University of Rochester

Journal for Law, Politics & Foreign Policy

Volume I | Issue I
Spring 2026

Individual Article

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This article is an empirical insight into arguments made by Stuntz (2011), who argues that fiscal pressures on law-enforcing institutions will incentivize prosecutors to convict low-cost charges in response to budget constraints[1]. Such analysis is necessary to analyze institutional structures that could solidify disparities between minority and nonminority imprisonment.

I. Introduction

In Virginia, discretion is explicitly assigned to the role of commonwealth attorneys (district attorneys) in the Code of Virginia §15.2-1627.1 [7]. This kind of discretion may respond to the fiscal pressures from local governments and enforce low-cost felony charges when attorney funding begins to depend on local funds after exceeding expenditures past state aid. I also consider that prosecutors may feel incentivized to produce low-cost felony charges due to the possibility of higher state funding given by a staffing formula that can influence how much prosecutorial resources each county may receive by the state each year [5]. My analysis uses Virginia's circuit court cases from 2010 to 2020 [1], and annual fiscal documentation for each locality of Virginia provided by the State in those same years [2]. With this, I formulate a multivariate linear regression with charge severity as the dependent variable. I then visualize my analysis of the possible relationship between the amount that attorneys depend on the county to spend from local budgets, and what kinds of charges are output the following year between minority and non-minority groups. My results showed that there is no significance in the correlation between localities over-spending their state aid and the kinds of charges that defendants are facing in both racial groups in their respective circuit courts.

II. Background

In the United States, imprisonment rates for Black populations remain significantly higher

than those of White populations, and this overrepresentation of minority groups in punishment systems continues to remain true in the United States. Previous research has suggested that such overrepresentation may be, in part, a result of the '*selectivity*' necessary for deciding which defendants will be facing convictions [4]. This logic is present in Stuntz (2011), who provides an answer to how there could be millions of felonies annually, despite the number of felony convictions being small in proportion. He contends that, because the justice system can not financially support the conviction of all major crimes, it must contain the price to convict into a smaller fraction of serious crimes [4]. He makes the contention that the financial burden felony convictions impose on the justice system is a reason why '*selectivity*' is necessary to determine a smaller fraction of felony convictions [4]. That, "The criminals who pay the highest price for their crimes will be those who are most cheaply caught and convicted" [4].

Virginia district attorneys and their circuit courts provide an opportunity to test Stuntz's claim at an empirical level. This is because district attorneys in Virginia are prone to facing fiscal incentives from the state to produce larger numbers of felony charges. This is through a staffing formula that can influence the amount of funding the state grants to each locality for its district courts (Vera Institute). The Staff Funding Formula is formulated: *((3-Yr AVG felony defendants + 3-Yr AVG sentencing events))/(Office size)* by the Virginia Association of Commonwealth's Attorneys, and recommended to the compensation board [5]. In addition, Virginia is one of the 39 states in the U.S. where prosecutors in local governments are directly elected by local voters, exhibiting a potential for prosecutors to practice discretion under possible electoral pressures. In both cases of the electoral and fiscal opportunities that exist, prosecutors in Virginia may practice discretion in their decisions. This can contribute to the kinds of felony and misdemeanor charges courts make a ruling on, due to the lack of authority within the states to review the kinds of charges they are deciding.

For this paper, I will focus on the fiscal pressures that may exist and incentivize cheap and quick convictions. In Virginia, localities report expenditures on the district attorneys that are oftentimes greater or less than the amount of state aid they depend on. With this information, the State may generate fiscal pressure on district attorneys when local courts' spending on prosecution exceeds state aid and becomes a financial burden to the local government. It is not known how prosecutors would respond to these pressures when there is no authority within the states to review prosecution decisions on what charges they are putting out. So I ask the question: will fiscal

constraints in Virginia influence prosecutorial discretion in their decision-making power, and how so?

On one hand, there are costs to the kinds of indictments brought to court from the time it takes to pursue investigation and complete the necessary labs for prosecution. These different kinds of charges vary in costs, and can even depend on what is considered necessary to prosecute. On the other hand, there can be benefits for prosecutors from this discretion where private preferences can be projected from electoral pressures onto the sentencing types of their convictions.[3] With the potential costs and benefits that may come from their discretionary control, prosecutors must decide which charges to pursue, given a budget limited by staffing, time, etc.

Based on the prior research, I hypothesize that larger fiscal pressures from the state will contribute to a larger proportion of low-cost felony prosecutions annually due to concerns of budget constraints. I theorize that district attorneys plan on having a greater proportion of low-cost indictments when past years exhibit the county or city spending beyond the state-aid designated for prosecution. This includes spending from their own limited pool of resources. This is based on the assumption that more severe charges are less costly to indict, as opposed to minor charges. It expects that when budget pressures are high, prosecutors will seek to prosecute less severe charges on average. I would argue that these proportions of low-cost indictments will have a greater impact on minority defendants than non-minority defendants.

Before addressing the potential interaction between county expenditures and the fiscal constraints it may impose on their district attorneys, I verify with the court dataset utilized for this analysis that there is racial overrepresentation and disproportion in the convictions and the actual prison days defendants are serving. *Figure 1* represents the annual average, median, standard deviation, minimum, and maximum for the years defendants in each racial group (minority and non-minority) have served. *Figure 2* represents the same analysis, but instead, the convictions in years that prosecutors have attempted to convict defendants with in court.

Group:	Mean	Median	Std. Deviation	Minimum	Maximum
Non-Minority	0.70	0.65	0.38	0	5.07
Racial Minority	0.88	0.81	0.65	0	10.29

Figure 1

Group:	Mean	Median	Std. Deviation	Minimum	Maximum
Non-Minority	11.61	10.84	4.13	1.62	30.15
Racial Minority	13.49	12.46	5.72	0.06	40.02

Figure 2

III. Methodology

To the main article's examination, I look at 114 localities based on their completeness in court case data from Virginia's Supreme Court and budget documents from the Auditors of Public Accounts by the State, both of which from fiscal years from 2010-2020 (starting July 1st, 2010 and ending June 30th, 2021). For each locality I define these variables in our dataset:

- *county_responsibility* → (Expenditure-State)/Expenditure
- *change_county_responsibility* → county_responsibility-lag(county responsibility)
- *mean_severity* → the mean of either prison_days or convict_case_severity
- *change_severity* → (lead(mean_severity)-mean_severity)/mean(severity)
- *fiscal_year* → the fiscal year of the indictments and budget document
- *minority* → dummy, coded as yes or no
- *lag_resp* → lag_resp = lag(county_responsibility, order_by = fiscal_year)
- *locality_type* → locality is the name of the county/city, and type designates the locality as a city or county (e.g. name_county or name_city).
- *prison_days* → amount of days defendant actually spends in prison
- *convict_case_severity* → severity of charges sought at conviction

In our first regression model, I set the mean of *prison_days* equal to our dependent variable *mean_severity*, and divide this variable by 365 to represent years in the data set, set equal to the variable name: *mean_severity_years*. This is to model what had actually happened to the defendants, and look at the existing relationship of how county spending is practically applied to the amount of prison days defendants face.

I group by locality, type and minority to mutate a new variable, *lag_resp,* set equal to lag(*county_responsibility, order_by = fiscal_year*)) which represents the outcome as a function of the past year. This helps determine the causation from the previous year's amount in *county_responsibility*, and how that may affect the year after charge severity (by the average of *prison_days*). I then utilize a multivariate linear regression to predict outcomes of the dependent variable, *mean_severity_years* with the following regressors*: lag_resp, minority*, the interaction between *lag_resp * minority*, the factor of *fiscal_year*, and *locality_type*. This displays the interaction without general year fluctuations, allowing me to isolate the effect of county responsibility and minority status independent of time trends. This regression model also includes *minority* as an interaction term to test differences in effects on county responsibility in the previous year, based on charge severity in the following year, between minority and non-minority groups.

Then, I form a plot that visualizes the rates at which the proportion of change in county responsibility from the previous year is in relationship with the proportion of the average annual prison days in the year after. This plot calculates the x-axis with the variable *change_county_responsibility* with *(county_responsibility)-lag(county_responsibility))*, since lag() will give us the previous year values. This plot displayed the y-axis with the variable *change_severity* with (*lead(mean_severity)-mean_severity)/mean_severity* since lead() would give us the forward looking change, the year following the previous. All values plotted resemble a percent value. This plot essentially shows how changes in county responsibility from one year to the next are related to the average prison days (severity) in the following year.

I then repeat the same procedure with the variable *mean_severity* representing the mean of a different variable from *prison_days*, called *convict_case_severity* which will tell us not what actually happened to defendants, but what convictions the prosecutors were trying to prosecute for each defendant, and the number of days in prison that a defendant would be charged for if convicted by the output of the prosecutor.

IV. Results & Discussion

The regression for the initial regression model with actual prison time defendants have faced, *Figure 3,* shows the very bottom of the stargazer() model. Below is the tabled relationship between past county responsibility and actual prison time served in years. The interaction term

lag_resp:minorityYes has a small negative coefficient (-0.143) and is not statistically significant, which would suggest that the county responsibility from a prior year will not create a meaningful difference on the kinds of charges that minority defendants will face. The same analysis proves true for non-minority defendants as well.

Lag_resp:minority:Yes	-0.143 (0.113)
Constant	0.932*** (0.117)
Observations	2,284
R2	0.272
Adjusted R2	0.230
Residual Std. Error	0.473 (df = 2156)
F statistic	6.357*** (df = 127; 2156)
Note:	*p<0.1; **p<0.05; ***p<0.01

Figure 3

Furthermore, *Figure 4* plots the relationship between fiscal year-to-year changes in local government responsibility and the subsequent change in average charge severity between minority groups. Each point represents a percent change for the given locality and fiscal year in the dataset. Both general trends depict a very small negative slope, suggesting that as local government responsibility increases, the average severity of sentences tends to decrease the following year. However, the amount of noise and weak clustering of data around the line suggests no strong evidence, and can not be interpreted as a meaningful negative association between the axes as there is.

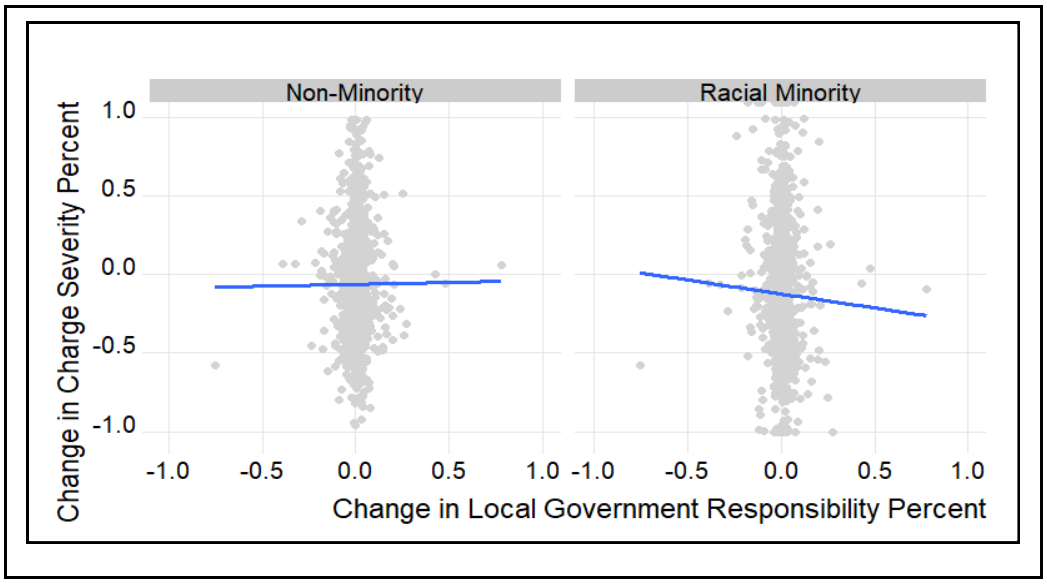

Figure 4

The results from the replicated analysis with the variable *mean_severity* representing the *convict_case_severity* variable, depicts similar outcomes in the regression table and plot as seen in *Figure 5* and *Figure 6*. The coefficient for *lag_resp:minorityYes* in *Figure 5* remains as a statistically insignificant negative value, meaning that change in county responsibility does not have a meaningful affect to the severity of convictions prosecutors pursue against both racial groups. Additionally, while the plot in *Figure 6* may depict a slightly stronger native association in both racial groups, the overall relationship remains weak.

Lag_resp:minority:Yes	-1.1465 (0.998)
Constant	16.270*** (1.034)
Observations	2,276
R2	0.363
Adjusted R2	0.325
Residual Std. Error	4.177 (df = 2148)
F statistic	9.632*** (df = 127; 2148)
Note:	*p<0.1; **p<0.05; ***p<0.01

Figure 5

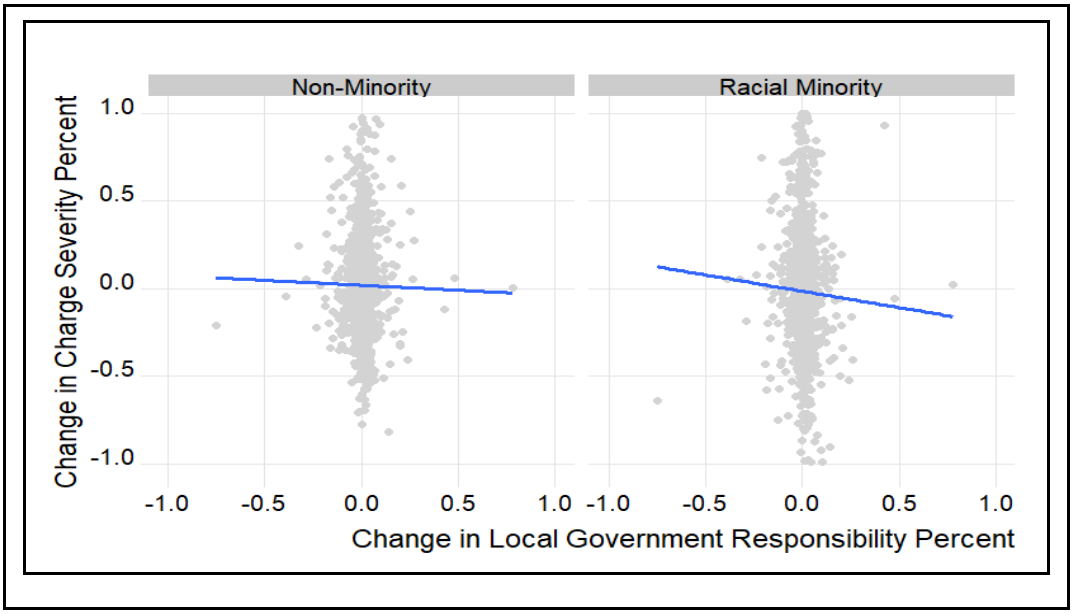

Figure 6

V. Conclusion

I can conclude in response to Stuntz arguments on prosecutorial sentencing possibly being affected by financial constraints, when considering current empirical analysis can show that there is little correlation between the two in the State of Virginia, and their circuit courts. Our hypothesis was that Virginian decentralized nature in prosecutorial discretion would open the door to greater vulnerability to listen to possible fiscal pressures. However, Virginia does not significantly show this possible correlation. Rather, while data analysis shows a difference in charge severity and fluctuations over time, the over-spending of the state budget that feeds from local funds does not seem to be a contributing factor. It is important to note that while the correlation between county responsibility and the severity by days of an indictment, the proportion of severity between racial groups remains an issue in the United States. Charges prosecutors are convicting on may shape the existing disparity between racial groups that are incarcerated, contributing to current day overrepresentation of minorities that are imprisoned, however the case of Virginia's circuit courts, state aid on their commonwealth attorneys, and local expenditures does not seem to be an incentivizing factor.

For future research, it may be necessary to reconsider the assumptions in which this existing research is utilized. Charges with less prison days would be quicker and cheaper is an implicit assumption this analysis depended deeply upon. Future research may look to find the

exact time it would take for a conviction and quantify that as a value to represent whether there are, or are not, greater amounts of quick and cheap charges when there are larger amounts of county responsibility.

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