


# DOES PROSECUTOR PARTISANSHIP EXACERBATE THE RACIAL CHARGING GAP?

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<sup>1</sup>**Slides:** [sidakyntiso.github.io/research.html](https://sidakyntiso.github.io/research.html) 

# 1. Introduction

## Opinion: Eric Garner is proof that we need to reform laws on excessive force



Black Lives Matter activists and other protesters in Harlem on Tuesday. (Craig Ruttle/AP)

By Alvin Bragg

July 31, 2019



Alvin Bragg, a visiting professor and co-director of the Racial Justice Project at New York Law School, was chief deputy New York state attorney general from late 2017 through 2018. He has provided legal advice to the family of Eric Garner.

### Protests Flare in Brooklyn Over Floyd Death as de Blasio Appeals for Calm

Demonstrators stormed the perimeter of Barclays Center, hurling bottles and debris at police officers. The police responded with pepper spray and arrested more than 200 people.



FILED 9:00 p.m.  
04.29.2018

FEATURE

## The People vs. Cy Vance

*Think the Manhattan DA goes easy on the rich? Take a look at how he prosecutes the poor.*

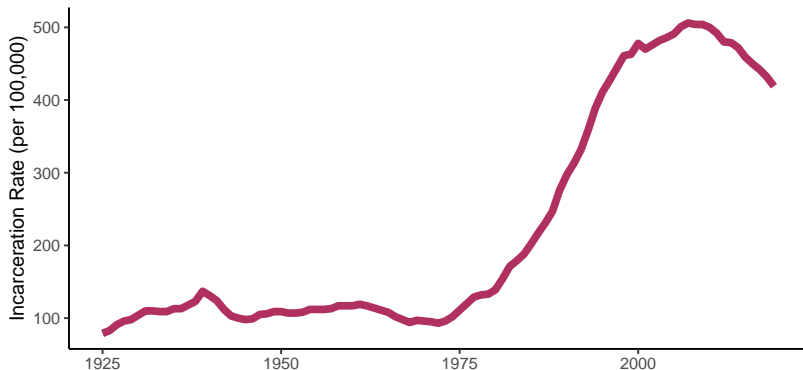


Alvin Bragg, left, and Thomas Kenniff are running for Manhattan district attorney. Andrew Seng for The New York Times, Amir Hansja for The New York Times

# Introduction

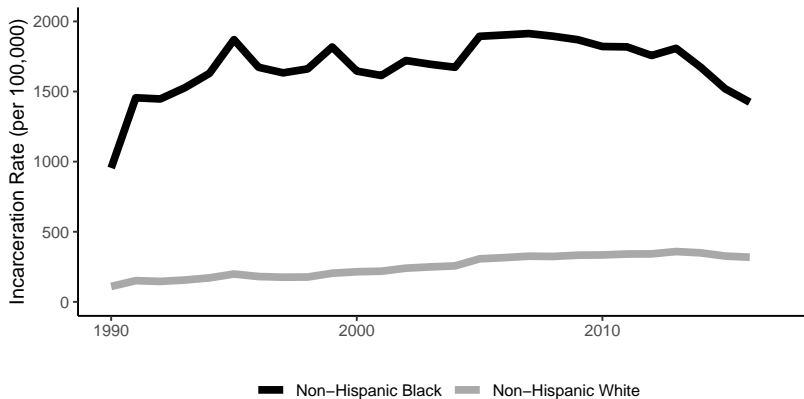
To what extent do electoral selection and incentives influence how local prosecutors treat defendants from different races?

# Introduction



Source: *Sourcebook of Criminal Justice Statistics Online*

# Introduction



*Source: Incarceration Trends Dataset (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

## This Paper

Collect 39 million criminal records from TX, VA and WA.

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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

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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:
  - Partisan difference increases over electoral calendar, at different rates depending on defendant race.
3. Racial charging disparities between parties most pronounced for Democratic/minority neighborhoods.



## 2. Institutional Background

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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)...

## Racial disparities are widespread

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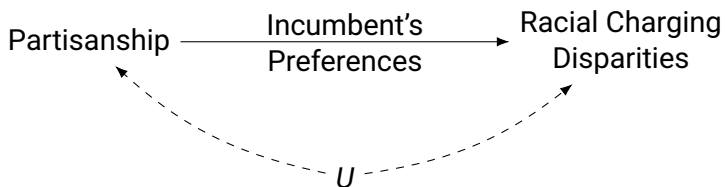
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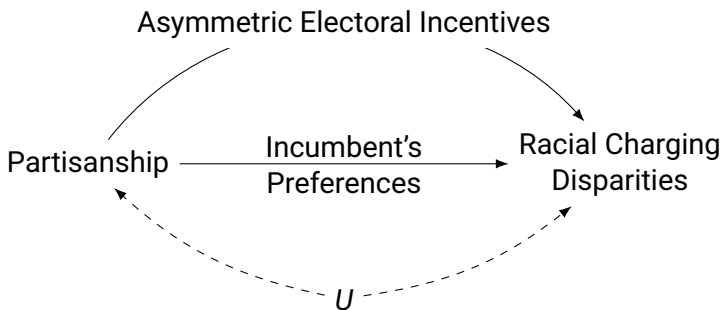
1. Role of racial threat (*Keen and Jacobs 2009; Feigenberg and Miller 2019*)
2. Conservative electoral strategy in post Civil-Rights Era (*Flamm 2005; Lowndes 2008; Mendelberg 2001; Weaver 2007; Becket and Francis 2021*)

### 3. Partisanship & Racial Charging Gap

# Electoral Selection



# Electoral Selection and Incentives



*Incentives: partisan differences in benefits or costs of charging?*

# Electoral Benefits of Punitive Charging

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- Reelection-seeking incumbents will seek to minimize likelihood of well-publicized “errors.” (Gordon and Huber 2004; Bandyopadhyay and McCannon 2014)
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- Incentives for punitiveness may vary across parties.
  - Electorate may weight under-punishment differently by race

# Electoral Costs of Punitive Charging

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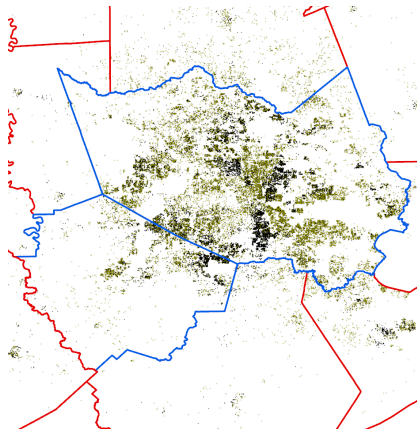
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To extent that social costs carry with them electoral penalties

- 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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Mechanism		Implied policy recommendation
1. Prosecutor tastes	⇒	Elect less biased prosecutors?
2. Partisan differences in reelection concerns	⇒	Insulate officeholders from electoral scrutiny
3. Partisan differences in electoral costs	⇒	Redesign political boundaries



## 4. Data & Empirical Approach

# The States

	Texas	Virginia	Washington
<b>A. Institutional Setting</b>			
Incarceration ranking	6th	16th	37th
Primary system	Partisan	Partisan	Top-two
DA responsibilities	Felony	Felony & Misd.	Felony & Misd.
<b>B. Charging Data</b>			
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

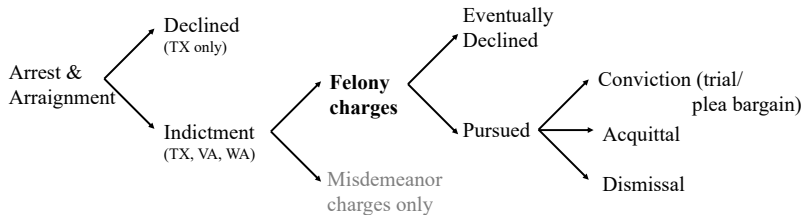
## DA Elections: Descriptive Statistics

	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)

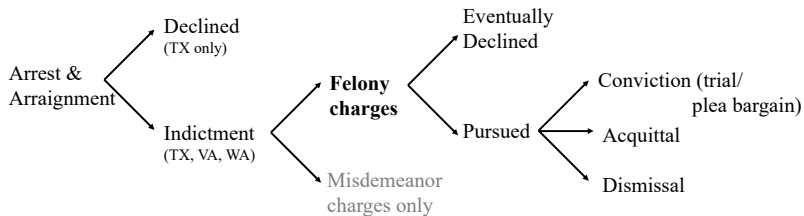
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Total population	0.057m (0.107m)	0.176m (0.462m)
Total prison pop.	350.608 (498.187)	1,058.285 (3,201.216)
Black prison pop.	58.9 (131.918)	345.695 (1,625.281)
Num. of felony cases	1.87m	3.85m
Num. of districts	182	142

# Criminal Records

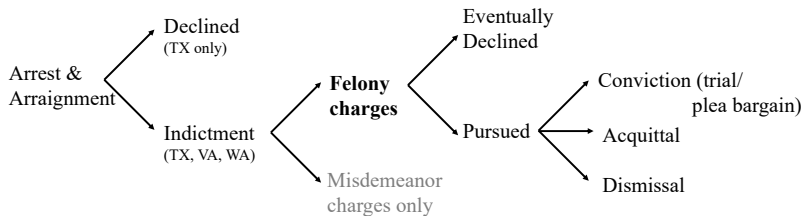


# Criminal Records



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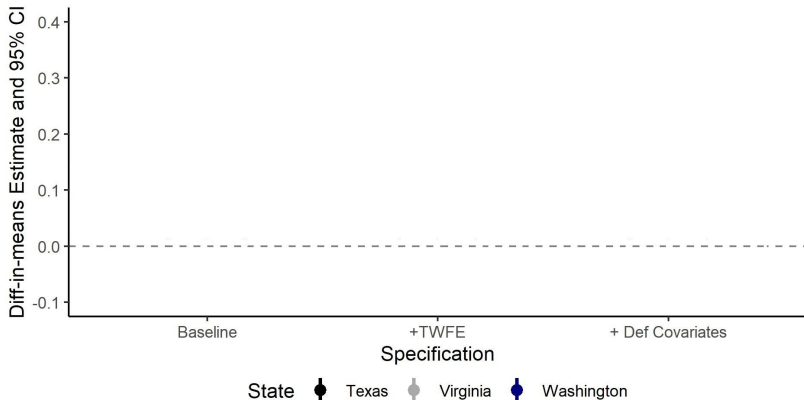
Aggregated to 5.9 million felony cases.

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

- indicted charges and enhancements;
- defendant criminal history.

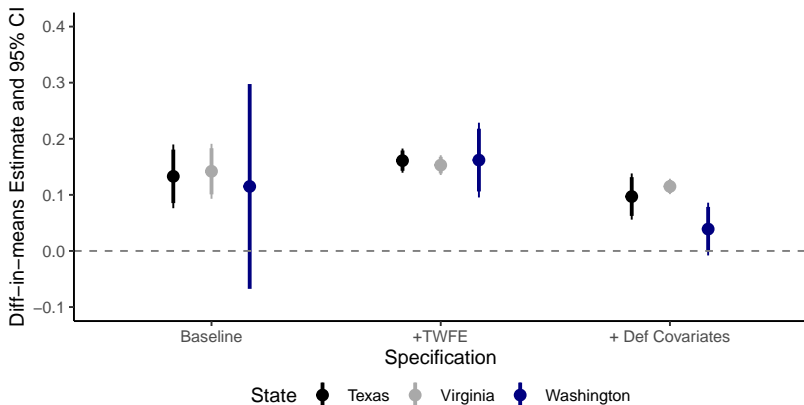


# Racial Disparities in Charging



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# Challenges to Inference

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

Two-way fixed effects estimates

# Empirical Approach

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 charge severity;  $r_{jst}$  is Republican vote share.

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- Unit of analysis is case, so cluster at election level
- Estimated by defendant race throughout.
  - Once disaggregated, need to adjust for sex, prior history, and crime type (whether violent, drug, property, or other)

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2. **Sample selection bias:** estimates may reflect changes in case composition due to strategic behavior by police.



## Selection into Arrest: Intuition

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- Less likely to make arrest when (liberal) prosecutor is unlikely to seek indictment.

## 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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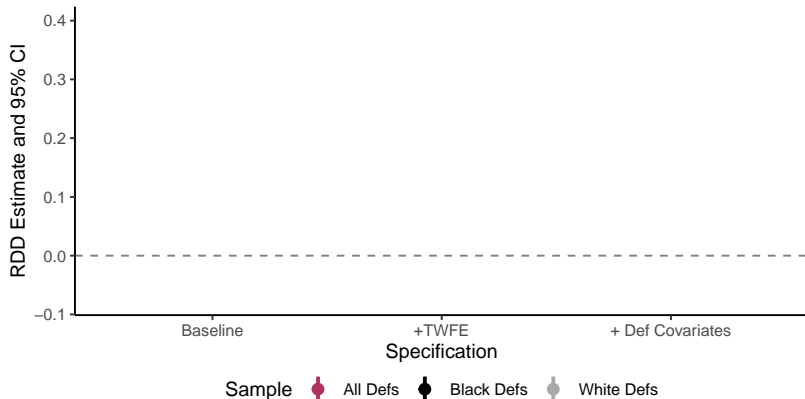
- Less likely to make arrest when (liberal) prosecutor is unlikely to seek indictment.
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But how large is the downward bias? And might it vary by race?

Estimating Selection into Arrest

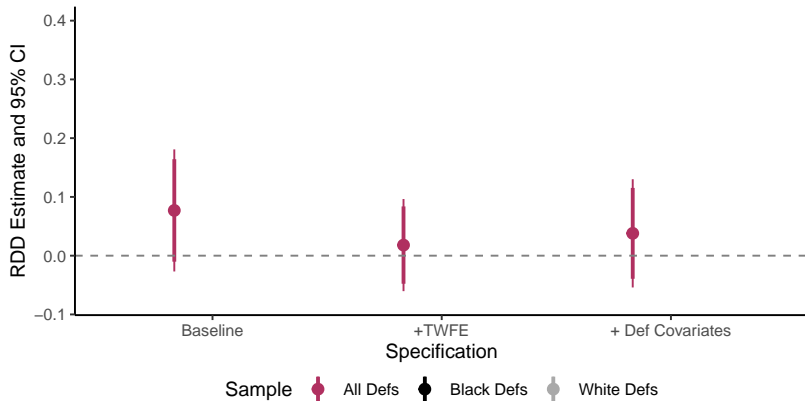
## 5. Main Results

## Local-linear Estimates



*The dependent variable is (logged) charge severity, adjusted by state-and year- fixed effects. Defendant characteristics include prior criminal history, crime type (violent, property, or drug) and sex.*

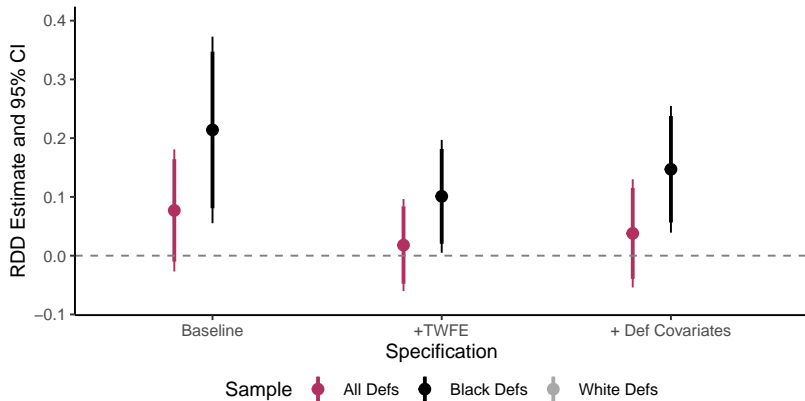
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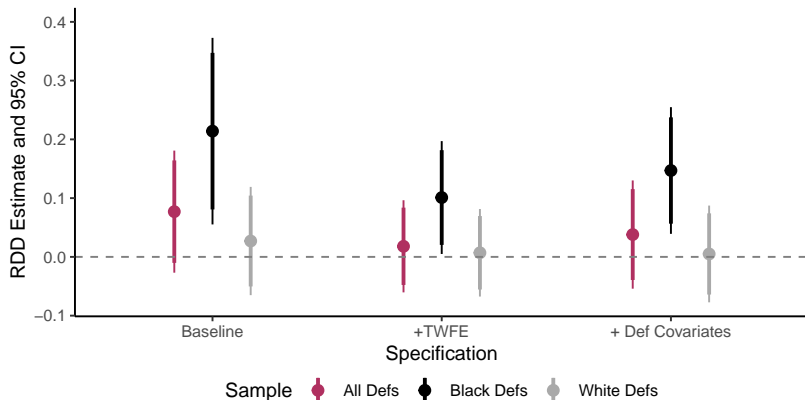


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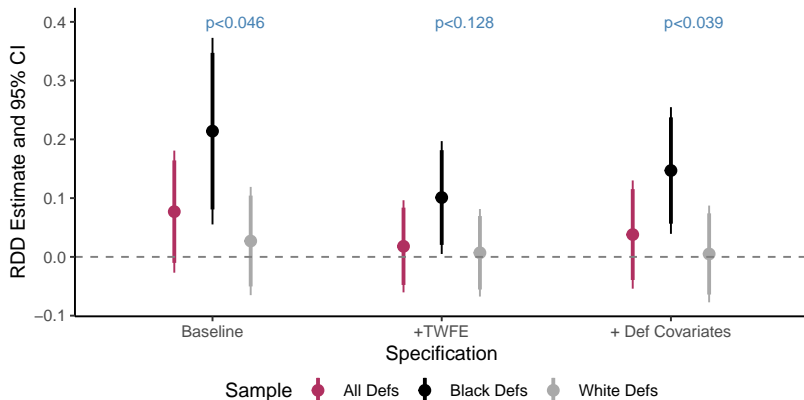
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## Robustness to alternative specifications

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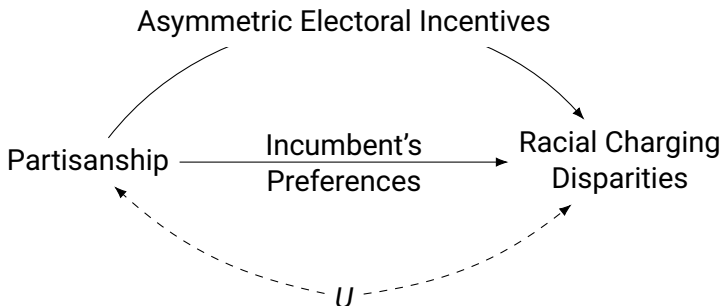
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Similar partisan differences appear on prison admissions (estimated using a larger sample). **Effect on Prison Admissions**

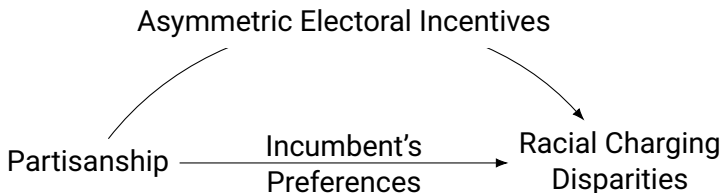
## 6. Isolating Incentive Effects

# Electoral Selection and Incentives

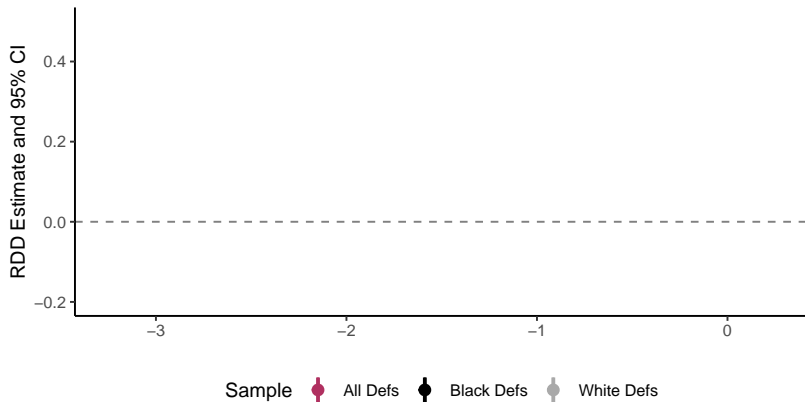




RDD removes  $U$  path but doesn't isolate mechanism

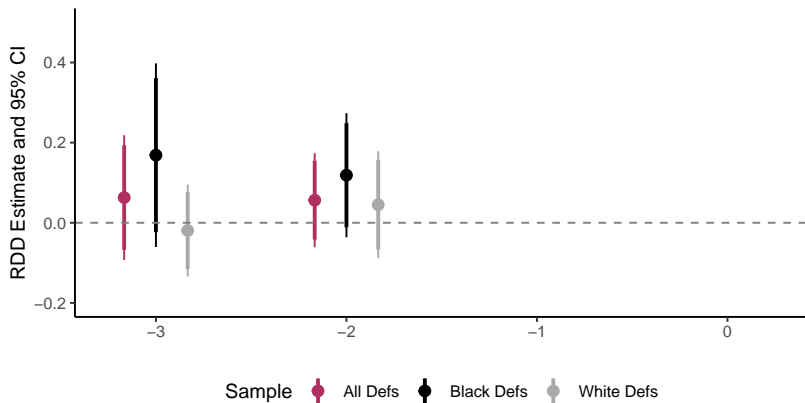


# Electoral Benefits of Punitive Charging



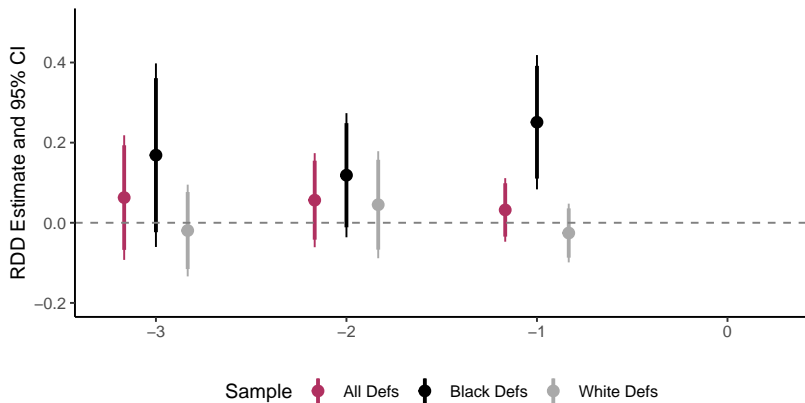
*Each point corresponds to the RDD effect on (logged) charge severity by year to reelection.*

# Proximity to Reelection



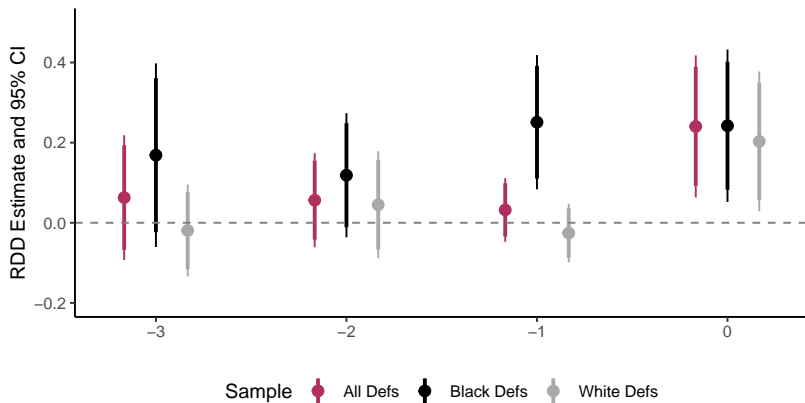
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Permutation Test

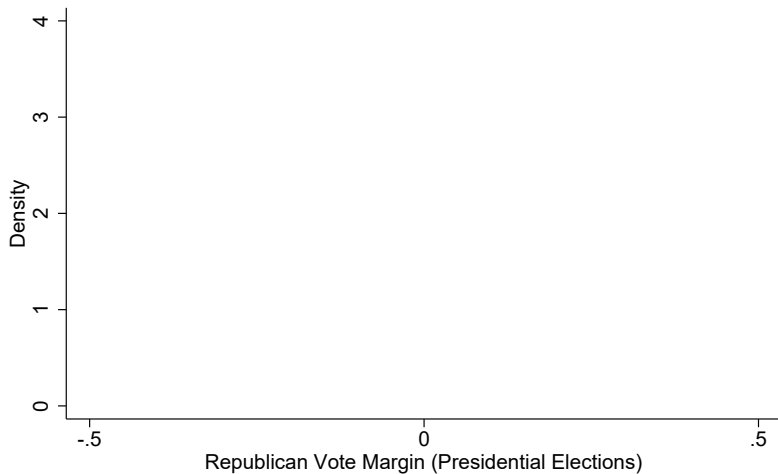
## 7. Next Steps & Discussion

# Electoral Costs of Punitive Charging

Necessary conditions:

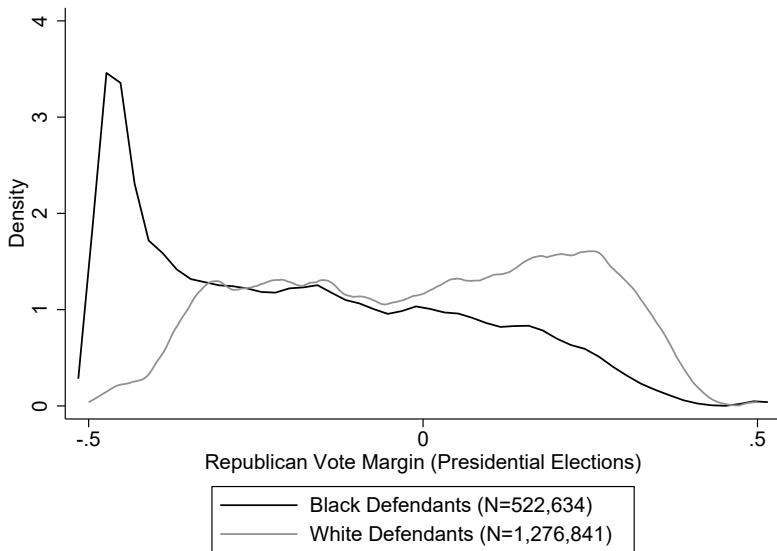
- A greater proportion of minorities reside in areas where Republicans are not competitive (majority D-precincts).

## Local partisan context





Black defendants tend to live in Democrat precincts.



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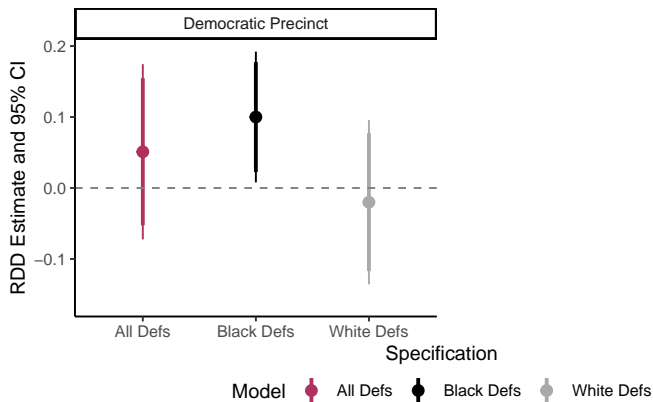
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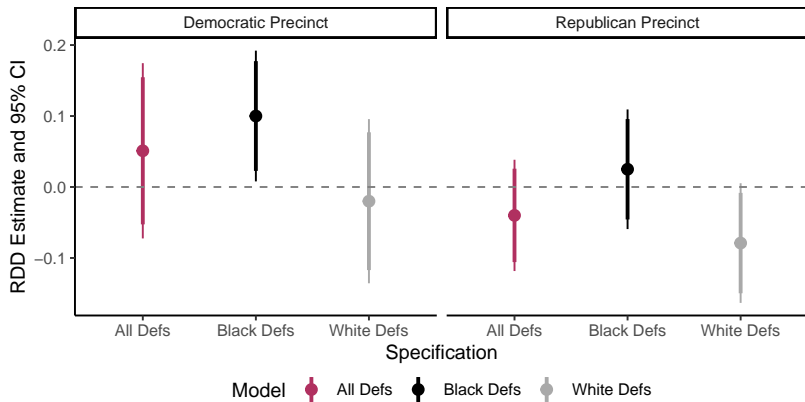
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# Heterogeneous Effects by Partisan Context



*Each point corresponds to the RDD effect on (logged) charge severity by precinct partisan context.*

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## 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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How much of this disparity is attributable to prosecutor partisanship?

Little's law (1961) anticipates that steady state number of prisoners = admissions rate  $\times$  expected sentence (by race):

- Disaggregated by partisanship of prosecutor.

# Discussion

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Growing evidence that incentive effects matter:

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

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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!

**Email:** [sidak.yntiso@nyu.edu](mailto:sidak.yntiso@nyu.edu)

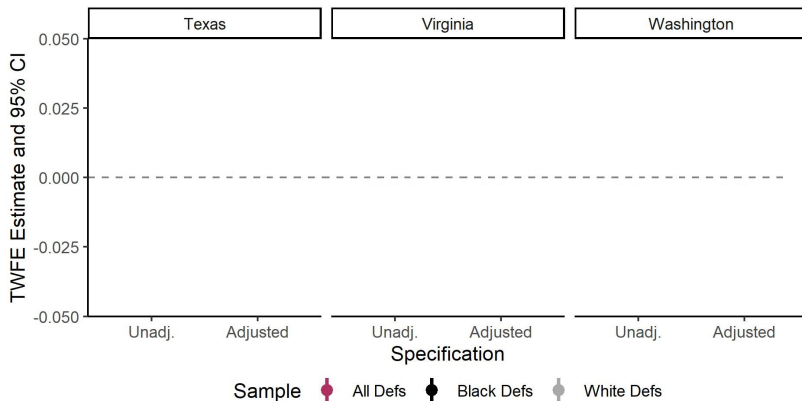
**Homepage:** <http://sidakyntiso.com>

## Appendix

## DA Elections: Descriptive Statistics

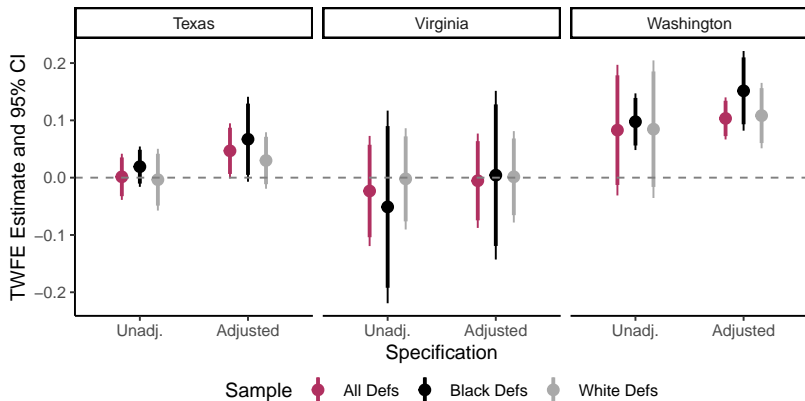
	Uncontested	Contested
Republican wins	0.496 (0.496)	0.565 (0.496)
Total population	0.091m (0.203m)	0.341m (0.800m)
Total prison pop.	528.374 (1,167.007)	2,246.135 (5,782.0127)
Black prison pop.	115.328 (514.882)	916.519 (3009.637)
Num. of felony cases	3.78m	1.94m
Num. of elections	1,760	260

# Descriptive Evidence of Partisan Effects



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

# Descriptive Evidence of Partisan Effects



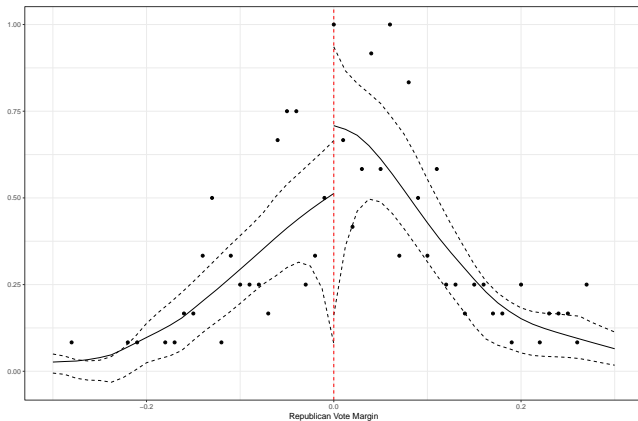
*Two-way fixed effects estimates. Sample restricted to contested elections. Robust standard errors clustered at district level.*

# 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 <sub>t-1</sub>	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

[Back to Presentation](#)

# Validity of Research Design: Sorting



[Back to Presentation](#)

## Selection into Arrest: Estimand

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: Estimand

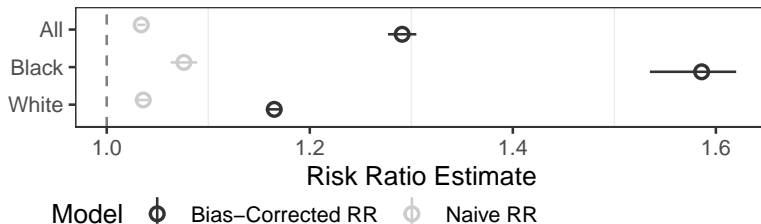
Consider effect on indictment decision as risk ratio:

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

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

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

# Risk Ratio Results: Texas Sample



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

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## Selection into Indictment: Estimands

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

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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)

## Identifying Assumption

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

# Identifying Assumption

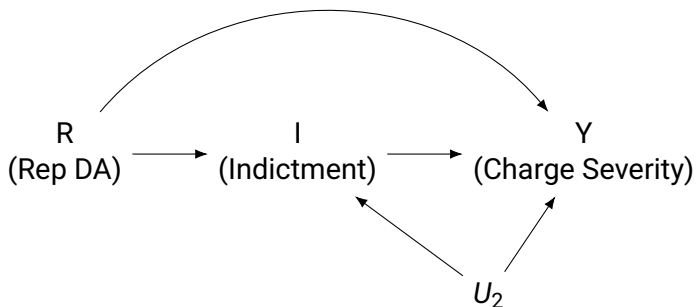
Suppose that conditional on arrest severity, the probability of inclusion into the arrest sample is smooth at the threshold.

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

- partisanship affects charge severity only through the indictment decision.

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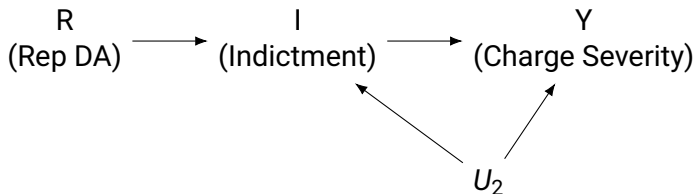
## Complete DAG



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## Visualizing Assumption



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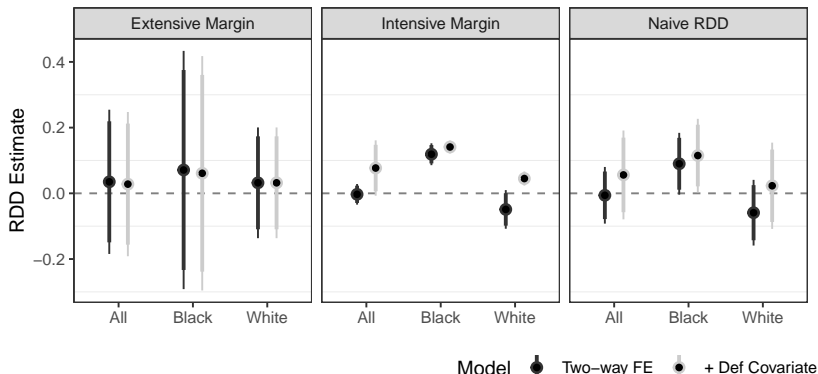
# Estimation

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:

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

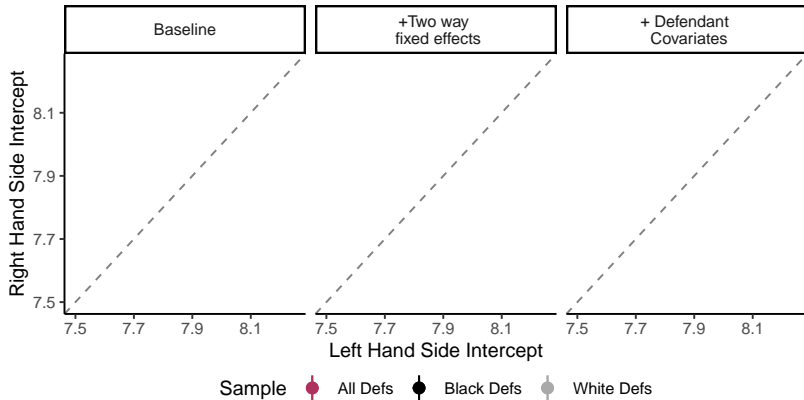
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# Extensive and Intensive Margins: Texas Sample



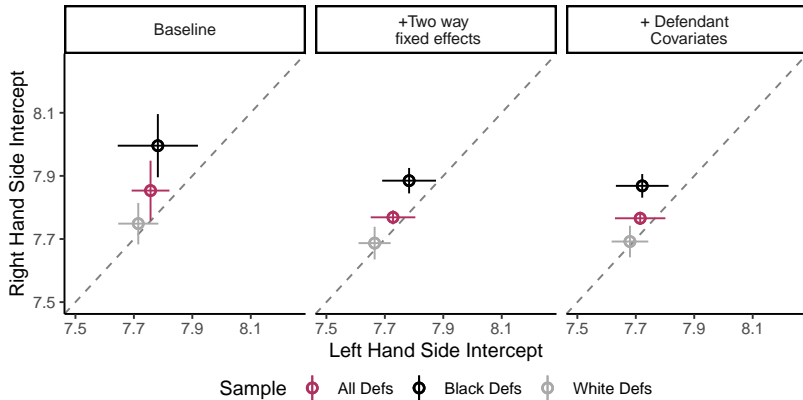
*Estimates adjust for the severity of the underlying arrest offense. Standard errors are clustered at the election level in the first two panels. Bootstrapped 95% confidence intervals reported in the third panel.*

# Main Estimates



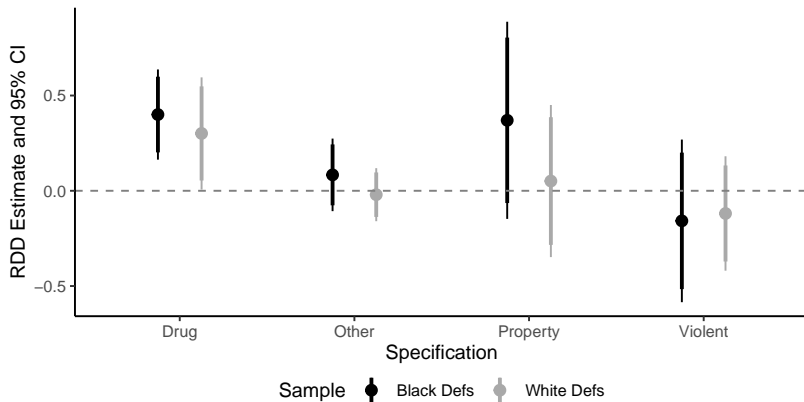
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# Main Estimates



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## Heterogeneity by Crime Type



*The dependent variable is (logged) 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.*

# National-level dataset

Local prosecutor elections:

- Covers 2700 counties, for the period 1995-2017

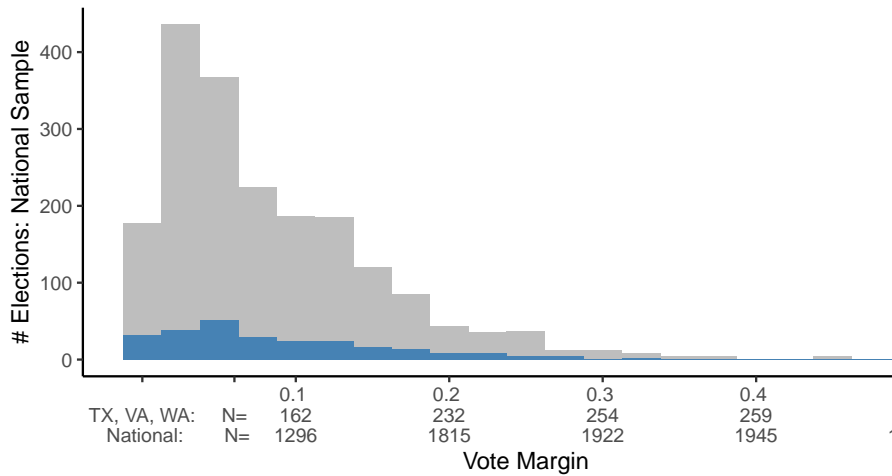
# National-level dataset

Local prosecutor elections:

- Covers 2700 counties, for the period 1995-2017



# Number of Contested Elections



# 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

# Effect on Prison Admissions

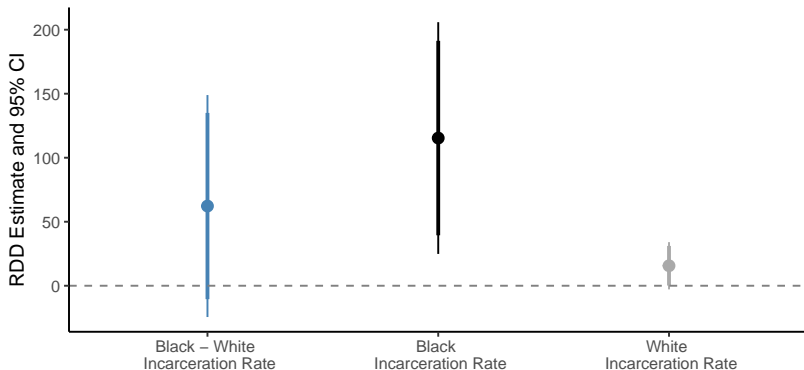
## *Incarceration Trends Dataset:*

- Prison admissions (by race) by county of commitment
- Assembled by Vera Institute of Justice
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## Final dataset:

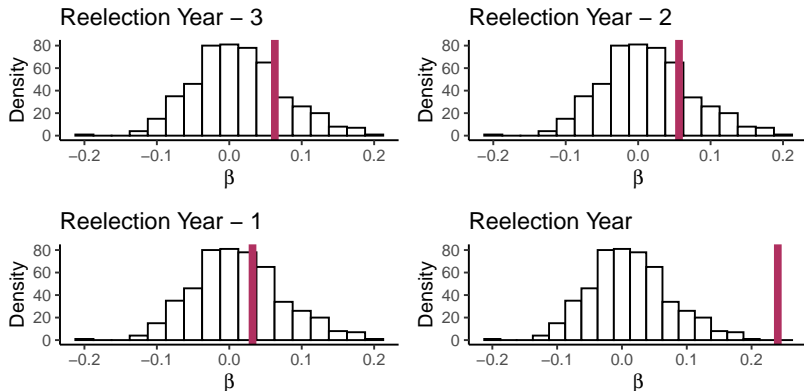
- **Unit:** county - election year dataset
- **Outcome, by race:** new prison admissions per 100k

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



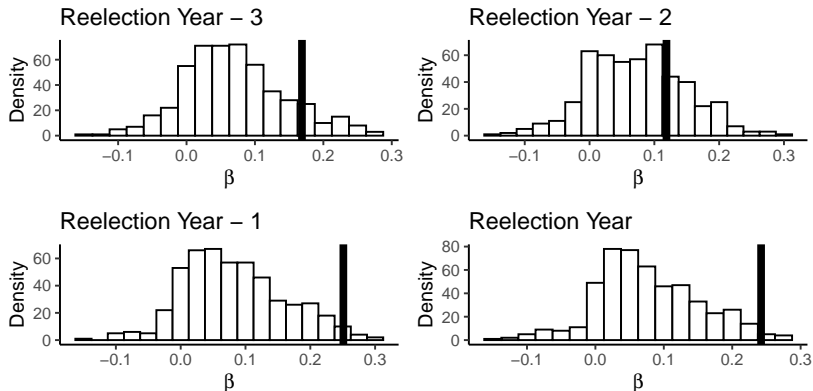
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# Permutation Test: Full Sample



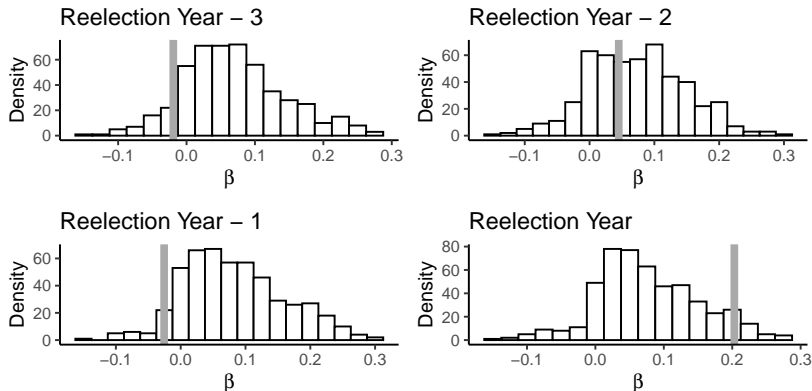
*Estimated placebo effects of electing Republican prosecutor on charge severity. Solid lines depict point estimate obtained in the original data.*

# Permutation Test: Black Defendants



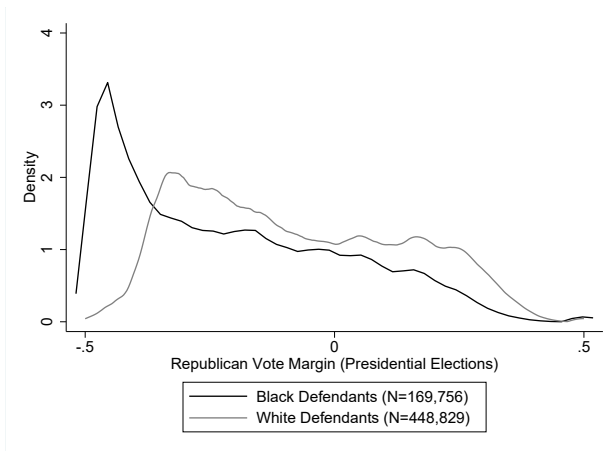
*Estimated placebo effects of electing Republican prosecutor on charge severity. Solid lines depict point estimate obtained in the original data.*

# Permutation Test: White Defendants



*Estimated placebo effects of electing Republican prosecutor on charge severity. Solid lines depict point estimate obtained in the original data.*

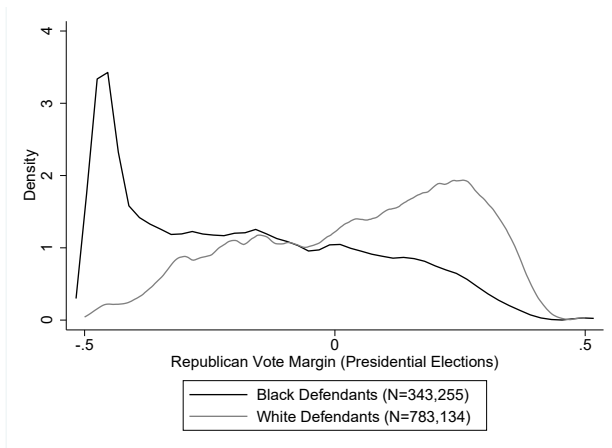
# Residential Segregation, Democratic Jurisdictions



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# Residential Segregation, Republican Jurisdictions



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