JUSTICE UNDONE: EXAMINING ARRESTS ENDING IN RELEASE WITHOUT CHARGES IN BALTIMORE CITY

By

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ABSTRACT

From 2000 through 2005, the rate of arrests declined charges in Baltimore City increased from approximately 15 percent to 33 percent. This project uses primary research to attempt to resolve some of the debate over this increasing percentage of arrests declined charges. The thesis proposes four hypotheses to account for the increase in arrests declined charges. Hypothesis 1 considers the role of offense type in prosecutors’ decision to decline charges. Hypothesis 2 proposes resource constraints in the State’s Attorney’s Office caused them to decline more of the arrests they reviewed. Hypothesis 3 states that prosecutors declined to charge a greater portion of arrests because the quality of officers’ arrests or statements of probable cause deteriorated. Hypothesis 4 attributes the increased rate of declinations to worsening communication between prosecutors and officers. Analysis of each of these hypotheses draws on qualitative information gathered through interviews and quantitative data from several city agencies.

The research findings support several conclusions about the increase in arrests ending in release without charges. First, the State’s Attorney’s Office declined charges on particular types of quality of life offenses at a very high rate. As the Baltimore Police Department increased enforcement of these offenses, the overall percentage of arrests declined charges increased. Second, resource constraints played a minor role in prosecutors’ propensity to decline charges on cases. Third, fluctuations in the portion of cases closed as “cannot prove” paralleled changes in the portion of arrests declined charges, indicating prosecutors decline more cases when they find they do not meet
evidentiary standards. However, the data indicate that the portion of arrests closed as “cannot prove” is more a function of offense type than each arrest’s merits. Fourth, a disconnect between the leadership of the Baltimore City Police Department and the State’s Attorney’s Office underlies the rate of arrests ending in release without charges.

Several policy options would address this problem, including pursuing alternatives to arrest for quality of life offenses, revising the city’s anti-loitering statute, devoting a city employee to testify in trespassing cases involving city-owned property, and capturing better data on arrests ending in release without charges.

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I. BALTIMORE CITY’S DEBATE OVER ARRESTS ENDING IN RELEASE WITHOUT CHARGES

The City of Baltimore has long struggled to strike a balance between the need for effective policing strategies designed to address its serious crime problems and the rights of its individual citizens. Former Mayor Martin O’Malley modeled his order-maintenance strategy of policing after that of New York City, believing the strategy would reduce violent crime in Baltimore because some credited the strategy with reducing violent crime in New York.\(^1\) Order-maintenance policing targets enforcement at more minor offenses, such as loitering, trespassing, and disorderly conduct, and is intended to send a “zero tolerance” message to potential offenders. The focus on quality of life offenses in both cities generally followed from the Broken Windows theory, which claims that visible signs of disorder in a neighborhood send a message to potential criminals that they need not fear consequences for their crimes.\(^2\)

During Martin O’Malley’s administration and campaign for the Maryland Governor’s Office, the Baltimore City Police Department’s (BPD) policing strategies came under public scrutiny. Whereas Mayor O’Malley repeatedly cited the drop in crime as an accomplishment of his administration, others lambasted his police force for making “illegal arrests,” going so far as to call Baltimore a “police state.”\(^3\) One Maryland State Delegate petitioned Mayor O’Malley to issue an executive order to end illegal arrests, which she characterized as those made without probable cause.\(^4\) Mayor O’Malley defended the police department’s arrests by emphasizing the difference between cases declined charges because the arrest was bad and cases declined charges because the prosecutor deemed the alleged offense too insignificant and unworthy of prosecution. As
he said, “It is a great leap and very contrary to history and the facts to say that the 30 percent of cases dismissed now…are dismissed because of false arrest.”\(^5\) Regardless of their actual causes, the Baltimore State’s Attorney, Pat Jessamy, claimed that these arrests ending in release without charges “erode the public confidence in the system.”\(^6\)

In August 2005, the number of arrests reviewed by the State’s Attorneys Office (SAO) reached nearly 9,000, a record high, at a time when the percentage of those declined prosecution had been rising during as well. According to the SAO, the percentage of arrests they declined to charge increased from approximately 15 percent in 2000 when they opened the Charging Room at the Baltimore City Booking and Intake Facility (BCBIF) to 33 percent in 2005.\(^7\) The SAO instituted the charging section at the booking facility to review statements of probable cause on arrest documents and to process cases more quickly. However, in 2005 the booking facility continued to overflow with prisoners, causing a group of Baltimore City public defenders and the city administration to file suit against the state-run facility for holding prisoners past the legal 24-hour limit. A Circuit Court judge agreed with the public defenders and ordered the booking facility to release automatically anyone held longer than 24 hours.\(^8\) From April to June 2005, the facility released 80 suspects on the judge’s order.\(^9\) Since then, case processing has improved as officers have agreed to file their arrest reports in a more timely fashion and prosecutors can track suspects’ movements through the booking process, flagging all of those held longer than 15 hours.\(^10\)

In response to the delays at central booking, the Maryland Department of Public Safety and Correctional Services (DPSCS) commissioned a report from consultant Col. David Parrish. Col. Parrish reported his findings in 2005, offering fifteen
recommendations in a letter to the Secretary of the DPSCS. Col. Parrish cited the volume of people arrested and released without charges in Baltimore City as one possible reason for the backlog at the booking facility. He argued that the BPD and SAO “have a vested interest in conducting a review of the declination rate” and should review monthly statistics to reduce the declination rate. Col. Parrish also argued that the increasing percentage of arrests resulting in release without charges is a politically divisive problem and a “waste of valuable and limited resources.”

A few months after Col. Parrish’s study, members of the Maryland General Assembly called a public hearing to address the issue of arrests ending in release without charges. BPD Commissioner Leonard Hamm responded somewhat positively, laying out a plan to address the issue, including additional training for officers and supervisory approval of officers’ statements of probable cause. However, a spokesperson for Mayor O’Malley noted that officers are under pressure from citizens to respond to community complaints, prompting some of the arrests for minor offenses.

Despite a reduction in the percentage of arrests declined charges in 2006, the debate in Baltimore City surrounding them persists. In the summer of 2006, the ACLU and NAACP filed a suit against the BPD and the state-run booking facility. They argue that police officers arrested the plaintiffs for minor offenses, such as loitering, without probable cause. To demonstrate these arrests lacked probable cause, the plaintiffs rely on the fact that the prosecutors who reviewed them at the booking facility declined to charge the cases. The plaintiffs allege that Baltimore City police arrest citizens for quality of life offenses as a matter of routine, without careful deliberation during their encounter with citizens.
The ACLU does not blame individual officers, however, as much as they blame BPD policies. As the police officers’ union, the Fraternal Order of Police, has complained, their officers are under pressure to increase their arrest numbers. According to the president of the police union, the department’s emphasis on increasing arrest numbers “doesn’t give the officer the option to use discretion.” The ACLU bases its case, in part, on the alleged pressure on officers to make more arrests without deliberation or discretion in individual instances. To illustrate the BPD push for increased arrest statistics, the ACLU relies on a memo supposedly leaked from the BPD to a local television station and then sent to the ACLU. The memo states, “The powers that be have ordered that your primary stats, ARRESTS, CRIMINAL CITATIONS, VEHICLE STOPS, and AND [sic.] CITIZEN CONTACTS will play a major role in how you are evaluated (emphasis in original).” If some officers’ ratings fall below that of their fellow officers, then they will be placed on a 30-day evaluation cycle. If officers receive three unsatisfactory ratings, they could be transferred from their command or possibly become the subject of termination proceedings. The ACLU and the NAACP allege that these criteria for reviewing officers’ performance have led to arrests made without probable cause, and therefore the high portion of arrests ending in release without charges.

The City Solicitor, Ralph S. Tyler, believes the plaintiffs “will not be able to prove their truly wild allegations…The illegal arrests claim rests largely on a false equation. The fact that the State’s Attorney declines to charge in many cases does not suggest that the arrest was illegal.” Instead, he proposes the State’s Attorney Office has
exercised its authority and prosecutorial discretion in deciding not to pursue minor offenses.\textsuperscript{21}

Despite repeated reference to the percentage of arrests that the SAO declines to charge, few people have asked why the rate increased so dramatically in recent years. Instead, most of the public debate refers to policing strategies, without considering the other major factors at play. This paper attempts to identify these other factors and answer the question of why the portion of cases the SAO declined to charge increased from 15 percent in 2000 to 33 percent in 2005. By identifying the reasons so many arrests are not charged, I hope to determine what policies might resolve this debate in Baltimore City and perhaps even raise citizens’ faith in their city’s criminal justice system.

**II. OVERVIEW OF BALTIMORE CITY’S ARREST AND CHARGING PROCESS**

In Baltimore City, a person can be arrested either pursuant to an arrest warrant issued by the court, or as a result of an encounter with an officer. In the latter example, the officer has made an “on-view” arrest, the type of arrest studied in this report. The SAO does not review the charges for arrests made on warrants, which officers of the court have already approved. The SAO only reviews the charges for on-view arrests, and therefore only declines to charge on-view arrests, not arrests pursuant to a warrant. Generally, the more egregious offenses, such as homicide, rape, or robbery prompt an investigation and arrest warrant, and thus the SAO will not review these types of arrests at the booking facility. The on-view arrests the SAO reviews are therefore for lesser offenses, such as loitering or disorderly conduct.
When making an on-view arrest, an officer commences a process involving several criminal justice agencies and a trail of paperwork. The arrest signifies the officer’s belief that a person committed a crime and that probable cause existed to arrest the person. Generally, officers other than the arresting officer will transport the arrestee to the booking facility while the arresting officer completes the necessary documents for the arrest at the station house. These documents include an “incident report,” which describes the details of the event leading to the person’s arrest and the officer’s reasons for bringing the person into custody. The incident report is a BPD record and remains with that agency for internal use.

The second major document of an arrest is the officer’s statement of probable cause, which the officer uses to communicate the elements of the alleged crime and the facts that constituted probable cause for arrest. The elements needed to show probable cause derive from the language of local and state laws, which officers learn during academy and field training. Once officers finish preparing their statements of probable cause at the station house, they send them electronically over a remote booking system to the Assistant State’s Attorneys in the Charging Room at the booking facility. In 2006, the BPD instituted a new rule that requires a supervising officer to review and approve statements of probable cause before sending them to the SAO. The Police Commissioner designed this new rule to improve the quality of statements of probable cause and ensure the arresting officer has included all elements of the crime necessary for prosecution. After supervisory approval, the officers send the statements to the SAO.

Prosecutors at the booking facility receive the statements of probable cause electronically and may change, add, or omit any of the charges on the document, but are
not able to change the text of the officer’s statement, as it is a sworn statement. If the Assistant State’s Attorneys reviewing the statement of probable cause find any deficiencies in the text of the statement, they can attempt to contact the arresting officer to request changes in a supplemental form. Several police liaisons assigned to the Charging Room assist the prosecutors in contacting police officers if the prosecutors need further information. Once prosecutors have reviewed the statement of probable cause, they decide whether to file charges. If a prosecutor accepts the case, the prosecutor formally charges the arrestee and sends the documents to the court commissioner for further processing.

The SAO may decline charges for three broad reasons, closing them as “abated by arrest,” “cannot prove,” or because the defendant has been identified as a juvenile. In the first instance, the prosecutor has decided that the arrest itself has resolved the problem or offense. For example, if a person is arrested for drinking alcohol on the street, the arrest has stopped the person from committing the offense and further prosecution is not necessary or worth the resources. If the arrest falls into the “cannot prove” category, then the prosecutor reviewing the case has decided the officer’s statement of probable cause, which describes the reason for arrest, does not contain the necessary elements of a crime and therefore will automatically fail to meet the standard later used in court, that the case can be proven beyond a reasonable doubt. If a prosecutor or an officer identifies the defendant as a juvenile, then the defendant is transferred to the juvenile court. This project omits from consideration and calculations all cases declined because the defendant was a juvenile, instead focusing on cases closed as either “abated by arrest” or “cannot prove.”
Once the prosecutor declines the case, then the charges are deleted and the person is released from the booking facility. However, a record of the arrest remains on the person’s criminal history until that person applies for an expungement of all documents pertaining to the incident.

Officers also possess the authority to issue citations for certain kinds of quality of life offenses, such as open container or urinating in public. In these cases, when officers believe they have observed a person committing an offense, they may detain the person and issue them a citation. However, officers generally do not transport this person to the booking facility. Instead, the BPD sends the citation to the District Court for adjudication, thus bypassing prosecutors’ review at the booking facility. Similar to the process for a traffic ticket, the recipient of a criminal citation has the right to a trial and, if they choose to contest the citation, must appear in court to present their defense. If the person does not contest the citation, they plead guilty and submit payment for a fine.

III. Literature Review

The issue over arrests declined charges in Baltimore City seems two-fold: officers are potentially making arrests without probable cause, or prosecutors are declining cases based on the relative insignificance of the offense alleged. By the first explanation, the percentage of cases declined charges increased from 2000 to 2005 because officers made more arrests without probable cause. By the second explanation, prosecutors declined a larger portion of the cases as a matter of policy, triaging cases as they arrived at BCBIF and opting to charge only those types of arrests prosecutors deem most significant.
Much of the debate surrounding the rising percentage of cases declined charges in Baltimore City omits the role of the SAO and prosecutors’ discretion in deciding whether to file charges. This omission might be due in part to a traditionally maintained distance between prosecutors and citizens. Whereas police officers operate in the public view and have more opportunity for public interaction, prosecutors traditionally work at a distance and in isolation from the public. This is not to say elected prosecutors leading an agency are not mindful of their constituency, only that individual prosecutors’ discretion in reviewing cases is less open to public scrutiny than are arrest policies. The Commissioner of the U.S. Sentencing Commission, Michael Edmund O’Neill, in reviewing federal prosecutors’ decisions to decline charges, explains:

> Unlike many political decisions that are subject to rigorous checks and balances…prosecutors enjoy considerable independence in deciding whether to bring formal charges against an individual. In the criminal justice system, the checks tend to come after the prosecutor decides to pursue a target.23

Uncovering what factors contribute to a prosecutor’s decision to refuse cases is difficult because there are few formal guidelines or reporting requirements. As Commissioner O’Neill argues, prosecutors’ discretion “is nearly invisible…and thus poses numerous public policy questions.”24 In the example of Baltimore City, there is little information as to the reasons Assistant State’s Attorneys at the booking facility decline up to one-third of the cases they review. Nevertheless, any policy prescription for the problem over arrests ending in release without charges would likely have to account not only for policing strategies, but for SAO policies as well. According to Commissioner O’Neill, “[i]f the government wants to refocus its prosecutorial efforts, it is vital to understand the
nature of cases that have been prosecuted in the past, and whether criminal matters that have been declined fall into any discernable pattern.”

To determine why prosecutors feel compelled or choose to decline cases, Commissioner O’Neill analyzed federal data for U.S. Attorneys’ offices across the country, including data on the number of referrals for prosecution, funding, size of the federal prosecutors’ offices, and types of cases referred from 1994 to 2000. He found that as the number of referrals increased over the period, prosecutors declined a smaller percentage of them, a negative association he attributed to substantial increases in funding over the period. The study also found that districts with fewer prosecutors tended to decline a higher percentage of the cases they reviewed, suggesting that staffing constraints could lead to more cases declined prosecution.

Lastly, the study considered the hypothesis that prosecutors prioritize certain offenses over others, causing them to decline a greater portion of the types of cases they deem insignificant. The Department of Justice segregates cases into several categories: violent offenses, frauds, drug offenses, property offenses, regulatory, and public order. These categories allow federal prosecutors to prioritize cases so that they can allocate more resources to the more significant offenses. Compared to the other categories listed, prosecutors declined a higher portion of drug offenses and public order offenses. Within the broad category of drug offenses, the study found that cocaine-related offenses were declined more frequently than marijuana cases, somewhat contradicting the theory that prosecutors decline less serious cases. Because the federal public order offenses include weapons and immigration offenses, they may not be regarded as insignificant. These results might not adequately consider the effect of the offense type and severity on
prosecutors’ decision to decline charges, however, because the sample of cases studied omits the most trivial cases. The data used in the Commissioner’s study do not capture the most trivial cases because the U.S. Attorney’s Office does not require prosecutors to record their reasons for declining a case when the matter has required less than one hour of their time.26

In a review of New York City’s system for adjudicating minor offenses, Fordham University Law Professor Ian Weinstein presents a slightly different explanation of prosecutors’ decisions to decline cases. He argues that lower criminal courts throughout the country are incapable of considering the legal and factual merits of all the cases they receive. Because legislatures continually criminalize more behaviors and allocate more resources to police departments for enforcement, they create a burden on lower courts that must absorb the new arrests. This forces prosecutors to offer pleas and decline to prosecute minor offenses. The institutionalized triage of cases, he claims, wastes public resources and fails to pass legal muster:

For differing reasons, defendants, prosecutors and judges have little incentive to reach the merits of these [lower court] cases and sort them according to their real deserts....there is no effective judicial check on executive authority in the misdemeanor cases which account for ninety percent of the citizen police encounters that result in a constitutionally cognizable seizure of the person and deprivation of liberty.27

Echoing the sentiments expressed in the ACLU and NAACP’s suit against Baltimore City, Ian Weinstein criticizes arrests for quality of life offenses and the broad discretion afforded officers to enforce trivial matters. There are too many opportunities, he claims, in the regular course of one’s day to violate legal prohibitions on “noise pollution,” loitering, and other similar behaviors. Officers can therefore impose a punishment of up
to 24 hours detention without question. To subject officers’ discretion to review, Weinstein suggests adjudicating all cases, regardless of offense, on their merits. He remains hopeful that through more efficient court procedures and structure, prosecutors can adjudicate even minor offenses.

Based on these reviews, prosecutors decline charges on criminal cases for a variety of reasons, including staffing constraints, budget constraints, caseload, and the gravity of the offense alleged. However, all these reasons refer to endogenous factors from within the prosecutor’s office, rather than exogenous factors, such as the quality of the arrest and the evidence the officer presents to the prosecutor reviewing the arrest. Weinstein discusses the character of arrests in the context of quality of life offenses, but does not claim that the arrests themselves are unlawful. Instead he claims that the laws upon which the arrests are based over-criminalize otherwise innocuous behaviors.

Whether due to faulty laws, poor enforcement strategies, or misperceptions, the public debate in Baltimore City over arrests without charges indicates there are widely divergent views on the acceptability of BPD arrest policies and practices. Newer policing strategies that emphasize greater community input and participation, referred to as Community or Problem-Oriented Policing, incorporate citizen surveys to monitor and improve police-citizen relations. The Vera Institute of Justice tested one of these surveys in New York City, finding that “residents from communities low in political empowerment were less likely to contact the police to report crimes, discuss concerns about the neighborhood, or just stop to talk to an officer walking the beat.”28 Their research also suggested citizens’ perceptions of police result from their direct experiences with officers and neighborhood norms and beliefs.
The Baltimore City Circuit Court attempted to address widespread distrust of the police by charging a grand jury in 2001 and again in 2005 to investigate the problem. In 2005, Circuit Court Judge Joseph P. McCurdy told the grand jury,

More and more prospective jurors said they did not trust police officers because of some negative personal experience which they had with a particular officer or because of a general feeling that law enforcement officers as a whole were not trustworthy.

Distrust and disapproval of the police not only taints the potential jury pool, but some research suggests that it also contributes to violent crime in severely disadvantaged communities. Contributing to a larger body of research on this topic, one study of violent crime variation in New York City from 1975 to 1996 found indicators of police legitimacy explain some of the increase in violent crime in structurally disadvantaged neighborhoods. Specifically, the study showed that “over-policing,” or overly aggressive police enforcement practices, predicted increases in the violent crime rates in several extremely disadvantaged neighborhoods.

At least in part, it is plausible that the prevalence of arrests without charges contributes to public disapproval of the police. However, resolving this debate must consider the role of the SAO, and the interaction between the two agencies. The Circuit Court grand jury in 2005 cited “finger pointing” between the BPD and SAO, which they suggested contributed to “faulty arrests—those lacking sufficient evidence and/or probable cause to charge.” To remedy this problem, the grand jury recommended the SAO and BPD collaborate to find a solution. The four hypotheses that follow attempt to explain the increase in the cases the SAO declined to charge from 2000 to 2005 to determine what role each of these agencies might have in finding a solution to this persistent policy problem.
IV. Four Hypotheses

The four hypotheses stated here attempt to account for the different contributions of the BPD and the SAO to the rate of cases declined prosecution and some of the explanations outlined in the literature about what factors prompt changes in the rate of cases declined prosecution. Any one or a combination of these hypotheses could explain the recent trend in Baltimore City’s rate of arrests declined charges. However, the literature on this issue is very sparse, rendering these hypotheses only a first pass at a complicated question.

**Hypothesis 1:** An increase in the overall percentage of arrests for minor, or “quality of life” offenses, or a subset of them, has caused prosecutors to decline charges on those types of arrests, thus driving up the overall rate of declinations.

Because much of the public debate surrounding arrests ending in release without charges focuses on arrest policies, this hypothesis seeks to examine the effect the BPD’s and former Mayor O’Malley’s policies might have had on the rate of arrests declined charges. If the administration and BPD increased enforcement of minor offenses, such as loitering, trespassing or disorderly conduct, then the overall rate of arrests declined charges might increase as the SAO declines to charge these particular types of offenses.

**Hypothesis 2:** Resource constraints, whether financial or staffing, have overburdened the State’s Attorney’s Office, causing them to decline charges on a greater portion of criminal cases.

As the study of federal prosecutors’ decisions to decline charges indicates, staffing levels, funding levels, and caseloads could potentially affect the rate at which
prosecutors decline cases. Weinstein’s review of New York City lower courts builds on this idea, arguing that the high volume of arrests for minor offenses overburdens the court system and prosecutors, preventing many of the cases from reaching adjudication on their merits. Hypothesis 2 examines the possible relationship between these types of resource constraints on the Baltimore City SAO and prosecutors’ propensity to decline to charge the arrests they review.

**Hypothesis 3:** The State’s Attorneys Office declined more arrests on their apparent merits because a greater portion of the arrests lacked probable cause, or more of the statements of probable cause failed to communicate the elements of the alleged crime.

Whereas Hypothesis 1 considers the effects of increases or decreases in different types of arrests on the overall rate of arrests declined charges, Hypothesis 3 delves into the quality of individual arrests and officers’ ability to communicate the probable cause for arrests to prosecutors. According to Hypothesis 3, the SAO declines certain cases not as a matter of policy based on the type of offense, but instead based on the merits of each arrest, regardless of offense type. The decision to file charges would rely on the officer’s statement of probable cause and the prosecutor’s belief the statement contains the necessary elements of the alleged crime. If the statement is deficient, this could be either a symptom of an arrest without probable cause or a lawful arrest poorly justified by the officer’s statement of probable cause. Hypothesis 1 and Hypothesis 3 are not necessarily mutually exclusive. It is also possible that the SAO categorically declines arrests for some types of minor offenses as a matter of policy, but reviews arrests for other minor offenses on their merits.
**Hypothesis 4:** Communication between the Assistant State’s Attorneys at the Charging Room in BCBIF and arresting officers has deteriorated since 2000 to the extent that prosecutors have declined charges on a greater portion of cases they review.

This hypothesis considers the role that communication between the SAO and BPD plays in processing and charging arrests. Rather than a function of prosecutors’ discretion to decline certain kinds of cases over others, or officers’ failure to present sufficient evidence, it is possible more arrests have been declined charges because prosecutors lack the information needed to file charges. In contrast to Hypothesis 3, Hypothesis 4 relies on qualitative information gathered through interviews and on-site observations.

**V. RESEARCH METHODS**

To analyze the four stated hypotheses, this research project relies on primary sources of quantitative and qualitative information. The BPD provided detailed arrest statistics on certain types of offenses, citizen calls for service, and broad arrest statistics from the Universal Crime Report (UCR) system designed by the Federal Bureau of Investigation. The BPD provided all arrest statistics organized by top charge, such that a case with many charges (e.g. assault and disorderly conduct) would only appear in the arrest totals once, according to the most serious charge (e.g. assault). If the SAO drops one of the charges on a particular case, but has not declined the case in its entirety, then the case does not appear in the statistics as a declination. Only those cases for which the
SAO declines all charges appear in the declination totals, which are also categorized by top charge.

The SAO provided monthly data on the arrests reviewed in their Charging Room and data from their Annual Statistical Reports. However, monthly arrest and prosecution data were not available for the period 2000 to 2002. Thus, monthly data were available only for 2002 to 2006, with the exception of August and September of 2004, at which time the SAO changed computer systems.

Broad trend data provide an overview of the number and types of arrests made and declined charges during the period 2000 through 2006. Additionally, to determine why some arrests end in release without charges, or what might have caused the increase in arrests declined charges from 2000 to 2005, this project relied on statistical regression modeling. The model included the dependent variable, percent of arrests reviewed by the SAO that end in release without charges, and 11 independent variables:

- Total arrests reviewed by the SAO
- Percent of arrests reviewed = controlled dangerous substance (CDS)
- Percent of arrests reviewed = disorderly conduct
- Percent of arrests reviewed = hindering police
- Percent of arrests reviewed = loitering
- Percent of arrests reviewed = open container
- Percent of arrests reviewed = prostitution
- Percent of arrests reviewed = trespassing
- Total Part One arrests
- Charging Room funding per arrest reviewed
- Total funded SAO attorney positions

The variable for total arrests reviewed by the SAO each month draws on data from the SAO Charging Room and includes all months, January 2002 through December 2006.

However, neither the BPD nor the SAO could provide the total number of arrests for each of these listed offenses during the study period due to the way in which each
agency captures data. First, the BPD enters the arrest in their computer system upon sending the arrest documents via the remote booking system. Only after a prosecutor reviews the arrest and decides to file charges does the system “lock down” and record the official charge, and thus the type of offense alleged. When a person is released without being charged, the computer system does not keep a record of the type of charge—the arrest is therefore not counted in the BPD’s arrest statistics. Calculating the total arrests within each offense, including those charged and those not charged, required adding the total arrests within each offense type above to the total cases declined within each offense type, which the SAO tracks separately. Therefore, the percentage of cases reviewed comprised by each of the above categories is equal to the total arrests (charged and not charged) within each type divided by the total number of cases reviewed by the SAO each month.

The seven variables for arrest types listed in the regression model provide the analytical basis of Hypothesis 1, which states that a change in the types of arrests officers made from 2000 to 2005 drove the overall increase in arrests declined charges. These particular offense categories appear in the model because the SAO data indicate they comprise over 90 percent of all arrests declined charges. It therefore stands to reason that an increase in arrests for any one or combination of these offense types would drive an increase in the overall rate of arrests ending in release without charges. Other than these seven types of offenses, the SAO reviews arrests for a number of different types of crimes, including assault, burglary, domestic violence, gambling, littering, panhandling, handgun violations, theft, and others up to more than 30 classifications of crimes. Within each of classifications, there are a number of specific charges and degrees of charges as
outlined in the criminal code. However, all of these additional charges comprise less than ten percent of all on-view arrests declined charges from 2002 to 2006.

The remaining three variables appear in the model to test Hypothesis 2, which states that the increase in cases declined charges occurred as a result of resource constraints on the State’s Attorney’s Office. The variable for Total Part One arrests derives from the BPD’s monthly UCR, which separates arrests into Part One and Part Two arrests. Part One arrests include more serious offenses, such as homicide, robbery, burglary and assault. Part Two arrests include crimes, such as prostitution, disorderly conduct, and a category called “all other offenses,” which includes all of the other offenses listed in the model above. To measure the potential workload on prosecutors that might lead to a higher rate of declinations, both the number of attorney positions and the number of arrests for violent crimes, which typically take more of attorneys’ time, have been included.

The number of attorney positions and the Charging Room funds originate from the annual Budget Details published by the Baltimore City Department of Finance and Board of Estimates. Because these figures appear for the fiscal year, the monthly totals for each variable equal the fiscal year total divided by twelve, a rough estimate for actual resource availability. Moreover, the number of positions funded each year does not necessarily indicate the number of attorneys actually on staff, trained and working. Again, this is only a rough estimate for the staffing level at the SAO.

Because the quantitative data likely do not capture some of the complexity of the issue at hand, this project also incorporates information gathered through a series of one-on-one interviews. Specifically, three BPD officials, four SAO employees familiar with
the Charging Room, three Baltimore City court officials, and an official from the Maryland chapter of the ACLU agreed to be interviewed. Three interview protocols—for the BPD, SAO, and courts—provided a set of questions utilized in each interview (see Appendix B). The interview at the ACLU, however, addressed only the lawsuit currently pending against the BPD and the Central Booking and Intake Facility. Such a small sample of respondents from each agency is not representative of the whole agency, but rather provides only some insight into a few stakeholders’ opinions.

Each agency involved in the booking and charging process uses a different computer system, all of which share some information with each other. To ensure proper analysis of the Charging Room functions and decision-making process, I visited the Charging Room twice and observed the prosecutors there for a total of three hours. The analysis that follows draws on the information gathered by both these quantitative and qualitative methods.

VI. FINDINGS AND DISCUSSION

General Data Trends

As shown in Table 1, the SAO declined an increasing percentage of the cases they reviewed from 2000 to 2005, but began declining a smaller portion of the cases they reviewed in 2006. This might indicate some shift in either arrest or prosecution policies between 2005 and 2006. The rate of cases declined charges might also reflect the change in the number of arrests reviewed by the SAO. As the number of arrests reviewed by the SAO increased from 2000 to 2005, the percentage declined charges also increased and as
the number of arrests reviewed decreased from 2005 to 2006, the percentage of arrests
dropped charges also decreased.

**Table 1: Arrests Declined Charges by the Baltimore City State’s Attorneys Office**

<table>
<thead>
<tr>
<th>Year</th>
<th>Arrests Reviewed</th>
<th>% of Arrests Declined Charges</th>
<th>% Declinations Closed “Abated by Arrest”</th>
<th>% Declinations Closed “Cannot Prove”</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>35,388</td>
<td>15.0</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>2001</td>
<td>60,412</td>
<td>26.2</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>2002</td>
<td>66,585</td>
<td>26.7</td>
<td>35.6</td>
<td>64.4</td>
</tr>
<tr>
<td>2003</td>
<td>63,778</td>
<td>31.5</td>
<td>23.0</td>
<td>77.0</td>
</tr>
<tr>
<td>2004</td>
<td>68,495</td>
<td>31.7</td>
<td>23.7</td>
<td>76.3</td>
</tr>
<tr>
<td>2005</td>
<td>76,497</td>
<td>33.0</td>
<td>32.2</td>
<td>67.8</td>
</tr>
<tr>
<td>2006</td>
<td>67,145</td>
<td>24.3</td>
<td>42.4</td>
<td>57.6</td>
</tr>
</tbody>
</table>

*Source: Baltimore City State’s Attorneys Office, 2007*

From January 2002 through December 2006, seven categories of offenses—CDS,
disorderly conduct, hindering, loitering, open container, prostitution, and trespassing—
comprised 91.7 percent of all arrests declined charges, as seen below in Table 2.

**Table 2: Types of Arrests Declined Charges, 2002-2006**

<table>
<thead>
<tr>
<th></th>
<th>Number Declined</th>
<th>% of All Declined</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDS</td>
<td>17,257</td>
<td>17.6</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>18,870</td>
<td>19.3</td>
</tr>
<tr>
<td>Hindering Police</td>
<td>1,194</td>
<td>1.2</td>
</tr>
<tr>
<td>Loitering</td>
<td>28,339</td>
<td>28.9</td>
</tr>
<tr>
<td>Open Container</td>
<td>16,710</td>
<td>17.1</td>
</tr>
<tr>
<td>Prostitution</td>
<td>1,052</td>
<td>1.1</td>
</tr>
<tr>
<td>Trespassing</td>
<td>6,313</td>
<td>6.5</td>
</tr>
<tr>
<td><strong>Total of these arrest types</strong></td>
<td><strong>89,735</strong></td>
<td><strong>91.7</strong></td>
</tr>
<tr>
<td><strong>All other arrest types declined</strong></td>
<td><strong>8,154</strong></td>
<td><strong>8.3</strong></td>
</tr>
<tr>
<td><strong>Total arrests declined</strong></td>
<td><strong>97,889</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

*Source: Baltimore City State’s Attorneys Office, 2007*
Although the SAO reviews many different types of offenses at the Charging Room, including burglary, auto theft, and weapons violations, they tend to decline minor, quality of life offenses, and drug-related offenses. One other quality of life offense reviewed by the SAO that they tend to decline is urinating/defecating/spitting in public. Although this category of arrest comprises roughly four percent of all arrests declined charges during the period 2002 to 2006, the BPD could not provide arrest data for this category and thus these arrests have been omitted from all ensuing analysis. Because the types of arrests typically declined charges by the SAO fall into one of the seven categories listed in Table 1, the analysis for Hypothesis 1 focuses on arrests within these categories.

The regression model used for this project identified statistically significant relationships between several of the independent variables and the percentage of arrests declined charges by the SAO. Appendix C lists the correlation coefficients among the independent variables included in the regression model and shows that none of the independent variables are extremely correlated with each other. The highest correlation coefficient among all independent variables is 0.76, between the number of funded attorney positions and the percentage of cases reviewed each month by the SAO that are trespassing arrests. The first regression model used, an OLS regression, produced a low Durbin-Watson statistic of 1.10, thus indicating first order autocorrelation of the residuals. A common problem of time series data, autocorrelation can often be remedied by using a Prais-Winston adjustment. The results for the Prais-Winston regression of the same multivariate model returned a higher Durbin-Watson statistic of 1.748, thus eliminating the autocorrelation of the residuals and returning more reliable standard error terms for each variable’s coefficient estimate.33
The results of the Prais-Winston regression model appear in Table 3 below.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of arrests declined charges</td>
<td>Dependent</td>
</tr>
<tr>
<td>Total arrests reviewed by the SAO</td>
<td>.001*</td>
</tr>
<tr>
<td>Percent CDS</td>
<td>.147**</td>
</tr>
<tr>
<td>Percent disorderly conduct</td>
<td>.719**</td>
</tr>
<tr>
<td>Percent hindering police</td>
<td>1.423</td>
</tr>
<tr>
<td>Percent loitering</td>
<td>1.058**</td>
</tr>
<tr>
<td>Percent open container</td>
<td>1.139**</td>
</tr>
<tr>
<td>Percent prostitution</td>
<td>-.215</td>
</tr>
<tr>
<td>Percent trespass</td>
<td>.385*</td>
</tr>
<tr>
<td>Total Part One arrests</td>
<td>-.001</td>
</tr>
<tr>
<td>Charging Room funds/ case</td>
<td>-.065</td>
</tr>
<tr>
<td>SAO attorney positions funded</td>
<td>-.062*</td>
</tr>
</tbody>
</table>

Durbin-Watson statistic = 1.748, not significant at .05 level
R-squared = 0.945
* Significant at .01 level
** Significant at .05 level

**Hypothesis 1:** An increase in the overall percentage of arrests for minor, or “quality of life” offenses, or a subset of them, caused prosecutors to decline charges on those types of cases, thus driving up the overall rate of declinations.

**Findings**

Hypothesis 1 first proposes that an increase in the overall number of arrests for quality of life offenses will lead to an increase in the percentage of arrests declined charges. As one representative of the BPD stated in an interview, the police have always tried to maintain public order through their arrest policies. However, the question of this paper is whether there was some change in arrest procedures that led to the increased percentage of arrests declined charges from 2000 to 2005. The portion of arrests that the
SAO declines to charge and the total number of quality of life arrests (all offense types listed in Table 3, excluding CDS, which also captures some serious drug offenses), are positively correlated with a coefficient equal to 0.83 at a .01 level of significance. We can therefore conclude that when the total arrests for loitering, disorderly conduct, trespassing, open container, and hindering police increase, the percentage of arrests declined charges will likely increase as well. Generally, the trend in quality of life arrests, both as a percentage of all arrests made in Baltimore City and as a percentage of cases reviewed by the SAO, over the period 2002 to 2006 closely follows the trend in percentage of arrests declined charges by the SAO.

**Figure 1: Quality of Life (QOL) Arrests as a Percentage of All Arrests and Reviewed Arrests, 2002-2006**

![Graph showing the percentage of quality of life arrests compared to all arrests and reviewed arrests from January 2002 to September 2006.](chart)

*Source: Baltimore City State’s Attorney’s Office and Baltimore City Police Department, 2007*
As illustrated in Figure 1, when quality of life arrests comprised a greater portion of total arrests and a greater portion of arrests reviewed by the SAO, the percentage of cases declined charges also increased. All three rates generally decline simultaneously as well over this period.

Hypothesis 1 also raises the possibility that a particular subset of these types of offenses drives the overall rate of arrests declined charges. By looking at the total arrests for each of these offense types listed in Table 4 below, some minor trends emerge.

<table>
<thead>
<tr>
<th>Table 4: Total Arrests by Offense Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDS</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
</tr>
<tr>
<td>Hindering Police</td>
</tr>
<tr>
<td>Loitering</td>
</tr>
<tr>
<td>Open Container</td>
</tr>
<tr>
<td>Prostitution</td>
</tr>
<tr>
<td>Trespassing</td>
</tr>
</tbody>
</table>

*Source: Baltimore City State’s Attorneys Office, 2007
*Data for August and September 2004 are missing

It appears that the number of people arrested within each arrest type dropped from 2003 to 2004 and then rose again in 2005. This is misleading because the SAO could not provide data for two summer months in 2004, months that tend to have higher arrest numbers than other times of the year. The number of arrests in the offense types disorderly conduct, hindering police, loitering, open container, prostitution, and
trespassing, appear to have been on an upward trajectory from 2002 to 2005, coinciding with an increase in the percentage of all cases declined charges. Additionally, from 2005 to 2006, the number of arrests within these categories dropped, in some examples quite dramatically, coincident to a decline in the percentage of all arrests declined charges. In particular, the total arrests for loitering dropped from 7,760 in 2005 to 2,626 in 2006, the number of arrests for disorderly conduct decreased from 4,664 to 3,225, and the number of arrests for prostitution dropped from 1,608 in 2005 to 1,186 in 2006.

Examining the number and percent of arrests declined within each of these offense categories, as seen in Tables 5 and 6, some striking patterns are evident.

Table 5: Total Arrests Declined Charges within Offense Types

<table>
<thead>
<tr>
<th>Offense Category</th>
<th>2002 (%Declined: 26.7%)</th>
<th>2003 (%Declined: 31.5%)</th>
<th>2004* (%Declined: 31.7%)</th>
<th>2005 (%Declined: 33.0%)</th>
<th>2006 (%Declined: 24.3%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDS</td>
<td>3,403</td>
<td>3,111</td>
<td>2,862</td>
<td>4,466</td>
<td>3,415</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>4,264</td>
<td>4,974</td>
<td>3,698</td>
<td>3,618</td>
<td>2,316</td>
</tr>
<tr>
<td>Hindering Police</td>
<td>181</td>
<td>241</td>
<td>116</td>
<td>326</td>
<td>330</td>
</tr>
<tr>
<td>Loitering</td>
<td>3,519</td>
<td>7,354</td>
<td>7,166</td>
<td>7,711</td>
<td>2,589</td>
</tr>
<tr>
<td>Open Container</td>
<td>3,561</td>
<td>2,090</td>
<td>2,338</td>
<td>4,630</td>
<td>4,091</td>
</tr>
<tr>
<td>Prostitution</td>
<td>309</td>
<td>272</td>
<td>172</td>
<td>195</td>
<td>104</td>
</tr>
<tr>
<td>Trespassing</td>
<td>896</td>
<td>944</td>
<td>959</td>
<td>1,899</td>
<td>1,615</td>
</tr>
</tbody>
</table>

Source: Baltimore City State’s Attorneys Office, 2007
*Data for August and September 2004 are missing
The percent of CDS arrests declined charges remained steady, between 11 and 15 percent, from 2002 to 2006. The SAO declined to charge 85.7 percent of arrests for disorderly conduct in 2002, but this rate has dropped each year since then, reaching 71.8 percent in 2006. The SAO declines an even greater portion of loitering and open container cases. In 2002, the SAO declined 97.3 percent of all loitering arrests; this declination rate has grown to approximately 99 percent since then. Similarly, the SAO declined between 96.9 and 98.6 percent of arrests for open container since 2002. The total arrests for loitering in a month is strongly and positively correlated with the percentage of cases declined prosecution (coefficient equal to .89 at a .01 level of significance). Disorderly conduct is the only other arrest type, measured by total arrests

<table>
<thead>
<tr>
<th>Offense Type</th>
<th>2002 (26.7%)</th>
<th>2003 (31.5%)</th>
<th>2004* (31.7%)</th>
<th>2005 (33.0%)</th>
<th>2006 (24.3%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDS</td>
<td>11.5</td>
<td>11.1</td>
<td>12.7</td>
<td>15.1</td>
<td>11.4</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>85.7</td>
<td>84.2</td>
<td>79.9</td>
<td>77.6</td>
<td>71.8</td>
</tr>
<tr>
<td>Hindering Police</td>
<td>60.9</td>
<td>62.6</td>
<td>36.5</td>
<td>62.6</td>
<td>60.0</td>
</tr>
<tr>
<td>Loitering</td>
<td>97.3</td>
<td>98.8</td>
<td>99.0</td>
<td>99.4</td>
<td>98.6</td>
</tr>
<tr>
<td>Open Container</td>
<td>98.2</td>
<td>96.9</td>
<td>97.7</td>
<td>98.6</td>
<td>98.5</td>
</tr>
<tr>
<td>Prostitution</td>
<td>12.9</td>
<td>12.8</td>
<td>9.3</td>
<td>12.1</td>
<td>8.8</td>
</tr>
<tr>
<td>Trespassing</td>
<td>40.8</td>
<td>40.0</td>
<td>39.9</td>
<td>38.8</td>
<td>33.1</td>
</tr>
</tbody>
</table>

Source: Baltimore City State’s Attorneys Office, 2007
*Data for August and September 2004 are missing.
each month, that shows any significant degree of correlation with the percentage of arrests declined charges, with a coefficient equal to .698 at a .01 level of significance.

This trend data suggest that as particular types of offenses, which the SAO is more likely to decline, comprise a greater share of all arrests reviewed by the SAO, the overall percentage of cases declined charges will also increase. Table 7, below, summarizes the mix of arrests reviewed by the SAO during the period 2002 to 2006. Few clear patterns for any single offense type emerge from this yearly data. Generally, when loitering arrests comprised a greater portion of all arrests reviewed, from 2002 through 2004, the overall rate of arrests declined prosecution increased. However, from 2004 to 2005, the portion of all arrests reviewed that were loitering arrests decreased slightly, from 12.7 percent to 10.1 percent as the overall rate of arrests declined charges

<table>
<thead>
<tr>
<th>Offense Types</th>
<th>2002 (%Declined)</th>
<th>2003 (26.7%)</th>
<th>2004 (31.5%)</th>
<th>2005 (31.7%)</th>
<th>2006 (33.0%)</th>
<th>2006 (24.3%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDS</td>
<td>44.4</td>
<td>44.1</td>
<td>39.6</td>
<td>38.8</td>
<td>44.6</td>
<td></td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>7.5</td>
<td>9.3</td>
<td>8.2</td>
<td>6.1</td>
<td>4.8</td>
<td></td>
</tr>
<tr>
<td>Hindering Police</td>
<td>0.5</td>
<td>0.6</td>
<td>0.6</td>
<td>0.7</td>
<td>0.8</td>
<td></td>
</tr>
<tr>
<td>Loitering</td>
<td>5.4</td>
<td>11.7</td>
<td>12.7</td>
<td>10.1</td>
<td>3.9</td>
<td></td>
</tr>
<tr>
<td>Open Container</td>
<td>5.5</td>
<td>3.4</td>
<td>4.2</td>
<td>6.1</td>
<td>6.2</td>
<td></td>
</tr>
<tr>
<td>Prostitution</td>
<td>3.6</td>
<td>3.3</td>
<td>3.3</td>
<td>2.1</td>
<td>1.8</td>
<td></td>
</tr>
<tr>
<td>Trespassing</td>
<td>3.3</td>
<td>3.7</td>
<td>4.2</td>
<td>6.4</td>
<td>7.3</td>
<td></td>
</tr>
</tbody>
</table>

Source: Baltimore City Police Department, Baltimore City State’s Attorney’s Office, 2007
increased from 31.7 percent to 33 percent. The following year, both rates decline substantially. However, when loitering arrests dropped, two other quality of life offenses became a greater share of arrest reviewed—open container and trespassing. A slightly negative relationship between the portion of arrests reviewed that are CDS and the overall rate of arrests declined charges emerges during this period. As the portion of arrests for CDS increases, the rate of all arrests declined charges decreases. The relatively low declination rate for CDS arrests, shown in Table 6, somewhat supports this pattern.

The results of the regression model, listed in Table 3, generally confirm these relationships between the trends in particular types of offenses and the rate of arrests declined charges. For every one percentage point increase in the portion of cases reviewed that are CDS arrests, the percentage of arrests ending in release without charges will increase by .147 percentage points, e.g. from 25 percent to 25.147 percent. Similarly, the percentage of arrests declined charges will likely increase .719 percentage points when disorderly conduct cases comprise one percentage point more of total cases reviewed by the SAO that month. An increase in the portion of arrests reviewed that are trespassing by one percentage point will be associated with a .385 percentage point increase in the rate of arrests declined charges. When any of these types of offenses (CDS, disorderly conduct, or trespassing) comprise a larger portion of the cases reviewed by the SAO, they will likely cause an increase in the overall percentage of cases declined charges, all other things being equal. However, the expected increase in the overall percentage of arrests declined charges pursuant to an increase in these offenses will be of a lesser magnitude than for some other offense types.
The effects of an increase in the portion of arrests reviewed that are either loitering or open container seem much greater. For example, when the portion of arrests that are loitering increases by one percentage point, this will raise the overall percentage of cases declined charges by an even greater magnitude—1.058 percentage points. Additionally, when the portion of arrests reviewed that are for disorderly conduct rises by one percentage point, the rate of arrests declined charges will increase by 1.139 percentage points (e.g. from 30 percent to 31.139 percent).

**Discussion**

The data provided by the SAO and BPD for the period 2002 to 2006 indicate that the portion of arrests for quality of life offenses can affect the rate of arrests ending in release without charges. Moreover, increases in arrests for particular types of quality of life offenses will drive an increase in the overall rate of arrests declined charges. It seems that the Baltimore City SAO declines to charge particular kinds of quality of life arrests as a matter of policy, based more on the type of offense alleged, than the merits of each individual arrest. As discussed further under Hypothesis 3, the SAO declines some of these types of quality of life arrests as “abated by arrest,” considering the arrest sufficient punishment for the offense, and declines others because the arrest documentation lacks sufficient evidence that a crime occurred.

The remarkably high percentage of loitering, disorderly conduct, and open container arrests declined charges suggests a major rift between SAO prosecutorial policies and BPD arrest policies. Through 2005, the BPD continued to make more of these three types of arrests, despite the fact that the vast majority of them would end in
release without charges. In effect, the booking facility became a revolving door for people arrested for minor offenses. The high rate of arrests for these particular offenses ending in release without charges raises some questions about the efficacy of the arrests. Repeat offenders likely learn they will not be prosecuted for the alleged offense, thereby diminishing any deterrent effect the arrest might have. Additionally, these arrests ending in release without charges cause the BPD to lose some credibility because the declinations give the appearance the individual arrests themselves are improper, rather than reflecting the SAO’s policy of declining particular types of arrests.

It is unclear whether the two agencies’ practices could become more closely aligned such that the value each of them places on these minor offenses is similar. If the BPD deemphasized arrests for minor offenses and the SAO accepted a greater portion of them for prosecution, then the portion ending in release without charges would inevitably decline. It could be argued that this level of cooperation between these agencies is not desirable because it would disrupt the traditional relationship between prosecutors and police officers, a relationship that exists to subject each arrest to multiple levels of review and scrutiny. If this relationship became less adversarial and more collaborative, then the arrests that traditionally do not pass legal muster would be prosecuted as attorneys coached officers to change their statements of probable cause or as officers convinced prosecutors to accept borderline arrests for prosecution. Whereas this degree of collaboration focuses on individual cases, the rift between SAO and BPD policies exists on a more abstract level. The type of collaboration that would reduce the percentage of arrests ending in release without charges would have to occur at the executive level of each agency, not between officers and prosecutors discussing individual cases. The BPD
and the SAO would have to find a level of arrests for quality of life offenses that would allow the BPD to fulfill their enforcement duties and the SAO to adjudicate even minor offenses.

Baltimore City is currently pursuing a flawed de facto policy of arresting thousands of people each year for quality of life offenses, without giving them the opportunity to defend themselves and without subjecting arrest practices to more thorough review. The BPD has other options to maintain order, including community-oriented policing that focuses on solving the neighborhood problems that cause disorder, rather than making arrests in reaction to the problems’ symptoms (e.g. drinking in public and disorderly conduct). Such community-oriented policing would engage residents to respond to specific problems. However, officers would retain the authority to issue warnings and citations to people committing quality of life offenses, which could reduce the emphasis on arrests while still sending a message that the BPD does not tolerate particular behaviors. As shown in Appendix A, citations generally bypass prosecutorial review in the Charging Room because officers file them directly with the District Court without ever transporting the recipient of the citation to the booking facility. This more direct adjudication of citations could alleviate some of the burden on prosecutors and save resources by lowering the population in the booking facility.

Two of the prosecutors interviewed for this project specifically cited the gubernatorial race in 2006 as the reason for the drop in cases they decline to charge. As they explained, former Mayor O’Malley deemphasized his order-maintenance policing toward the end of 2006, instead focusing on his campaign. If an accurate explanation, this would suggest that executive leadership can have a serious impact on policing
strategies, types of arrests made, and outcomes of arrests. To be effective, the BPD and administration would have to communicate any new policing strategy to individual commands and officers.

Even if the BPD changed arrest policies to deemphasize order-maintenance policing, the SAO likely would continue to decline to charge the vast majority of loitering, disorderly conduct, and open container arrests and a large portion of trespassing arrests. This project uncovered some potential reasons for the high rate of declinations of loitering and trespassing arrests. Prosecutors interviewed for this study indicated that they do not pursue loitering or trespassing arrests because they are not provable in court. In contrast, the data indicate that arrests for disorderly conduct and open container end in release without charges more often because the offense itself is not egregious enough to warrant prosecutors’ resources. Hypothesis 3 explores these reasons for arrests ending in release without charges in more detail.

**Hypothesis 2:** Resource constraints, whether financial or staffing, overburdened the State’s Attorney’s Office, causing them to decline charges on a greater portion of criminal cases.

**Findings**

When asked, the representatives of the SAO who were interviewed all stated that their workload ebbs and flows each week and that they did not notice any change in the number of cases reviewed over the past several years. They generally felt that they had adequate time to review each case that the BPD sent for review and that the staffing
levels in the Charging Room have remained constant. All of the prosecutors interviewed also mentioned that the workload at the Charging Room, where they work full time, pales in comparison to the workload of prosecutors who try cases.

There have been between 12 and 15 prosecutors assigned to the Charging Room since its opening in 2000. They rotate 12-hour shifts, with two to three attorneys working at any given time, so that the Charging Room is staffed 24 hours each day, seven days each week. Although the staffing levels and workload in the Charging Room itself might not affect the percentage of cases the SAO declines, it is possible that the SAO’s caseload overall pressures the prosecutors at central booking to decline more cases. As shown in Table 1, the number of cases reviewed each month by the SAO has increased along with the increase in percentage of arrests declined charges from 2000 to 2005, with the exception of 2003 when the number of cases reviewed dropped slightly. In 2006, when the number of cases reviewed by the SAO dropped substantially, the percentage of arrests ending in release without charges also declined, indicating caseload might be one reason prosecutors decline cases.

As shown in Table 8, the staffing levels at the SAO have increased over this period as well, from 374 total employees in FY01 to 417 funded positions in FY07, including administrative staff and attorneys. The number of funded attorney positions has also increased, from 185 in FY01 to 219 in FY07. Likewise, SAO funding has increased over this period, from $19.4 million in FY01 to $30.3 million (budgeted) in FY07. During the budget approval process in 2005, State’s Attorney Jessamy petitioned the city for more funds, explaining that her office’s caseload increased at a time when some of her grant funding was ending. She requested a budget increase greater than the
17 percent increase that the city planned to give her office in FY06, claiming that if she did not receive more city funding, she would be forced to terminate nearly two dozen employees. After weeks of negotiating, the State’s Attorney received the additional funding she requested. However, the Baltimore City Council passed a resolution requesting that the State’s Attorney undergo a management evaluation to determine a more stable funding and staffing structure that would be less vulnerable to fluctuations in grant funding.

Table 8: State’s Attorney’s Office Resources 2000-2006

<table>
<thead>
<tr>
<th></th>
<th>FY01 Jul 00-Jun 01</th>
<th>FY02 Jan 02-Jun 02</th>
<th>FY03 Jul 02-Jun 03</th>
<th>FY04 Jul 03-Jun 04</th>
<th>FY05 Jul 04-Jun 05</th>
<th>FY06 Jul 05-Jun 06</th>
<th>FY07 Jul 06-Dec 06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrests Reviewed</td>
<td>NA</td>
<td>32,670</td>
<td>62,659</td>
<td>69,863</td>
<td>69,356</td>
<td>73,820</td>
<td>34,132</td>
</tr>
<tr>
<td>*Total Funds</td>
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<td>$21.3m</td>
<td>$21.6m</td>
<td>$24.0m</td>
<td>$25.4m</td>
<td>$27.8m</td>
<td>$30.3m</td>
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<td>*Charging Room</td>
<td>$1.12m</td>
<td>$1.16m</td>
<td>$1.15m</td>
<td>$0.98m</td>
<td>$1.12m</td>
<td>$1.16m</td>
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Source: State’s Attorney’s Office, 2007 and Baltimore City Board of Estimates, 2007
*Funds expressed in nominal, non-adjusted, US dollars

Despite an increase in overall funding levels, the funding for the Charging Room has not kept pace with the number of cases reviewed. The Charging Room funds per arrest reviewed were lower in fiscal years 2003 through 2006 than they were in fiscal years 2001 and 2002, despite the growing number of cases reviewed each year. It is...
unclear whether this would have an impact on the percentage of cases declined prosecution, considering that the overall level of funding at the SAO has increased during this period, staffing levels in the Charging Room have remained constant, and the number of total SAO staff and prosecutors has grown over the period.

The regression model results (see Table 3) indicate a slight and positive relationship between the number of arrests reviewed each month by the SAO and the percentage they decline to charge. Specifically, when the number of cases reviewed by the SAO each month increases by 100, the portion they decline to charge will increase by 0.1 percentage point, a relationship significant at the .05 level. The regression results exhibited no statistically significant effect of Part One arrests on the portion of arrests declined charges. The offenses categorized by Part One arrests tend to be more complex, take longer to prosecute, and therefore require more resources. An increase in these types of arrests could cause an increase in the overall rate of arrests declined prosecution because the increase in more serious arrests would burden the agency’s prosecutors, thus prompting the SAO to decline a larger portion of the minor, on-view arrests. Yet the regression results do not support this theory. Instead, they show no statistically significant relationship between Part One arrests and the rate of arrests declined charges.

The regression results do not necessarily support the conclusion that the volume and complexity of prosecutors’ caseloads at the SAO have no impact on the rate at which they decline to charge arrests. This is because the regression model used total Part One arrests to represent caseload for the SAO, a very rough measure of the actual complexity and volume of their caseload. An increase in Part One arrests could have differential effects on the rate of cases declined charges, depending on whether the Part One arrests
were made on-view or pursuant to a warrant. If Part One arrests increased to become a larger portion of on-view arrests, and therefore the cases reviewed by the SAO, then the declination rate would likely decrease because the SAO tends not to decline charges on more serious arrests. If however, Part One arrests increased the number of arrests made pursuant to a warrant, then they could have a burdensome effect on the SAO’s caseload, thus prompting the prosecutors in the Charging Room to decline a greater portion of the minor offenses to alleviate the agency’s workload. Rather than arrest statistics, a better measurement of workload would include data on the SAO’s actual open docket, broken down by top charge. Such caseload data were not available for this study. It is also possible that, as the regression results indicate, an increase in the number of complex or more serious cases has no measurable impact on prosecutors’ propensity to decline to charge arrests. Without better measurements, it is difficult to parcel out these potential relationships between workload and prosecutors’ declination rate.

The variable for attorney positions offers a slightly better measurement for the impact of caseloads on the rate of arrests declined charges. The regression results demonstrate a small and negative relationship between the number of attorney positions funded each year and the portion of arrests ending in release without charges. If the number of attorney positions at the SAO increased by one position, the portion of cases declined charges would likely decrease by approximately 0.062 percentage points.

The regression results suggest that the level of funding for the Charging Room each year has no statistically significant impact on the rate at which the SAO declines to charge cases. This, coupled with the fact that overall agency funding increased as the
SAO declined more arrests each year, indicates that the SAO’s funding levels have not contributed to the rate at which they declined to charge cases.

**Discussion**

The findings for Hypothesis 2 indicate that resource constraints play some, albeit minor, role in the rate of arrests declined charges. Changes in funding allocated to the Charging Room has no observable impact on the rate of arrests declined charges, likely because the resources of the agency overall have more of an impact on the declination rate than the resources within the Charging Room alone. Agency-wide funding increased each year along with the increase in the percentage of arrests declined charges. The trend data available for the SAO and the regression results support the conclusion that caseload, more than funding levels, can impact the percentage of cases declined charges, although only slightly.

The very small measured effect of the number of attorney positions in the SAO on the rate of arrests declined charges indicates the prosecutors in the Charging Room could be responding to agency-wide workloads when opting to decline charges. In periods with more attorneys to handle the agency’s caseload, the SAO has declined a smaller portion of arrests reviewed. Likewise, when the number of cases reviewed each month has increased, the SAO has declined a greater percentage of them, but the effects are so small that the prosecutors in the Charging Room likely are not aware of the changes in agency workload.

The SAO’s role in the charging process began with a pilot program in 1999, which evolved into the charging section at the BCBIF in 2000, currently still in operation.
According to one prosecutor and a court official interviewed, the SAO’s new charging function began with the intent to reduce prosecutors’ workload and reduce cases declined later in the adjudication process, thereby saving resources. The SAO declines to charge cases at such an early stage, before the case reaches adjudication, as a means to control the agency’s workload. However, this general function does not explain the increase in cases declined charges. The small detectable effect of the increased number of cases reviewed in the Charging Room does little to explain the increase in the portion of cases declined charges. Although an increase in the number of attorney positions could coincide with a decrease in cases declined charges, the number of attorney positions at the SAO increased over the period 2000-2005 coincident to the increase in cases declined charges. With such small detectable effects, it is difficult to reach any definitive conclusion about the role resources, whether staffing or monetary, have played in the increased rate of cases declined charges.

**Hypothesis 3:** The State’s Attorney’s Office declined more arrests on their apparent merits because a greater portion of the arrests lacked probable cause, or a greater portion of the statements of probable cause failed to communicate the elements of the crime.

**Findings**

If this hypothesis were true, then the portion of arrests closed as “cannot prove” would likely increase with the increase in the overall percentage of arrests declined
charges, assuming that the disposition “cannot prove” reflects the quality of the arrest and the officer’s evidence. One shortcoming of this assumption is that the SAO potentially declines some cases as “cannot prove” when the arrest has met the standard of probable cause, or even the standard of proof, “beyond a reasonable doubt,” because the SAO has deemed the case not worthy of prosecution and resources. Instead of closing the case as “abated by arrest,” the SAO could close the case “cannot prove,” which places more responsibility for the declination on the BPD.

As seen in Figure 2, the fluctuations in cases closed as “cannot prove,” have roughly followed the fluctuations in the percentage of cases declined prosecution. This potentially supports Hypothesis 3 because as prosecutors judged more cases were not provable, they declined to charge more arrests. The increasing rate of arrests declined charges from 2002 to 2005 could have been the result of an increase in officers’ failure to communicate the evidence for the alleged offenses in their arrest paperwork or to meet the requisite probable cause for their arrests. Similarly, as a smaller portion of arrests ended in release without charges from 2005 to 2006, fewer of them were closed as “cannot prove.”

Members of the BPD who were asked to explain the drop in arrests declined charges from 2005 to 2006 all cited a new initiative implemented by Police Commissioner Hamm in 2006. The Commissioner implemented a new training program for all officers. Typically, officers must attend a week of “in-service training” each year to learn new policies and procedures and refresh those learned in academy. Beginning in January 2006, all officers who attended academy or in-service training received additional legal training from a group of instructors gathered by the BPD. These
Figure 2: Percent of Arrests Declined as "Abated By Arrest" vs. "Cannot Prove"

Source: Baltimore City State’s Attorney’s Office, 2007

included U.S. Attorneys, Baltimore City State’s Attorneys and Public Defenders. The coursework included an overview of probable cause and 4\textsuperscript{th} and 5\textsuperscript{th} Amendment rights. The BPD representatives also noted that the training may have taken some time to have a detectable impact on the percentage of cases declined prosecution, but that the share of cases declined prosecution as “cannot prove” decreased in 2006. They also pointed to the overall drop in cases declined charges as evidence of the training’s success.

However, the BPD representatives also maintained that officers were not making arrests without probable cause before this training. Instead, officers were failing to prepare statements of probable cause that accurately reflected the incident leading to arrest. One court official thought, on the other hand, that the arrests themselves might
fail to meet even the standard of probable cause. As the BPD has argued, few arrests fail to meet the standard of probable cause: instead, the SAO declines to charge arrests because they believe the cases would not meet the greater standard of proof needed in court, that the defendant was guilty of the alleged offense “beyond a reasonable doubt.” The language used in the SAO’s classification system, “cannot prove,” might suggest the BPD makes a valid point.

The monthly trend data showing the portion of arrests declined as “abated by arrest” and those closed as “cannot prove” somewhat contradict the claims of the BPD representatives about the success of their training program (see Figure 3). Whereas the portion of declinations in the “cannot prove” category was lower in the beginning of the year, it steadily increased again toward the end of the year. Whether this increase in arrests closed as “cannot prove” has continued into 2007 or has completely reversed the downward trend began in 2006 is not clear, absent data after December 2006. At least the partial reversal of the decrease in arrests declined as “cannot prove” coincident to the BPD’s new training initiative raises some doubts about the efficacy of the program, or about the ability of the BPD’s policies to affect the SAO’s reasons for declining some kinds of arrests at all.
As seen in Table 9, there are patterns in the types of arrests the SAO categorizes as “abated by arrest” and “cannot prove” that remain consistent throughout the period 2002 through 2006. Prosecutors classify the vast majority of CDS, loitering, prostitution, and trespassing arrests that they decline as “cannot prove.” Arrests for open container, however, generally fall into the category of “abated by arrest.” The SAO declines to charge arrests for disorderly conduct for either reason, with slightly more closed as “cannot prove.”
It is likely that the portion of cases declined charges because the SAO has determined they are not provable increases when certain kinds of these arrests comprise a greater portion of the cases the SAO reviews. For example, the SAO declines most CDS cases as “cannot prove.” Because these types of arrests comprise, on average, approximately 17.6 percent of arrests declined charges, an increase in the portion of arrests reviewed that are for CDS would raise the overall portion of arrests closed as “cannot prove.” Arrests for loitering seem to have an even larger impact on the portion of cases closed as “cannot prove.” As seen in Figure 4, the trends in loitering arrests follow closely those of the percentage of cases closed as “cannot prove.” They are also positively correlated, with a coefficient of .84, indicating that when loitering arrests comprise a greater share of the arrests the SAO reviews in a given month, the percentage of the arrests they decline as “cannot prove” that month will be greater.
Discussion

Although the BPD’s training program and sensitivity to the issue of arrests ending in release without charges are commendable, police officer training alone will not greatly affect the portion of cases declined as “cannot prove” because the SAO so frequently declines arrests according to the type of offense alleged as either “cannot prove” or “abated by arrest.” Changes in BPD policies, short of ceasing all arrests for loitering, disorderly conduct, and open container are unlikely to affect either the percentage of arrests declined prosecution or the percentage of arrests declined as “cannot prove.” Neither the declining quality of officers’ statements of probable cause nor a broad
deterioration in the quality of individual arrests seem to have driven the increased percentage of arrests declined charges from 2000 to 2005. Rather, if the quality of arrests, or the evidence upon which they are based, have had any effect on the rate of cases declined prosecution, it has been a function of the type of offense alleged and whether the SAO deems these types of cases provable in court. As with the results for Hypothesis 1, the data for arrests declined charges suggest a disconnect between BPD and SAO policies.

**Hypothesis 4:** The communication between the Assistant State’s Attorneys at the Charging Room in BCBIF and arresting officers has deteriorated since 2000 to the extent that prosecutors have declined charges on a greater portion of cases they review.

**Findings**

All of the prosecutors interviewed for this project mentioned that they would like to have more contact with officers during the charging process so that they can better assess the officers’ statements of probable cause. In the current booking system, when officers make an arrest, they send the suspect in a van to central booking. While the suspect is in transit, the arresting officer returns to the station house to complete paperwork, including the statement of probable cause upon which the prosecutor bases the decision to file charges. The officer completes the arrest documents, gains a supervisor’s approval, and then sends the information via a remote booking computer system to SAO’s Charging Room in central booking. When the arrest documents reach the SAO, the statement of probable cause has been “locked down,” meaning that the
prosecutors cannot amend the officer’s statement. Because the officer has sworn to this statement, only the officer can change it by preparing a supplemental statement. The prosecutors at the Charging Room can change, add, or omit any charges listed on the arrest documents but must contact the officer via telephone if they need more information to formally charge the suspect.

Over the past several years, police liaisons at the central booking facility have assisted the prosecutors with paperwork during the charging process and in contacting the arresting officers when needed. The prosecutors still believe more contact with the officers would improve the charging process and perhaps decrease the percentage of cases they decline to charge. One of the court representatives interviewed stated that the BPD is able to process arrests more efficiently now that they have the remote booking system, leaving more time for officers to patrol rather than process arrests. It would seem, then, that the BPD would not advocate having officers spend more time processing and charging arrests because this would divert resources and time from patrol activities.

Discussion

With the efficiency of the BPD’s remote booking system and the isolated placement of the Charging Room at the booking facility, the prospects for better communication between the prosecutors at the Charging Room and arresting officers are dim. On a broader scale, there is a gap between the BPD’s and the SAO’s policies regarding certain kinds of offenses. Given these agencies’ different policies regarding quality of life offenses and the resulting increase in the percentage of arrests ending in release without charges, a disconnection occurred during the former Mayor’s
administration, not as a miscommunication on individual cases, but between the leadership of the SAO and BPD.

The BPD holds regular CompStat\textsuperscript{36} meetings to identify crime trends and enforcement needs. If through CompStat, these two agencies could share information and reach a collaborative policy for handling quality of life offenses, the percentage of cases declined charges would certainly decrease. At least one of the BPD representatives interviewed for this study welcomed the idea of the State’s Attorney attending the meetings. If the BPD had more information regarding which types of arrests the SAO declines to charge, and the percentage declined within these arrest types, they might be encouraged to change their enforcement strategies. Additionally, the SAO might be encouraged to accept a greater portion of quality of life offenses for prosecution if there were fewer of them and if the SAO could reasonably examine the merits of each case.

VII. CONCLUSIONS AND POLICY RECOMMENDATIONS

Conclusions

Taken together, the results for the four hypotheses support several conclusions about the increased percentage of arrests declined charges from 2000 to 2005. The most significant conclusion supported by the research for this project is that the type of offense has a considerable impact on the SAO’s propensity to decline to charge an arrest. When total quality of life offenses increased, becoming a greater share of the cases prosecutors reviewed at the booking facility, the SAO generally declined a larger percentage of the arrests they reviewed. Additionally, several specific types of offenses within this broad
category of “quality of life” offenses drove the overall increase in arrests declined prosecution. Because the SAO declines to charge such a large portion of loitering, open container, trespassing, and disorderly conduct arrests, as these types of offenses became a greater share of the cases they reviewed, the SAO’s overall declination rate increased from 2000 to 2005. Even though the share comprised by one of these types of offenses may have dropped in one year, the share comprised by the other types of arrests compensated, as shown in Table 7. The data therefore suggest that the overall increase in quality of life offenses, driven by the increase in a particular subset of offenses, contributed to the overall increase in the percentage of cases declined charges from 2000 to 2005.

The other possible explanations, represented by Hypotheses 2, 3, and 4, are less compelling, than Hypothesis 1, in light of the data. Although resource constraints could have played a minor role in the increase in arrests declined charges, only those resulting from staffing constraints demonstrate any measurable effect. The number of cases reviewed each month by the SAO increased coincident to the increasing rate of declinations, with the exception of 2003. The regression model revealed a very small, albeit statistically significant, relationship between the number of cases reviewed by the SAO and the percent they declined to charge. If the SAO’s staffing and funding levels decreased coincident to the increasing rate of cases declined charges, they might offer some explanation for the increased declination rate. Yet, both funding and staffing levels increased from 2000 to 2005. Therefore, only the resource constraint potentially resulting from an increased caseload offers insight into the increased percentage of arrests
declined charges. When compared to the measurable effects of case type, however, the increased number of cases reviewed had a very small effect.

Similarly, there was no measurable deterioration in the quality of officers’ statements of probable cause or the quality of arrests during the period 2000 to 2005 that contributed to the increase in cases declined charges. The portion of cases closed as “cannot prove” generally increased as did the rate of declinations, potentially indicating that the SAO was declining more cases because more of the cases lacked sufficient evidence. Yet this pattern was reversed for the latter half of 2006, suggesting that the overall quality of arrests or officers’ statements justifying the arrests were not necessarily responsible for the rate of arrests declined charges. Instead, it seems that the type of arrests made by the BPD not only contributed to the overall rate of cases declined charges, but also to the portion of them closed as “cannot prove.” Because the vast majority of loitering, prostitution, CDS, and trespassing arrests are closed as “cannot prove,” when the total arrests for these offenses increases, the overall percentage of cases closed as “cannot prove” will likely increase. In contrast, the SAO declines the vast majority of open container cases as “abated by arrest,” so that when open container arrests comprises a larger portion of the arrests declined charges, they will contribute to an increase in the overall portion closed as “abated by arrest.”

The data suggest that because loitering and trespassing arrests comprised a greater share of all cases reviewed from 2002 to 2004, the percentage of arrests declined as “cannot prove” increased. When the percentage of cases closed as “cannot prove” began to decrease in 2004, the portion of reviewed arrests for loitering dropped nearly three percentage points, the portion of reviewed arrests for prostitution dropped one percentage
point and the portion of arrests for CDS dropped nearly one percentage point. However, the slight increase in trespassing and open container arrests likely offset the downward trend in arrests closed as “cannot prove” from 2004 to 2005.

The large role of offense type in the SAO’s decision to decline charges on arrests suggests a disconnect between the leadership of the SAO and the BPD over what kinds of cases are worthy of public resources. Whereas the BPD continued to make arrests for quality of life offenses and more of the types of arrests that tend to end in release without charges, the SAO continued to decline to charge a greater portion of these arrests. Communication between individual arresting officers and prosecutors in the Charging Room did not deteriorate drastically from 2000 to 2005, according to those interviewed for this project. Rather, it seems that a failure to agree on the value of certain types of arrests at the executive level of each of these agencies underlies the increased portion of arrests declined charges from 2000 to 2005. The results of this research project support several policy options to reduce the percentage of arrests declined charges, if policymakers in Baltimore City consider this a valuable policy goal. These are discussed in the following section.

**Policy Recommendations**

**Recommendation 1:** Pursue alternatives to traditional arrests and prosecution for quality of life offenses.

The results for Hypotheses 1 and 3, taken together, demonstrate that the State’s Attorney opts not to charge quality of life offenses, instead declining some as a matter of policy and on their face as “abated by arrest.” The SAO also declines other quality of life
offenses, primarily loitering offenses, as a matter of legal procedure, believing they are not provable in court. To reduce the portion of arrests ending in release without charges, the BPD could pursue alternatives to arrest for quality of life offenses. Officers have the option to issue citations in lieu of arrest for minor offenses, or they have the option to issue a warning and draw on community resources to resolve problems of disorder, a strategy encouraged by community-oriented policing.

Currently, the reliance on arrest as a first, rather than a last, resort in these cases contributes to the backlog of cases at the booking facility and requires more resources to process. Arrests also require more of the officers’ time during their shifts, time that they could otherwise devote to more effective activities. Community-oriented policing has emerged as an alternative to order-maintenance policing and relies on different tactics to resolve disorder. Similarly, community prosecution units in cities around the country deal with adjudicating minor offenses, oftentimes in response to citations for quality of life offenses. The Baltimore City SAO had a small community prosecution unit that handled quality of life offenses by requiring offenders to perform community service, in lieu of detention and fines. The program targeted resources according to geographic region and neighborhood, and the prosecutor assigned to the Washington Village/Pigtown neighborhood of Baltimore, credited the program with reducing violent crime. Unfortunately, the SAO disbanded the community prosecution unit when grant funding ended.

Citations, community prosecution, and community service offer feasible alternatives to arrest and detention for minor offenses. The SAO and the Mayor should
consider reinstituting the community prosecution unit and expanding community service and examine the costs and benefits associated with these program alternatives.

**Recommendation 2:** Incorporate qualitative measures into police performance reviews to deemphasize arrests for minor offenses and encourage greater use of officers’ discretion.

The ACLU and NAACP lawsuit against the BPD claims that police are evaluated, in part, according to the number of arrests they make, creating “perverse incentives” for officers to arrest more people, even if the people are never prosecuted. Some research suggests that measurements of traditional indicators, such as the number of arrests made or citations issued, hinders police departments from shifting their focus to community and problem-oriented policing. In Baltimore City, the drop in arrests for certain kinds of quality of life offenses from 2005 to 2006 might indicate a change in the BPD’s enforcement strategies. As two prosecutors interviewed speculated, the police and former Mayor seemed to depart from their policy of making arrests for quality of life offenses.

If the BPD is, in fact, deemphasizing order-maintenance policing, then a successful alternative policing strategy should measure outcomes more than outputs, and incorporate use of citizen surveys within each Baltimore City district. The outputs currently measured include the immediate product of officers’ efforts, e.g. citations and arrests. In contrast, the outcomes that the BPD might incorporate into their strategy would include slightly longer-term results of officers’ efforts, such as crime clearances (i.e. the crime is deemed solved), arrests leading to charges, and citizen satisfaction. Moreover, some studies found that officers’ use of problem-solving methods and
discretion in their enforcement activities more often relies on their perceptions of their supervisors’ priorities than on their own priorities or values. As early as 1993, the U.S. Department of Justice began encouraging alternative methods for measuring police performance. Some of the measures proposed included assistance with prosecutions and quality of reports.

The BPD utilizes “green sheets” and monthly statistics sheets to evaluate officers. The green sheet measures “loyalty,” “economy of management,” “cooperation,” “endurance,” “initiative” and other personal characteristics on a qualitative scale from unsatisfactory to outstanding, but only includes one community-related measure of “handling citizens” (see Appendix D). The individual 28-day stat sheets tally use of sick days, number of arrests, citations, interviews, and visits to local businesses and hours of foot patrol. However, none of these are tied to outcomes, such as arrests ending in release without charges or community service. The BPD could devise a more outcome-driven and qualitative set of performance measures to motivate officers’ to rely on their problem-solving abilities more often, and arrests for minor offenses less often.

**Recommendation 3: Revise the anti-loitering statute.**

The SAO categorically declines nearly all arrests for loitering, believing they cannot be proven in court. The particularly high rate of declinations within this arrest type suggests that BPD arrest policies do not cause prosecutors’ to decline charges on these arrests, but that other factors are at play. One possible cause for the high rate of loitering cases declined charges could be flaws in the language of Baltimore City’s anti-
loitering statute. A number of U.S. cities have struggled with their loitering statutes in recent years due to constitutional challenges. In *Chicago v. Morales*, 1999, the U.S. Supreme Court found the city’s loitering statute too vague to be enforced, causing citizens engaged in innocuous behavior to be arrested in violation of their Fifth and Fourteenth Amendment rights. The Fifth and Fourteenth Amendments establish different standards for due process, which the Chicago anti-loitering statute violated. First, the statute failed to provide citizens adequate notice of the prohibited conduct because they could not foresee what behaviors would constitute a violation. Second, the statute failed to prevent “arbitrary and discriminatory law enforcement” because the vagueness of the statute afforded police too much discretion in deciding which behaviors would constitute a violation of the statute. Moreover, the Supreme Court found that the Chicago statute was so broad as to potentially prohibit lawful assembly in public, an activity they clearly state is protected under the First Amendment.

Justice O’Conner wrote a concurring opinion outlining the ways by which a city could draft more specific anti-loitering statutes to prohibit loitering for the purpose of committing another crime. By specifying in more detail the types of conduct that could arouse an officer’s suspicion, such a statute would provide a stricter framework for enforcement, thereby abiding by constitutional protections. Examples have included “loitering for the purpose of prostitution” and “loitering for the purpose of buying or selling illicit drugs.”

The Baltimore City Council could consult other cities’ revisions of their anti-loitering statutes and the framework established by Justice O’Conner to devise a more enforceable anti-loitering statute.
Recommendation 4: Devote a city employee as a witness in trespassing cases involving city-owned property.

Members of the BPD, the SAO and the courts all cited trespassing arrests as a challenge because the city administration has not provided the needed witnesses to adjudicate these cases. Court procedures require a witness to testify in trespassing cases so that the court can establish who owns the property in question. Without a witness to testify the suspect was trespassing on property they do not own, the court will dismiss the case. According to most of the people interviewed for this project, the city administration fails to provide this witness, causing the State’s Attorney’s Office to decline many cases before they even reach court. The data gathered for this study indicate that the SAO declined between 30 and 40 percent of trespassing cases from 2002 to 2006, closing nearly all of them as “cannot prove.”

As one of the prosecutors and two of the BPD representative interviewed explained, this pattern of declining to charge trespassing arrests undermines law enforcement and any deterrent effect the trespassing arrests might have. Because Baltimore City has many abandoned or vacant properties, they become havens for drug activity. Without trespassing laws rigorously enforced, this drug activity continues unchecked. One more seasoned prosecutor interviewed mentioned that the city used to have one person devoted to trespassing cases several years ago, but that the position no longer exists. Given the volume of trespassing cases, it is possible the person became overburdened. However, the Mayor should revisit this issue and seriously consider devoting at least one, if not more, employees to handling trespassing cases. The person could allot one to two days each month solely to adjudicating trespass cases, responding
at least in part to the challenge presented by these arrests and reducing the portion of them declined charges by the SAO.

**Recommendation 5:** Capture and report more detailed data on the reasons the SAO declines to charge arrests.

All three of the BPD officials interviewed offered that they would like to have more detailed information regarding the reason the SAO declines cases. The SAO currently keeps statistics on the reasons they declined to prosecute cases later in the process, once a case has reached the court. They could devise similarly detailed explanations for the arrests they opt to decline to charge earlier in the process. The computer system in use by the prosecutors at the booking facility is capable of incorporating additional fields to capture this data. However, the SAO does not regularly provide the data they have to the BPD and it is therefore unlikely they will be willing to devote more time and resources to providing detailed reports to the BPD on arrests declined charges. The State’s Attorney, as an elected official, is not required to provide these statistics to any state or local agency. Any reports of their declination statistics would therefore have to be voluntary.
APPENDIX A: ARREST AND CHARGING PROCESS

- Officer encounters possible offender
- Officer makes on-view arrest
- Arresting officer completes paperwork at station
- Incident Report Prepared
- Supervisor approves Statement of PC
- Statement of PC Prepared
- Statement of PC sent to SAO
- Court issues arrest warrant
- Officer makes arrest on warrant
- Arrestee transported to BCBIF
- Person released
- Citation sent to District Court
- Person pleads guilty and pays fine or presents defense in Court
- Arrestee released without charges
- Arrestee charged--charging documents sent to court
- Arrest records on file unless expungement application filed

(note: “Statement of PC” = Statement of Probable Cause)
APPENDIX B: INTERVIEW PROTOCOLS

Interview Protocol—Criminal Justice Coordinating Council (CJCC) and Court Representatives

Name_________________________________________ Position_________________________________________

1) What are the origins and purpose of the CJCC?

2) To what extent does the CJCC fulfill its mission?

3) What are some of the challenges members experience in cooperating with each other?

4) How does one go from arrest to charges in Baltimore City, if arrested as an adult?

5) What forms must be completed during this process?

6) Which agency holds primary charging authority in Baltimore City? Does the actual process hold true to the rules?

7) How well does the booking and charging process function?
   a. exceptionally well, well, fairly well, not well at all
   b. why?

8) What is your opinion of the charging room at BCBIF?

9) To what extent do prosecutors consult with arresting officers or members of Baltimore City Police Department on cases before deciding whether to bring charges on a case?

10) Do you notice any differences in the types of arrests being made now, as opposed to five or six years ago? If yes, what is the difference?

11) What kinds of cases are declined charges? Why?

12) Do you feel that prosecutors have adequate resources or staff to handle all of the cases brought through the booking facility? If not, what else do they need?

13) Are there any standards for how many cases will be or should be declined prosecution?

14) Why do you think the rate of cases declined prosecution has increased over the past several years?
15) Do you have any recommendations for improving the booking and charging process?

Interview Protocol—Baltimore City Police Department representatives

Name__________________________________________ Position__________________________________

1) How does one go from arrest to charges in Baltimore City, if arrested as an adult?

2) What are your duties during this process?

3) What forms must you complete while booking and charging someone?

4) What kind of training, if any, do you receive on filing documents, using the computer system, and processing arrests? In preparing probable cause statements?

5) How much supervisory assistance is there in preparing statements of probable cause?

6) How well does the booking and charging process function?
   a. exceptionally well, well, fairly well, not well at all
   b. why?

7) What is your opinion of the Charging Room? How often do you go there?

8) How frequently do officers consult with prosecutors when prosecutors in the charging section decide whether they will file charges on a case?

9) Do you notice any differences in the types of arrests made now, as opposed to five or seven years ago? (Have you noticed any trends in the types of arrests made?) If yes, what is the difference?

10) Do you have any sense of which kinds of cases prosecutors decline charges? Why?

11) Do you feel that you have adequate resources or staff to complete the booking and charging processes? If no, what else do you need?

12) What are some of the benefits and drawbacks of working with different agencies during the booking and charging process?

13) What, if anything, would you change about the booking/charging process?
Interview Protocol—State’s Attorney’s Office representatives

Name______________________________   Position__________________________

1) How does one go from arrest to charges in Baltimore City, if arrested as an adult?

2) What forms must you complete during this process?

3) What kind of training, if any, do you receive on filing documents, using the computer system, and processing arrests?

4) How well does the booking process function?
   c. exceptionally well, well, fairly well, not well at all
   d. why?

5) What happens in the charging section?

6) What is your opinion of the process in the charging section?

7) To what extent do you or other prosecutors consult with arresting officers or members of Baltimore City Police Department on cases before you decide whether to bring charges on a case?

8) How much time do you spend reviewing each case that you receive when deciding if charges should be filed?

9) Do you notice any differences in the types of cases brought through central booking now, as opposed to five or six years ago? If yes, what is the difference?

10) What kinds of cases are declined charges? Why?

11) Do you feel that you have adequate resources or staff to handle all of the cases brought through the booking facility? If not, what else do you need?

12) Do you feel overburdened by your caseload or workload? Is this a complaint among other prosecutors?

13) Do you have adequate time to review each case brought to the charging section?

14) Are there any standards for how many cases will be or should be declined prosecution?
15) Why do you think the rate of cases declined prosecution has increased over the past several years?

16) Is there anything you would recommend improving or changing in the booking/charging process?
### Appendix C: Correlation Coefficients Among Independent Variables

<table>
<thead>
<tr>
<th>Charging Room Funds/</th>
<th>Attorney Positions</th>
<th>Part I Arrests</th>
<th>% Revwd Trespass</th>
<th>% Revwd Disord.</th>
<th>% Revwd Hinder.</th>
<th>% Revwd Loiter.</th>
<th>% Revwd OpenCo</th>
<th>% Revwd CDS</th>
<th>Total Revwd</th>
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- Total Reviewed
- Percent Reviewed CDS
- Percent Reviewed Disorderly
- Percent Reviewed Hindering
- Percent Reviewed Loitering
- Percent Reviewed Open Container
- Percent Reviewed Prostitution
- Percent Reviewed Trespassing
- Total Part I Arrests
- Funded Attorney Positions
- Charging Room Funds/ case
APPENDIX D: BALTIMORE POLICE DEPARTMENT EVALUATION FORMS

**POLICE DEPARTMENT**  
BALTIMORE, MARYLAND

**PERFORMANCE EVALUATION REPORT**  
Form 33 / 397

Section A  (To be completed by rating officer)

1. NAME  
   (Last)  
   (First)  
   (Middle Initial)  

2. ORGANIZATION  
   S.S.N.  
   E.O.D.

3. OCCASION FOR THIS REPORT.  (Check Appropriate box)
   - Quarterly Report
   - Final Report

4. PERIOD COVERED FROM  
   (Day, Month, Year)  
   TO  
   (Day, Month, Year)  
   MONTHS

5. PERIODS OF NONAVAILABILITY  
   (15 days or more)  
   (Explain)

6. DUTY ASSIGNMENTS DURING PERIOD COVERED.  
   A. REGULAR  (Date, descriptive title, and duty)

   B. ADDITIONAL  (Descriptive title and number of months)

7. OFFICER'S PREFERENCE FOR NEXT ASSIGNMENT  
   (1st choice)  
   (2nd choice)

Section B  (To be completed by rating officer)

8. NAME AND RANK OF RATING OFFICER

9. DUTY ASSIGNMENT

10. DURING THE PERIOD COVERED BY THIS REPORT —  
    YES  NO
    (a) Has the work of this officer been reported on in a commendatory way?  
    (b) Has the work of this officer been reported adversely?  
    (c) Was this officer the subject of any disciplinary action that should be included on his report?  

11. A. ENTRIES ON THIS REPORT ARE BASED ON  
    (Check appropriate box)
    - Daily contact and close observation
    - Frequent observations of this Officer's work.
    - Infrequent observations of this Officer's work.

   B. DAYS LOST DURING PERIOD COVERED BY THIS REPORT
   SICK  
   INJURED  
   INJURED  
   LOD  
   NLOD  
   OTHER
Considering the rated officer reported on in comparison with all other officers of the same rank whose professional abilities are known to you personally, indicate your estimate of this officer by marking "X" in the appropriate box below, or when applicable on the line between categories.

12. PERFORMANCE OF DUTY (Based on Fact)
   (a) REGULAR DUTIES
   (b) ADDITIONAL DUTIES
   (c) ADMINISTRATIVE DUTIES
   (d) SUPERVISION OF SUBORDINATES / OFFICERS
   (e) HANDLING CITIZENS
   (f) EVALUATION (Marking) OF SUBORDINATES
   (g) TRAINING PERSONNEL
   (h) TACTICAL HANDLING OF OFFICERS

13. TO WHAT DEGREE HAS HE EXHIBITED THE FOLLOWING:
   (a) ENDURANCE (Physical and mental ability for carrying on under fatiguing conditions)
   (b) PERSONAL APPEARANCE (The traits of habitually appearing neat, smart, and well-groomed in uniform or civilian attire)
   (c) DIGNITY OF DEMEANOR (The qualities of attitude, manners and bearing)
   (d) ATTENTION TO DUTY (Industry, the trait of working thoroughly and conscientiously)
   (e) COOPERATION (The faculty of working in harmony with others, sworn and civilian)
   (f) INITIATIVE (The trait of taking necessary or appropriate action on own responsibility)
   (g) JUDGEMENT (The ability to think clearly and arrive at logical conclusions)
   (h) PRESENCE OF MIND (The ability to think and act promptly and effectively in an unexpected emergency or under great strain)
   (i) FORCE (The faculty of carrying out with energy and resolution that which is believed to be reasonable, right or duty)
   (j) LEADERSHIP (The capacity to direct, control, and influence others and still maintain high morale)
   (k) LOYALTY (The quality of rendering enlightened, faithful and unswerving allegiance to the Department and to professional law enforcement)
   (l) ECONOMY IN MANAGEMENT (Effective utilization of men, money and material)
14. Considering the possible requirement of service during extreme emergencies or crisis situations, indicate your attitude toward having this officer under your command.

Would you: NOT OBSERVED PREFER NOT TO HAVE BE WILLING TO HAVE BE GLAD TO HAVE PARTICULARLY DESIRE TO HAVE

☐ ☐ ☐ ☐ ☐

15. Indicate your estimate of this officer's "General Value to the Department" by marking "X" in the appropriate box.

NOT OBSERVED UNSATISFACTORY IMPROVEMENT AVERAGE ABOVE AVERAGE EXCELLENT OUTSTANDING

☐ ☐ ☐ ☐ ☐ ☐ ☐

Section D (To be completed by rating officer in pen and ink). (Record additional comments that would further classify the rated officer's performance and qualifications. This space must not be left blank).

Section E (To be completed by rating officer)

I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without bias.

(Signature of rating officer)

(Duty assignment) (Date)

Section F (To be completed by rated officer)

I have seen this completed report. (Check one)

☐ I HAVE NO STATEMENT TO MAKE

☐ I HAVE ATTACHED A STATEMENT

(Signature of Rated Officer) (Date)

Section G (To be completed by reviewing officer)

SIGNATURE OF REVIEWING OFFICER RANK S.S.N.

DISTRICT/SECTION COMMANDER INITIALS CHIEF INITIALS

DEPUTY CHIEF/DIRECTOR INITIALS DEPUTY COMMISSIONER INITIALS
|------|------|---------------|-----------------|--------------|----------|------------------|-------------|-----------------|------------|----------------|------------|-------------|-----------------|---------------|-----------------|--------------|----------------|-------------|----------------|-------------|----------------|----------------|--------------|---------------|-------------|--------------|--------------|----------------|----------------|----------------|---------------|
NOTES

5 Ibid.
6 Ibid.
7 Baltimore City State’s Attorney, Annual Statistical Report (Maryland, 2002- 2006)
9 Ibid.
10 Based on independent observations of the Charging Room at BCBIF on November 30, 2005 and February 9, 2006.
12 David M. Parrish, letter to the Honorable Mary Ann Saar, Secretary of the Maryland Department of Public Safety and Correctional Services, Towson, MD, 21 October 2005.
13 Ibid.
17 Ibid.
18 Anonymous, memo to district officers, Baltimore City Police Department, Baltimore, 18 October 2006.
22 For a depiction of this process, see Appendix A.
24 Ibid., 225
25 Ibid., 225
26 Ibid.
30 Ibid.
33 The Durbin-Watson statistic of 1.78 indicates the absence of statistically significant autocorrelation for the 11 explanatory variables and 60 observations.
CompStat is a law enforcement program in Baltimore City whereby the BPD central command reviews crime trends and critiques each District’s performance based on statistics gathered on a regular basis. The purpose of these meetings is to focus BPD attention and resources in the areas of greatest need, whether geographically or according to crime type and to identify shortcomings in enforcement strategies.


The U.S. Government Accountability Office offers the following distinction between outputs and outcomes. Outputs are “the direct products and services delivered by a program” whereas outcomes are “the results of those products and services.” United States Governmental Accountability Office, Performance Measurement and Evaluation: Definitions and Evaluation (Washington, D.C.: U.S.G.A.O., 1998) 3.


CURRICULUM VITAE

Sarah Brannen was born in Poughkeepsie, New York and moved to Manhattan to attend Barnard College. She graduated with a Bachelor of Arts in Political Science in 2001. Soon after, she began working for the New York City Civilian Complaint Review Board as an investigator of police misconduct within the NYPD. After several years investigating cases and supervising investigations, she moved to Baltimore, MD to attend the Johns Hopkins University where she will receive her Master of Arts in Public Policy.