

A Comparison of Two Prosecution Policies in Cases of Intimate Partner Violence

Mandatory Case Filing vs. Following the Victim's Lead

EXECUTIVE SUMMARY

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Introduction and Purpose

Prosecutors have widely different policies regarding how to handle domestic violence arrests when the victim does not support prosecution. The purpose of the research presented here was to compare two policies, one that most often accedes to the victim's preference not to prosecute by not filing cases with the court (heavy case screening) and one that most often files cases regardless of the victim's preference (mandatory filing). This study took advantage of naturally occurring differences between two boroughs of New York City, the Bronx and Brooklyn. Prosecutors in each borough are independently elected officials who can set their own policies, but most contextual factors – police practices, state statutes, and rules of evidence – are identical between the boroughs.

The Bronx policy is a “first party complaint” process (Peterson & Dixon, 2005). Victims are asked by the arresting officer to come to the complaint room and meet with an assistant district attorney (ADA) following the arrest. The victim may sign a waiver of prosecution, and most often the ADA will decline to prosecute. Also, if the victim cannot be located within 24 hours of the arrest, the prosecutor will not file the case.

In contrast, the Brooklyn policy is that an effort should be made to prosecute all domestic violence cases regardless of the victim's preference. The DA's Office most often files charges with the court, but if the victim continues to oppose prosecution, the case will ultimately be dismissed, typically three to four months after the arrest. While the case is pending an order of protection will be in effect, and the defendant will have to return to court for two or three additional appearances after arraignment.

This study was designed to address four key questions about the effects of prosecutor screening policies:

1. Where the policy is *not* to file certain types of domestic violence cases, how much does the victim's preference not to prosecute influence the prosecutor's filing decision compared with other factors (e.g., severity of the offense, victim injuries, and defendant's criminal history)?
2. Does a policy of filing virtually *all* domestic violence cases lead to different re-arrest outcomes than a policy of selective prosecution?
3. Does a policy of filing virtually *all* domestic violence cases lead to different outcomes for victims, in regard to:
 - Use of victim services?
 - Victim sense of safety?
 - Victim sense of empowerment?
4. What are the marginal costs of prosecuting cases in which victims have expressed an unwillingness to participate?

Method and Findings

Question #1: Predictors of the decision not to prosecute under heavy case screening policy (Bronx)

To answer the first question – concerning which factors influence the decision of whether or not to file under a policy of heavy case screening – we sampled 102 recent intimate partner cases that the Bronx District Attorney (DA) had declined to prosecute (DP cases) and 102 cases that the Bronx DA did prosecute. For each sampled case, we collected information on the victim’s expressed reluctance to cooperate, the defendant’s criminal history, the nature of the current offense, victim injuries, the victim/offender relationship, and whether there was an outstanding order of protection. These variables were used to develop a multivariate statistical model predicting which cases in the Bronx would be prosecuted and which would be declined.

The results indicated that the odds of the DA’s Office declining to file a case were 6.5 times higher if the victim was reluctant to cooperate (indicated by leaving the Domestic Incident Report unsigned or signing a waiver of prosecution?) and were 4.7 times higher if there was no prior conviction for domestic violence (see Table 1). No other variables came close to statistical significance. *Summary:* The victim’s support for prosecution and the defendant’s prior convictions were the primary determinants of the prosecutorial decision in the Bronx.

Table 1. Factors Predicting Decision to Prosecute Bronx Cases (Logistic regression)

Variable	Odds Ratio	Wald Statistic	Significance
Signed DIR	6.54	20.84	.000
Prior DV case	4.72	11.56	.001
Nagelkerke R-square	0.28		

Question #2: Criminal Justice Outcomes

To answer the second question – concerning the case outcomes and recidivism rates that result from a universal filing policy as opposed to a selective filing or heavy screening policy – we compared the outcomes of cases that were not filed in the Bronx to the outcomes of similar cases that *were* filed in Brooklyn under their universal filing policy for domestic violence cases. In the Bronx, we sampled all 272 cases declined for prosecution from January through August 2006. Selecting cases in which the victim did not sign the DIR and/or opposed prosecution, we sampled a total of 211 cases in Brooklyn. We tracked both sets of cases for at least six months. At that point, we

Table 2. Impact of Screening Method on Re-Arrests Within Six Months¹

Sample Size	Brooklyn N = 208	Bronx N = 271
1. Re-arrest on any charge		
Any re-arrest	21%	28%
Mean number of re-arrests	0.32	0.40
2. Re-arrest with a charge of assault, menacing, or harassment (either top or associated charge)		
Any re-arrest	12%	11%
Mean number of re-arrests	0.16	0.12
3. Re-arrest with a felony top charge		
Any re-arrest	15%*	7%
Mean number of re-arrests	0.21**	0.08
4. Re-arrest with a misdemeanor top charge		
Any re-arrest	8%***	22%
Mean number of re-arrests	0.10***	0.31
5. Re-arrest with a felony top charge, not counting felony criminal contempt charges		
Any re-arrest	10%	7%
Mean number of re-arrests	0.14	0.08
6. Re-arrest with a misdemeanor top charge, not counting felony criminal contempt charges		
Any re-arrest	13%*	22%
Mean number of re-arrests	0.17*	0.31

+ p < .10 * p < .05 ** p < .01 *** p < .001

Note 1: Cases with criminal contempt-only charges (no other charge type on the docket) were excluded.

Note 2: Statistical significance tests are based on the F statistic from the main effect of county in the two-way ANOVA: re-arrest measure by county by strata.

collected information on case outcomes in Brooklyn (conviction, dismissal, etc.), and re-arrests and violations of protection orders in both boroughs using data obtained from official records of the New York State Division of Criminal Justice Services.

The reader should be aware that there were substantial differences in the characteristics of Brooklyn and Bronx cases, most notably in the ethnicity of defendants and victims. While these differences were controlled in the analyses using propensity scores, they nonetheless complicate comparisons of the different policies in the two boroughs. Results were as follows:

- *Case Duration:* We found that 92% of the cases sampled in Brooklyn (cases that probably would not have been filed in the Bronx) were pending for at least 80 days (mean = 113 days). During this time a temporary order of protection was in effect prohibiting the defendant from contacting the victim.
- *Conviction:* We found that only 5% of the cases sampled in Brooklyn resulted in a conviction, indicating the difficulty of successfully prosecuting without victim cooperation.

- *Recidivism:* We did not find that Brooklyn’s policy produced a statistically significant reduction in re-arrests when compared with the Bronx (see Table 2). There were significantly fewer misdemeanor re-arrests in Brooklyn than in the Bronx, but these were explained by a higher rate of arrests on misdemeanor drug and marijuana charges in the Bronx than in Brooklyn.
- *Domestic Violence Re-arrests:* The best measure that we had available of re-arrests for domestic violence offenses only – charges of assault, menacing, or harassment – did not reveal a significant difference between the two boroughs (see Table 2). The raw numbers were virtually identical.
- *Re-arrest Charge Severity:* Brooklyn’s filing policy has important implications for how the re-arrests were charged. Brooklyn’s use of temporary orders of protection while the initial cases were pending meant that subsequent domestic violence re-arrests were more likely to have a felony level charge of criminal contempt added. Therefore, important questions for future research are: (1) whether these new felony level cases in Brooklyn are more likely to result in full prosecution and conviction, and (2) whether prosecution as a felony carries a higher likelihood of more severe penalties and lower subsequent recidivism.

Question #3: The Victim Perspective

To gain insight into victims’ experiences under the two policies, we conducted semi-structured in-depth individual interviews with 23 victims and group interviews with 12 victims, all of whom opposed prosecution; roughly half had experienced the Bronx policy of the case being dropped at their request and half the Brooklyn policy of limited prosecution despite their opposition. We caution the reader that the number of victims spoken to was small and they are not necessarily representative of the population of domestic violence victims in either court. While it is not clear, then, the extent to which the results can be generalized, the interviews did provide significant insight into the thought processes of domestic violence victims. The focus groups, particularly, proved to elicit frank and open discussion of women’s desires, fears, and decision processes in a way that could not be replicated by surveys, in revealing nuances and complexities in their decision making processes.

Victims’ Policy Preferences

In individual interviews, the victims who experienced the Bronx DA’s policy were uniformly pleased with the fact that the prosecutor had dropped their case. The Brooklyn victims were fairly evenly split in their feelings about their case being filed by the district attorney’s office in spite of the fact that they did not want to participate in prosecution. Nonetheless, when the focus group participants were asked to compare the two prosecution policies, as opposed to assessing the possible impact on their own situation, there was overwhelming support for the Brooklyn policy of universal case filing. Overall, though, several victims felt that mandatory prosecution policies should be applied more

selectively, in cases where there was severe injury or danger. A victim from the Bronx captured the apparent contradiction between individual preference opposing prosecution and policy preference for mandatory filing: “I think the policy in Brooklyn is actually good even though I love my [partner] and I stayed with him. But when he did this to my eye and gave me stitches ... if they would’ve picked him up, I would not have minded...”

Timing of Victim Input

The victims wanted more time to decide whether or not to support prosecution than the Bronx policy of screening out cases before arraignment allows. Within 24 hours of a complaint, “...he could be calling you, pressuring you, threatening you, you’re scared, you can’t decide...For the next three weeks, you talk to friends. You think it over...”

Victim Safety

Most of the victims felt safe at the time of the interview. However, more of the women from Brooklyn (92%) felt safe than victims from the Bronx (55%). It is difficult to explain this difference, and it may simply be a function of sampling bias due to the participation of only 35 victims in total. It could also be that part of the reason the Brooklyn victims were more likely to feel safe was that a criminal order of protection was in place as long as the case was pending, whereas the Bronx victims did not receive an order of protection (unless they successfully petitioned the family court for a civil order). Of note, other factors contributing to victims’ sense of safety did not vary between the two boroughs or relate to the case screening policy per se. For example, victims appreciated follow-up from the police (home visits) or prosecutors (phone calls), and felt safer knowing that someone was checking on their well-being. In both counties, they felt most vulnerable when the defendant was released from detention following the arrest, especially if they had no one to talk to and did not know when the defendant was being released.

Access to Services

Contrary to our expectations, we did *not* find that the Brooklyn interview participants were more likely than the Bronx participants to receive services. We also found that some victims who wanted services felt they were unable to access them, despite efforts of both DA’s Offices and victim assistance agencies.

Reporting New Incidents

The majority of victims said they would report new incidents of abuse and would support prosecution if it happened again. To some extent, the victim’s response to prosecution was conditioned by police actions. When the victim felt the arrest was uncalled for, when police involved child protective services, or when police made the victim leave the home she shared with the abuser, several victims expressed a natural reluctance to report future incidents unless they were severe and life-threatening. Such a finding highlights the importance not only of prosecutorial policies but of how the police,

as first responders to a report of domestic violence, play a crucial role in shaping the victim's experiences and perceptions.

Question #4: Cost Implications of Brooklyn and Bronx Policies

Finally, to answer the fourth question – concerning the costs of prosecuting cases with reluctant victims – we conducted a cost-effectiveness analysis. This analysis determined the resource implications of the Brooklyn policy of filing domestic violence arrests as compared to the Bronx policy of declining prosecution by estimating costs to prosecutors and others – judges, court support staff, public defenders, and police. Calculation of these differential costs were based on hourly rates for each relevant actor as well as a determination of the differential time devoted to cases prosecuted in Brooklyn but not in Bronx.

Since Brooklyn's mandatory filing policy did not produce a statistically significant reduction in recidivism as measured by six-month re-arrest rates nor did it result in a high rate of convictions, it is by definition no more cost *effective* than the Bronx's policy of heavy case screening. We found that the Brooklyn model does impose greater overall costs. These differential costs are concentrated in the DA's office, where Brooklyn devotes considerably more time to victim outreach and pursuing prosecution. Costs to judges and other court actors, while higher in Brooklyn, are minimal, given the lack of trials and brevity of arraignments and other court appearances. Only police officers appear to devote more time under the Bronx model, although we were unable to quantify the cost implications of this difference.

Conclusions

We designed this study as a test of two different approaches to prosecuting domestic violence misdemeanor arrests. Is it better – in terms of victim safety from future harm, victim empowerment, and access to services – to prosecute virtually all arrests made by the police even knowing that is not what victims want and knowing that most such cases will ultimately be dismissed? Is it therefore worth the higher marginal costs of filing charges and pursuing limited prosecution? Or is it better to respect victims' wishes and prosecute only those cases in which victims are willing to participate?

The results of our investigation were surprising. We did not see a lower recidivism rate as a result of the near universal filing policy in Brooklyn. Although this finding ran counter to expectation based on Davis et al.'s findings in Milwaukee (Davis, Smith & Taylor, 2003), it is consistent with Peterson's (2002) work examining the same two jurisdictions in New York City.

The study did not produce a clear-cut picture of which of the two prosecution policies is superior. There was no apparent benefit of near universal case filing in terms of convictions or re-arrests, at least not when adopted without sufficient resources to conduct "victimless" prosecutions based on eyewitness, medical, or physical evidence. Not only were there insufficient resources to prosecute effectively all the cases filed in Brooklyn, but (according to victims) the police sometimes failed to do a thorough job of

gathering critical evidence at the crime scene. In this respect, the conclusions of the present study mirror those of Davis, Smith and Taylor's (2003) Milwaukee study.

On the other hand, victims expressed a preference for being relieved of the responsibility for prosecuting and endorsed an approach that would include at least limited prosecution of their partners based on an objective assessment of the potential benefits and costs to the victims. Moreover, it was clear from the victims we spoke to that the majority of victims want orders of protection and access to services regardless of whether their case was to be prosecuted.

Policy and Practice Recommendations

We found that the costs of mandatory filing are often incurred as a result of efforts to improve the chances of obtaining a conviction, such as having assistant district attorneys or detective investigators spend many hours seeking to reach the victim or to acquire other kinds of corroborative evidence. Since such efforts were usually unproductive – only 5% of our Brooklyn sample of cases with reluctant victims resulted in conviction – the DA's Office could conserve resources by targeting these efforts to a small subset of cases, either those with a chance of success given the strength of the case and available evidence, or those that the DA's Office deems serious and worthy of greater effort regardless of the cost and probability of success.

Targeting their investigation resources more narrowly would not, however, undermine most of the perceived advantages of the Brooklyn policy. These advantages over the Bronx policy include keeping the defendant under court control for a limited period of time after the arrest, obtaining a temporary order of protection, and avoiding having to force victims to support or waive prosecution within 24 hours of the incident. A related implication for other jurisdictions is to think through carefully the intended benefits of their choice of prosecutorial policy and be sure not to expend resources seeking other benefits (e.g., conviction) that may be less central and less attainable.

These observations begin to suggest an intermediate case screening policy. Such a policy might favor prosecuting cases with reluctant victims selectively based on the prosecutor's assessment not only of the societal interest in prosecuting but also of the victim's interests and safety. Charges might be filed in the majority of cases in jurisdictions such as New York, which require a filing decision within 24 hours of arrest. Filing charges near universally in such jurisdictions would give victims a longer period to assess their own situation and to provide a temporary order of protection in the immediate aftermath of the arrest to more victims. However, the charges might then be dismissed sooner than under statutory limits in cases where the victim ultimately decides to oppose prosecution; in such cases, full prosecution might be undertaken only when there was sufficient evidence available that could be used in lieu of the victim's testimony.

References

- Davis, R.C., Smith, B.E., & Taylor, B.G. (2003). Increasing the proportion of domestic violence arrests that are prosecuted: A natural experiment in Milwaukee. *Criminology and Public Policy*, 2, 263-282.
- Peterson. R.R. (2002). *Cross-borough differences in the processing of domestic violence cases in New York City criminal courts*. New York: New York City Criminal Justice Agency.
- Peterson, R.R. & Dixon, J. (2005). Court oversight and conviction under mandatory and non-mandatory domestic violence case filing policies. *Criminology and Public Policy*, 4, 535-558.