

Does Prosecutor Partisanship Exacerbate the Racial Charging Gap?

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1. Introduction

Protesters gather in Rochester streets after announcement that no officers will be charged in Daniel Prude's death

By Christina Mavroulis and Taylor Romine, CNN
Updated 12:14 PM ET, Wed February 24, 2021

Rochester Mayor Suspends Police Officers Who Pepper-Sprayed 9-Year-Old Girl

February 1, 2021 · 3:11 PM ET

BRACKTON BOOKER

NEWS

Call for reform arrives at Monroe County District Attorney Sandra Doorley's front yard

Justin Murphy Rochester Democrat and Chronicle

Published 1:20 p.m. ET July 3, 2020 | Updated 3:01 p.m. ET July 3, 2020

PROTESTS

Protesters Lead Car Parade to Monroe County District Attorney's Home

BY PHILLIP BOUDREAU | ROCHESTER
PUBLISHED 10:59 PM ET OCT. 02, 2020

District attorney's race is about justice

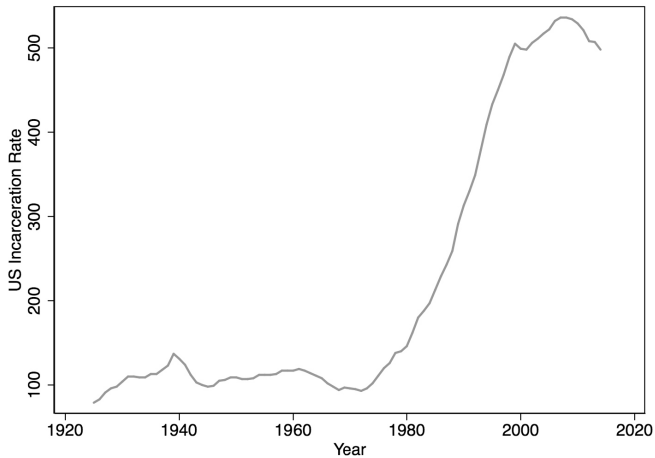
By JEREMY MOULE · OCT 2, 2019



Introduction

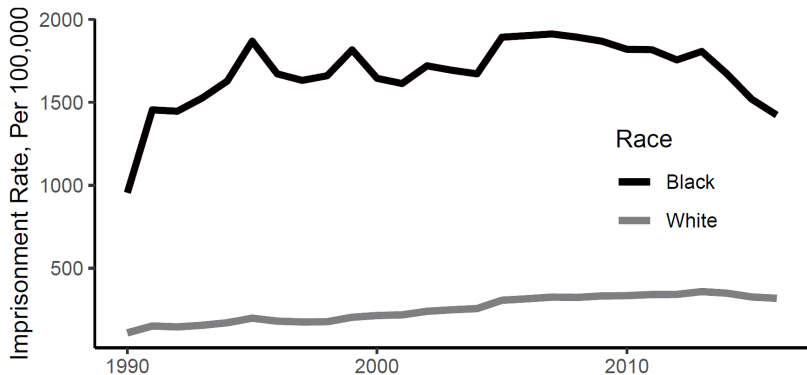
To what extent do electoral selection and incentives influence how local prosecutors treat defendants from different races?

Introduction



Source: Pfaff 2017

Introduction



Source: Incarceration Trends Dataset. Includes only population housed in state-run facilities.

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1. Insufficient variation in existing studies at officeholder level (or within officeholder)
2. Non-random assignment of partisanship
3. Difficulty distinguishing role of police, prosecutors and judges

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Leverage electoral RDD to examine the causal impact of partisanship on prosecutor behavior, by defendant race.

Exploit variation in electoral calendar and within-district geographic variation to uncover incentive effects:

- critical to understand viability of institutional remedies.

Preview of Findings

1. Republican prosecutors seek tougher charges than their Democratic counterparts.
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1. Republican prosecutors seek tougher charges than their Democratic counterparts.
 - Partisan disparity concentrated in charging of Black defendants.
2. This finding cannot be explained by preferences alone:
 - A. Partisan difference increases over electoral calendar, at different rates depending on defendant race.
 - B. Racial charging disparities between parties most pronounced for Democratic/minority neighborhoods.

2. Institutional Background

Local Criminal Prosecutions in the U.S.

Prosecutors do not face formal oversight by higher offices:

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- Proliferation of criminal codes increased discretion
- Although decision to prosecute cannot be based on race (Oyler v. Boles, 368 U.S. 448, 456)...

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Competing explanations:

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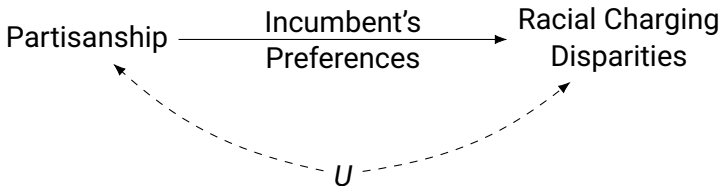
In part, due to disparate treatment by prosecutors (Rehavi and Starr, 2014; Crow and Johnson, 2008; Berdejo, 2018; Sloan 2019)

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2. Conservative electoral strategy in post Civil-Rights Era (*Flamm 2005; Lowndes 2008; Mendelberg 2001; Weaver 2007; Becket and Francis 2021*)

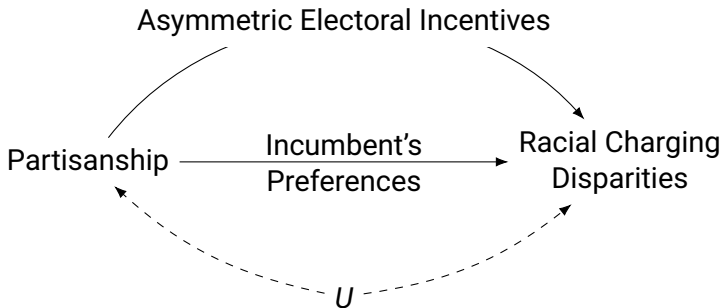
3. Partisanship & Racial Charging Gap

Electoral Selection



Confounder? Or partisan differences in prosecutor preferences about punishment and/or racial bias?

Electoral Selection and Incentives



Partisan differences in benefits or costs of charging?

Electoral Benefits of Punitive Charging

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- Incentives for punitiveness may vary across parties.
 - Electorate may weight under-punishment differently by race

Electoral Costs of Punitive Charging

Social costs of charging:

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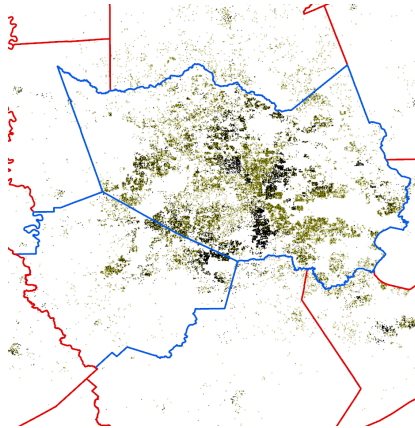
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Incentives to target prosecutions in areas that are not in support coalitions (*e.g. Holland 2014*)

Racial residential segregation



Black defendants (black dots) and white defendants (yellow dots) in Harris County, TX.

Why do mechanisms matter?

| Mechanism | | Implied policy recommendation |
|----------------------|---------------|--------------------------------|
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| 3. Partisan differences in electoral costs | ⇒ | Redesign political boundaries |

4. Data & Empirical Approach

The States

| | Texas | Virginia | Washington |
|---------------------------------|-----------|-------------------|-------------------|
| A. Institutional Setting | | | |
| Incarceration ranking | 6th | 16th | 37th |
| Primary system | Partisan | Partisan | Top-two |
| DA responsibilities | Felony | Felony & Misd. | Felony & Misd. |
| B. Charging Data | | | |
| Period | 1980-2020 | 2000-2020 | 2000-2020 |
| Arrest charges | Y | N | N |
| Decision to prosecute | Y | N | N |
| Indictment charges | Y | Y | Y |

DA Elections: Descriptive Statistics

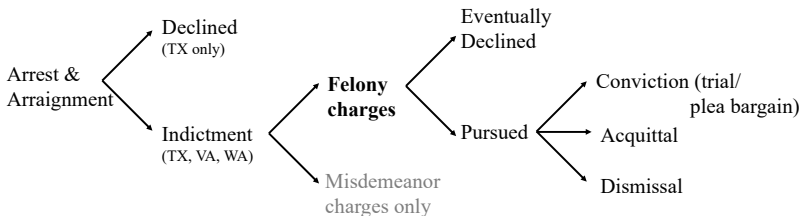
DA Elections: Descriptive Statistics

| | Never Contested | Contested at least once |
|------------------|--------------------|----------------------------|
| Republican wins | 0.425 (0.418) | 0.530 (0.346) |
| Total population | 0.057m (0.107m) | 0.176m (0.462m) |

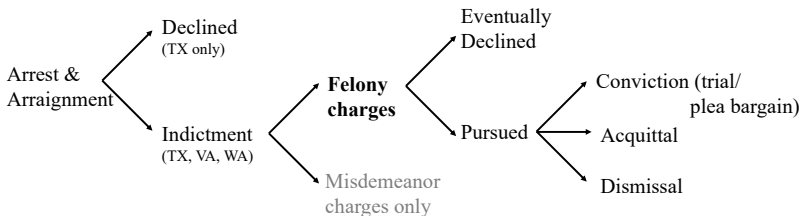
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| Total population | 0.057m (0.107m) | 0.176m (0.462m) |
| Total prison pop. | 350.608 (498.187) | 1,058.285 (3,201.216) |
| Black prison pop. | 58.9 (131.918) | 345.695 (1,625.281) |
| Num. of felony cases | 1.87m | 3.85m |
| Num. of districts | 182 | 142 |

Criminal Records

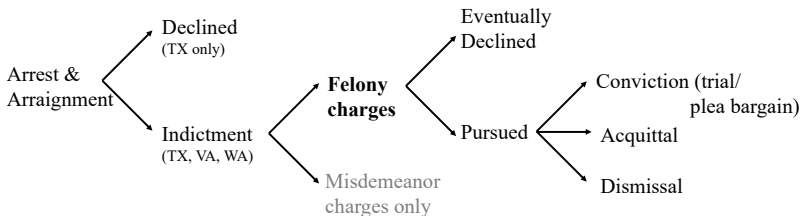


Criminal Records



Aggregated to 5.9 million felony cases.

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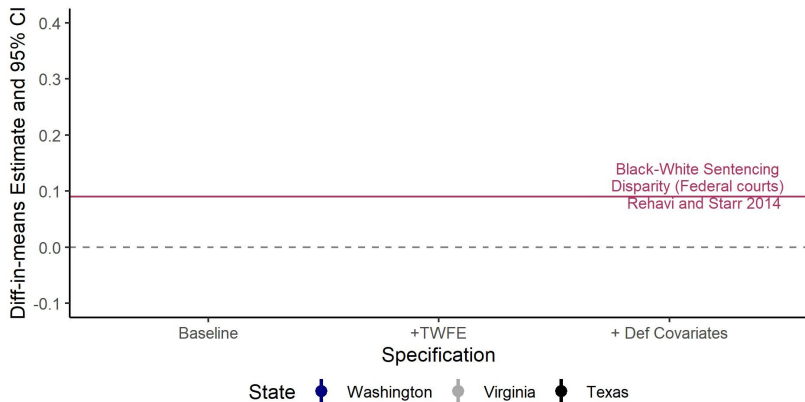


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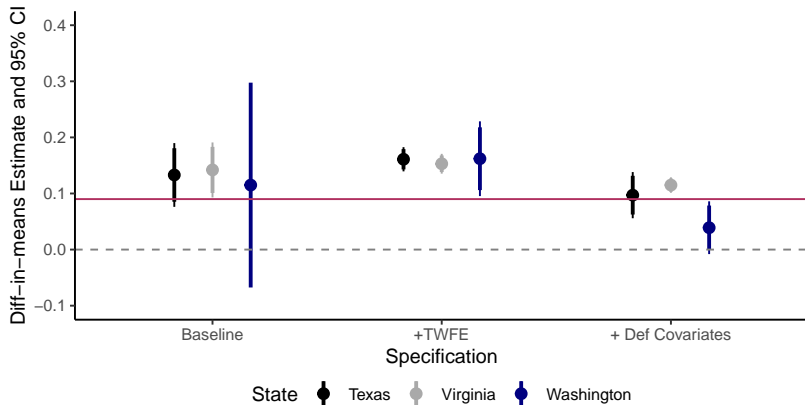
Primary outcome: Charge severity (maximum possible sentence) constructed using state- by-state functions of

- indicted charges and enhancements;
- defendant criminal history.

Racial Disparities in Charging



Racial Disparities in Charging



Challenges to Inference

1. Confounding differences between jurisdictions that elect Democratic and Republican district attorneys.

Two-way fixed effects estimates

Empirical Approach

1. Baseline local-linear regression model:

$$\log(y_{ijst}) = \beta_0 + \beta_1 \mathbb{1}(r_{jst} > 0.5) + f(r_{jst} - 0.5) + \alpha_{st} + \epsilon_{ijst}$$

- y_{ijst} is an indictment outcome; r_{jst} is Republican vote share.

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- y_{ijst} is an indictment outcome; r_{jst} is Republican vote share.
- Unit of analysis is case, so cluster at treatment assignment (election) level
- Estimated by defendant race throughout.
 - Adjust for defendant sex, prior criminal history, and crime type (whether violent, drug, property, or other)

Challenges to Inference

1. Confounding differences between jurisdictions that elect Democratic and Republican district attorneys.
2. Sample selection bias: estimates may reflect changes in case composition due to strategic behavior by police.

Selection into Arrest: Intuition

Police face an opportunity cost for making arrest.

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RDD Effect on Arrest Outcomes

| | Estimate | Std. Err. | Eff. Obs | Clusters |
|----------------------------------|----------|-----------|----------|----------|
| <i>A. Arrest Characteristics</i> | | | | |
| (log) Num. of Arrests (TX) | 0.234 | (1.015) | 85 | 85 |
| (log) Num. of Traffic Stops | 0.339 | (1.353) | 75 | 75 |
| (log) Arrest Severity (TX) | -0.107 | (0.071) | 0.594m | 63 |
| Pr(Arrest Traffic Stop) | -0.002 | (0.004) | 3.494m | 77 |

Traffic stops sourced from the Stanford Open Policing project.

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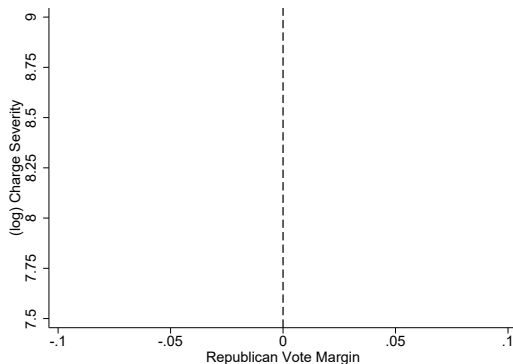
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But how large is the downward bias? And might it vary by race?

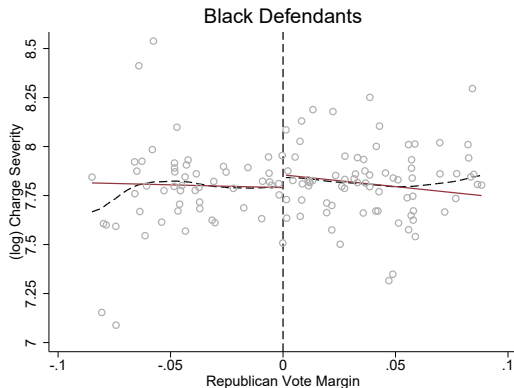
5. Main Results

Graphical Evidence



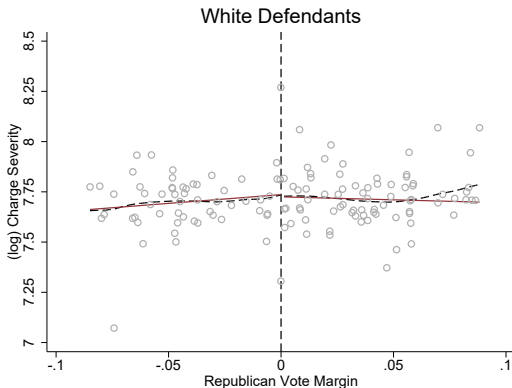
Binned means of (logged) charge severity. A local-linear (maroon) and local polynomial smoother (grey) are fit on either side of the Republican vote margin cutoff.

Graphical Evidence: Black Defendants



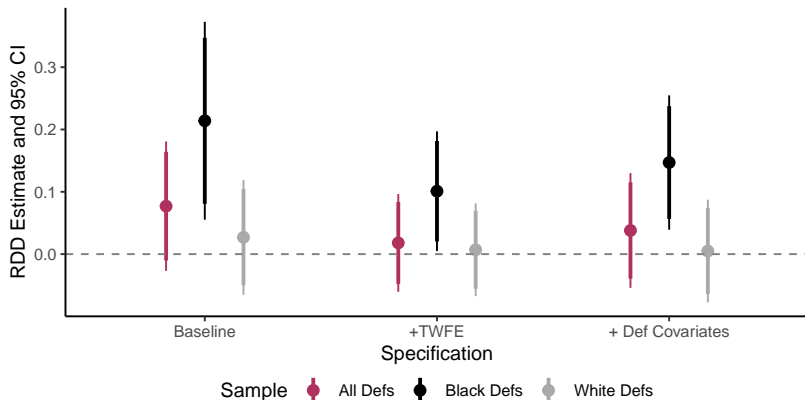
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Graphical Evidence: White Defendants



Binned means of (logged) charge severity. A local-linear (maroon) and local polynomial smoother (grey) are fit on either side of the Republican vote margin cutoff.

Local-linear Estimates



The dependent variable is (logged) indictment charge severity, adjusted by state-and year- fixed effects. Defendant characteristics include dummies for prior criminal history, crime type (violent, property, or drug) and sex. Standard errors are clustered at the election level.

Robustness to alternative specifications

Effect on indictment severity for Black defendants robust to:

1. Varying bandwidth used for estimation
2. Clustering on district level
3. Alternative samples and outcomes
4. Null effect for White defs. persists under all robustness checks.

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Partisan differences appear largest in low-level drug and property crimes.

Heterogeneity by Crime Type

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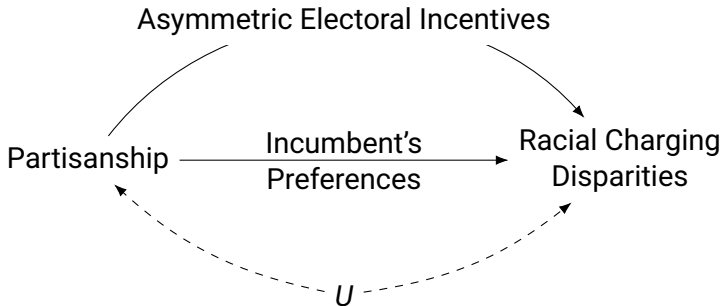
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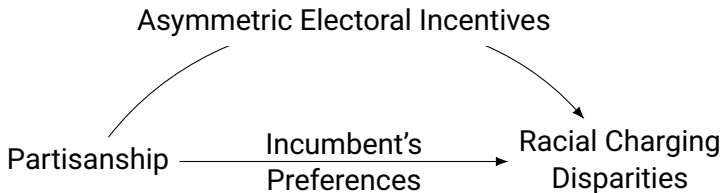
Similar partisan differences appear on prison admissions (estimated using a larger sample). **Effect on Prison Admissions**

6. Isolating Incentive Effects

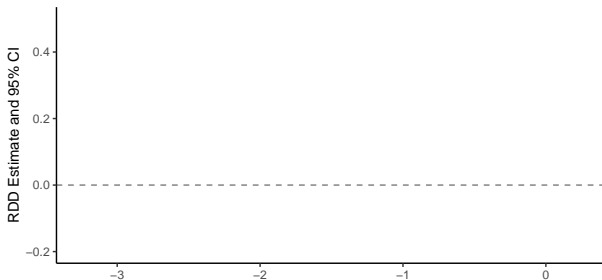
Electoral Selection and Incentives



RDD removes U path but does not isolate the mechanism.

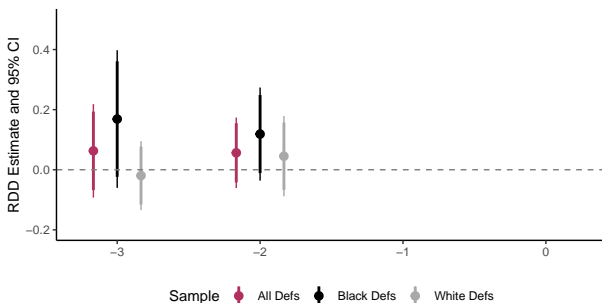


6a. Electoral Benefits of Punitive Charging



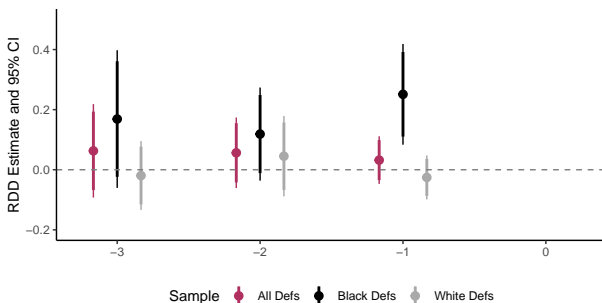
Each point corresponds to the RDD effect on (logged) indictment charge severity. All estimates adjust for state-by-year-fixed effects. Standard errors are clustered at the election level.

Proximity to Reelection



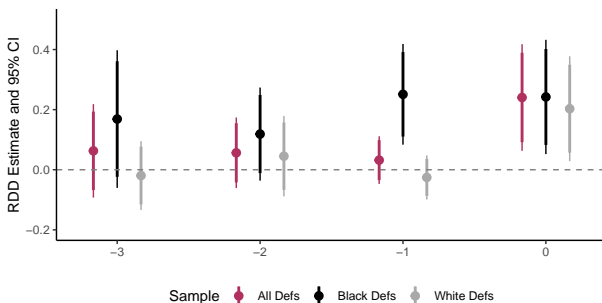
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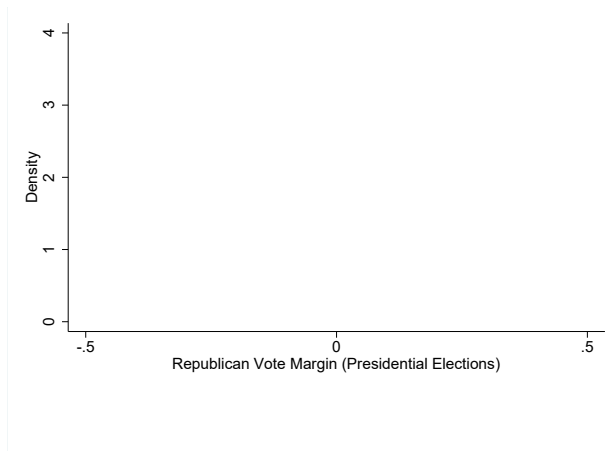
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6b. Electoral Costs of Punitive Charging

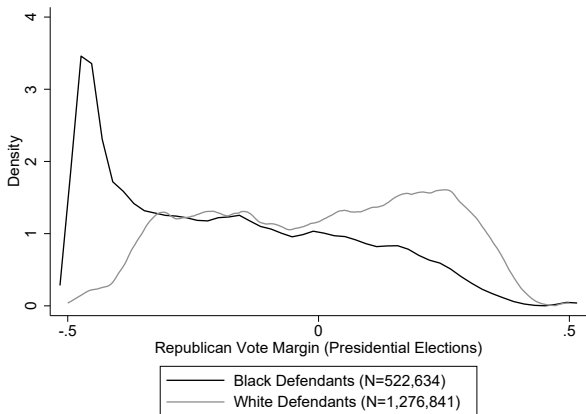
Necessary conditions:

- A greater proportion of minorities reside in areas where Republicans are not competitive (majority D-precincts).

Local partisan context



Black defendants tend to live in overwhelmingly Democrat precincts.

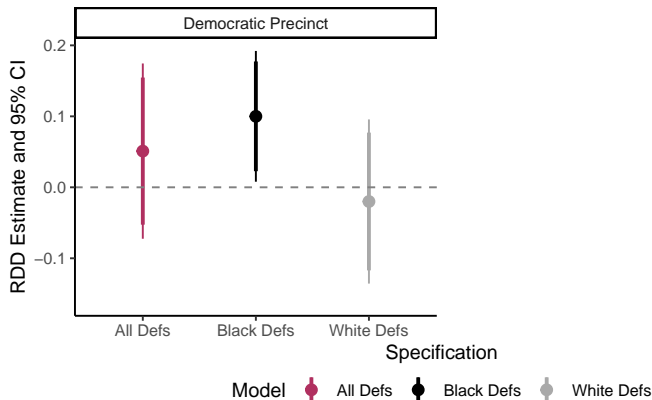


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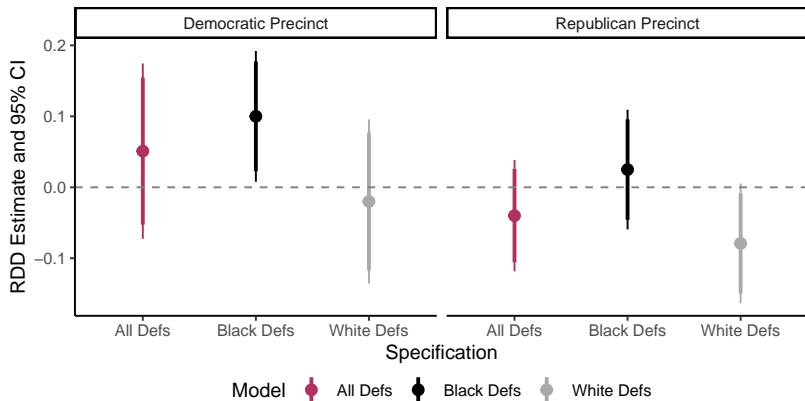
Necessary conditions:

- A greater proportion of minorities reside in areas where Republicans are not competitive (majority D-precincts).
- Partisan difference larger in misaligned precincts.

Heterogeneous Effects by Partisan Context



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7. Discussion

Next steps: Substantive Importance

Incarceration rate for Black males is 5.7 times higher than for non-Hispanic White males (*Carson, 2020*).

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Incarceration rate for Black males is 5.7 times higher than for non-Hispanic White males (*Carson, 2020*).

How much of this disparity is attributable to prosecutor partisanship?

Little's law (1961): steady state number of prisoners is equal to the admissions rate times the expected sentence (by race):

- Disaggregated by partisanship of prosecutor.

Discussion

Partisan differences in charging decisions:

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Growing evidence that incentive effects matter:

- “Incentive Effects of Recall Elections” (Gordon and Yntiso 2022, *Journal of Politics*)
- “Judicial Accountability and Racial Disparity in Criminal Appeals” (Harvey and Yntiso 2021, *Journal of Legal Studies*)

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Partisan differences in electoral costs:

- officeholders responsive to geographic variation in partisan incentives;

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Partisan differences in electoral costs:

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Next steps:

- “Targeting Punishment: Political Geography and Criminal Sentencing in Texas” (Yntiso 2021)
- “Shaping the (S)electorate” (Simpson and Yntiso 2022)

Thank you!

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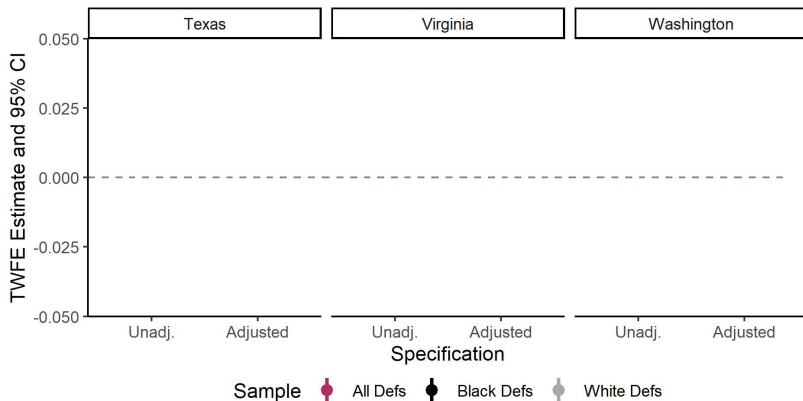
Homepage: <http://sidakyntiso.com>

Appendix

DA Elections: Descriptive Statistics

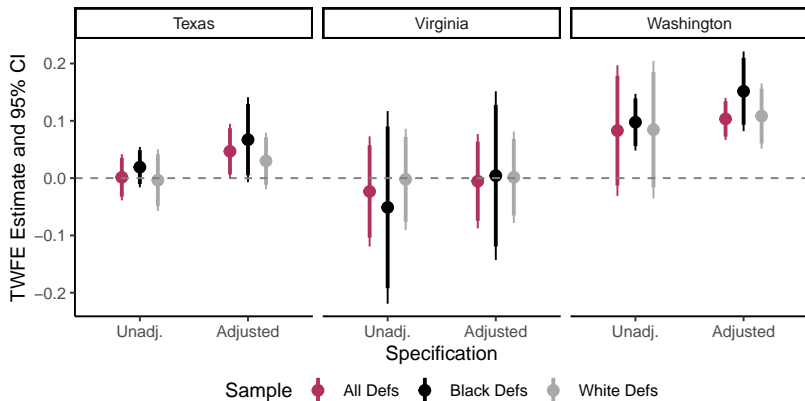
| | Uncontested | Contested |
|----------------------|------------------------|---------------------------|
| Republican wins | 0.496 (0.496) | 0.565 (0.496) |
| Total population | 0.091m (0.203m) | 0.341m (0.800m) |
| Total prison pop. | 528.374 (1,167.007) | 2,246.135 (5,782.0127) |
| Black prison pop. | 115.328 (514.882) | 916.519 (3009.637) |
| Num. of felony cases | 3.78m | 1.94m |
| Num. of elections | 1,760 | 260 |

Descriptive Evidence of Partisan Effects



Two-way fixed effects estimates. Sample restricted to contested elections. Robust standard errors clustered at district level.

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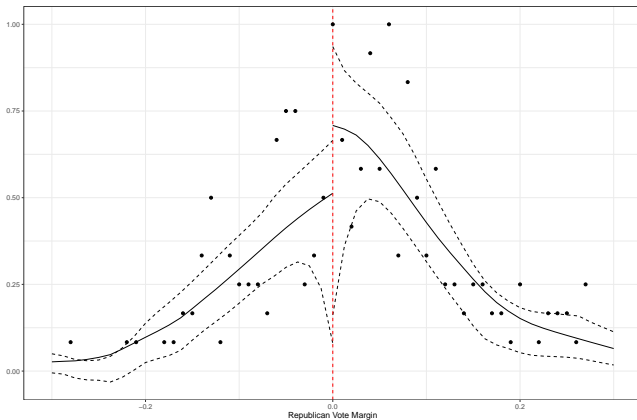


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Validity of Research Design: Balance

| | Estimate | Std. Err. | Eff. Obs | Clusters |
|-------------------------------------|----------|-----------|----------|----------|
| <i>A. Pretreatment Covariates</i> | | | | |
| Black pop. share | 0.053 | (0.069) | 160 | 160 |
| (log) Total pop. | 0.133 | (0.560) | 185 | 185 |
| Rep. Vote Share _{t-1} | 0.014 | (0.039) | 44 | 44 |
| <i>B. Defendant Characteristics</i> | | | | |
| Female | 0.003 | (0.011) | 0.778m | 147 |
| Prior Criminal History | 0.041 | (0.060) | 1.308m | 165 |

Validity of Research Design: Sorting



Selection into Indictment: Estimands

Let I_i denote the indictment decision, with potential outcomes defined accordingly.

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1. **The extensive margin:** RDD effect on the indictment decision ($E[I_i(1) - I_i(0)|r_{jt} = 0.5]$), where r_{jt} is the running variable.

Selection into Indictment: Estimands

Let I_i denote the indictment decision, with potential outcomes defined accordingly.

1. **The extensive margin:** RDD effect on the indictment decision ($E[I_i(1) - I_i(0)|r_{jt} = 0.5]$), where r_{jt} is the running variable.
2. **The intensive margin:** RDD effect on charge severity, regardless of changes in the composition of cases ($E[Y_i(1)|I_i(1) = 1, r_{jt} = 0.5] - E[Y_i(0)|I_i(0) = 1, r_{jt} = 0.5]$; see Dong 2019)

Selection into Arrest: Estimation

Consider effect on indictment decision as risk ratio:

$$RR_{naive} = \frac{E[Y|R = 1, A = 1]}{\underbrace{E[Y|R = 0, A = 1]}_{\text{naive risk ratio}}}$$

Selection into Arrest: Estimation

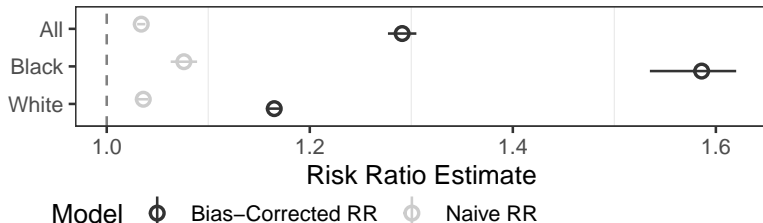
Consider effect on indictment decision as risk ratio:

$$RR_{naive} = \frac{E[Y|R = 1, A = 1]}{\underbrace{E[Y|R = 0, A = 1]}_{\text{naive risk ratio}}}$$

Causal risk ratio approach (*see by Zhao et al. 2020*)

$$\begin{aligned} RR_{causal} &= \frac{E[Y_i(1)]}{E[Y_i(0)]} \\ &= \underbrace{\frac{E[Y|R = 1, A = 1]}{E[Y|R = 0, A = 1]}}_{\text{naive risk ratio}} \underbrace{\frac{Pr(R = 1|A = 1)}{Pr(R = 0|A = 1)} \bigg/ \frac{Pr(R = 1)}{Pr(R = 0)}}_{\text{bias factor}} \end{aligned}$$

Risk Ratio Results: Texas Sample



Estimates adjust for two-way FE and defendant covariates. Bootstrapped 95% confidence intervals.

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Identifying Assumption

Suppose that conditional on arrest severity, the probability of inclusion into the arrest sample is smooth at the threshold.

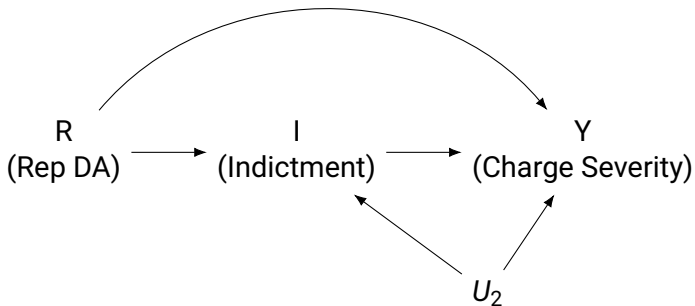
Identifying Assumption

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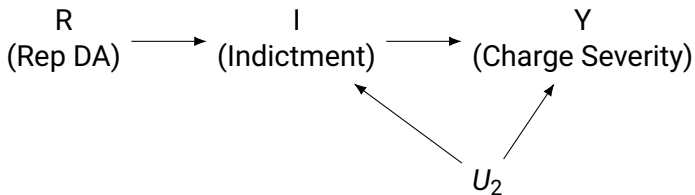
To test for indirect effect of party, suppose no direct:

- partisanship affects charge severity only through the indictment decision.

Complete DAG



Visualizing Assumption



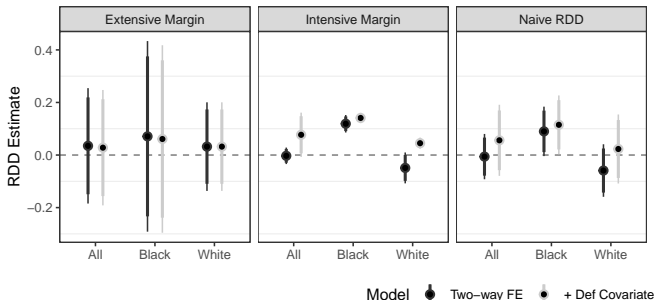
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Estimation

The intensive margin is point identified by with a fuzzy RD estimator using $1\{r \geq 0\} \times Y \times I$ as the outcome and $I \times 1\{r \geq 0\}$ as the treatment e.g. from the right hand side:

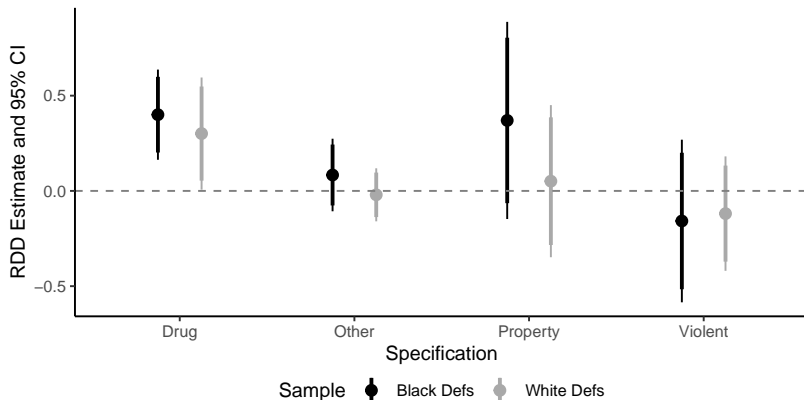
$$I \times Y \times 1\{r \geq 0\} = \beta_0 + \beta_1 r + \beta_2 (I \times \widehat{1\{r \geq 0\}}) + \epsilon_2$$
$$I \times 1\{r \geq 0\} = \alpha_0 + \alpha_1 r + \alpha_2 (1\{r \geq 0\}) + \epsilon_1$$

Selection into Indictment



Estimates adjust for the severity of the underlying arrest offense. Standard errors are clustered at the election level in the first two panels. Bootstrapped 95% confidence intervals reported in the third panel.

Heterogeneity by Crime Type



The dependent variable is (logged) indictment charge severity, adjusted by state-and year- fixed effects. Defendant characteristics include dummies for prior criminal history, and sex. Standard errors are clustered at the election level.

Effect on Prison Admissions

Incarceration Trends Dataset:

- Prison admissions (by race) by county of commitment
- Assembled by Vera Institute of Justice
- Covers all counties, for the period 1983-2018

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Final dataset:

- Unit: county - election year dataset
- Outcome, by race: avg. annual new prison admissions

Effect on New Prison Admissions per 100,000, by race

