

UCL Centre on US Politics
Working Paper Series in American Politics



Working Paper No. 2022-11

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Testing the Opinion-Election Connection in Criminal Justice Policy

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The Punitive Public? Testing the Opinion-Election Connection in Criminal Justice Policy

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Word Count: 6,015

Abstract

A long-standing line of research attributes criminal justice outcomes in America to punitive attitudes held by the public. For these scholars, the primary mechanism driving this relationship is a punitive public electing punitive politicians. This article presents new evidence complicating that story by demonstrating that citizens' punitive attitudes do not directly translate into their electoral choices. We use three national conjoint experiments to demonstrate this disjunction. Our first two experiments demonstrate agreement about which classes of offenders are more deserving of release. This agreement holds for Democrats, Republicans, and respondents at all levels of racial resentment. However, when respondents were asked to choose between hypothetical candidates promising to release these same classes of offenders, the consensus breaks down. In an hypothetical electoral context, partisan and racial resentment-based divisions emerge. These findings suggest that the translation between public levels of punitiveness and their electoral preferences regarding candidates' criminal justice policies are not straightforward. Our findings suggest that researchers must focus more on the mechanisms connecting public opinion and criminal justice outcomes.

Keywords: *Criminal Justice; Race and Ethnic Politics; Public Opinion; Conjoint Experiments*

Many scholars have tried to explain America’s high rate of imprisonment. One prominent theory attributes mass incarceration to politicians’ responses to punitive public opinion from across the political spectrum (Clegg & Usmani, 2018; Duxbury, 2021b; Enns, 2014,1; Forman Jr, 2017; Fortner, 2015; Schoenfeld, 2018).¹ According to these public opinion-centric theories, electoral decisions when criminal justice policies are at stake should reflect public preferences. For example, Enns (2014) argues that public opinion regarding criminal justice drives changes in criminal justice policy outcomes like incarceration rates. Elections, Enns says, are an “important avenue” driving the relationship between public opinion and criminal justice policy outcomes. However, this research does not directly probe the relationship between public opinion and electoral choices. Instead, scholars often focus on the relationship between public opinion and aggregate outcomes like incarceration rates – ignoring the intermediate step connecting public sentiment to voting behavior. (Enns, 2016; Jennings et al., 2017; Lax & Phillips, 2012; Zimring & Johnson, 2006).²

This article examines the connection between the public’s preferences over criminal justice policy and their preferences over candidates’ criminal justice policy platforms. We test the opinion-election connection using three preregistered conjoint studies. In our first conjoint experiment, we find evidence for a strong bipartisan consensus on the characteristics of individual inmates that respondents prefer to be released from prison.³ Moving beyond individuals, our second conjoint finds that this consensus holds when deciding which groups of offenders to release.

But, in our third experiment, we find that the consensus about *who* respondents want to release does not translate into electoral choices. We find that politicians do

¹For related approaches focusing on partisanship and punishment see (Grumbach, 2018; Murakawa, 2014).

²For example, in *Incarceration Nation*, Enns connects public punitive mood to changes in national incarceration rates. But Enns does not address whether punitive public mood leads to more punitive candidates being elected. Our findings suggest that the connection between public preferences over policy and public preferences over candidates is more tenuous than Enns assumes.

³These results align with work finding that despite the outward appearance of deep partisan divides on immigration, there is little variation in preferences over who the United States should permit to immigrate (Hainmueller & Hopkins, 2015)

not benefit from proposing liberalizing criminal justice reforms. In fact, politicians typically pay a small cost for proposing to release even drug-offenders, who respondents in the first two studies preferred for release at overwhelming rates.

In total, these findings suggest that the preference ordering of survey respondents regarding criminal justice policies does *not* necessarily translate to the preference ordering for candidates proposing those criminal justice policies. Put another way, respondents' policy preferences do not directly translate to respondents' electoral preferences. This suggests that the public opinion-election mechanism that Enns (2014) leverages is not straightforward. This challenges theories that posit a direct link between between punitive attitudes, electoral support, and policy outcomes.

Public Opinion and Criminal Justice

The American public has been generally punitive in public opinion polling (Cullen et al., 2000; Pickett, 2019; Ramirez, 2013b). For example, time-series estimates of support for the death penalty since 1970 consistently find over 60% support (Baumgartner et al., 2017) and a vast majority of GSS respondents report that courts are “not harsh enough” in dealing with criminals (Ramirez, 2013a). But while researchers agree on these stylized facts, substantial scholarly debate remains over whether this punitive sentiment drives criminal justice outcomes or merely reflects elite behavior (Lenz, 2013).

One body of work argues that the punitive public is illusory, reflecting messaging from politicians and media sources rather than genuine concern about rising crime or disorder (Beckett, 1999; Brown, 2006; Gottschalk, 2006; Matthews, 2005). As Pickett (2019) notes, these accounts are constructionist, claiming that issue entrepreneurs channeled racial animus into punitive sentiment through the elite construction of a “crime issue” (Loo & Grimes, 2004; Weaver, 2007). A broader literature on framing effects lends validity to these theories with researchers finding that

more TV news consumption increases concern about crime and racializes the crime issue itself (Baranauskas & Drakulich, 2018; Gilliam Jr & Iyengar, 2000; Mendelberg, 1997). While this work largely suggests that the media framing of crime makes public sentiment more punitive, some work shows the opposite; Baumgartner et al. (2008) finds that for every ten New York Times stories focused on innocent people sentenced to death, death penalty support falls by 1.5%. Critically, these studies agree that elites lead the masses on criminal justice policy. On this account, politicians and the media drive American mass incarceration (Alexander, 2011; Eubank & Fresh, 2021).

Another body of research posits the opposite relationship, arguing that rising public punitiveness in response to real concerns about crime drives more punitive policy outcomes. These scholars argue that crime concerns are not constructed by media and politicians; rather, they arise organically among the public in response to concerns about real changes in crime rates (Clegg & Usmani, 2018; Enns, 2016). A substantial body of work validates this, identifying changes in punitive sentiment that follow changes in violent crime rates (Baumgartner et al., 2008; Duxbury, 2020; Jacobs & Kent, 2007; Jennings et al., 2017). Other scholarship exploits variation in the selection method of different government officials to identify the effect of an electoral connection on criminal justice policy outcomes. This work shows that elected judges more closely follow public preferences in determining criminal sentencing than appointed judges (Boyd & Nelson, 2017; Brace & Boyea, 2008; Canes-Wrone et al., 2014). Relatedly, researchers document how criminal justice policy adoption across states more closely tracks the preferences of advantaged social groups than the preferences of race-class subjugated communities (Boushey, 2016; Duxbury, 2021a; Forman Jr, 2017; Hinton, 2017).

However, across both the elite-constructionist and public-driven accounts, direct tests that connect public policy preferences to electoral choices are wanting. This crucial connection between public preferences and electoral choices may seem intuitive, but it should not be assumed. A broad literature identifies the complexity

of selecting individual candidates when voters' policy preferences span multiple dimensions (Klar, 2014; Stoetzer & Zittlau, 2020; Treier & Hillygus, 2009). Therefore, studying the translation of public opinion to electoral preferences is crucial for adjudicating between the elite-driven or public-driven theories of incarceration. If electoral choices do not reflect public sentiments then the theorized mechanism connecting public punitiveness to punitive policy outcomes rests on shaky ground. This article tests that connection and finds evidence that policy preferences for criminal justice do not directly translate to electoral preferences for candidates endorsing those same policies.

Analysis Approach

All three studies use conjoint experiments. The conjoint design permits us to analyze choices made along multiple dimensions simultaneously. Conjoint designs involve randomizing different levels of multiple attributes across profiles. The profiles are compared to one another, and respondents are entered into a forced choice decision between the two profiles. Importantly, because attribute levels are each randomized independently and the outcome (choice) is measured on the same scale for all attributes, effect sizes can be compared to one another.

In this case, we estimate two quantities of interest across all three conjoint experiments: average marginal component effects (AMCEs)⁴ and conditional marginal means.⁵ AMCEs represent the effect of changes in levels of an attribute on the likelihood respondents select a profile, averaging across all other features. Marginal means represent the percent of the time that a profile is selected when a given attribute level is present.

For each of the three conjoint experiments we present three estimates based on

⁴An AMCE “measures the degree to which a given value of a conjoint profile feature increases or decreases respondents’ support for the overall profile relative to a baseline, averaging across all respondents and all other profile features” (Leeper et al., 2020).

⁵Conditional marginal means reflect how favorable respondents are toward profiles with particular attribute levels (Leeper et al., 2020; Levy, 2021).

these two quantities of interest. First, we present the AMCE, as discussed above. Next, we present the marginal means across partisan groups and racial attitudes. Specifically, we compare the marginal means for Republicans and Democrats and for high and low racial resentment respondents in each study.⁶ We do so because a robust literature demonstrates that both racial attitudes (Hurwitz & Peffley, 2005b; Mendelberg, 1997; Peffley & Hurwitz, 2002) and partisan politics (Eckhouse, 2019; Keen & Jacobs, 2009; Smith, 2004; Stucky et al., 2005)⁷ are key driver of criminal justice policy and attitudes.

All three studies are pre-registered at [LINK REDACTED]⁸ Study 1 took place between June 21st, 2021 and June 22nd 2021, while study 2 and 3 took place between December 1st and 3rd of 2021. Across all 3 studies, respondents were recruited through Lucid – a survey firm which registered more than 30 million unique respondent IDs platform-wide in 2020. We used quotas to match the U.S. census population. Study 2 and 3 use the same respondents, while Study 1 is a unique sample. Table 1, below, summarizes the 3 studies below.

Past research has documented concerns with the data quality of survey samples on Lucid, primarily driven by the inattentiveness of survey respondents (Aronow et al., 2020). We take several steps to address this potential concern. First, Lucid conducted bot checks to ensure that respondents were human. Next, we screened respondents with two attention check questions in the pre-experiment phase of the survey. Our analysis only includes respondents who passed both attention checks,

⁶We use the standard four question battery for racial resentment: (1) Irish, Italians, Jewish and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors, (2) Generations of slavery and discrimination have created conditions that make it difficult for Blacks to work their way out of the lower class, (3) Over the past few years, Blacks have gotten less than they deserve (4) It's really a matter of some people not trying hard enough; if Blacks would only try harder they could be just as well off as whites.

⁷But see (Grumbach, 2018; Gunderson, 2021; Murakawa, 2014) for push back on the idea that incarceration is primarily a Republican-driven political project.

⁸See supplemental materials for anonymized pre-registrations. Our registration for study 1 specified the following hypothesis: H1: People will support offering parole to those who are incarcerated for non-violent crimes at higher rates, which we found support for. Our registration covering the next two studies specified a new H1: Respondents will support decarceral referen- dums at higher rates than they support decarceral candidates, and H2: Respondents will support punitive candidates at higher rates than decarceral candidates. We found support for the second hypothesis but not the first, which will be the focus of other ongoing work.

in line with the recommendations of [Aronow et al. \(2020\)](#).⁹ In survey 1 (with conjoint 1) 84.2% of respondents passed both attention checks, while in survey 2 (with both conjoint 2 and 3) 88.9% of respondents passed both attention checks. Finally, we monitored the response time for each conjoint task and the survey as a whole for all respondents. In survey 1, respondents spent an average of eight and a half minutes (median of 5) on the survey and an average of 32 seconds on each specific conjoint task (median of 23 seconds). In survey 2, respondents spent an average of 19 minutes (median of 13 minutes) answering questions and an average of 22 seconds on each specific conjoint task (median of 17 seconds per task). Together, these suggest that respondents were generally attentive and not speeding through surveys.

Table 1: Summary of Three Conjoints

Study	Sample	Testing
Conjoint-1	Lucid (June 21st-22nd, 2021)	Consensus on which individual offenders are more deserving of parole?
Conjoint-2	Lucid (December 1st-3rd, 2021)	Consensus on which classes of offenders should be released to halfway homes?
Conjoint-3	Lucid (December 1st-3rd, 2021, Same sample as Conjoint 2)	Consensus on preferences over legislative candidates criminal justice policies?

Study 1

This study uses a conjoint experiment in which respondents are presented with randomized profiles of two hypothetical incarcerated individuals.¹⁰ Each respondent completes four choice tasks evaluating these sets of profiles. In each of the decisions, respondents choose which of the two incarcerated individuals they would

⁹We remove all respondents from the survey who do not pass both attention checks, meaning they do not take the conjoint tasks we present below. Similarly, we

¹⁰The study was preregistered at [REDACTED TO PRESERVE ANONYMITY]

prefer their government to parole. Respondents then rate how likely they would be to release the individual they chose on a scale from 1 (definitely would not) to 5 (definitely would). We present results for the forced choice dependent variable measure and use the ratings to demonstrate robustness beyond the context of the standard conjoint (see Supplementary Information Section 8).¹¹

We recruited 1,909 participants using Lucid. Respondents completed the informed consent form, answered baseline political questions concerning partisanship, ideology, and racial resentment. Respondents passed two attention checks and received instructions on the conjoint tasks. After that, people completed four decision tasks in succession and then finished the survey. Respondents were: 76% White, 10% Black, 12% Hispanic, 48% Democrat, 36% Republican, and averaged 47 years old. The median respondent completed their Associates Degree while reporting annual income between \$50,000 and \$54,999. See the SI section 1 for more details.

Each profile consists of a set of seven attributes for each hypothetical parolee. These attributes (Table 2) are independently randomized in each profile. We chose these attributes for realism and policy relevance. First, we chose age of offense, sex, race, and education to provide realistic profiles that contain demographic information that past research shows affects punitive preferences (Unnever & Cullen, 2010). The six levels of offense we present here correspond to the six most common convictions in state prisons.¹² As of 2020, individuals who were convicted of murder, sexual assault, assault, theft, firearms possession, or drug possession constitute two-thirds of the incarcerated population.

We include time served for two reasons. First, a large literature establishes the “age-crime curve”; individuals are unlikely to re-offend beyond a certain age (Shulman et al., 2013; Stolzenberg & D’Alessio, 2008). Second, an important feature of American mass incarceration is its aging prison population, including many

¹¹This approach closely follows other work using similar designs, see for example: (Ward, 2019) and (Carnes & Lupu, 2016).

¹²Prison Policy Initiative, 2020

who have already served long sentences (Pfaff, 2017). Finally, we include location of planned release as a check to ensure that our results are consistent even when incarcerated-individuals are to be released into the communities and states of respondents.

Table 2: Study 1 Conjoint Attributes and Levels

Attribute	Levels
Age at time of offense	[17 / 22 / 27 / 32]
Sex	[Male / Female]
Race	[White / Black / Hispanic]
Education	[No High School / High School / College]
Offense	[Murder / Sexual assault / Assault / Theft / Illegal Firearm / Drug Possession]
Time already Served	[1 year / 5 years / 9 years / 13 years / 17 years / 29 years]
Location of planned release	[Your town / Your state / Another state]

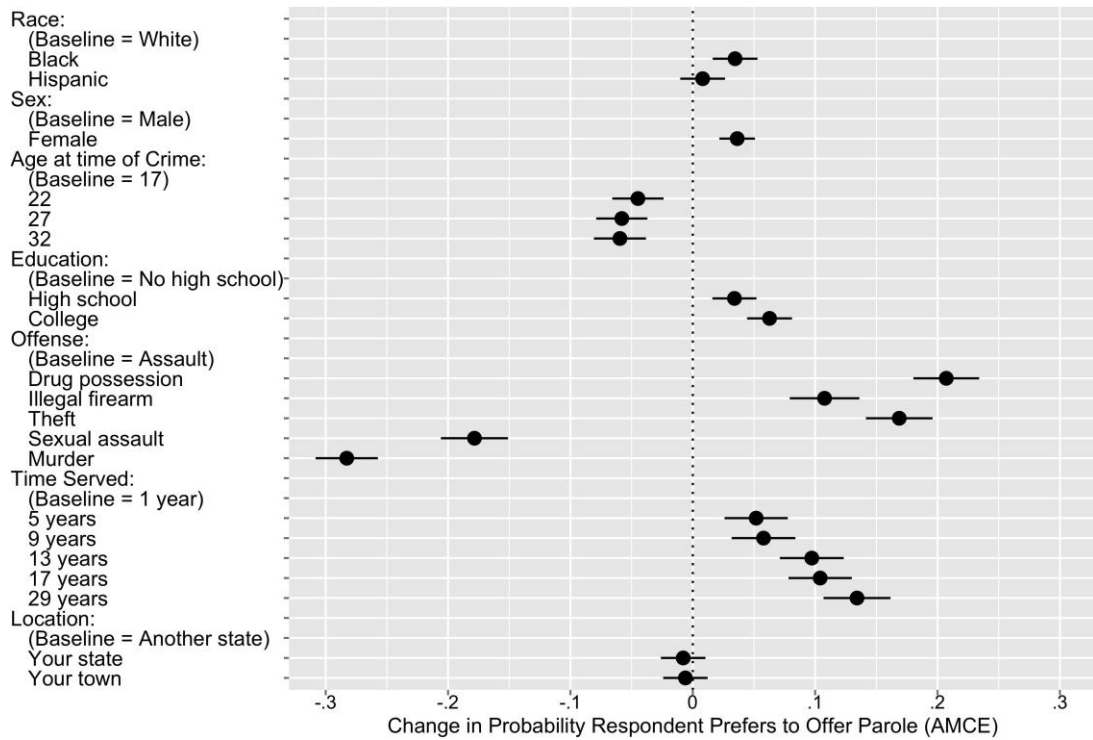
Study 1 Results

Beginning with AMCEs, Figure 1 presents the effect of changes in levels of an attribute on the likelihood respondents select a profile, averaging across all other features. We estimate AMCEs simultaneously using linear regression. Here the dependent variable is a 1 for profiles that respondents preferred; standard errors are clustered at the respondent-level. We find evidence of a consensus among respondents about who should be released from prison. Demographic variables including race, sex, and education have statistically significant but substantively small effects on the likelihood of a profile being selected for parole.¹³

On the other hand, the offense an individual committed has a large effect on preferences for parole. Relative to those incarcerated for assault, those incarcerated for drug possession are preferred for release by 21% (95% CI: 18.02, 23.34). Similarly, those incarcerated for theft are preferred by 19% (95% CI: 14.15, 19.59) while profiles of those incarcerated for firearm possession are preferred by 11%

¹³For a table reflecting these results, see Supplemental Information Appendix section 4.

Figure 1: Change in probability a respondent prefers to offer parole for each randomly assigned attribute



(95% CI: 7.92, 13.61). Violent offenders' profiles are much less likely to be selected. Relative to those incarcerated for assault, those incarcerated for sexual assault are 18% (95% CI: -20.58, -15.01) less likely to be selected while profiles of those incarcerated for murder are disfavored by 28% (95% CI: -30.83, -25.74).

For demographic characteristics, we show that Black incarcerated profiles were 3% (95% CI: 1.63, 5.29) more likely to be offered parole, while Hispanic profiles were not significantly more likely to be chosen than White profiles. Similar results emerge for sex and age. Female profiles are 4% more likely to be chosen (95% CI: 2.18, 5.08]; individuals who committed their offense at 32 are 6% (95% CI: -8.08, -3.98) less likely to be chosen than those who committed their offense at the age of 17. While these results are all statistically significant, they are not substantively large when compared to type of offense committed.

Time-served and education also matter. Relative to profiles who have been in prison for 1 year, respondents were more likely to choose profiles with 5, 9, 13, 17, and 29 years served. Moving from 1 to 29 years in prison yields a 13% increase

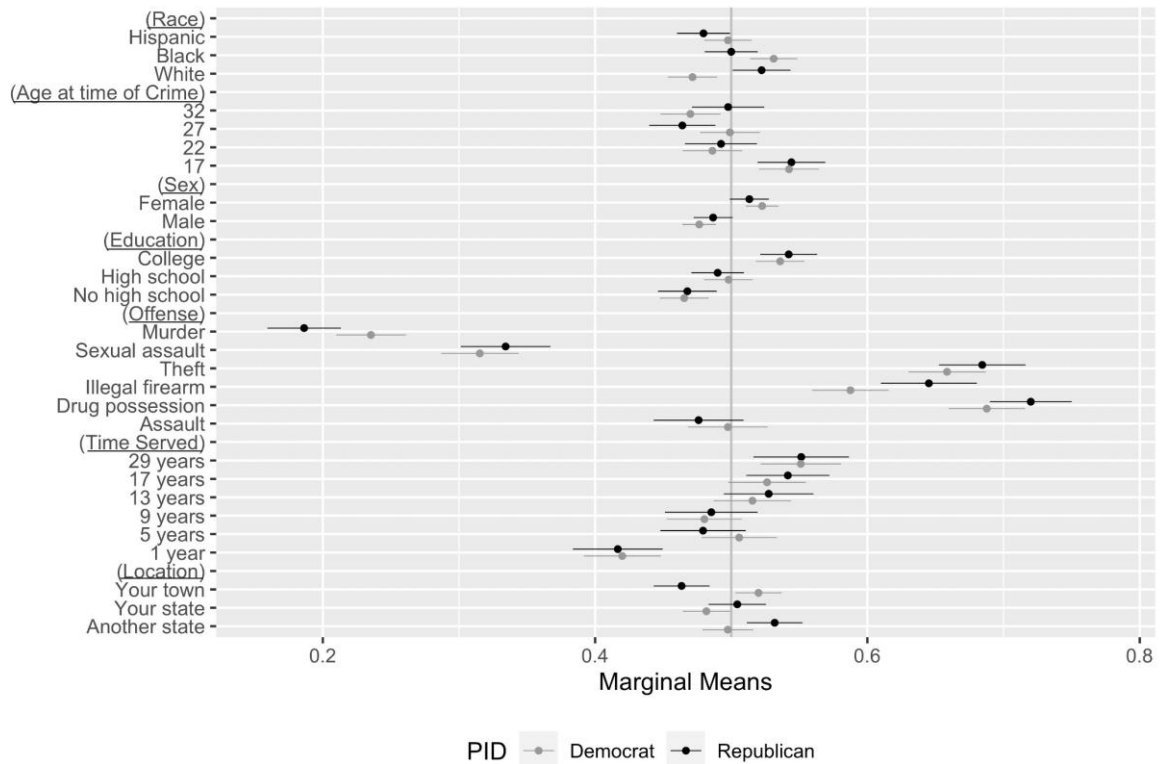
(95% CI: 10.68, 16.16) in respondents choosing the profile. Additionally, people were 6% (95% CI: 4.44, 8.11) more likely to offer parole to college educated individuals than those with no high school diploma.

Next, we estimate differences in conditional marginal means (Figure 2) to test whether these findings are consistent across groups. Conditional marginal means indicate the level of respondent favorability toward a profile with a particular attribute level, and thus allow for sub-group comparisons (Leeper et al., 2020; Levy, 2021).

We find strong evidence for a bipartisan consensus. Figure 2 displays the marginal means for Republican ($n = 2,216$ cases) and Democratic ($n = 3,071$ cases) respondents. Statistically significant differences in preferences between Republicans and Democrats only exist within three attributes: race of incarcerated individual, offense committed, and location where the incarcerated individual would be released. On race of the incarcerated individual, Republicans were 3% less likely (95% CI: -5.73, -0.50) to select Black profiles and 5% more likely to select White profiles (95% CI: 2.28, 7.86). In the offense category, Republicans were 5% less likely to parole individuals incarcerated for murder relative to Democrats (95% CI: -8.96, -1.18), and 6% (95% CI: 1.25, 10.28) more likely to prefer releasing individuals incarcerated for illegal firearm possession. Finally, Republicans were 6% (95% CI: -8.32, -2.98) less likely to choose release for incarcerated individuals when this would mean release into their communities. Still, each of these differences is substantively small, not exceeding 6%.

There is a high level of consensus across partisan groups on the attributes that matter most to respondents: type of offense and time served. Roughly 70% of Democrats and Republicans choose to offer parole to drug offenders, over 60% choose to offer parole to those incarcerated for illegal firearm possession and over 65% choose to parole those incarcerated for theft. Similarly, a majority of Democrats and Republicans believe that those who have already spent over a decade incarcerated should be released. Differences between partisans on these attribute levels

Figure 2: How often Republicans and Democrats prefer to grant parole when a given attribute appears in their decision task

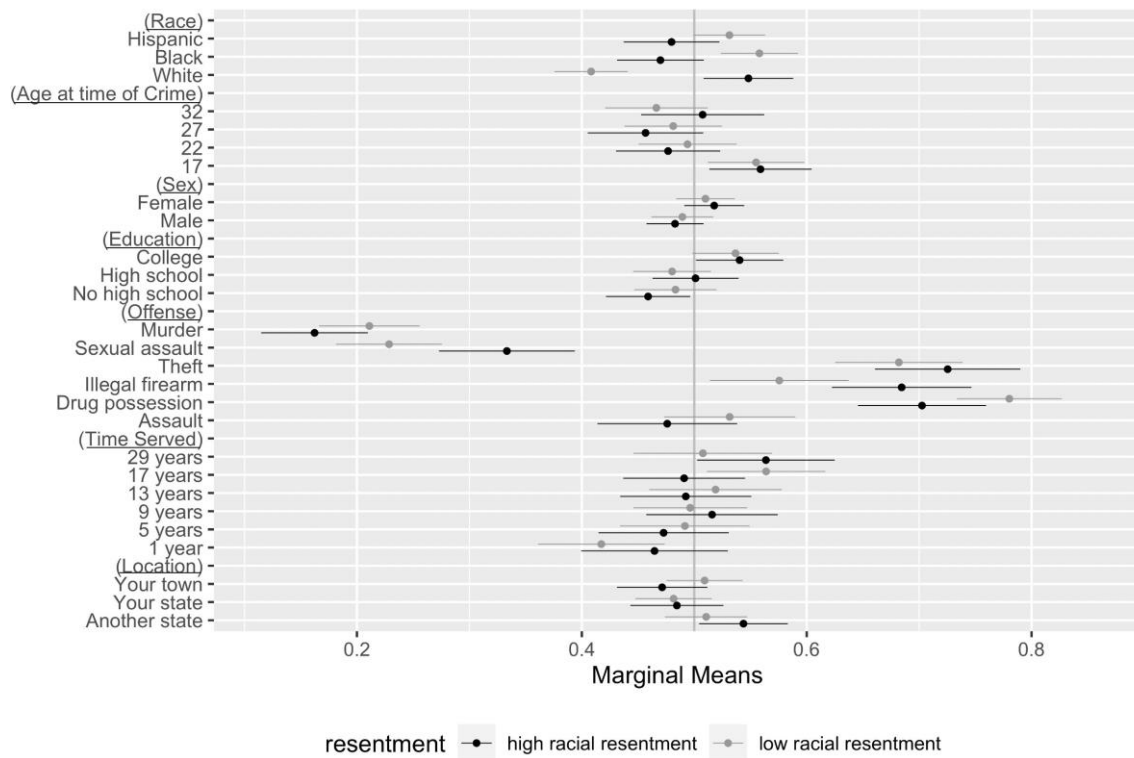


are not statistically distinguishable from zero.

Consensus does not just exist across the partisan divide. A robust literature documents the effects of racial attitudes on preferences for criminal justice policy (Bobo & Johnson, 2004; Hurwitz & Peffley, 2005a; Hutchings, 2015; Soss et al., 2003). Figure 3 compares the marginal means for high and low racial resentment respondents across each attribute level.¹⁴ Coefficients for high and low racial resentment respondents are not significantly different from one another on any attribute other than race and offense. High resentment respondents were 14% (95% CI: 8.84, 19.14) more likely to choose White profiles for parole and 9% (95% CI: 3.63, 13.97) less likely to choose Black profiles than low racial resentment respondents.

¹⁴The figure compares the respondents with the maximum level of racial resentment (8.3% of all respondents) to respondents with the minimum level of racial resentment (10.2% of all respondents). Results are substantively unchanged when comparing the 25% of respondents with highest resentment to the 25% of respondents with the lowest resentment. Tabular and graphical versions of both of these analyses can be seen in SI Appendix section 5. The full battery of four items that measures racial resentment is also in SI Appendix Section 1.

Figure 3: How often high and low racial resentment respondents prefer to grant parole when a given attribute appears in their decision task



High resentment respondents are also about 10% more likely to choose profiles incarcerated for sexual assault (95% CI: 2.13, 18.13) and illegal firearms possession (95% CI: 2.82, 18.13). Still, shared agreement largely exists: About 65% of high and low racial resentment respondents supported releasing individuals incarcerated for drug possession and theft. Furthermore, a majority of both high and low resentment respondents supported releasing those incarcerated for illegal firearm possession. Importantly, these marginal means are *all* higher than the marginal means for the race of the incarcerated individual. This evidence suggests that even for those with high levels of racial resentment, the racial makeup of individuals being released from prison does not overshadow preferences for decarcerating non-violent offenders.

Study 2

Study 1 tells us which individual inmates the public prefers to release. Our second study moves from individual inmates to groups of individuals being released. We do so by presenting a slightly different scenario to respondents. Here, each respondent is asked to decide between two different “halfway house” construction policies proposed by the Governor of their state. Each respondent completes three choices tasks evaluating these sets of halfway house profiles by deciding which halfway house policy they prefer. Respondents are also asked to rate how likely they would be to support each policy itself, on a scale from 1 (definitely would not) to 5 (definitely would). 1,752 Participants for this study were recruited on Lucid between December 1st and 3rd of 2021 using quotas to match the demographics of the United States population. Respondents in our sample were 29% Republican, 40% Democrat, 67% white and 61% male.

This design is meant to parallel the key components of our first study, also including offenses committed, location of release, time served, educational attainment and race of offenders.¹⁵ However, to move from individual offenders to groups of individuals, we include a new attribute – the number of inmates to be released. Table 3 presents the full conjoint attributes and levels. The number of hypothetical inmates ranges from 10 to 100,000, reflecting the large numbers of inmates to be released by a possible reform oriented politician. The purpose of this design is to determine if the preferences respondents hold over which individual criminal offenders to release scales to releasing larger numbers of criminal offenders. This scaling is particularly important because policy changes involve reducing sentences or releasing large numbers of incarcerated residents, not just individual offenders.

¹⁵See p. 8 for a discussion of the reasons for choosing those categories

Table 3: Study 2 Conjoint Attributes and Levels

Attribute	Levels
Percent of released inmates who demographers predict will be black	[20% / 40% / 60% / 80% / 100%]
Number of inmates to be released	[10 / 100 / 1,000 / 10,000 / 100,000]
Educational attainment of those expected to be released	[No high school / High school / College]
Nature of offense of those expected to be released	[Murder / Sexual assault / Assault / Illegal firearm / Theft / Drug possession]
Time already served in prison of those expected to be released	[Less than 1 year / Between 1 and 5 years / Between 5 and 10 years / More than 10 years]
Location of planned release	[Your county / Your state / Another state]

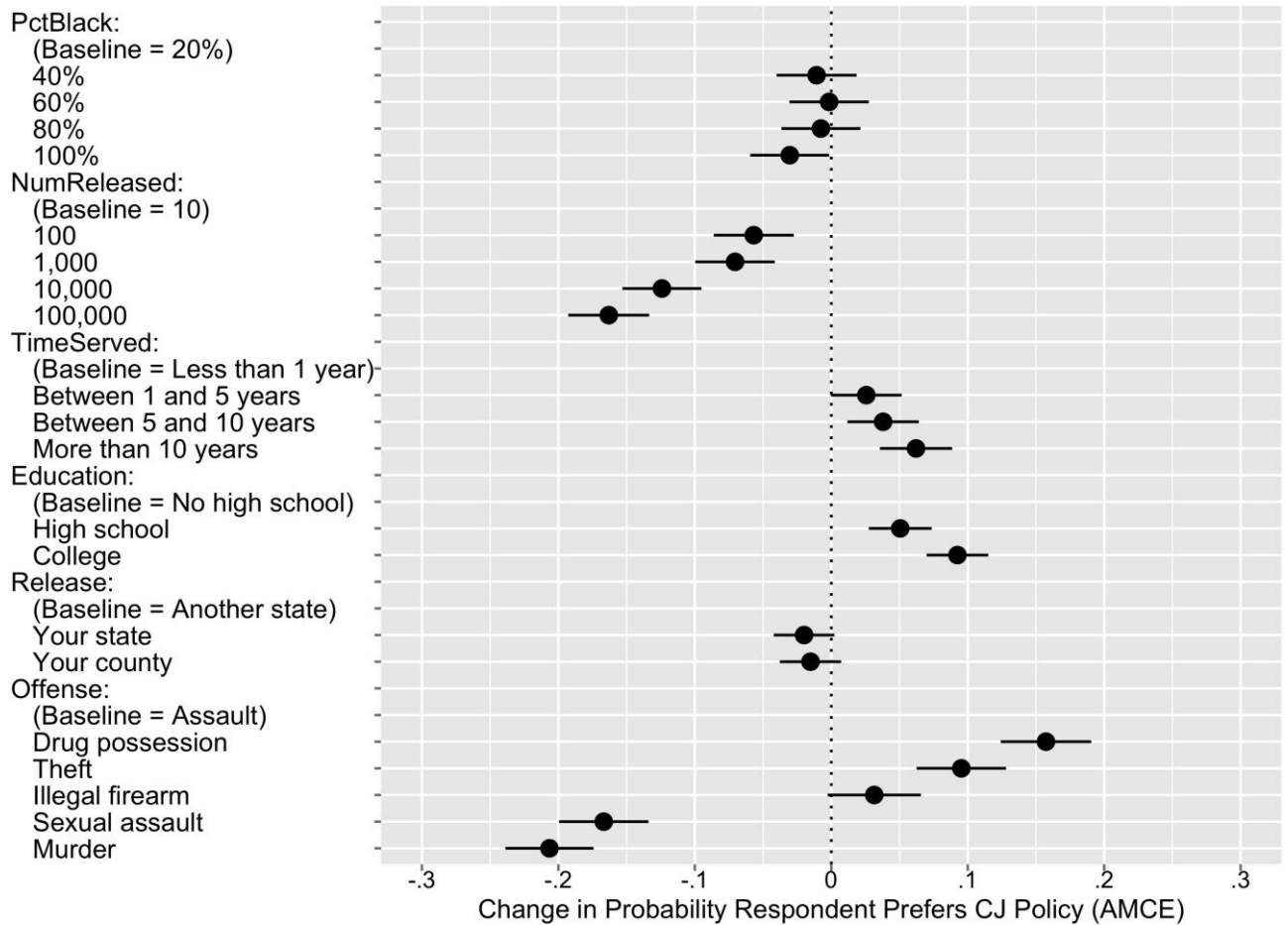
Study 2 Results

Just as with study 1, we estimate AMCE and conditional marginal means in the figures below. Figure 4 presents the AMCEs for study 2. The AMCE here represents the change in probability a respondent prefers to select a given group of criminal offenders for release to halfway houses. Here, a distinct set of preferences emerge. The percent black among the group being released and the halfway house location had no significant effect on the profiles chosen by respondents. While statistically significant, the time already served and education variables are substantively small in their effects on respondents preferred halfway house criminal release program. Specifically, offenders attending college are preferred over offenders who didn't complete high school by 9.2% (95% CI: 6.98, 11.05) and offenders who have served over ten years are preferred over offenders who have served less than a year by 6.2% (95% CI: 3.56, 8.86).

On the other hand, respondents had strong, substantively large preferences across the nature of offense of those released and the number of offenders that should be released. Respondents strongly disfavored halfway house releases of more offenders to halfway house releases of fewer offenders. Additionally respon-

dents strongly preferred the release of drug offenders and theft offenders relative to assault offenders, and strongly opposed release of sexual assault offenders and murder offenders relative to assault offenders.

Figure 4: Change in probability a respondent prefers to select a given group of criminal offenders for release in a halfway house

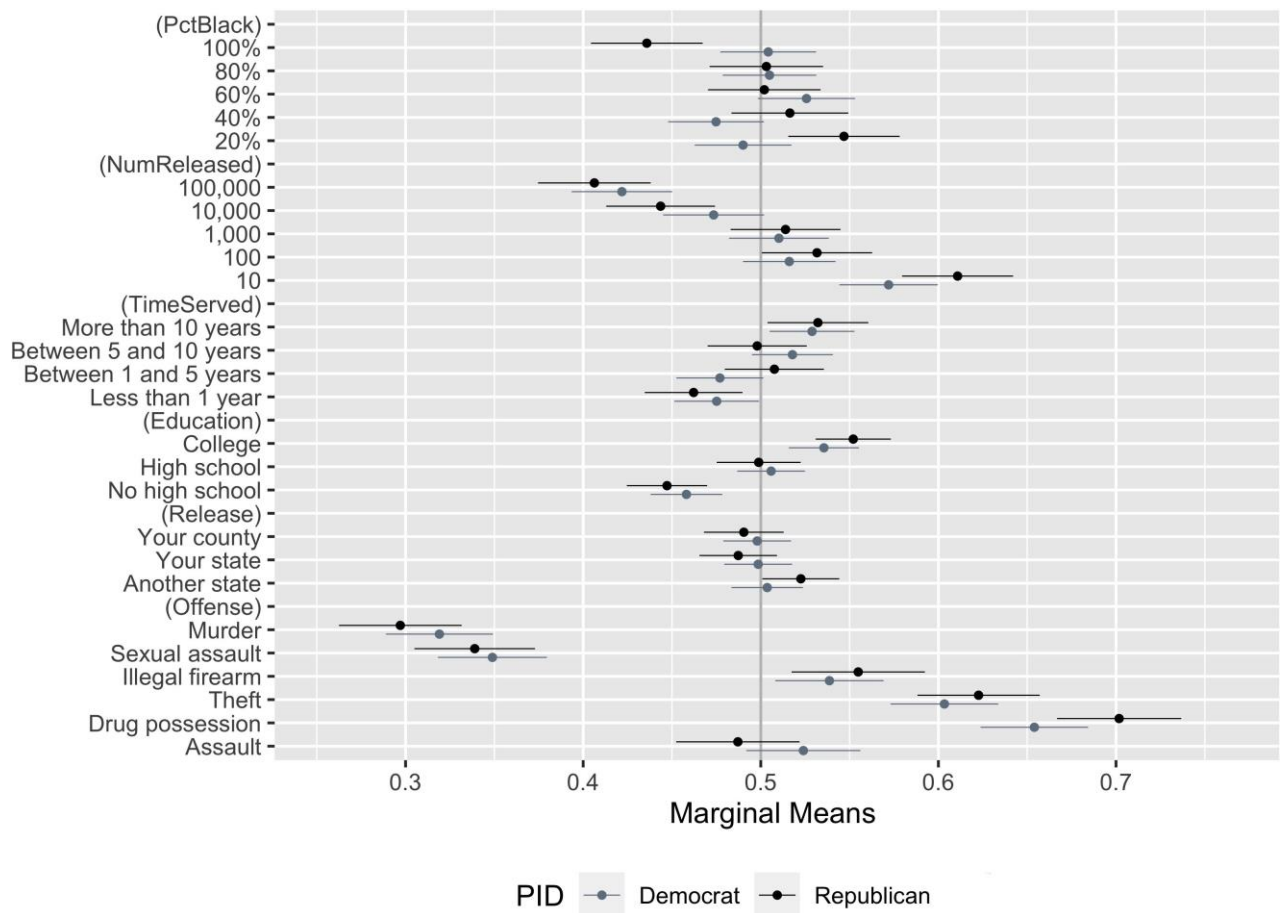


Specifically, releases of groups of 100, 1,000, 10,000 and 100,000 people are disfavored to releases of 10 people. Releases of 100 people are disfavored by 5.68% (95% CI: -3.50, -7.72), releases of 1,000 people are disfavored by 7.05% (95% CI: -4.85, -9.33), releases of 10,000 people are disfavored by 12.46% (95% CI: -10.20, -14.69) and releases of 100,000 people are disfavored by 16.30% (95% CI: -14.02, -18.63). Together, this suggests that on average, respondents strongly prefer releasing fewer offenders to more offenders.

The same consensus relative ordering of offenses was present in this study as

was found in study 1. Respondents are 15.76% (95% CI: 13.45, 17.99) more likely to prefer releasing drug offenders, 9.54% (95% CI: 7.30, 11.77) more likely to prefer releasing theft offenders and 3.14% (95% CI: 0.84, 5.59) more likely to prefer releasing firearm offenders to assault offenders. On the other hand, respondents had a strong distaste for releasing sexual assault offenders, disfavoring them by 16.66% (95% CI: -14.21, -18.94) and disfavoring murder offenders by 20.65% (95% CI: 18.24, 23.04). Figure 5 displays the marginal means for Republican ($n = 3,894$

Figure 5: How often Republicans and Democrats select a halfway house policy when a given attribute appears in their decision task



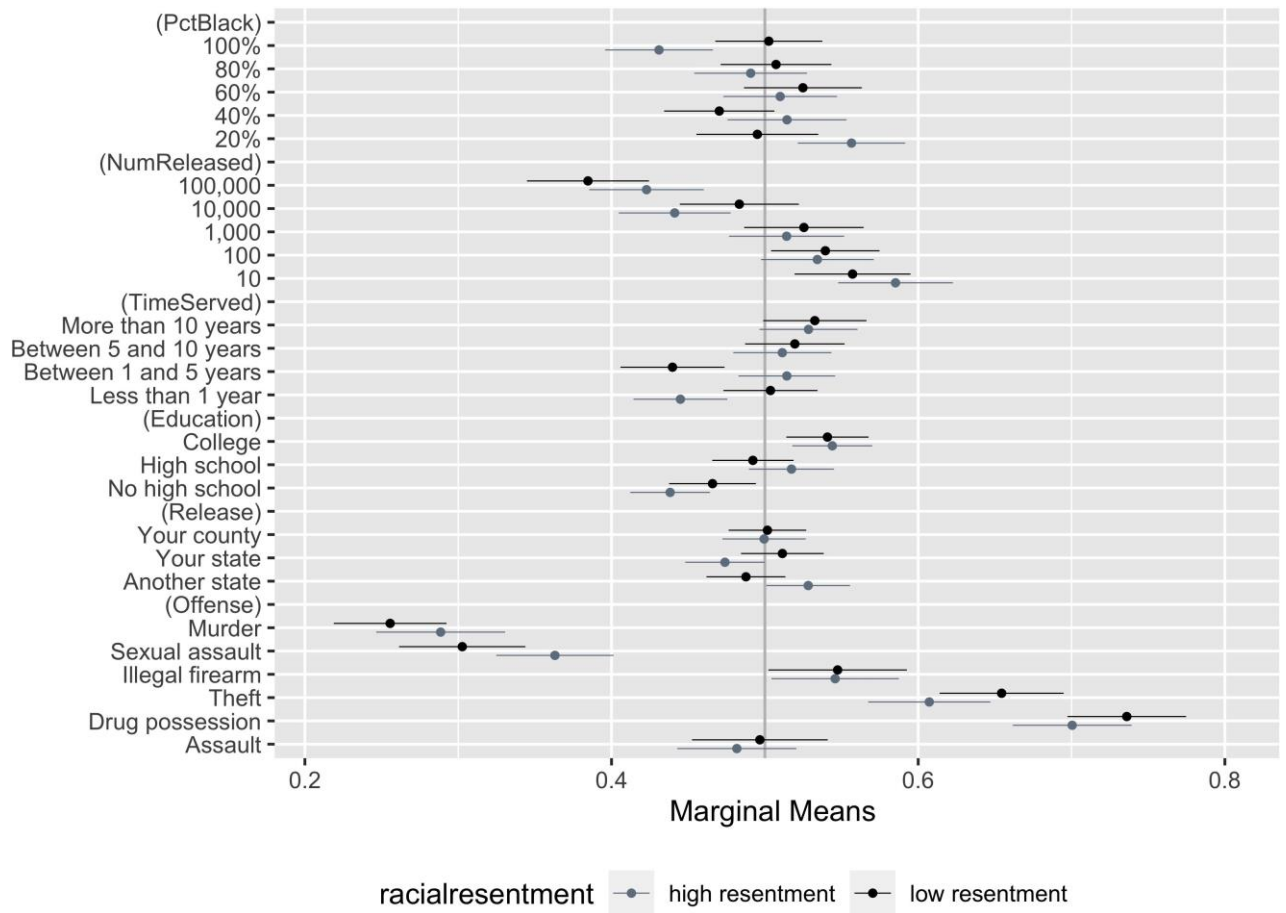
cases) and Democratic ($n = 5,076$ cases) respondents. Statistically significant differences in preferences between Republicans and Democrats only exist within one attribute: percent Black released in the halfway house policy. While statistically significant, this effect is also substantively small in size. Democrat respondents

are 6.7% more likely to support the release of 100% Black offenders than Republicans are (95% CI: 1.02, 13.9). Overall, a strong bipartisan consensus exists on the relative preferences for how many offenders and what kinds of offenders should be released. That is because across every other attribute no statistically significant differences exist between Republicans and Democrats. Between 60 and 70 percent of Democrats and Republicans prefer releasing theft and drug possession offenders in their halfway house policies, and between 30 and 35 percent of Democrats and Republicans prefer releasing murder offenders and sexual assault offenders. A similar bipartisan consensus exists with both partisan identifying respondents preferring lower number of released offenders into halfway houses, and offenders with more education to less education in the release programs. These results are largely consistent with the bipartisan consensus findings from study 1.

Figure 6 displays the marginal means for high racial resentment ($n = 2,892$) and low racial resentment ($n = 2,706$) respondents. High resentment respondents are those who score above a .66 (0 to 1 recoded) in racial resentment, while low resentment respondents are those who score below a .33 in racial resentment. Results are substantively unchanged when respondents above and below the median level of racial resentment are included in analysis. Study 1 and Study 2 found no differences across levels of racial resentment in support for parolees. These results hold here. There are only significant differences found across one category – percent black offenders released in the halfway house program. Here, high resentment respondents are 6.9% more likely to support releasing 100% Black offenders than low racial resentment respondents (95% CI: 0.1, 14.1). This is expected, as racial resentment purports to measure anti-black affect. Aside from this, no statistically significant differences in preference orderings exist for low and high resentment respondents.

Importantly, the difference in preferences for releasing 100% Black offenders does not overshadow the strong consensus that exists in favor of releasing theft and drug possession offenders and the strong consensus that exists against releas-

Figure 6: How often high and low racial resentment respondents select a halfway house policy when a given attribute appears in their decision task



ing murder offenders and sexual assault offenders. The marginal means for these attribute levels are all above 60, far higher than the marginal means favoring or disfavoring the racial breakdown of the halfway house release individuals. This suggests that while preferences over the racial composition of those affected by criminal release policies may play some role in preferences, they are not overriding the relative preferences for which kinds of offenders should be released – even among the most racially resentful respondents.

Study 3 Data and Design

Study 1 and 2 can tell us *which* potential parolees people prefer. However, if the predominant public opinion-centric theories are correct, then the results of Study 1 and Study 2 should translate directly to respondent's choices when deciding between candidates criminal justice platforms in an electoral context. To study that, we conducted a conjoint experiment. Respondents were recruited on Lucid between December 1st and December 3rd of 2021 and were sampled to be proportional to the United States demographically along race, gender, age and geographic region. In total 1,752 individual completed the survey, with each individual respondent completing four conjoint tasks, leading to a total of 7,008 conjoints used for analysis. Respondents in our sample were 29% Republican, 40% Democrat, 67% white and 61% male.

Respondents four conjoint tasks saw them chose to vote for one of two hypothetical primary candidates for state legislature. We choose an election for state legislature for two reasons. First, a majority of incarcerated individuals reside in state prisons, which are under the policy control of state legislatures.¹⁶ Next, state laws like sentencing guidelines are passed by state legislators and have proven to be a central drivers of mass incarceration, making criminal justice policies relevant to the election of these officials (Campbell, 2018; Duxbury, 2021a; Gottschalk, 2011). Attributes of the candidates were: race, age, sex, education, ideology/partisanship, previous job, and crime policy. These demographic categories present more realistic portraits of a candidate, and previous research using candidate choice conjoints finds these categories are important in determining vote choice for respondents (Doherty et al., 2019; Jones et al., 2018; Schwarz & Coppock, 2022). We include information on candidate ideology and partisanship to ensure that respondents do not use criminal justice policy positions as a proxy for ideology and partisanship.

One critique of this design may be that our hypothetical elections do not present

¹⁶<https://www.prisonpolicy.org/reports/pie.html>

respondents with realistic candidate choice scenarios. In particular, a broad literature demonstrates that both Democrats and Republicans have engaged in the ‘tough-on-crime’ politics that caused mass incarceration (Grumbach, 2018; Gunderson, 2021; Hinton, 2017; Murakawa, 2014; Weaver, 2007). As a result, one may think it is unlikely respondents would ever be voting in an election with candidate(s) explicitly advocating for reducing prison populations. But lately, multiple candidates have made explicit campaign pledges to decarcerate. For example, Cori Bush, the Democratic congresswoman from Missouri, promised to reduce prison populations by changing parole policies.¹⁷ Several prominent candidates for the 2020 democratic Presidential nomination, including Beto O’Rourke, Andrew Yang, and Cory Booker, promised to decarcerate by using the president’s power to release non-violent offenders in Federal prison.¹⁸ This push to reduce prison populations is not solely driven by Democrats either. While in office Former President Donald Trump passed and campaigned on the *First Step Act*¹⁹, a criminal justice reform bill which released over 3,000 federal prisoners serving long sentences. In the abstract, our design presents a well controlled setting to evaluate whether candidates do or do not benefit electorally from decarceral campaign promises.

Importantly, respondents in this conjoint are the same individuals who completed the conjoints displayed in study 2. That allows for a direct comparison between the rank orderings of which criminal offenders respondents preferred to release with the rank orderings of which candidates criminal justice policy platforms are preferred.

The key source of variation here is the crime policy favored by the candidates. Levels were as follows: keep prison population the same, reduce prison populations by releasing drug offenders, reduce prison populations by releasing those convicted of theft, increase prison populations by getting tougher on firearm of-

¹⁷See <https://coribush.org/prison-reform>

¹⁸See <https://www.themarshallproject.org/2019/10/10/2020-the-democrats-on-criminal-justice>

¹⁹<https://www.brennancenter.org/our-work/research-reports/what-first-step-act-and-whats-happening-it>

Table 4: Study 3 Conjoint Attributes and Levels

Attribute	Levels
Age	[30 / 45 / 60 / 75]
Sex	[Male / Female]
Race	[White / Black / Hispanic]
Party/Position	[Democrat who wants to INCREASE unemployment benefits and environmental protections / Independent who wants to MAINTAIN unemployment benefits and environmental protections / Republican who wants to DECREASE unemployment benefits and environmental protections]
Education	[High School / College / Graduate Degree]
Previous Job	[City council member / teacher / banker / bartender / accountant]
Crime Policy	[DECREASE the prison population by releasing people imprisoned for drug possession and shortening sentences / DECREASE the prison population by releasing people imprisoned for theft of goods under \$1,000 and shortening sentences / DECREASE the prison population by releasing people imprisoned for firearm possession offenses and shortening sentences / MAINTAIN the current prison population level by keeping sentencing guidelines the same / INCREASE the prison population by imprisoning more people for firearm possession offenses and lengthening sentences / INCREASE the prison population by imprisoning more people for theft of goods under \$1,000 and lengthening sentences / INCREASE the prison population by imprisoning more people for drug possession and lengthening sentences]

fenders, increase prison populations by getting tougher on drug offenders, and increase prison populations by getting tougher on those convicted of theft. These policies follow directly from our first two studies, which each suggested that people strongly favor releasing drug offenders.

One limitation of conjoint experiments is that they force people to make choices, but one feature of elections is that there isn't always a change. Elections do not force any divergence from the status quo because politicians are not forced to diverge from the current policy world. For this reason, we include a "status quo" criminal justice policy candidate, who says they won't change anything about the criminal justice system. We believe that this is a more realistic test and helps alleviate some concerns that the results of the first two experiments are driven by a

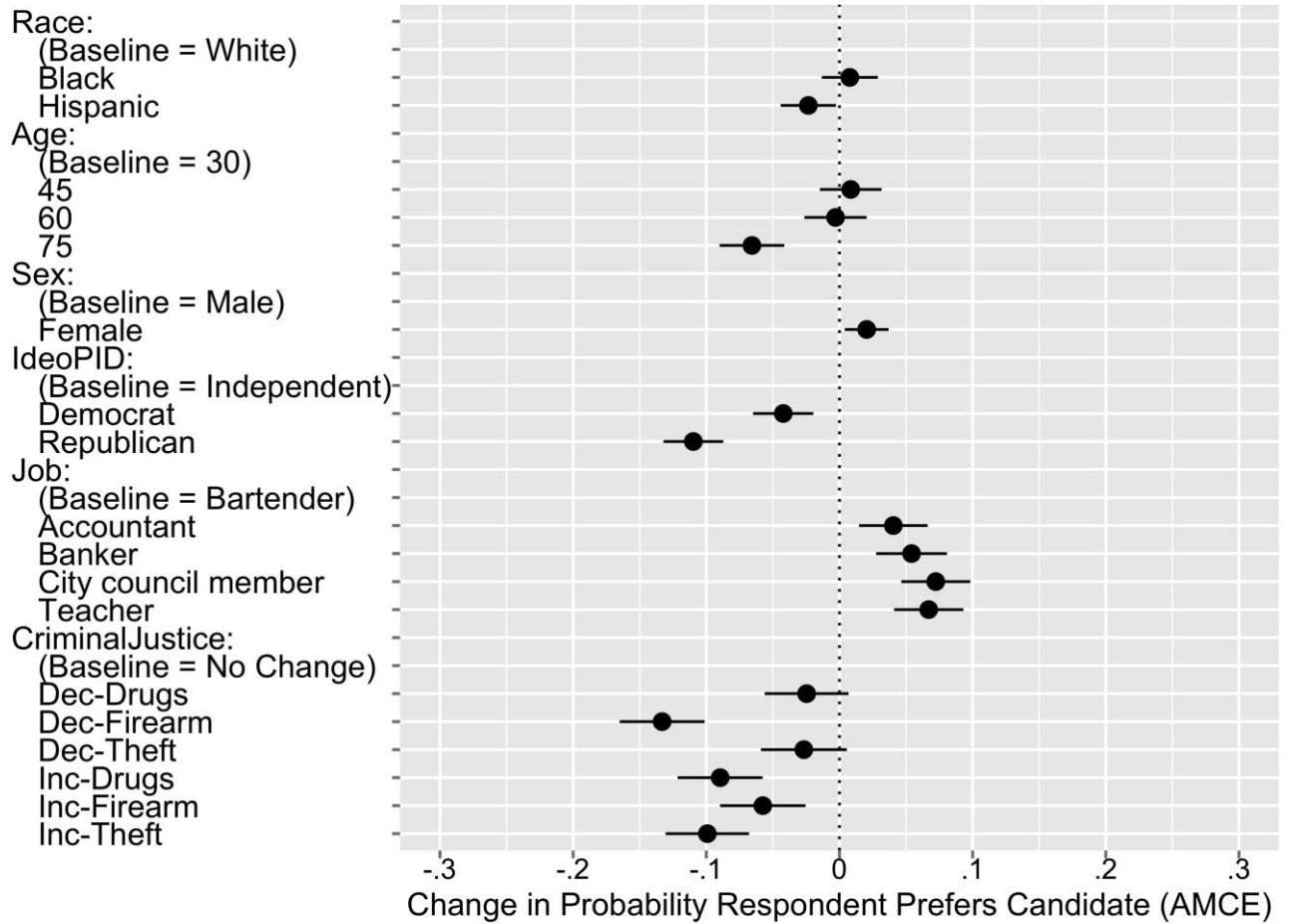
forced choice context where both choices require releasing some incarcerated individuals.

Study 3 Results

Just as with studies one and two, we present two quantities of interest: the AMCE and conditional marginal means. These results stand in stark contrast to the findings of study one and study two. While a consensus across partisan groups and racial attitudes exists in determining which criminal offenders are deserving of parole, this consensus does not translate into electoral preferences. Instead, we find that respondents slightly disfavor candidates who promise to enact decarceral policies. These average effects mask important heterogeneity. Democrats prefer candidates proposing decarceral policies, while Republicans prefer candidates proposing carceral policies. Additionally, high racial resentment respondents even more strongly prefer candidates promising to increase the prison population than Republicans, and low racial resentment respondents even more strongly prefer candidates promising decreasing the prison population than Democrats. This finding fits well with existing research on the relationship between racial attitudes and preferences for punishment (Hurwitz & Peffley, 2005b; Mendelberg, 1997; Valentino, 1999).

Figure 7 displays the AMCE for each attribute level. The coefficients for each attribute level represent a percent change in the probability a respondent prefers a candidate with those attributes, holding all else constant relative to the reference category. Respondents disfavor 75 year old candidates and favor female candidates, independent candidates, and candidates who did not work as bartenders. However, most relevant to this study are the results for crime policy. Relative to a baseline of no change in criminal justice policy, no single criminal justice policy is favored. In fact all policies are significantly disfavored aside from decreasing the prison population by releasing drug offenders (95% CI: -5.61, 0.07) and decreas-

Figure 7: Change in probability a respondent prefers a candidate for each randomly assigned attribute



ing the prison population by releasing more theft offenders (95% CI: -5.89, 0.05), which are each significantly disfavored at the 90% α level. These two decarceral policies are not statistically distinguishable from zero in their effect on respondent vote choice, but the coefficient estimates are still negative in direction. While these results do not suggest that candidates can decarcerate without suffering some electoral cost, they also do not suggest that candidates can increase incarceration without paying some electoral cost either. In fact, they primarily suggest that maintaining status quo incarceration levels is most optimal as an electoral strategy.

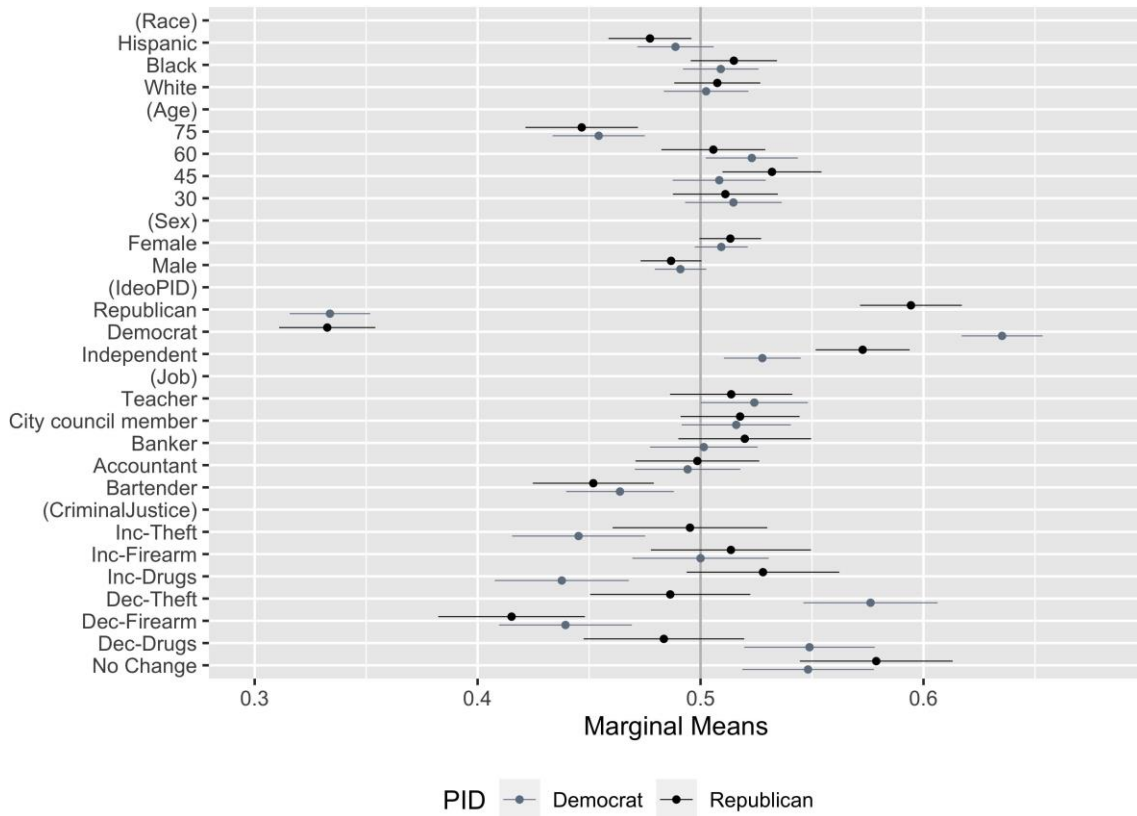
In study 1 and 2 we showed that respondents strongly preferred to parole individual and groups of non-violent offenders incarcerated for drug offenses, theft and firearm possession. However, here, on average, respondents did not support

candidates who proposed policies decreasing the prison population by releasing non-violent offenders. Candidates advocating release of theft offenders were disfavored by about 2.7% (95% CI: -5.89, 0.05), candidates advocating for the release of drug offenders were disfavored by about 2.5% (95% CI: -5.61, 0.07) and candidates advocating the release of firearm offenders were disfavored by about 13.3% (95% CI: -16.51, -10.13). Substantively, the key implication of these results is that candidates will not benefit from running on a platform of decarceration – even if the individuals affected by the policy are those the public views as most deserving of release.

However, it is worth noting that candidates advocating for an increase in incarceration by locking up more drug, firearm and theft offenders were *also* significantly disfavored. Candidates advocating for incarcerating more theft offenders were disfavored by about 9.9% (95% CI: -13.10, -6.71), candidates advocating for incarcerating more drug offenders were disfavored by about 8.9% (95% CI: -12.14, -5.77) and candidates advocating for incarcerating more firearm offenders were disfavored by about 5.7% (95% CI: -8.96, -2.55).

Figure 8 displays the marginal means for Republican ($n = 4,024$ cases) and Democratic ($n = 5,608$ cases) respondents. Statistically significant differences in preferences between Republicans and Democrats only exist within two attributes: partisanship/ideology of candidate and crime policy. On partisanship, Democrat respondents are 30.1% more likely to select Democrats candidates than Republican respondents are (95% CI: 26.2, 34.6) and 26.1% less likely to select Republican candidates than Republican respondents (95% CI: 22.7, 29.4). On crime policy the differences are also substantive. Democrats are 6.53% more likely to support candidates who plan to release drug offenders than Republicans (95% CI: 1.9, 11.7) and 8.98% more likely to support candidates who plan to release theft offenders (95% CI: 4.3, 13.7). Conversely Republicans are 9.1% more likely to support candidates who plan to incarcerate more drug offenders (95% CI: 4.4, 13.6) and 4.99% more likely to support candidates who plan to get tougher on theft offenders (95%

Figure 8: How often Republicans and Democrats select a candidate for state legislature when a given attribute appears in their decision task

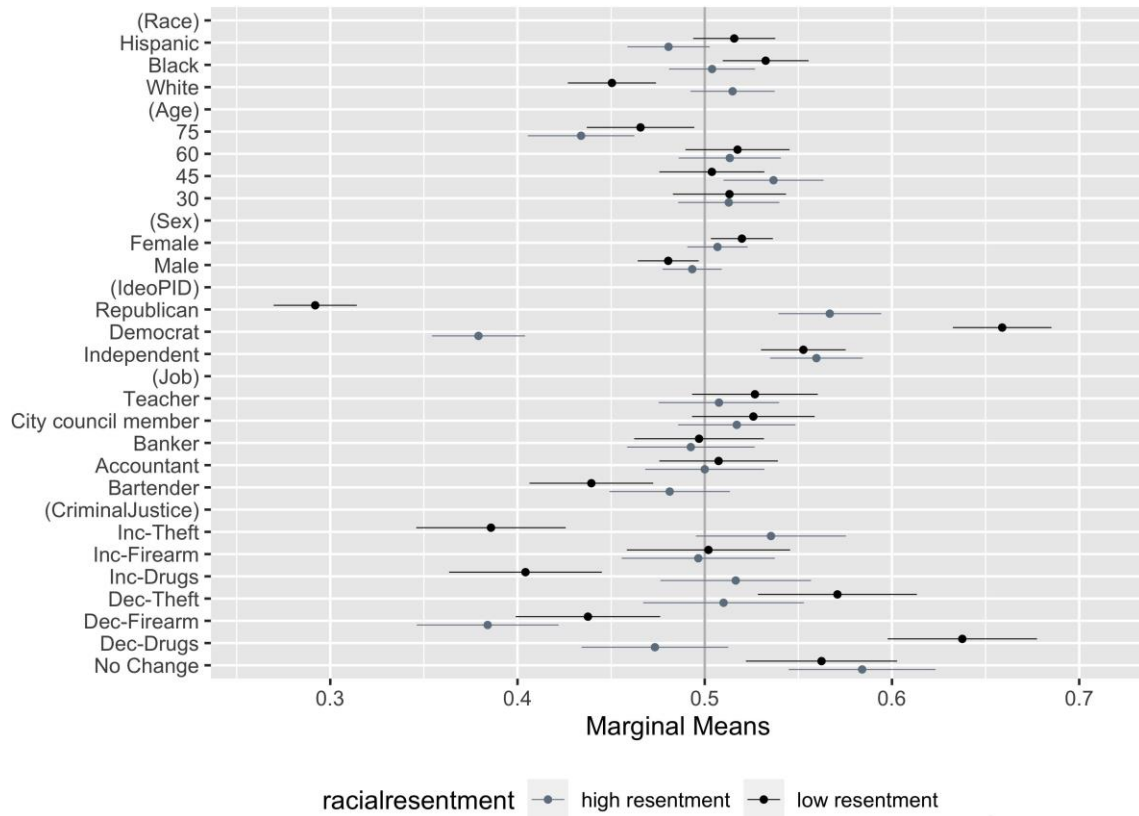


CI: 0.4, 9.5).

Figure 9 displays the marginal means for high racial resentment ($n = 3,608$) and low racial resentment ($n = 3,856$) respondents. High resentment respondents are those who score above a .66 (0 to 1 recoded) in racial resentment, while low resentment respondents are those who score below a .33 in racial resentment. Results are substantively unchanged when respondents above and below the median level of racial resentment are included in analysis. Study 1 and Study 2 found no differences across levels of racial resentment in support for parolees. Those results do not hold here. Instead, there are significant differences across two attribute levels of the conjoint experiment – ideology/partisanship and criminal justice policy.

High racial resentment respondents are 27.4% more likely to select Republican candidates than low racial resentment respondents (95% CI: 23.9, 31.0) and 27.9%

Figure 9: How often high and low racial resentment respondents select a candidate for state legislature when a given attribute appears in their decision task



less likely to select Democratic candidates than low racial resentment respondents (95% CI: -24.3, -31.9). This finding is likely due to the fact that most high racial resentment respondents are Republicans and most low racial resentment respondents are Democrats. More importantly, high racial resentment respondents are 16.4% less likely to support candidates who plan to decrease the number of drug offenders in prison (95% CI: -22.0, -10.8) and 6.1% less likely to support candidates who plan to decrease the number of theft offenders in prison (95% CI: -12.1, -0.04) than low resentment respondents. On the other hand, high racial resentment respondents are 14.9% more likely to support candidates who plan to increase the number of theft offenders in prison (95% CI: 9.3, 20.6) and 11.2% more likely to support candidates who plan to increase the number of drug offenders in prison (95% CI: 5.4, 16.9).

The results of this study suggest that the translation between public preferences regarding criminal offenders and electoral preferences regarding candidates criminal justice policies are not straightforward. Similarly, we find that the consensus across partisan and racial attitude divides over which criminal offender classes are more and less deserving of release does not hold in an electoral context. Substantial differences in preferred candidates exist across partisan lines and levels of racial resentment.

Discussion

To summarize, our studies yield three main findings. Study 1 finds that there is a consensus across parties and racial attitudes over which individual inmates are more deserving of release. Study 2 finds that this consensus holds even when people are deciding between large numbers of offenders. Together, these findings suggest strong agreement over which classes of criminal offenders are more deserving of release. Our third study reveals that preferences over inmate release fail to translate into electoral support for candidates endorsing the release of those same classes of offenders. If past work correctly links public punitiveness on crime to electoral outcomes then we would see respondents express consistent preferences over both candidates and policies. In contrast to that expectation, we find that the consensus on which offenses and which offenders merit imprisonment or release breaks down when people are choosing candidates. Sharp partisan differences and differences centered on racial attitudes emerge only in an electoral environment.

Our analysis of the link between policy preferences and electoral outcomes has several potential limitations, each of which may impact the generalizability of our conclusions.

The most significant limitation of our methodology is the forced choice structure of the studies. As [Abramson et al. \(2022\)](#) note, the estimand of conjoint experiments (AMCE) does not map neatly onto the electoral context that we generalize

to.²⁰We take two steps to address this limitation. First, we include an analysis with ratings as the dependent variable (see Supplementary Information Section 8) and find our results to be consistent with results using the forced choice as a dependent variable. Second, we include a second electoral conjoint within the appendix (see Supplementary Information Section 12), conducted on a separate survey sample. These results are also substantively unchanged from our electoral conjoint (Study 3). These approaches do not fully address the limitations of conjoint experiments that [Abramson et al. \(2022\)](#) articulate but the consistency of our results does allay some concerns about robustness.

A second apparent threat to generalizability is that we measure preferences in hypothetical elections. We argue that if anything, real world elections will be more subject to the same breakdown in translating criminal justice preferences into policy outcomes. In our tightly controlled experiments there were relatively few differences between candidates beyond a small number of policy positions and characteristics. In real world elections there often are more loci of political conflict and thus more opportunities for people to make choices that diverge from those they would have made in experimental conditions.

A third concern is that respondents took both conjoint 2 and conjoint 3 within the same survey, one after the other. It is possible that the conditions of interest in study 3 (releasing people from prison without any additional details) were perceived as more extreme than the hypothetical policies in study 2, which focused on releasing prisoners to state supervised halfway houses. It is also possible that the cognitive load for respondents became too much, and they satisficed more frequently on the conjoint tasks as the survey continued. We ensure our results are robust to these concerns in two ways. First, we look at the average time each respondent spent on a conjoint task as the study continued across conjoints 2 (3 tasks) and conjoint 3 (4 tasks). We find no statistically significant differences in

²⁰Because we do not ask questions about the importance level for each attribute in the conjoint, we can not validate the testable assumption of no correlation between the direction and intensity of attribute preferences that [Abramson et al. \(2022\)](#) lay out in their article.

average time spent on each conjoint task based on task number, and, as we display in Supplementary Information Section 10, we also find no task order effects on response patterns. This is consistent with findings from [Bansak et al. \(2018\)](#) and [Bansak et al. \(2021\)](#) suggesting that researchers can assign dozens of conjoint tasks without substantial declines in respondent attention. Next, we use an entirely separate analytic sample on Lucid on another date (August 2021) and conduct a similar electoral conjoint (see Supplementary Information Section 12). This sample does not involve respondents taking multiple conjoint experiments within the same survey. Instead, it only presents respondents with an electoral state legislative conjoint task similar to that which we present in study 3 of this manuscript. Here, we find similar results. Again, candidates for State Legislature do not benefit from engaging in decarceral policy promises.

A final limitation is conceptual. Our conjoint experiments only allow us to identify relative rankings of deservingness, not absolute measures of punitiveness, as scholars like [Enns \(2014\)](#) and [Enns \(2016\)](#) can. This limitation means that we may be identifying and measuring a different construct entirely – a ranking of deservingness of punishment rather than a measure of the punitiveness of the public. However, even if the construct we identify is not identical to that leveraged by [Enns \(2014\)](#) and [Enns \(2016\)](#), the inconsistency between the relative rankings of deservingness in conjoints 1 and 2 and the relative ranking of electoral preferences in conjoint 3 still point to an important theoretical obstacle to public opinion-driven theories of incarceration. Despite this important critique, our central finding still holds – public preferences over which criminal offenders deserve to be released do not directly translate into their preferences for candidates endorsing the release of those same offenders.

Moreover, our conjoint experiment enables us to discern differences in punitive attitudes towards specific kinds of criminal offenders, rather than relying on a coarsened measure of punitiveness. Because our conjoint presents hypothetical offenders and offender classes that include drug, theft, assault and murder, we can

differentiate between preferences across these categories. Scholarship relying on aggregate measures of public mood or punitiveness provides important insight, but the granularity of our methodology can also help contextualize heterogeneity in punitiveness.

Our design does not allow us to determine precisely why these differences emerge in electoral contexts. Further research should probe the precise mechanisms through which the electoral environment vitiates public opinion policy preferences. To study this, future researchers may consider whether policy preferences translate differently to vote choice on referenda, compared to candidate elections. Or researchers may consider whether candidates face pressures from positive or negative traits associated with certain criminal justice policies.

Ultimately, these partisan and racial resentment driven differences represent the intervention of the electoral process in any attempt to translate shared policy preferences into electoral outcomes. Our findings challenge prominent theories of mass incarceration while suggesting important avenues for further exploration. In addition to directly linking stated policy preferences to electoral preferences in this domain, as many academic and public commentators continue to do, researchers in this space should consider the political implications of choosing policymakers through elections in which many policies are chosen simultaneously, and in which cultural identities are more likely to intervene.

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