



A review of ‘progressive’ prosecution and its impacts on people who use drugs in the US

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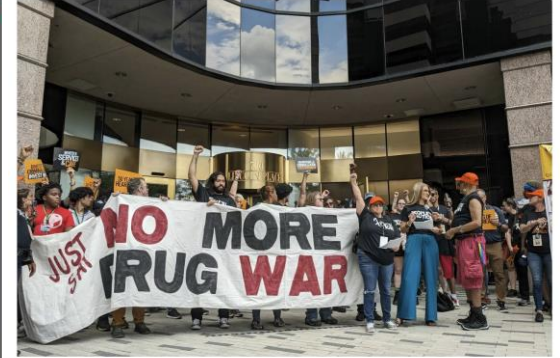
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**& as always, all of our
study participants**

‘Reforming’ the drug war in the US



▲ People who lost relatives to a drug overdose sit among imitation graves set up by the Trail of Truth, near the U.S. Capitol in Washington, D.C., on September 24, 2022. The U.S. has some of the highest rates of drug overdose deaths, with many Americans lacking access to effective addiction treatment or harm-reduction tools. Photo: Stefani Reynolds/AFP via Getty Images



Members of People's Action, a national advocacy organization representing working and poor people, gather outside the Drug Enforcement Administration headquarters in Washington, D.C., on June 27 to call for an end to a criminal justice approach to addiction — pushing instead for investments in health care and housing.

Aneri Pattani/KFF Health News

‘Reforming’ the drug war in the US

Decriminalization: Eliminate criminal penalties for drug possession, within defined parameters

- ***De jure***: decriminalization via legislation
 - Oregon Measure 110
- ***De facto***: decriminalization via prosecutorial discretion
 - A prosecutor's authority to decide what charges to pursue

Prosecutorial discretion as an evolving strategy

- Progressive Prosecutor Movement
- Social, political and epidemiologic events of 2020
- Declining to prosecute new cases, quashing outstanding warrants, dropping pending charges and commuting sentences
- Does not only apply to drug policy

Prosecutorial discretion as an evolving strategy

- **Key differences between *de facto* and *de jure*:**
 - Legislation may **codify** multi-sectoral commitment/collaboration, earmark funds for service – *de facto* cannot
 - Implications for policing
 - Process & transparency

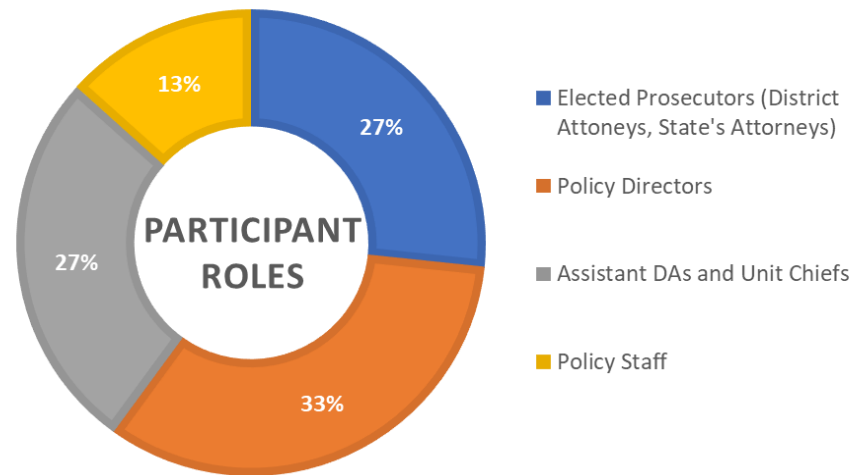
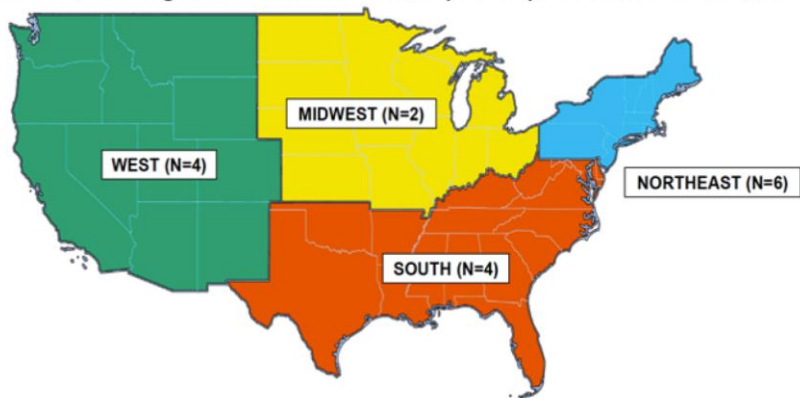
Research objectives

- (I) What are the emerging policy models of *de facto* drug policy reform around the country?
- (I) What are the impacts of this approach in Baltimore City?

Study participants

N=16 “Policymakers” staff recruited via monthly ‘progressive prosecutors’ working group

Exhibit 1: Regions included in sample of prosecutor's offices



N=6 “National Experts” additionally recruited from policy and advocacy agencies focusing on drug policy or criminal legal reform

Key findings: Policy typologies

Unconditional declination

Blanket declination policy for
all illicit drugs

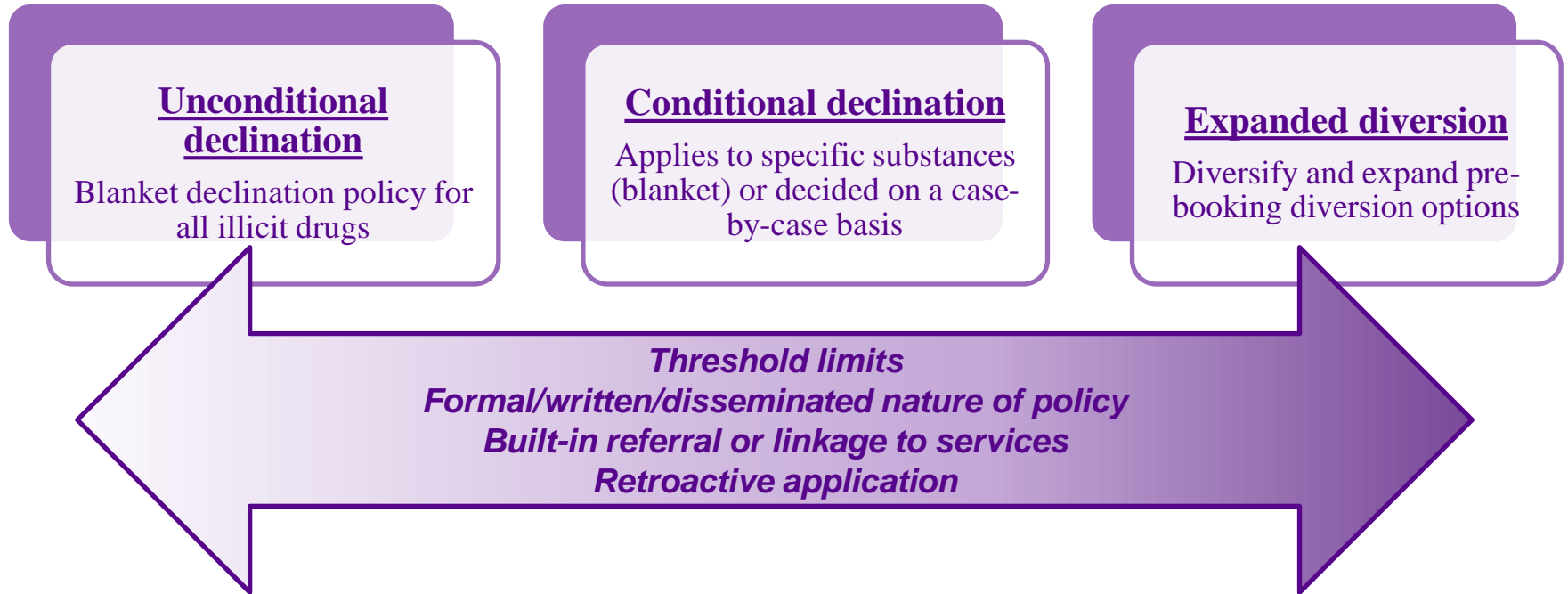
Conditional declination

Applies to specific substances
(blanket) or decided on a case-
by-case basis

Expanded diversion

Diversify and expand pre-
booking diversion options

Key findings: Policy typologies



Key challenges

- Law enforcement buy-in and cooperation
- Political opposition
- Public (mis)perceptions of crime
- Sustainability

“rank and file police undermining the policies”

“The [police union] have gone out of their way to undermine what we're trying to do.”

“[Opposition]...it's often grounded in not understanding the policies or being misled by the police.”

Baltimore City's *de facto* decriminalization

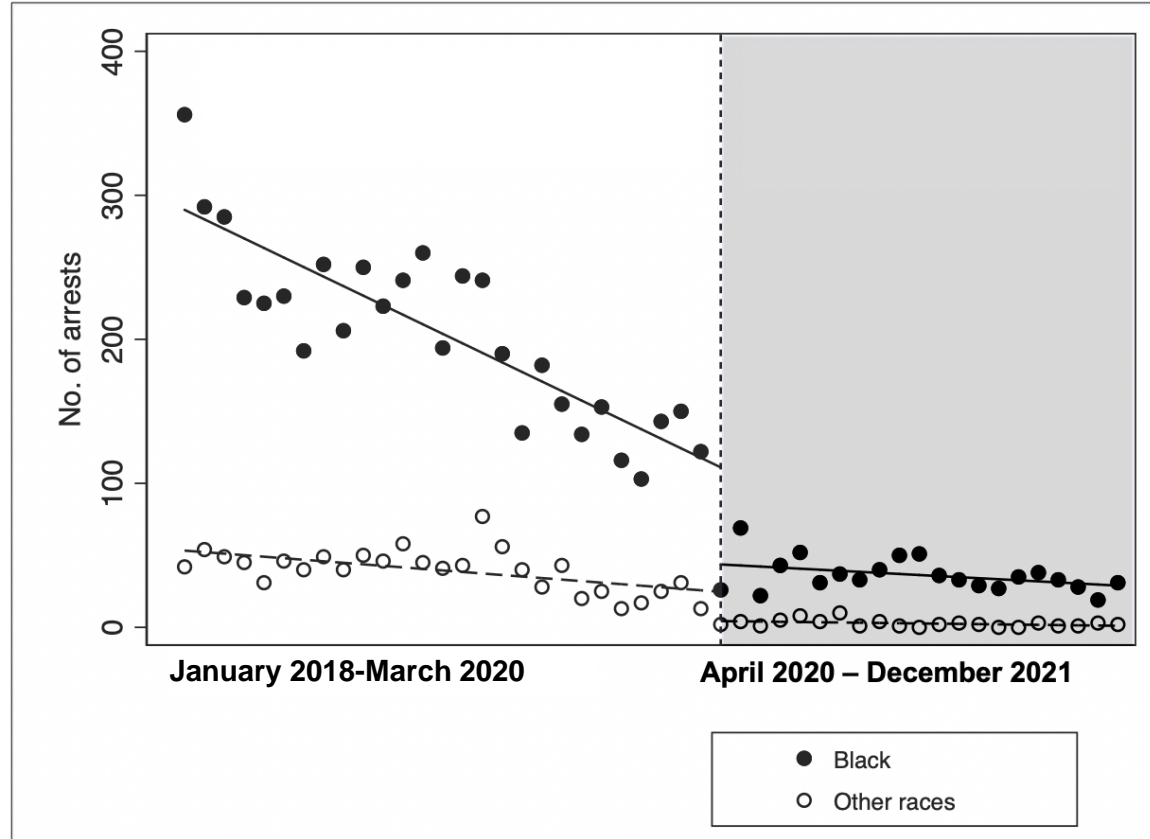
- Highest overdose fatality rate of any US city; legacy of racist policing and incarceration
- Unconditional, public *de facto* model
 - All substances, no threshold limits
 - Retroactive application via quashing outstanding warrants and pending charges
 - Endorsement of mayor's office and police leadership



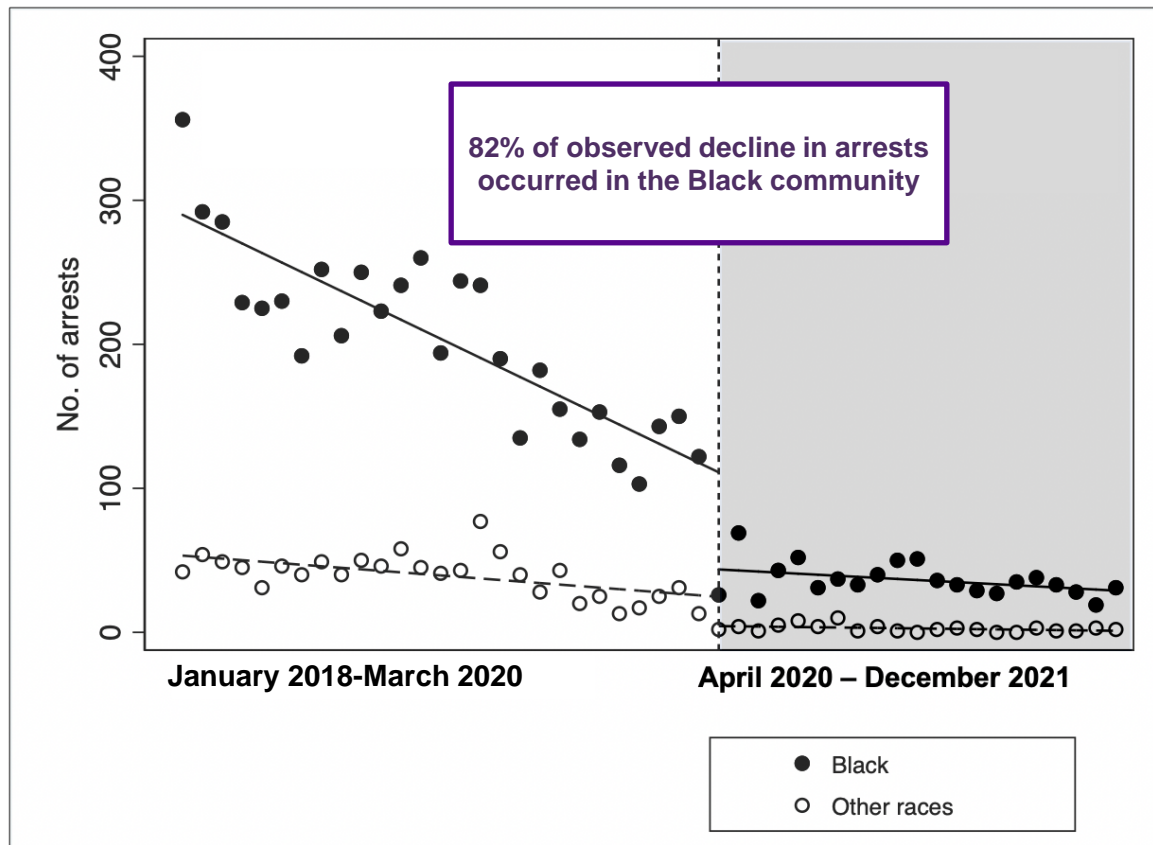
Evaluation of possible impacts on policing and arrests

- **Did arrests decline, and if so among whom?**
- **What were the experiences of PWUD and police under this model?**
 - Key informant interviews with N=26 PWUD and N=22 police officers

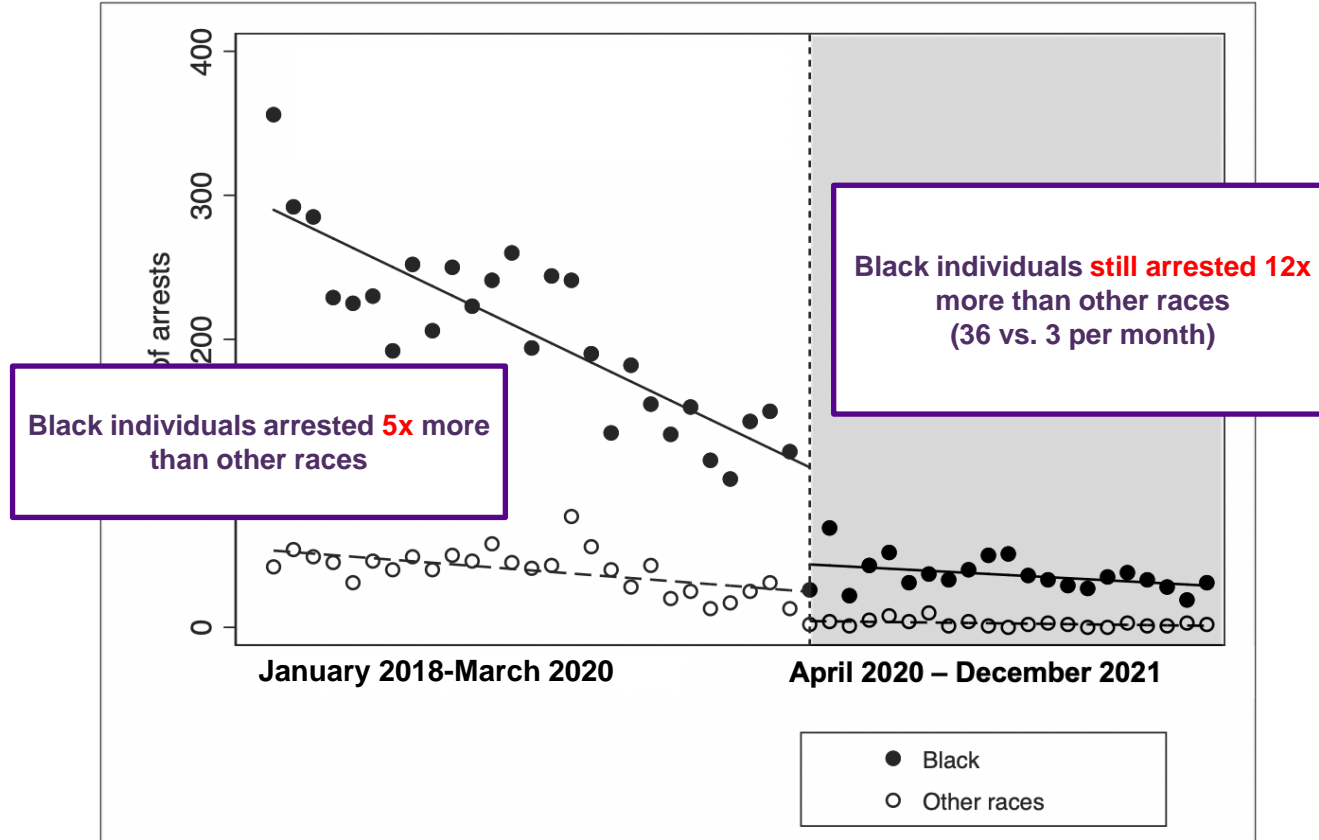
Street arrests by race



Street arrests by race



Street arrests by race



Broad agreement that possession should not be met with arrest among police & PWUD

“Nobody... the most proactive police officer I know, still, nobody wants to take a person to jail for possession. That's a waste of everyone's time.”

White male DAT detective officer, 4 yrs

“You don't need that. Go get them killers. I mean you worry about me with one damn pill, go get the dude over there with the gun, you know?”

Black male PWUD, 52 yrs old

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PWUD expressed ongoing fear, distrust of police

“I don't feel safer because you gotta be smart. I mean, I keep that in the back of my head, but still, they [police] can still change whatever they want. It doesn't matter. They still can do what they want.”

White woman PWUD, 36 yrs old

“As far as Baltimore City cops, I have no respect...A girl hit me with brass knuckles and the cop said take that shit off the street and not on my block. Let her rob me... He told me that y'all come to our neighborhood and expect us to treat you with respect and you're fucking throwing needles everywhere.”

White woman PWUD, 42 yrs old

Many PWUD expressed the need for *better* policing

“Maybe instead of just parking their car and staring, like they're trying to intimidate us, maybe park your car and get out... Come out and talk to us. We're still human”

White woman PWUD, 38 yrs old

“Engage the people in the community right there where you're being paid to serve and protect. You know, as opposed to just standing there like you're strictly there to keep order. You got to see your job bigger than that...Get to know some people, those who may want to talk sometime... Become more of a part of the community that you're patrolling.”

Black male PWUD, 56 yrs old

Police felt decriminalization constrained their power and further compromised community trust

“To the community that it didn't affect, they loved it. Oh, this is great, we're moving forward in a progressive manner, this, that and the third. But to the community that sees it and it affects, that makes some calls every day. They hated it and it was so, they felt as if they lost their voice...they felt like they lost part of their protection you know. It was like a complete slap into the face of the residents.”

Black male Patrol Officer, 10 years

A new policy era

What an Ivan Bates victory means for the Baltimore State's Attorney's Office

By: Madeleine O'Neill November 8, 2022



2023: *De facto* decriminalization reversed

Citation system implemented for low-level drug crimes

Enforcing minor crimes will return 'accountability' to Baltimore, new top prosecutor says

