

Panic at the Courtroom: how banning the LGBTQ+ “panic” defense shapes the prevalence of hate crimes

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1. Introduction

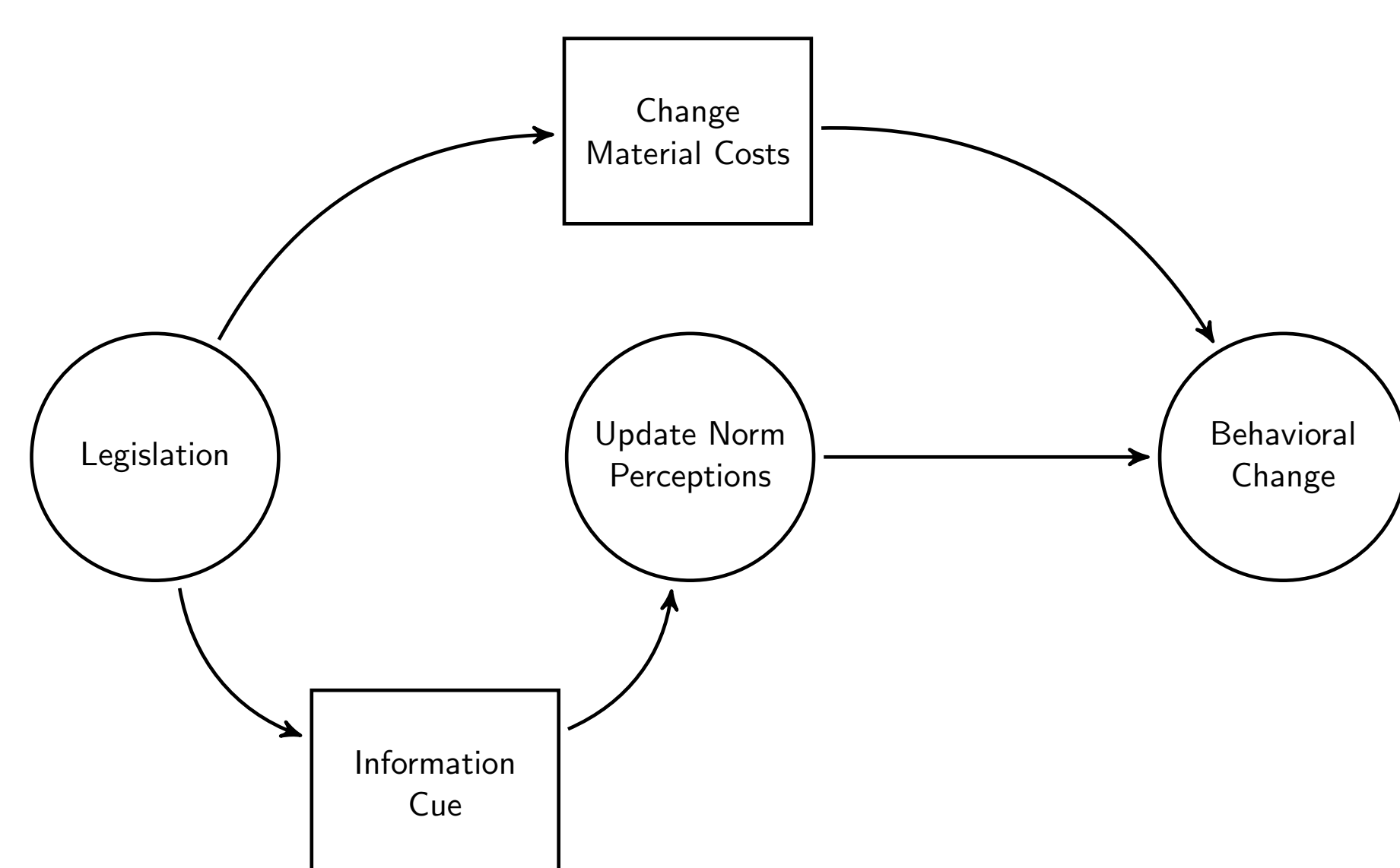
Over the past few years, the US has seen a dramatic increase in bias-motivated crime. Of particular concern in this context are recent trends in offenses against the LGBTQ+ community. According to the Human Rights Campaign (n.d.), lethal violence against transgender and gender non-conforming individuals reached an unprecedented peak in 2020. Against this backdrop, I seek to address the question of whether legislative interventions can protect marginalized communities. More specifically, I examine whether the prohibition of the LGBTQ+ “panic” defense affects the prevalence of hate crimes. Despite increasingly vocal criticism, to this day, raising a LGBTQ+ “panic” defense remains a legal practice in the majority of state courts, as well as in federal court.

Definition

The LGBTQ+ “panic” defense refers to a legal strategy where the defense argues that an unwanted, non-forcible sexual advance or the discovery of a victim’s sexual orientation or gender identity, caused the defendant to lose control and act in the heat of passion when committing a violent crime.

2. Argument

Drawing on the concepts of the deterrent and expressive function of law, I argue that legislative measures against the LGBTQ+ “panic” defense decrease the number of hate crimes in two ways:



Under the deterrence framework, the introduction of measures against this court practice should directly interfere with the utility function of potential perpetrators by increasing both the expected severity and chances of punishment. According to the social norm mechanism, these measures can also exert an indirect effect on compliance. Understood as institutional signals, individuals may

interpret this new legislation as reflecting growing consensus about the unacceptability of enforcing heteronormativity and masculinity norms through physical violence which, in turn, may prompt them to refrain from norm-defying behavior.

Hypothesis

The passage of legislative actions against the LGBTQ+ “panic” defense decreases the number of hate crimes based on a victims’ sexual orientation or gender identity.

3. Method & Results

To identify the causal effect of banning this practice, I leverage the gradual roll-out of LGBTQ+ “panic” defense bans across the US and implement a difference-in-differences design, calculating group time average treatment effects following the approach of Callaway and Sant’Anna (2020):

$$ATT_{(g,t)} = \mathbb{E}[Y_t(g) - Y_t(0) | G_g = g]$$

The results show that the introduction of these legislative measures reduce the rate of hate crimes motivated by a victims’ sexual orientation or gender identity by an average of 0.13 per 100,000 inhabitants. For a state like Ohio, which so far failed to take action against LGBTQ+ “panic” claims in court, this would have resulted in a reduction of 64 anti-LGBTQ+ motivated hate crimes in 2019. Moreover, the effect does not manifest immediately but gradually increases with time (see Figure 1) and proves to be robust to a range of different model specifications and placebo falsifications.

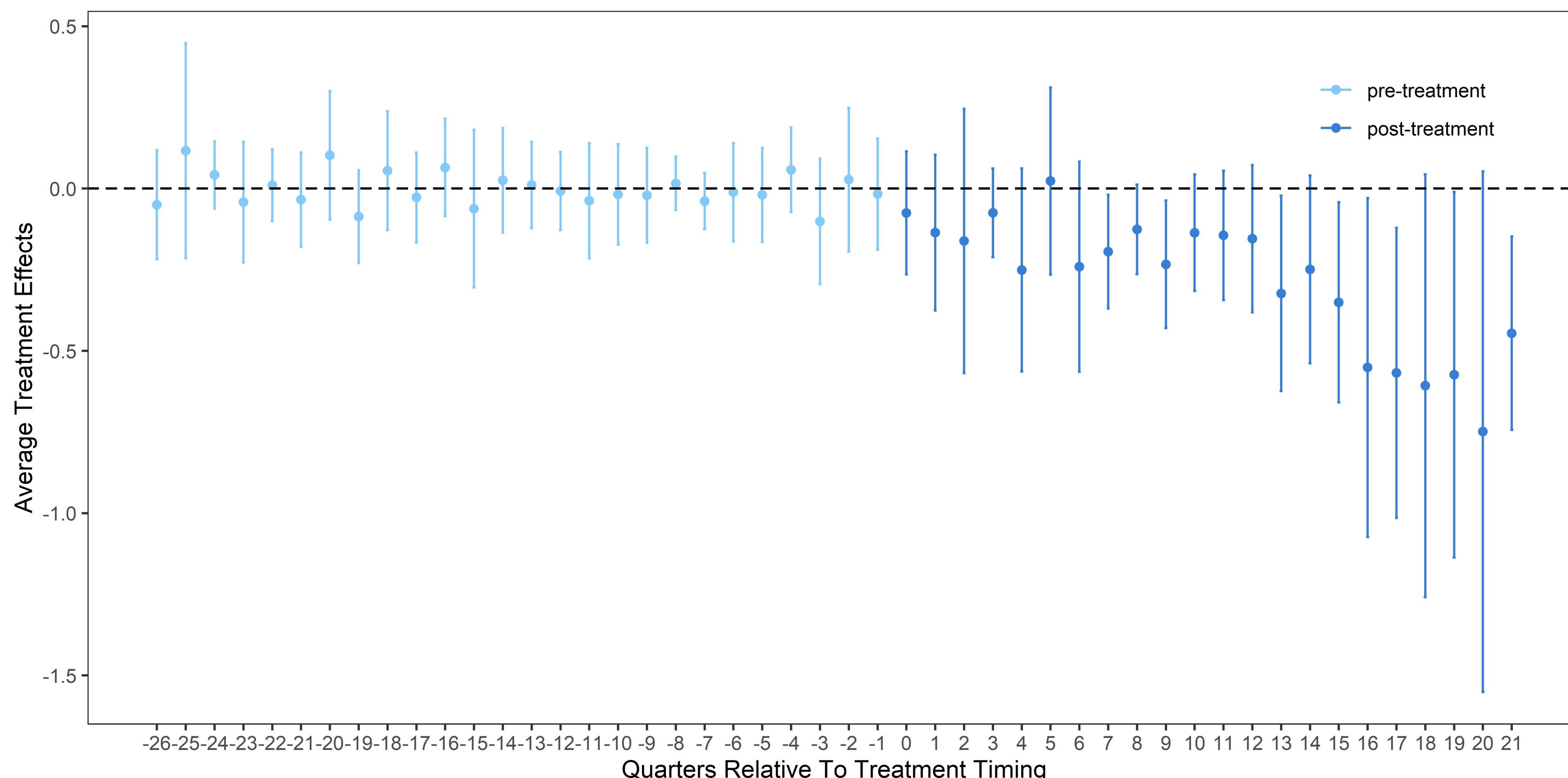


Figure 1: Average treatment effect of prohibiting the LGBTQ+ “panic” defense on hate crime rates by length of exposure.

4. Conclusion

Can legislative interventions protect marginalized communities? Using variation in the timing of prohibiting the LGBTQ+ “panic” defense across states, I demonstrate that these measures have a disarming effect on hate crimes based on a victims’ sexual orientation or gender identity. Besides contributing to the literature on minority politics, policy feedback and hate crime prevention, insights gained from this work are of assistance to policy makers and minority rights advocates.

5. Forthcoming Research

Paper 2 will implement a survey experiment to assess how the construction of target groups in minority policies can be used to reduce anti-minority sentiments.

Paper 3 will examine the conditions under which political elites mobilize in response to advances in minority rights and whether such strategies yield electoral benefits.

References

- Callaway, B. and Sant’Anna, P. H. (2020). Difference-in-differences with multiple time periods. *Journal of Econometrics*, pages 1–45.
- Human Rights Campaign (n.d.). Fatal violence against the transgender and gender non-conforming community in 2021. *Human Rights Campaign*. Retrieved from <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2021>. Accessed 2021, July 28.

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