

# Does Prosecutor Partisanship Exacerbate the Racial Charging Gap?

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**SLIDES:** [SIDAKYNTISO.COM/RESEARCH](https://sidakyntiso.com/research)

NOVEMBER 5, 2021

# 1. Introduction

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## 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

BRAXTON 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



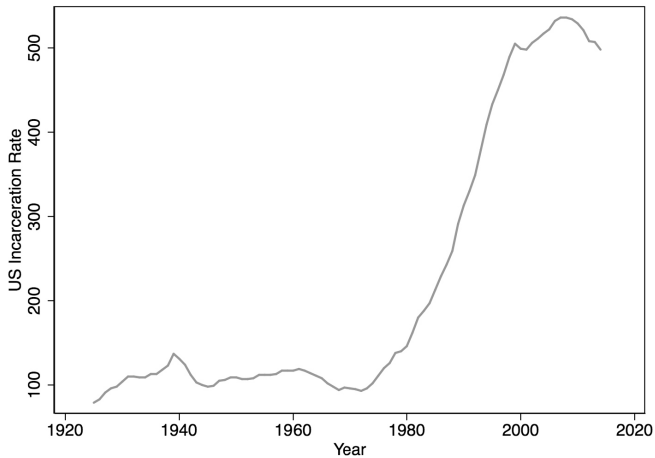
# Introduction

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

# Introduction

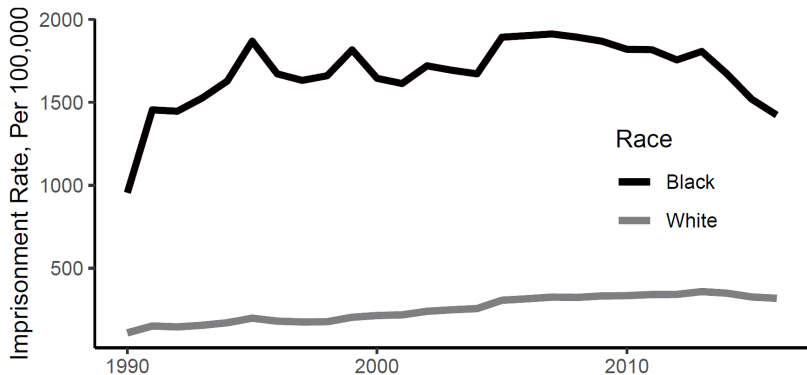
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Source: Pfaff 2017

# Introduction

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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

## This Paper

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

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- 300 districts over 20 years;
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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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  - 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

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## Local Criminal Prosecutions in the U.S.

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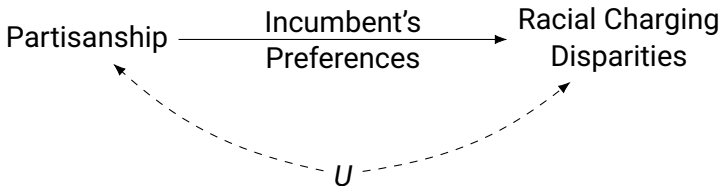
1. Role of racial threat (*Keen and Jacobs 2009; Feigenberg and Miller 2019*)
2. Conservative electoral strategy in post Civil-Rights Era (*Flamm 2005; Lowndes 2008; Mendelberg 2001; Weaver 2007; Becket and Francis 2021*)

### 3. Partisanship & Racial Charging Gap

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# Electoral Selection

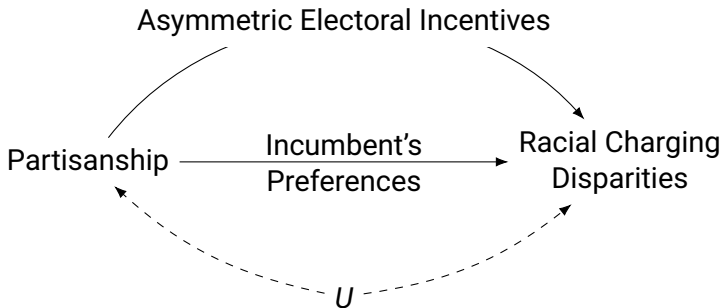
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*Confounder? Or partisan differences in prosecutor preferences about punishment and/or racial bias?*

# Electoral Selection and Incentives

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

# Electoral Costs of Punitive Charging

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Social costs of charging:

- Households face financial and emotional disruptions (e.g. *Comfort 2002*)

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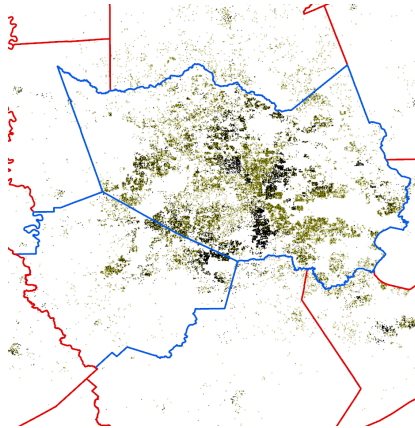
Social costs of charging:

- Households face financial and emotional disruptions (*e.g. Comfort 2002*)
- Communities redirect dollars from social investment to social expense

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

# Racial residential segregation

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

# Why do mechanisms matter?

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Mechanism		Implied policy recommendation
1. Prosecutor tastes	$\Rightarrow$	Elect less biased prosecutors?

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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

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# The States

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	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

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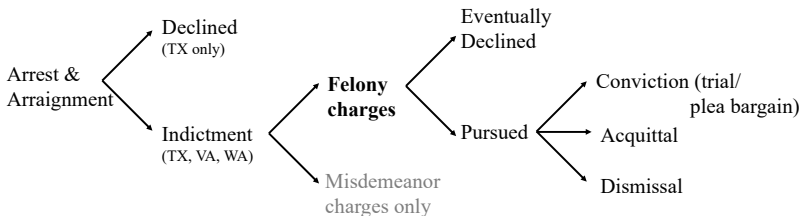
	Never Contested	Contested at least once
Republican wins	0.425 (0.418)	0.530 (0.346)
Total population	0.057m (0.107m)	0.176m (0.462m)

## 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)
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

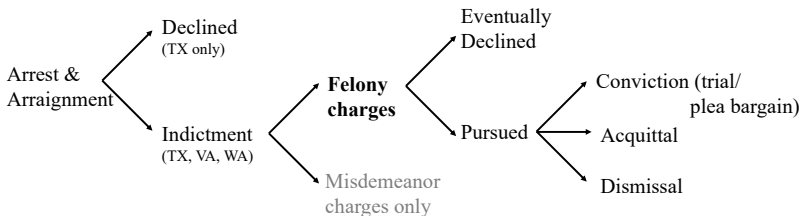
# Criminal Records

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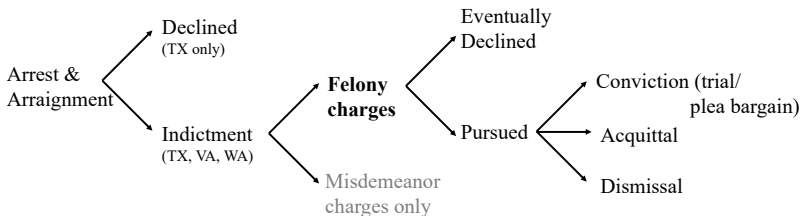
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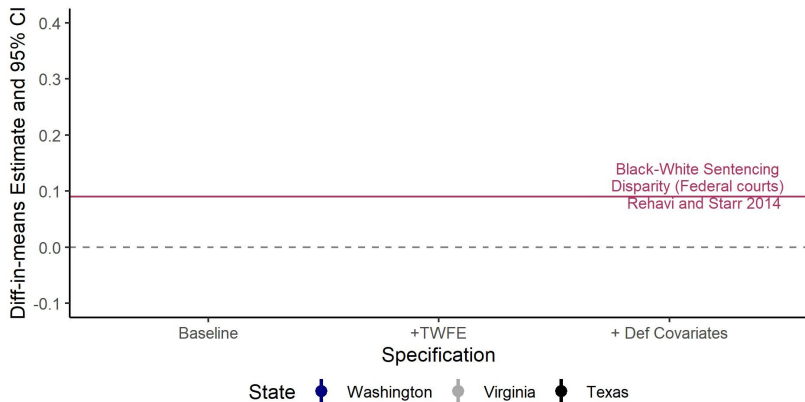
Aggregated to 5.9 million felony cases.

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

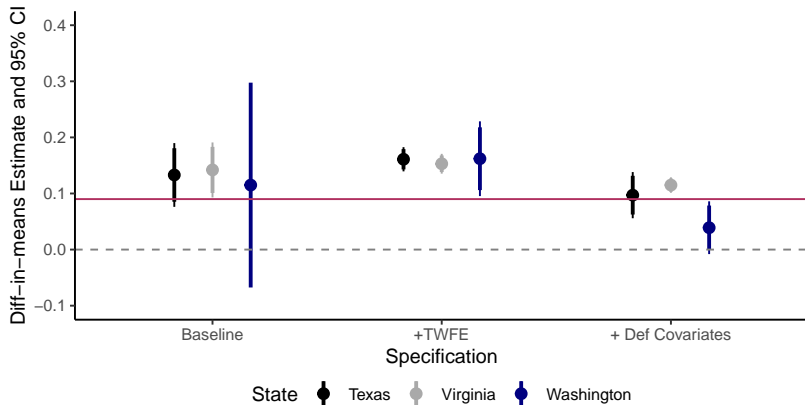
- indicted charges and enhancements;
- defendant criminal history.



# Racial Disparities in Charging



# Racial Disparities in Charging



# Challenges to Inference

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

Two-way fixed effects estimates

# Empirical Approach

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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

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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

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Police face an opportunity cost for making arrest.



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## RDD Effect on Arrest Outcomes

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	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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- Downward bias on partisan difference (*see Knox, Lowe and Mummolo 2020*)

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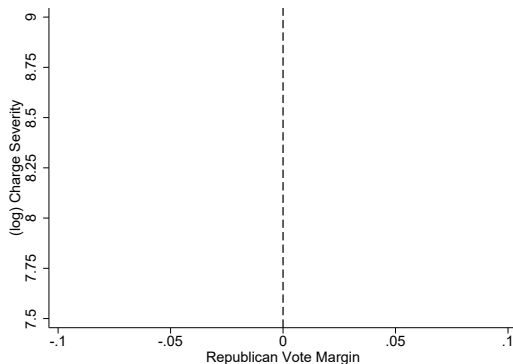
But how large is the downward bias? And might it vary by race?

## 5. Main Results

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# Graphical Evidence

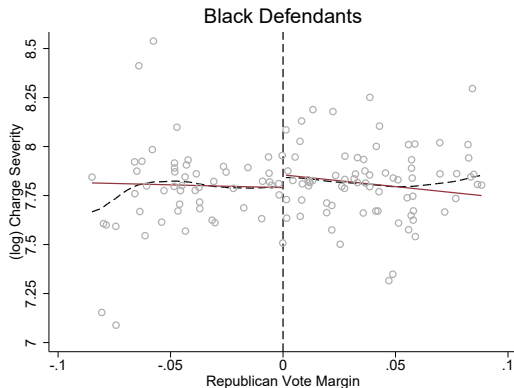
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*Binned means of (logged) charge severity. A local-linear (maroon) and local polynomial smoother (grey) are fit on either side of the Republican vote margin cutoff.*

# Graphical Evidence: Black Defendants

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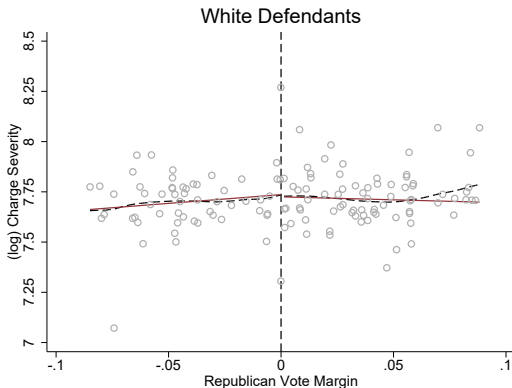


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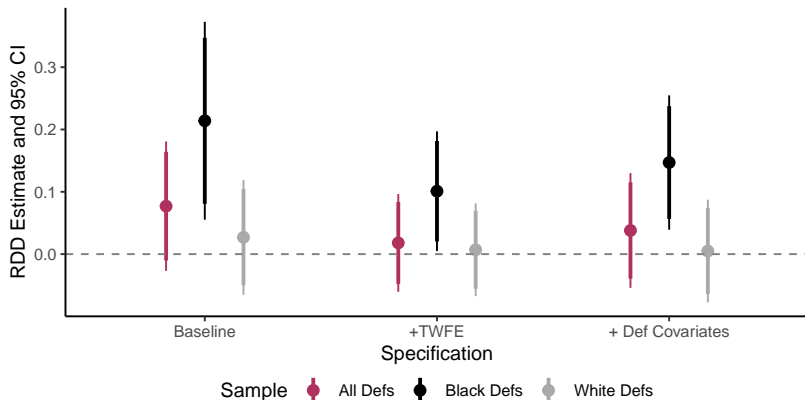
# Graphical Evidence: White Defendants

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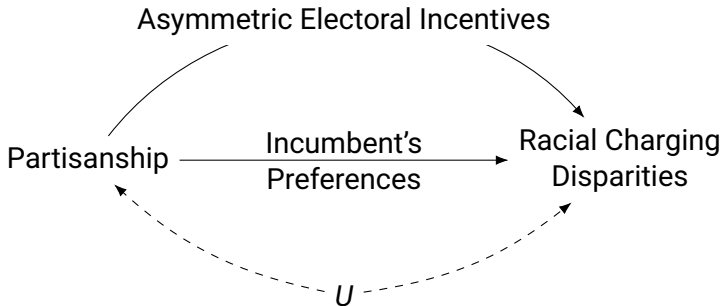
Similar partisan differences appear on prison admissions (estimated using a larger sample). **Effect on Prison Admissions**

## 6. Isolating Incentive Effects

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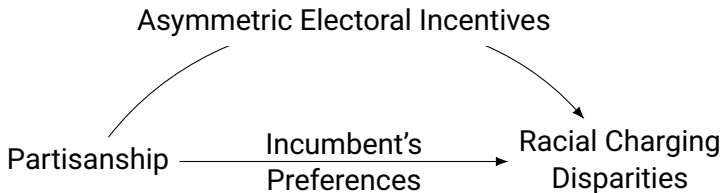
# Electoral Selection and Incentives

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RDD removes  $U$  path but does not isolate the mechanism.

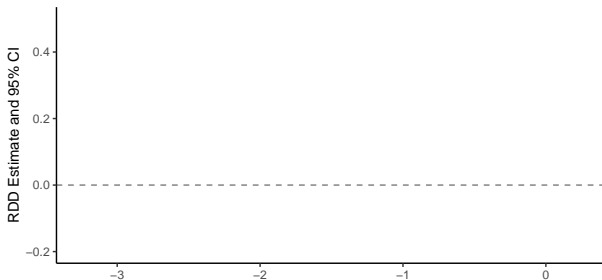
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## 6a. Electoral Benefits of Punitive Charging

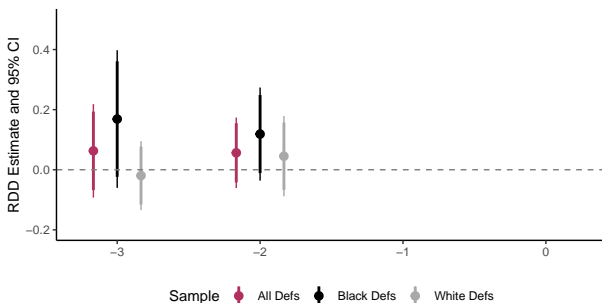
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*Each point corresponds to the RDD effect on (logged) indictment charge severity. All estimates adjust for state-by-year-fixed effects. Standard errors are clustered at the election level.*

# Proximity to Reelection

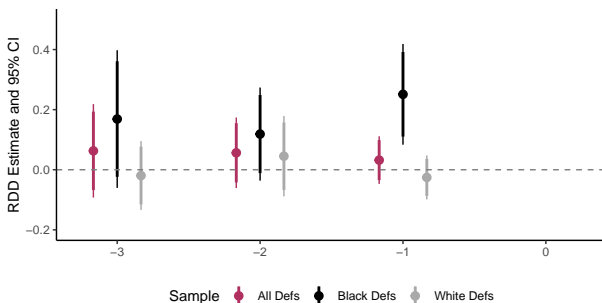
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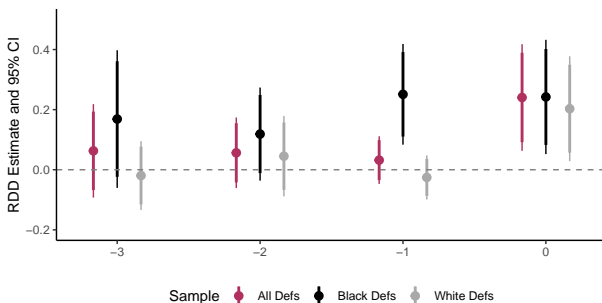
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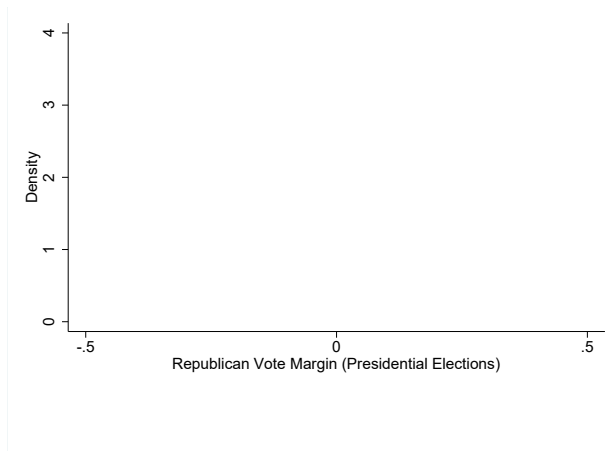
## 6b. Electoral Costs of Punitive Charging

Necessary conditions:

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

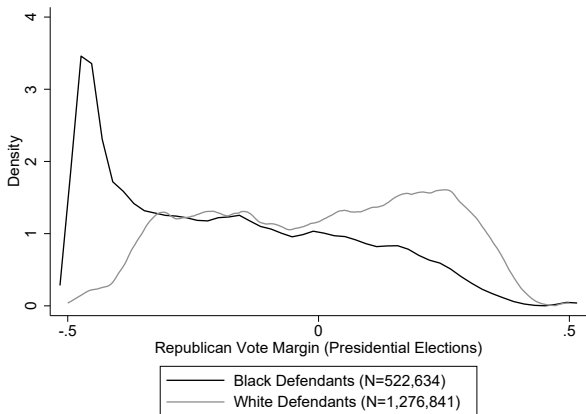
# Local partisan context

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# Black defendants tend to live in overwhelmingly Democrat precincts.

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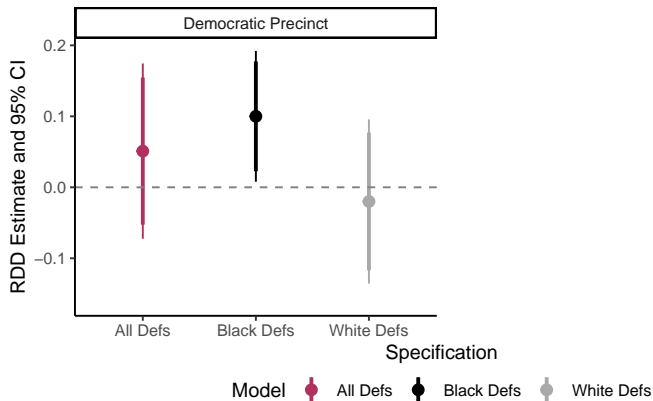
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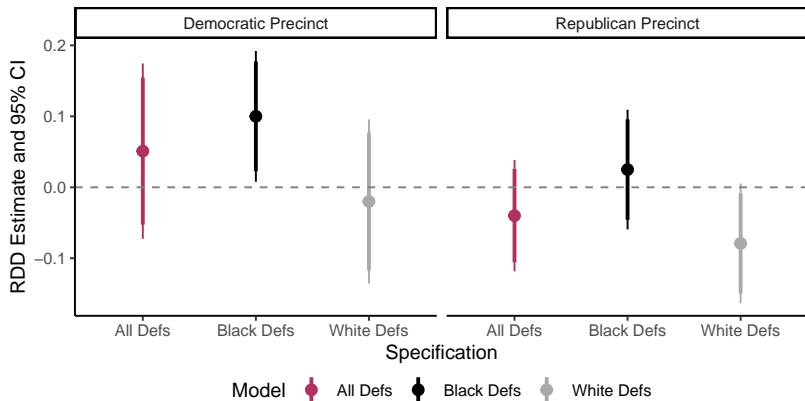
- A greater proportion of minorities reside in areas where Republicans are not competitive (majority D-precincts).
- Partisan difference larger in misaligned precincts.



# Heterogeneous Effects by Partisan Context



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## 7. Discussion

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## Next steps: Substantive Importance

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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

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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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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

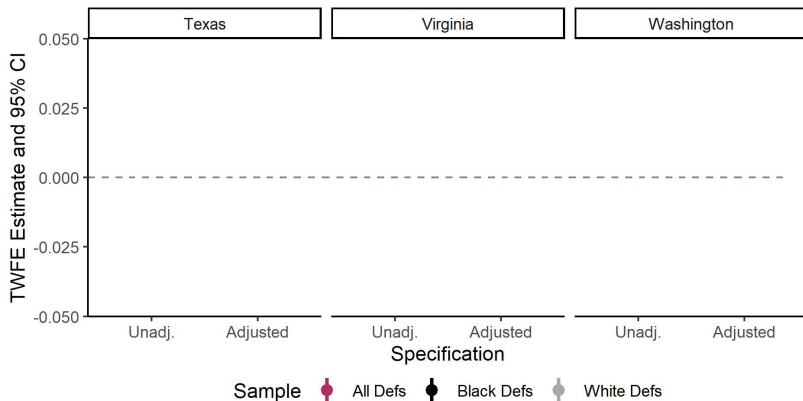
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## DA Elections: Descriptive Statistics

	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

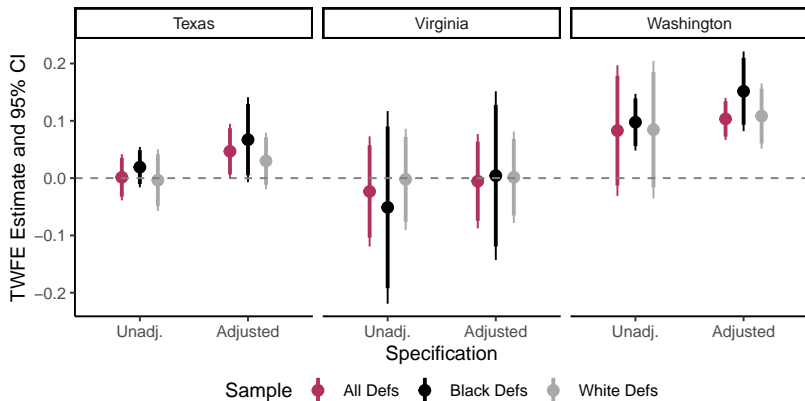


# Descriptive Evidence of Partisan Effects



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

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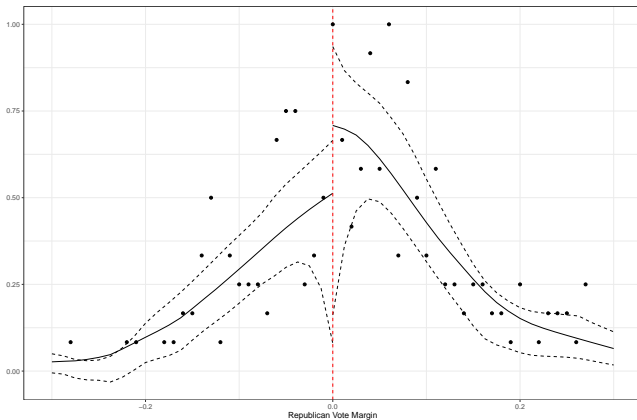
Two-way fixed effects estimates Sample restricted to contested elections. Robust standard errors clustered at district level.

## 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

# Validity of Research Design: Sorting

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## Selection into Indictment: Estimands

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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

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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

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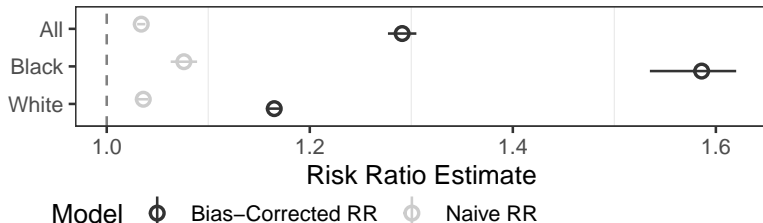
Consider effect on indictment decision as risk ratio:

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

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

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

# Risk Ratio Results: Texas Sample



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

[Back to Presentation](#)

## Identifying Assumption

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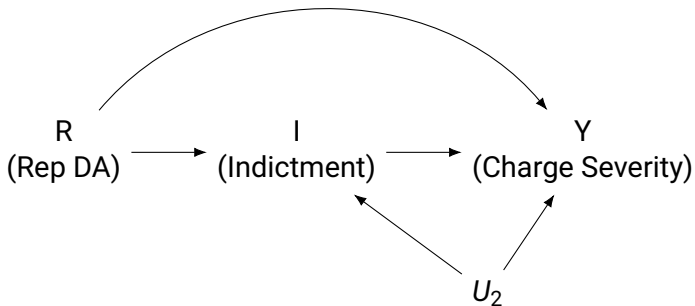
Suppose that conditional on arrest severity, the probability of inclusion into the arrest sample is smooth at the threshold.

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

- partisanship affects charge severity only through the indictment decision.

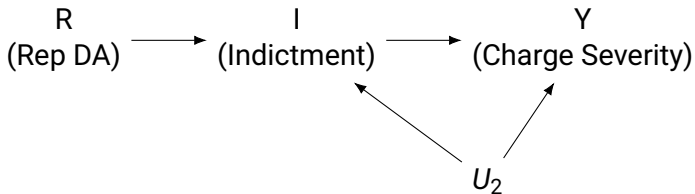
## Complete DAG

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# Visualizing Assumption

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[Back to Presentation](#)

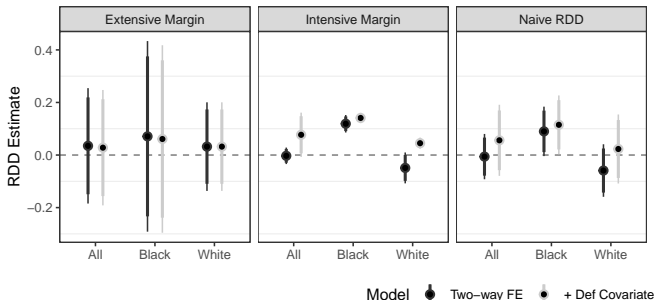
## Estimation

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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:

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

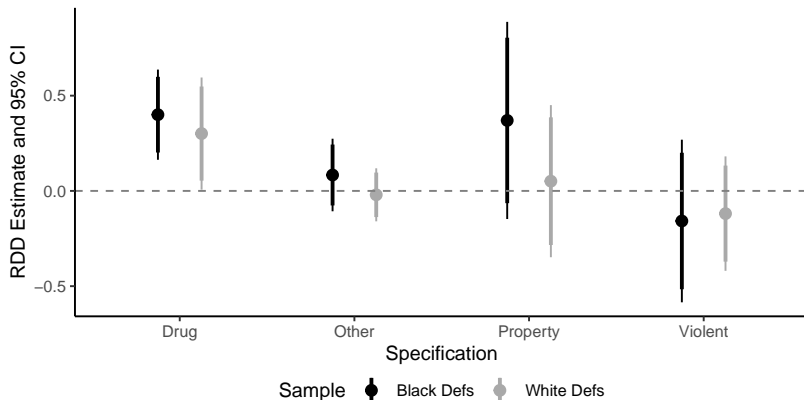
# Selection into Indictment



*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

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## *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

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