

Researchers study bias in prosecutor filing trends

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UTSA Public Policy Professor Richard Hartley. Credit: UTSA Communications

There is evidence that federal charging practices vary across district

courts. Experts state that several court characteristics impact what charges might be pursued for similarly situated defendants.

UTSA professors of public policy Richard Hartley and Rob Tillyer studied what factors affect the determination by prosecutors to decline to charge someone arrested for a federal crime.

Recent research regarding [decision](#)-making in federal criminal courts has revealed disparities related to charging decisions, charge reductions, guilty pleas, pleas rewards, trial penalties, selection processes in screening, and between [prosecutor](#) variation in plea bargaining.

The purpose of their current research is to understand prosecutorial discretion and its influence as gate keeper of the federal criminal justice system and whether this might benefit or disadvantage certain types of defendants.

In the current research, Hartley and Tillyer examined charge changes and prosecutor's decisions to decline to pursue a case.

"We know that the decisions made by prosecutors (prosecutorial decisions) are highly discretionary and that these decisions affect later stage decisions such as those of sentencing judges, however, one of the main obstacles in exploring these cumulative effects has been the lack of, or availability of, data" said Hartley.

Prosecutors' discretion extends over investigations, initial or indictment information charges, declination and dismissal outcomes and the guilty plea process that includes pleas to charges, charge reduction fact bargaining and sentencing recommendations.

To overcome the limitation of a lack of knowledge of prosecutorial decisions, the researchers linked data on federal arrests to data on

prosecutorial charging decisions producing a data set that covers 10 years and has nearly one million cases. The source of the data sets they merged is the Federal Justice Statistics database housed within the National Archive of Criminal Justice Data (NACJD). Their project was sponsored by a grant from the National Institute of Justice.

Hartley and Tillyer sought to explore the factors influencing a prosecutor's decision to proceed with charges or not against an individual arrested for a federal offense. Given the decision to proceed, they also wanted to examine if the charge sought was similar or different from the original arresting charge? Did the type of case, or [defendant](#) characteristics have an impact on the prosecutor's decision to proceed with charges and the any differences between the arresting charge and the final charge? Further, did those decisions vary by district?

The research showed that federal prosecutors declined to prosecute in about one quarter of all cases across the 10 years of data but this percentage varied by type of offense. Violent and drug cases were most likely to be declined for prosecution while immigration offenses had the highest likelihood to be prosecuted.

Hartley says there are several reasons related to these outcomes. To prosecute a drug related charge, for example, significant evidence must be gathered and presented. In immigration cases, a lack of proper documentation to be present in the country can be sufficient in prosecuting the offense.

Regarding legally relevant factors, the researcher found offenders with more charges were more likely to have their case declined for prosecution in a federal court. Part of the explanation for this might be that in the federal system 90 percent of defendants plead guilty through some sort of plea agreement.

Having more charges against you, therefore, may increase the possibility that defendants do not enter into a plea agreement and the prosecutor has to examine how the case might be viewed at trial which could result in a higher likelihood of declining to prosecute the case. It may also be that a state- or county-level prosecutor agrees to prosecute the case due to overlapping jurisdiction and therefore the federal prosecutor declines to prosecute the case in federal court.

The UTSA researchers also found some differences in these decisions across gender and race. Their analyses revealed that men and non-white defendants were more likely to have their cases declined for prosecution, however men also comprised 90 percent of offenders in the data.

Regarding race, there is some evidence that non-white defendants are less likely to cooperate with officials. Another possible explanation is that African American and Native American defendants are more likely to be arrested on lesser evidence. A prosecutor therefore may decline to prosecute the case because of a lack of evidence.

Hartley and Tillyer also looked at the types of offenses prosecuted, such as trafficking of controlled substances, violent offenses and weapon violations. At the district level, they found that districts with higher caseloads were less likely decline cases for prosecution but that this might be due to the types of cases that certain districts prosecute more often.

Hartley and Tillyer's research is one of seven publications that is featured in the latest edition of *Justice Quarterly*, an academic journal covering criminology and criminal justice.

More information: Richard D. Hartley et al, Examining Prosecutorial Discretion in Federal Criminal Cases: Legal and Extra-Legal Determinants of Declination and Charge Change Decisions, *Justice*

Quarterly (2019). [DOI: 10.1080/07418825.2018.1530367](https://doi.org/10.1080/07418825.2018.1530367)

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