

LOCAL CRIME & PUBLIC SAFETY

D.C. U.S. attorney declined to prosecute 67% of those arrested. Here's why.

'I can promise you, it's not MPD holding the bag on this,' D.C. Police Chief Robert J. Contee III said. 'That's B.S.'



By [Keith L. Alexander](#)

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As the District grapples with rising crime and increasing attention from federal lawmakers over public safety issues, a startling statistic emerged in recent weeks.

Last year, federal prosecutors in the District's U.S. attorney's office chose not to prosecute 67 percent of those arrested by police officers in cases that would have been tried in D.C. Superior Court.

That figure, first reported earlier this month on the substack [DC Crime Facts](#), nearly doubled from 2015, when prosecutors in the U.S. attorney's office declined to prosecute 35 percent of such cases.

The increased number of declined cases has sparked frustration among city leaders who are already under a national microscope from members of Congress for their crime fighting efforts. The House Committee on Oversight and Accountability is scheduled to hold a hearing Wednesday where Republicans will examine management of D.C., particularly on crime and safety. Earlier this month, the Senate joined the House in [voting to reject an overhaul of the city's criminal code](#), in part because it [called for reducing penalties for certain crimes, including carjacking](#).

In an interview, Matthew M. Graves, the Biden-appointed U.S. attorney for the District, said his office was continuing to prosecute the vast majority of violent felonies. He said prosecutors were declining less serious cases for myriad reasons, including that the city's crime lab remained unaccredited and police body-camera footage was subjecting arrests to more scrutiny.

Robert J. Contee III, the District's police chief, said his officers were not to blame.

"I can promise you, it's not MPD holding the bag on this," Contee said. "That's B.S."

The U.S. attorney's office in the District is unique among federal prosecutor shops across the country. It prosecutes both local, D.C.-based crimes in Superior Court, as any local prosecutor or district attorney's office would, as well as federal cases in U.S. District Court.

But even compared to a local prosecutor's office, a 67 percent declination rate is high. For example, in Wayne County, Mich., which includes Detroit, the prosecutor's office reported declining 33 percent of its cases last year. Prosecutors in Philadelphia declined 4 percent and prosecutors in Cook County, Ill., which includes Chicago, declined 14 percent, according to data from those offices.

"Of course we are concerned," Contee said. "We believe every person we arrest should be off the streets."

Graves said the declinations are mostly coming after arrests in cases such as gun possession, drug possession and misdemeanors — not in violent crimes. He said his office last year prosecuted 87.9 percent of arrests made in homicides, armed carjackings, assaults with intent to kill and first-degree sexual assault cases. According to figures provided to The Washington Post, that percentage is higher than the 85.7 prosecuted cases in 2021, but down from 95.6 percent of prosecuted cases in 2018.

"The bottom line is that it creates the impression that this is an across-the-board decrease in the number of cases we are bringing. That is simply not true," Graves said.

Because the D.C. Department of Forensic Sciences lost its accreditation in 2021, prosecutors have to pay to have evidence for DNA, firearm and fingerprint analysis sent to outside laboratories, Graves said. Prosecutors, he said, prioritize doing so for violent offenses.

"We are now entering year three of DFS being shut down without any clear plan of coming back online," Graves said. "We have to prioritize violent felonies and make sure we are doing the forensic testing for those cases. Our office is often bearing the cost for this analysis."

Prosecutors in the D.C. Office of the Attorney General, which handles juvenile crime and most misdemeanors in the District, and similarly has had to use outside laboratories, declined to prosecute just 26 percent of its cases last year, according to data from that office.

Graves said footage from body cameras has also increased the number of arrests prosecutors walk away from, as they review at an earlier stage whether police have gathered enough evidence to support a conviction.

"Since 2019, we have been taking more time at arrest to determine if we are going to file charges. With body-worn camera and the proliferation of surveillance cameras, we have more information at the charging stage to assess the strength of the evidence we would be presenting later to courts and juries," he said.

Contee took aim at a part of a law that the D.C. Council passed in 2020 preventing officers from reviewing their body cameras before filling out charging documents.

The law, which congressional Republicans have threatened to try to block, means officers now have to rely on their memories and notes when filling out arrest warrants, and prosecutors might not move forward on a case if details in the warrant don't match the footage, officials said.

Contee said prosecutors, too, are often reluctant to move forward with cases if there are concerns about a witness's background.

"But those are often the very individuals who witness such crimes. We can't pick our witnesses, especially in neighborhoods where these crimes are happening," he said. "I wish we could have Boy and Girl Scouts as witnesses, but that's often just not the case."

Deborah Sines, a retired federal homicide prosecutor in the District, said the U.S. attorney's office is hampered not only by "poor police work," but also by prosecutors and supervisors "who only want to try slam-dunk cases."

"I would get angry when I would see defendants in homicide cases in front of me who had previous gun possession charges that a prosecutor had previously dismissed," Sines said. "Some cases are going to be challenging, yes. But that's your job. Do your job. Don't just dismiss it just because the evidence is not everything you want it to be or think it should be."

Graves said the office temporarily had resources stretched thin in recent years, though some of those problems had abated. After the Jan. 6, 2021, attack on the U.S. Capitol, he said his office temporarily pulled about 15 prosecutors and staffers from D.C. Superior Court cases to focus on prosecuting the federal cases. Graves said all of those staffers have since returned to D.C. Superior Court side or their positions have been filled by other prosecutors.

As of Tuesday, overall crime was up in D.C. by 23 percent over the same time last year, fueled in large part by a spike in motor vehicle thefts, according to D.C. police data. Homicides were up 19 percent, though violent crime was even with last year because of drops in robberies and assaults with a deadly weapon.

CORRECTION

An earlier version of this article incorrectly included burglaries among the categories of cases that officials said make up most of the declinations. The article has been corrected.