discussing. First, it is possible that the policy's introduction impacted how law enforcement officers choose who to stop and arrest. If, for example, law enforcement responds to the policy by reducing arrests for less serious cases that they think are unlikely to be prosecuted, then it may be that the caseload after DA Rollins is inaugurated differs systematically from cases brought before. In this case, estimates of the change in prosecution rates attributable to the declination, dismissal, and diversion policy would be biased upwards, and the true decrease in prosecution rates would actually be larger than is observed here through a combination of averted arrests (which I cannot observe) and nonprosecution.

Another potential source of bias is that the declination and diversion policy may impact both the current case and subsequent cases. Thus, the policy may have a direct impact on the measure of recidivism used here, as it is based on subsequent contact with the criminal legal system. That being said, it is unlikely that the policy had any effect on arrests for violent offenses, which are more likely to be reported consistently and were explicitly not targeted by the policy, and so estimates of DA Rollins' impact on violent recidivism are unlikely to be biased in this way. As discussed above, the policy's impact was concentrated among a subset of the offense types included on the DTP list, and so this source of bias might be limited even for many cases with offenses explicitly included on the DTP list. On the other hand, law enforcement agencies may respond to information about the policy even if it is only partially implemented. Future research on law enforcement responses to

21. See Agan, A.Y., Doleac, J.L. and Harvey, A., 2021. *Misdemeanor Prosecution* (No. w28600). National Bureau of Economic Research. Their study focuses on estimating the impact of nonviolent misdemeanor prosecution on defendants' future criminal justice involvement using as-if random assignment of cases to line ADAs as a natural experiment. They find that prosecuting the marginal defendant leads to a large increase in the likelihood of a new criminal complaint. They also explore the impact of the first few months of this declination policy and find evidence of a larger and statistically significant decrease in overall recidivism and no change in local reported crime.

DA-led discretionary decriminalization would be helpful in understanding the extent to which these factors are at play and give a fuller picture of the community-wide impacts of these and similar policies.

Additional Implications

While these outcomes cannot be observed in the available data, nonprosecution can have important additional downstream consequences for impacted defendants. Decreasing prosecution for low level offenses will likely result in a decrease in criminal sanctions such as fines and incarceration and all of the fiscal and social costs associated with them. Despite facing low level nonviolent offenses, it is likely that some defendants who avoided prosecution as a result of the declination policy would have been incarcerated in its absence. This could reflect both individuals who would have been detained pre-trial had they faced prosecution and cases that would have resulted in convictions and jail sentences had they been prosecuted. Defendants facing any offense included in the declination and diversion policy except possessing alcohol as a minor can be sentenced to a term of incarceration upon conviction. For example, being convicted of operating a motor vehicle with a suspended license for the first time carries a minimum fine of \$500 and a potential sentence of up to 10 days in jail. First time larceny of goods valued at less than \$250 can result in jail sentences of up to 12 months. Prosecuted cases that do not result in incarceration can still generate fines, fees, probation sentences, criminal histories, and other barriers that are costly to both the individuals facing them and the state.²²

Additional research would be helpful in fully understanding the impact of this and similar DA-led nonprosecution policies on the criminal legal system more broadly. Prosecution decisions do not happen in a vacuum, and future work considering how law enforcement, sentencing, and other practices might change in response to such policies would be informative in understanding the longer-term equilibrium impacts.

Lastly, while charge dispositions and recidivism were the focus of this analysis, DA Rollins' vision for this policy went beyond limiting the prosecution of nonviolent misdemeanors to include "consider[ing] solutions that direct those in need of treatment — mental health, substance use disorder, or otherwise — to available resources..."²³ Administrative data from within the criminal legal system are insufficient to understand either the extent and nature of these needs or the scope of work being done already to connect those in need with the resources that they need to thrive. Additional research that maps these resources, identifies when and for whom they are being deployed, and evaluates their impact relative to traditional criminal adjudication will be key to understanding the true potential of leveraging alternatives to prosecution to produce long-term public safety.

22. See, for example, Harris, A., 2016. *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. Russell Sage Foundation for a discussion on the social costs of legal financial obligation.

23. See <https://www.suffolkdistrictattorney.com/rachael-rollins-policy-memo>, page C-1