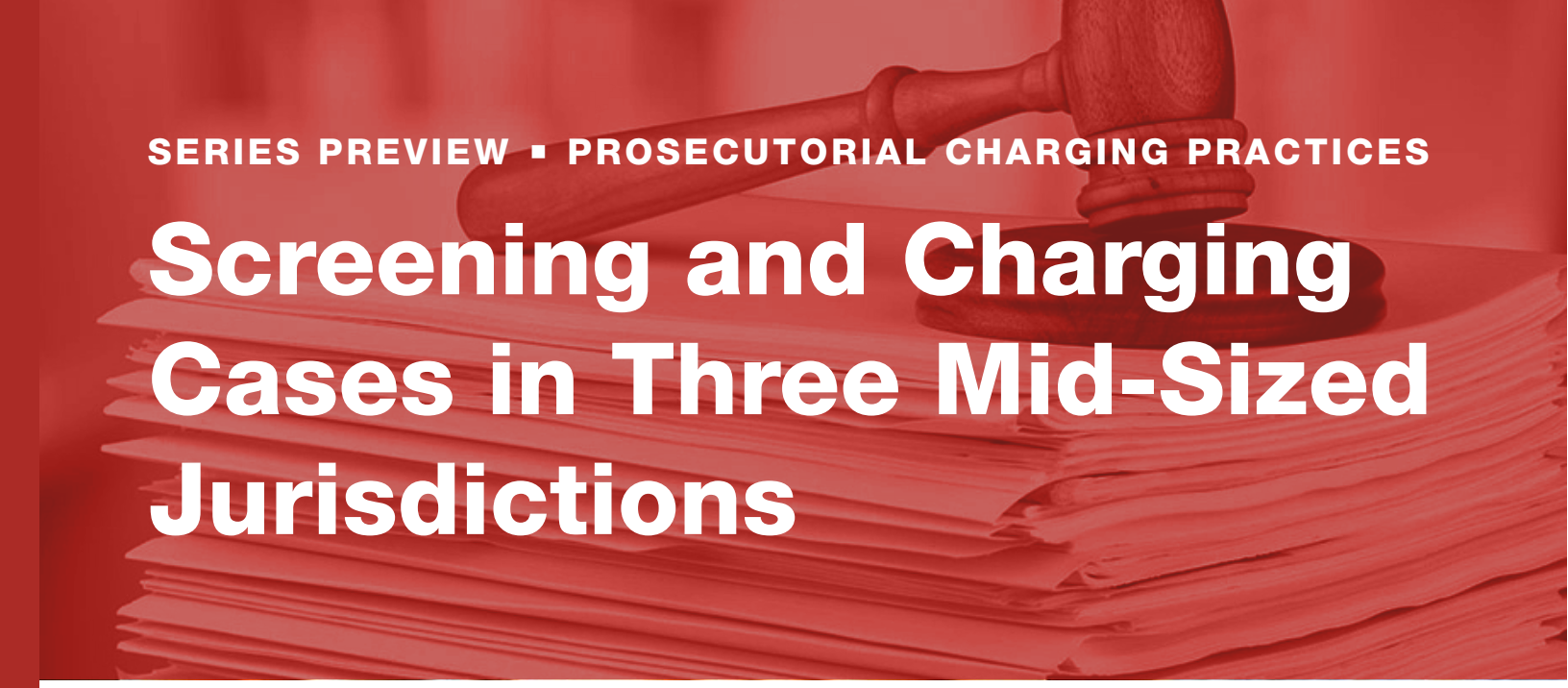


SERIES PREVIEW ▪ PROSECUTORIAL CHARGING PRACTICES

Screening and Charging Cases in Three Mid-Sized Jurisdictions

INTRODUCTION

Prosecutors are the gatekeepers of the criminal legal system. Their discretionary charging decisions drive the criminal process. After police make arrests or issue citations, prosecutors screen these cases, declining to pursue some of them and agreeing to prosecute others. Once prosecutors accept a case for prosecution, they decide which charges to pursue and what plea bargains to offer. In turn, these decisions determine the likelihood of pretrial release and the range of possible sentences. Through this discretionary power to screen and charge cases, prosecutors wield extraordinary influence over the fate of individual cases and the size of their local criminal court systems.

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THE RESEARCH

The Deason Center worked with an accomplished team of experts. Led by Professor Jon Gould of American University, the research team visited each office at least twice. The team gathered administrative data, distributed surveys, conducted interviews, and convened focus groups.

Study Offices

Far from the big-city spotlight, the Deason Center studied three district attorney's offices in medium-sized metropolitan areas across the country. These offices—referred to as **Franklin**, **Hazelton**, and **Springfield**—are far more typical than the prosecutors' offices in major cities that are so often discussed by researchers and reformers. Collectively, the **Franklin**, **Hazelton**, and **Springfield** offices ("Study Offices") employed approximately 145 prosecutors. None employed fewer than 20 or more than 80 attorneys.



Franklin **Hazelton** **Springfield**

Two offices were headed by Republican prosecutors; the other was headed by a Democrat. None of the elected district attorneys ran for office as a "progressive" or "reform" prosecutor. Each participated in the study to gather empirical data that would empower them to assess and improve their offices. Each allowed the Deason Center to publish anonymized reports about its research findings.

Administrative Data



The research team gathered case management and administrative data from each office. Unsurprisingly, the offices used different data management systems and had different data collection capacities. Accordingly, the researchers obtained somewhat different datasets. In **Franklin**, researchers collected data from 369 felony cases, a representative sample of slightly less than 5% of the office's annual caseload. In **Hazelton**—where the team reviewed case data from a violent crime unit—the team gathered data from approximately 280 felony cases. Finally, in **Springfield**, researchers reviewed data from approximately 2,250 felony case files.

Surveys

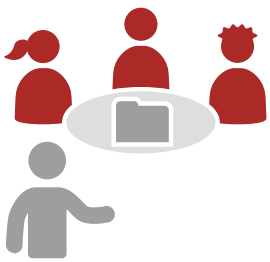


The research team administered surveys to prosecutors in all of the Study Offices and received 99 responses. Among other things, the surveys asked prosecutors about their career trajectories, their experience screening and charging cases, their offices' charging policies and practices, and the challenges of making charging decisions. Other areas of inquiry included prosecutors' backgrounds, legal experience, and caseloads.

Interviews and Focus Groups



The research team conducted more than 150 hours of in-person interviews and convened nearly a dozen focus groups with rank-and-file prosecutors, supervisors, and elected district attorneys. Prosecutors spoke candidly about why they became prosecutors. They described their personal and professional backgrounds, their views about criminal justice, and the beliefs and passions that motivate their work. At the heart of these interviews were conversations about how prosecutors made their screening and charging decisions.



In focus groups, prosecutors walked the research team through closed files from their respective offices. Prosecutors explained how and why they charged—or would have charged—these cases. They also discussed the extent of their charging discretion and their perception of office policies and practices, highlighting the complications and pressures associated with different charging decisions and case types.

Three Important Features of the Offices' Screening and Charging Practices

Pre-Arrest Communications between Police and Prosecutors



Police initiate most state court prosecutions, either by arrest or by citation. The nature and quality of police-prosecutor relationships and communications vary widely. In some jurisdictions, police and prosecutors work hand-in-hand to determine whether to make an arrest and, if so, on what charges. Elsewhere, prosecutors do not learn about a new case until police bring a file to their offices or to court to begin the adjudicative process.

Do Police Confer with the Study Offices about Their Arrest Decisions?

In **Franklin**, police officers work closely with prosecutors to make decisions about most felony (and some misdemeanor) arrests, while in **Hazelton**, police only consult prosecutors about arrests for serious violent crimes. In contrast, the **Springfield** police rarely consult with prosecutors about any of their arrest decisions.



In Franklin: Prosecutors said that they see police as colleagues and partners in a charging discussion. They ask what charges the officers want to file and try to follow the officers' leads rather than making unilateral decisions.

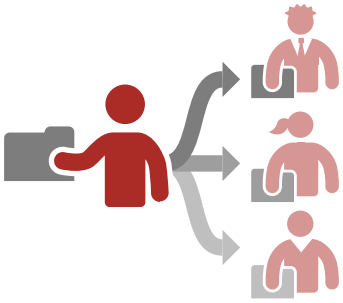


In Hazelton: Prosecutors valued a system in which multiple people considered the charges, and they described their charging decisions as part of a system of checks and balances between prosecutors and the police.



In Springfield: In general, Springfield prosecutors reported a fraught relationship with law enforcement. Springfield prosecutors rarely have pre-arrest discussions with the police and a majority of prosecutors interviewed were quite critical of the local department. Prosecutors complained that the officers had a "negligible grasp" of the law and that—despite efforts to train the department—"nothing changes."

Distribution of Responsibility for Screening and Charging



In some prosecutors' offices, each new case is assigned to an individual prosecutor who handles that case from assignment to final disposition. The assigned attorney screens the case, makes a charging decision, formalizes that decision (by filing a prosecutorial information or obtaining a grand jury indictment), and resolves the case by plea or trial. In other offices, lawyers in a dedicated charging unit make screening and charging decisions. After those lawyers file formal charges, trial division attorneys are assigned to handle these cases through disposition.

How Do the Study Offices Allocate Responsibility for Screening and Charging?



Franklin relies on a rotating team of experienced prosecutors to screen and charge most felonies and some serious misdemeanors. After this unit formalizes charges, it hands each case off to another **Franklin** prosecutor, who handles the case through disposition.



In most **Hazelton** cases, a judicial officer determines the initial charges at the arrestee's first court appearance. The case is then assigned to a **Hazelton** prosecutor. However, in some of the most serious cases, **Hazelton** prosecutors and police cooperate before an arrest and agree upon the initial charging recommendations that police will present to the judicial officer.



In **Springfield**, a rotating group of junior attorneys conducts a cursory "probable cause" review of new arrests, screening the cases to ensure that the police have met the legal threshold for arrest. Afterwards, the elected district attorney or a senior deputy conducts an additional screening review of each felony case to confirm that it merits prosecution. Finally, a single **Springfield** attorney is assigned to file formal charges and resolve the case.

Statutory Deadlines for Formal Charging Decisions



After arrest, a defendant can be held to answer for the informal charges associated with arrest. If prosecutors do not file formal charges in a timely manner, the informal charges will be dismissed. The defendant will then be released from all custodial conditions. Formal charging deadlines vary widely by state and may depend upon a defendant's custodial status (detained or released) or the type of crime alleged (misdemeanor, felony, or capital).

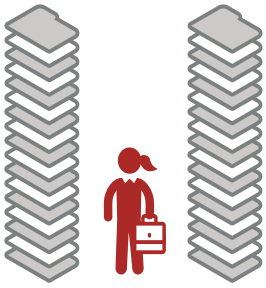
How Much Time do Prosecutors in the Study Offices Have to File Formal Charges?

In **Franklin**, if a person is arrested and detained on felony charges, prosecutors have less than 45 days to file formal charges. In contrast, prosecutors in **Hazelton** and **Springfield** have more than 45 days after arrest to file formal charges. If a felony defendant has been released on bail, **Franklin** prosecutors must file formal charges in less than 100 days, while **Hazelton** and **Springfield** prosecutors can wait more than 100 days.

	F Franklin	H Hazelton	S Springfield
Dedicated Screening or Charging Unit	Yes, felonies and serious misdemeanors	Yes, but only in very serious cases	Yes, but only at screening
Police Confer with Prosecutors before Arrest and Booking	Yes	Only for serious violent crimes	No
Deadline for Filing Formal Charges in Incarcerated Felony Cases	<45 Less than 45 days	>45 More than 45 days	>45 More than 45 days

A Sneak Peek at the Research Findings

Many Prosecutors Reported Excessive Screening and Charging Caseloads



Prosecutors in the Study Offices often reported crushing caseloads. As a result, some prosecutors hurried through their screening and charging decisions, while others faced charging backlogs. Because prosecutors can only spend a few minutes on each charging decision, they are almost entirely reliant on police reports. If the police investigation is inadequate, prosecutors may be forced to reduce or dismiss charges they might otherwise have pursued. Meanwhile, charging delays can leave defendants languishing in jail for weeks without any idea about what charges, if any, they will face.

Prosecutors Regularly Declined Cases or Filed Different Charges Than Those That Were Submitted to Them

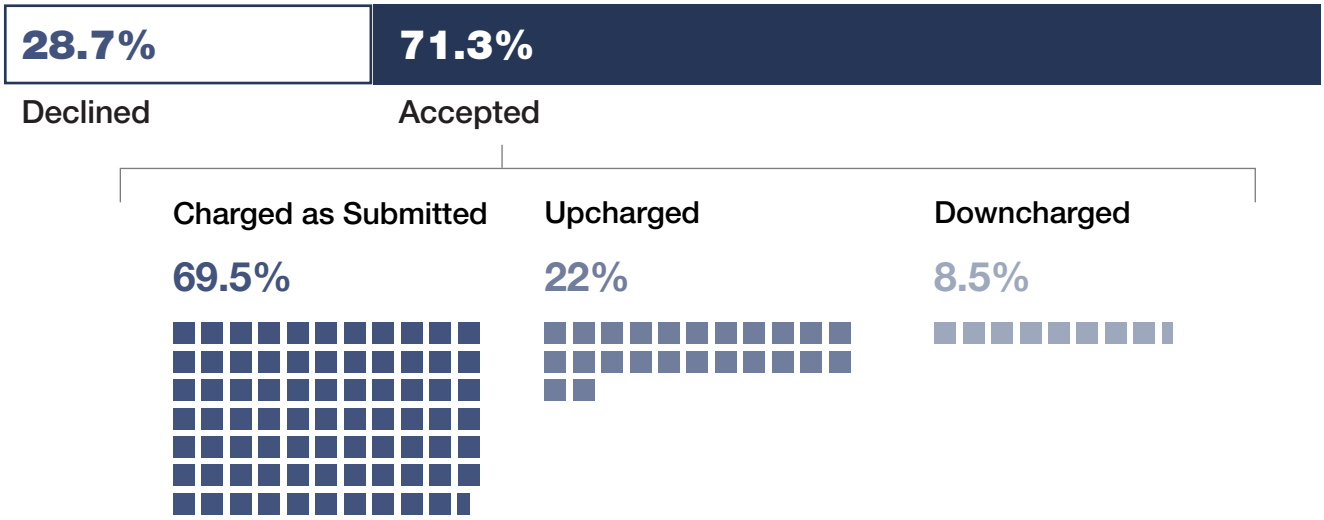
After police make an arrest, a prosecutor must decide whether to go forward with a prosecution and, if so, which crime(s) to charge. Often, a prosecutor decides that the initial charging decision—made by a police or judicial officer—was the correct decision and files formal charges accordingly. However, a prosecutor may also decide that the evidence or circumstances justify different charges. A prosecutor may then upcharge by filing more serious charges or stack charges by filing a greater number of charges. A prosecutor may also downcharge by filing less serious charges.

The researchers used a variety of data to study how prosecutors screened and charged cases submitted by the police. The administrative data on declination rates gathered from the Study Offices were too different to permit direct comparisons across offices. However, the researchers were able to make assessments of each office's practices.

Screening and Charging Cases in Franklin

In **Franklin**, prosecutors declined 28.7% of felony cases submitted by police. Among the cases that they accepted, **Franklin** prosecutors pursued the charges submitted by police in 69.5% of cases, upcharged in 22%, and downcharged in 8.5%.





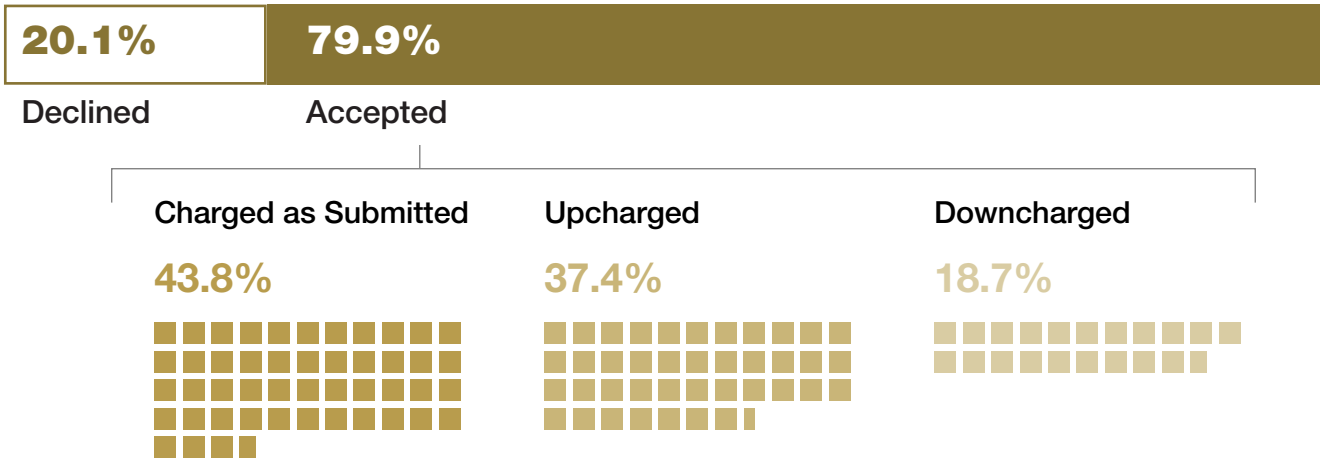
According to **Franklin's** elected district attorney, a defendant's criminal history is not relevant to the formal charging decision unless a prior conviction is an element of the new crime being charged. However, attorneys in the **Franklin** charging unit reported that their charging decisions are influenced by a defendant's criminal history. Some **Franklin** prosecutors used criminal history to decide whether to steer a defendant toward drug treatment or other rehabilitative programs. Others used criminal history as a proxy for the defendant's character.

When considering what charges to file against a defendant with a lengthy criminal history, one **Franklin** prosecutor told the researchers, "I would look at his background and think, 'He doesn't give a f*&% about any break you're going to give him.'"

Screening and Charging Cases in Hazelton

In **Hazelton**, where researchers only reviewed data on a group of violent crime cases, prosecutors declined just over 20% of the charges submitted to them. Among the cases that they accepted, **Hazelton** prosecutors filed formal charges that matched the submitted charges in 43.8% of cases, upcharged in 37.4%, and downcharged in 18.7%.





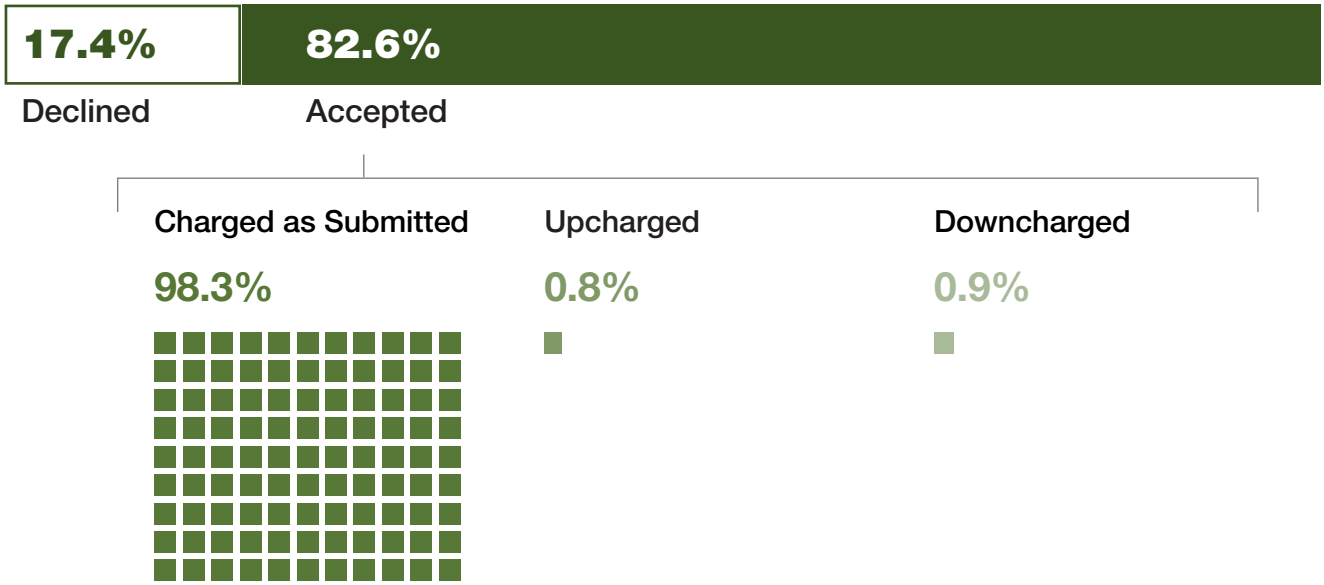
Hazelton prosecutors reported that, in serious cases, they want police to arrest on charges that will "get the defendant off the street" until prosecutors can get an indictment on the "real" charges. Once prosecutors obtain an indictment on more serious charges, they dismiss the less serious "holding charges." This practice protects victims and witnesses from having to testify at a preliminary hearing.

One **Hazelton** prosecutor described how he structured the charges in a murder case. First, he asked police to arrest the defendant for conspiracy-to-commit-murder, rather than for homicide (even though the victim was dead). After the defendant was in jail, the prosecutor indicted him for murder and dropped the conspiracy charge.

Screening and Charging Cases in Springfield

In **Springfield**, prosecutors declined prosecution in just over 17% of cases submitted. Among the cases that they accepted, **Springfield** prosecutors filed formal charges that matched those submitted by the police in 98.3%, upcharging and downcharging in only 0.8%, and 0.9% of cases, respectively.





Notably, many **Springfield** prosecutors complained that they lacked the discretion to decline cases that they believed should not be prosecuted. Several **Springfield** prosecutors reported using the grand jury to "solve" this problem, indirectly "declining" charges by presenting them to the grand jury in a way that discouraged indictment. These prosecutors thereby avoided prosecutions they saw as unjust without risking confrontations with their superiors. A preliminary review of the administrative data seems to confirm this practice, as there appear to be an unusually large number of cases in which the grand jury did not indict.

One **Springfield** prosecutor described presenting the grand jury with a case that the prosecutor did not want to prosecute. The prosecutor "played dumb," telling the grand jury, "I don't know what to do" with the case. The grand jury declined to indict and the prosecutor was able to tell their supervisor, "it's not my fault."

No Consensus about the Standard of Proof Necessary to File Formal Charges

Prosecutors held different views about the appropriate standard of proof for charging: should prosecutors file formal charges if the evidence meets the probable cause standard used for arrest, or should prosecutors only file if the evidence meets the beyond reasonable doubt standard that is required for conviction at trial?

In **Franklin** and **Hazelton**, a majority of prosecutors said that they filed charges when they believed they had proof beyond a reasonable doubt. In **Springfield**, however, there was significant disagreement. Some **Springfield** prosecutors said that probable cause justified filing formal charges, while others said formal charges were only appropriate if prosecutors could meet the beyond a reasonable doubt standard.



In Franklin: A prosecutor described the standard for charging as "Can you win this at trial? Do you have a good faith belief that it happened and can be proven?"



In Hazelton: A prosecutor said, "If I've got nothing, I'm not going to prosecute."



In Springfield: Prosecutors reported that, while the official policy is to use the beyond a reasonable doubt standard, there are "mixed messages." The big question to ask is "are we doing justice?"

Some Prosecutors Reported Overcharging and Stacking Charges as a Strategy to Get to What They Consider a Just Plea Bargain

In each office, some prosecutors reported that they strategically overcharged defendants, hoping to eventually arrive at a just result through the plea bargaining process. Some prosecutors did this by overcharging, filing charges that carried more serious consequences than they believed were necessary. Other prosecutors stacked (or increased the number of) charges filed against a defendant, which increased both the severity of the possible punishment and the range of evidence that might be used at trial. These prosecutors believed that, if the charges were high enough, a defendant would eventually plead guilty (to reduced charges) rather than risk losing at trial and facing more severe punishment.



In Franklin: Prosecutors said they charged high to "incentivize a defendant to plead." Even if a prosecutor wanted a defendant to receive the most lenient sentence, they would still file the most serious charges, hoping to arrive at their desired result through the plea bargaining process.



In Hazelton: A prosecutor described "piling on charges" to increase their leverage in plea negotiations.



In Springfield: Prosecutors said that extra charges filed at the beginning are better bargaining chips than subsequent threats to add new charges. So, they add as many charges as possible at the beginning of the case, knowing that they can always drop them later.

What Comes Next?

Understanding how prosecutors make their screening and charging decisions is essential to criminal legal reform. This preview report is the first in a series of publications that explores the screening and charging practices of prosecutors in three mid-sized jurisdictions. The Deason Center looks forward to sharing future reports, analyses, and recommendations about screening and charging practices.

To receive future publications in the series, please register here.

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About the Deason Center

The Deason Criminal Justice Reform Center takes a Stats and Stories approach to criminal justice reform. The Stats: we collect, analyze, and assess qualitative and quantitative data about our criminal justice system. The Stories: we uncover, recount, and amplify the experiences of people who live and work in that system. Together, these Stats and Stories make a compelling case for compassionate criminal justice reform.

Understanding and improving how prosecutors screen and charge criminal cases is a core component of the Deason Center's research and advocacy agenda. The Center's research in this area helps prosecutors across the nation use their charging discretion to advance fair and compassionate criminal legal reform.

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