

Get Jailed, Jump Bail? The Impacts of Cash Bail on Failure to Appear and Re-Arrest in Orleans Parish.

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Abstract

Cash bail has come under increasing scrutiny because of the high number of defendants who remain detained pretrial when they are unable to afford their release. According to critics, this amounts to punishment on the basis of poverty, not crime. As a result, releasing more defendants on their own recognizance (ROR) is becoming an increasingly popular reform implemented by cities and states. In this paper, we study individuals released pretrial by the Orleans Parish Sheriff's Office between December 2018 and November 2019 to understand the role and impacts of cash bail and ROR on failure to appear (FTA) and re-arrest rates. We find that ROR does not increase an individual's likelihood of FTA, but drug tests, a common condition attached to ROR, do increase the chances of FTA. Additionally, larger cash bail amounts and longer times spent awaiting release are correlated with increased rates of re-arrest. We also find substantial disparities in pre-release conditions based on a defendant's race. These results indicate that reducing or eliminating cash bail will not have a substantial impact on public safety and may have other benefits associated with justice and equity.

Introduction

The United States has a unique relationship to bail practices and incarceration. It is one of only two nations to currently use cash bail (Devine, 1988, p. 77). Its incarceration rate is the highest in the world (Prison Policy Initiative, 2020). The jail population has grown since the 1980s while the number of convicted individuals in jail has remained relatively constant since 2000 (Prison Policy Initiative, 2015). This suggests that a significant portion of the recent growth in the detained and incarcerated population is caused by an increase in pretrial detention (White House Council of Economic Advisors, 2016). Some of those detained are deemed a threat to public safety and therefore denied pretrial release, but most are given the option of cash bail. However, the offer of cash bail does not guarantee release, as many are unable to afford it and thus remain in jail awaiting trial. This fact has prompted criminal justice reform activists to turn their attention towards replacing cash bail with releasing defendants on their own recognizance (ROR) or other options (such as electronic monitoring) that do not penalize individuals based on their poverty.

The default practice was once to detain all defendants until their trial, and the introduction of cash bail was a progressive development (Helland & Tabarrok, 2004, p. 95). In time, cash bail lost its luster and by the 1960s there was a vigorous political debate regarding its use that culminated first in reform in New York (Botein, 1964) before spreading to other states. The initial wave of reform increased the use of ROR instead of requiring defendants to pay some form of cash bail (Friedman, 1976, p. 285).

Reform efforts were predicated on concerns about discriminatory and unequal pretrial treatment of the accused, much like they are today. Then, as now, cash bail systems make treatment by the criminal justice system depend on one's wealth, rather than one's guilt, one's likelihood to fail to appear for their trial (FTA), or the amount of risk one poses to the community. Crucial to the first wave of bail reform was the view that the sole purpose of bail was to ensure that defendants appeared for trial (Goldkamp, 1985) because pretrial detention aimed at anything else would amount to punishing those assumed to be innocent (Natapoff, 2018a; Sardar, 2018).

A second wave of reform, which took place during the 1970s and 80s, reframed the debate in terms of public safety. Without extensive pretrial detention it was believed that it would be impossible to guarantee public safety against the threat posed by defendants out on bail (Goldkamp, 1985). The Bail Reform Act of 1984 allowed for pretrial detention in federal cases if the prosecutors could prove that the defendant was a threat to others in the community. In 1987, the Rehnquist Court ruled in *United States v. Salerno* that the act was constitutional and that detaining organized crime leader Anthony Salerno did not violate due process protections. The majority held that if defendants are shown to pose a danger to others, the government has a sufficiently strong interest in detaining them. Pretrial detention is a form of *regulation*, not *punishment*, according to the court. As a result, states began to follow suit and incorporate judgements about a defendant's risk to the community in bail decisions (Sardar, 2018, p. 1432).

During the second wave of reform, the United States was facing a serious crimewave (Zimring, 2006). The increase in crime occurred alongside other major social changes such as deindustrialization, "urban decay," and after decades of white flight that contributed to the racialization of crime. Predictably, political discourse took public safety concerns to be more fundamental than the civil rights of the accused.

Since the 1990s, there has been a significant decline in crime rates nationwide, but until recently, a continued increase in incarceration rates. The election of progressive district attorneys in several American cities suggests the "tough on crime" posturing now scores fewer political points, and discourse has turned again to bail reform as one element of addressing systemic issues plaguing the criminal justice system. The 1960s framing of the issue has returned, with several prosecutors declining to seek cash bail and state legislatures opting to rewrite bail rules (Grant, 2019; Palmer, 2018; Rempel & Rodriguez, 2019; Romo, 2018).

There are many who are concerned about the unintended consequences of eliminating cash bail. Plausibly, eliminating cash bail could increase FTA rates by reducing the costs associated with missing one's court date (Myers, 1981) which in turn increases the costs of administering criminal trials. If pretrial release

of any kind is increased, there are more opportunities for pretrial defendants to engage in criminal activity. These safety concerns that dominated the debate until recently still motivate opposition to bail reform (DeWitt, 2019; Vargas, 2019).

The dispute over pretrial release conditions is only partially empirical as there is an unavoidable normative component. Criminal justice systems in the United States are constrained by respect for the innocent and individual freedom, but given that our criminal procedures are fallible, they must also consider balancing the burdens of error. This entails commitments to the presumption of innocence and to the view that criminal justice systems should be constructed such that mistakes are more likely to result in foregoing punishment for the guilty rather than punishing the innocent (cf. Laudan, 2006).

The burdens of criminal justice should be justified by desert or deterrence. If defendants remain incarcerated simply because they are poor, this is a failure of criminal justice. A commitment to equality has further implications. Any racial inequality in arrests will show up in the trial portion of the criminal justice system. Errors and inequality at the trial stage compound any errors leading up to that stage. Recent research finds evidence for this kind of cumulative disadvantage in the criminal justice system (Menefee, 2018; Sardar, 2018). Departures from these commitments to desert and equality, especially when they happen simultaneously, will result in arbitrary—or worse, discriminatory—rejections of the presumption of innocence and in unjust distributions of the burdens of the criminal trial system.

These considerations are balanced against the practical realities of administering justice. Certain costs are permitted to accrue to those who have not been found guilty. Individuals can be stopped and searched, given the satisfaction of certain procedural requirements, and they can be detained for certain amounts of time without having been found guilty to allow preparation for a trial. There is no other way to assess evidence of guilt.¹ Jails, however, are not pleasant. The leading cause of death in jail is suicide

¹ Unless, of course, we return to the old “ordeals” methods (Leeson 2012).

(Bureau of Justice Statistics, 2015) and pretrial detention has real financial costs and burdens for individual and family wellbeing (Henrichson et al., 2017) in a way that a “Terry stop” does not.

It is therefore crucial that policymakers appreciate the full costs and benefits of eliminating or reducing cash bail, especially their demographic effects, and the extent to which they increase financial and social costs associated with criminal justice systems. Unless there is a substantial increase in the costs of administering justice or crime because of higher FTA or crime rates, the costs of pretrial detention that arise because of an inability to afford cash bail appear difficult to justify.

Existing Research on Pretrial Decisions

Though there is a substantial literature on pretrial detention decisions, much of it is not empirical (Bechtel et al., 2017, 459). Where available, the empirical research tends to find that race, ethnicity, gender, and legal factors all play an important role in pretrial detention decisions. Using a sample of 25,000 defendants in Jefferson County, Kentucky, Schaefer and Hughes (2019) find that Black defendants are 10 percent more likely to receive cash bail (rather than ROR). This number is striking given that in their model, defendants with felony charges were only 15% more likely to receive cash bail. Even when controlling for offense severity, Black defendants were more likely than white defendants to be granted cash bail (Schaefer & Hughes, 2019). Other work finds that, when controlling for legal factors, Black (as well as Hispanic) defendants are likely to receive higher bail amounts than white defendants, as well as to be less likely to be granted ROR (Demuth & Steffensmeier, 2004, p. 237).

While race has an effect on whether a defendant is granted cash bail or ROR, several studies find that it does not influence that amount of cash bail given (though ethnicity does). Demuth (2003) finds that in large urban courts, Black and Hispanic defendants are more likely to be denied bail than white defendants, and Hispanic defendants are less likely to receive ROR than Black or white defendants. He also finds that, while Black defendants are not likely to receive higher bail amounts (though Hispanic defendants

are), both Black and Hispanic defendants are more likely than whites to be detained for inability to post bail (Demuth, 2003). Schlesinger (2007) also finds that there is no Black-white difference in bail amount, but also that Hispanics are likely to receive higher bail, that Black and Hispanic defendants are less likely to be granted ROR and that they are less likely to post bail. In drug offense cases in particular the findings are similar: Black defendants are less likely to be granted ROR (Freiburger et al., 2010).

On the other hand, some research does not find racial effects in pretrial decisions. Using data from 65 of the 75 most populous counties, Stolzenberg et al. (2013) find little evidence that race has an effect on decisions to grant financial bail or ROR, the bail amount, or whether pretrial release will be denied outright (Stolzenberg et al., 2013). Frieburger et al. (2010) also finds that, although Black defendants are more likely to receive cash bail, they are not less likely to post bail. Similarly, Wooldredge (2012) finds no significant *main effects* for race, but he does find interaction effects as young, male, black defendants are more likely to be treated harshly.

On balance, the pretrial decision literature supports the concerns of cumulative disadvantage, and therefore the motivation for bail reform, discussed above. Race and ethnicity appear to influence pretrial decisions apart from legal considerations or risk posed to the community. They compound bias in arrests, and structural disadvantage regarding the inability to post bail.

Empirical investigations relevant to the current wave of bail reform has mixed results. For instance, pretrial detention increases conviction rates, which could be because it eliminates the possibility of “bail jumping”. However, Dobbie, Goldin, and Yang (2018) suggest it is because it provides prosecutors greater leverage when offering plea deals. Some research has found that individuals released on cash bail to commercial bond dealers are less likely to miss a court appearance (Helland & Tabarrok, 2004). These findings, however, are insufficient for evaluating bail reform efforts. Increasing prosecutorial leverage risks raises the likelihood of injustice in the system, especially in light of concerns that plea bargaining is often

coercive (Caldwell, 2011; Natapoff, 2018b). It is possible that cash bail might reduce FTA rates, though that is only one side of the normative equation.

Given the normative considerations in favor of reducing the use of cash bail, it is important to determine how to reduce the risks associated with FTA and pretrial criminal activity. Investigation into the safety concerns find that reform efforts to reduce cash bail have not resulted in a spike in crime rates. For instance, crime rates decreased after implementing bail reform in New Jersey and there was no increase in FTA rates when Philadelphia implemented changes (Ouss & Stevenson, 2019b). Similarly, an examination of pretrial release mechanism in Dallas, Texas finds that different pretrial determinations (cash bonds, commercial bonds, ROR) do not predict recidivism or pretrial misconduct (Morris, 2013).

Not only did Philadelphia's FTA rates not increase after reducing the use of cash bail, there also appear to be more effective ways of ensuring that defendants show up for trial. Orange County, California saw lower FTA for individuals released under a supervised release program than those given cash bail (Barno et al., 2019) and court notification practices have also been found to decrease FTA rates (Bechtel et al., 2017; Bornstein et al., 2013). However, not all reform efforts have been successful. Other research finds that alternatives to cash bail, such as electric monitoring or drug testing during pretrial release reduces neither FTA nor rearrest rates (Sardar, 2018, pp. 1447, 1451).

In this article we contribute to this literature on the impact and role of cash bail in the criminal justice system. While previous research has studied the relationship between race and bail decisions (Katz & Spohn, 1995a; Sacks et al., 2015; Turner et al., 2003), cash bail's impact on FTA rates (Helland & Tabarrok, 2004a; Myers, 1981; Ouss & Stevenson, 2019a), pretrial misconduct (Morris, 2013), and the sustainability of reform efforts (Friedman, 1976), here we look at several features of the bail system in Orleans Parish, Louisiana. In particular, we address questions related to who is given cash bail vs released on their own recognizance, the impact of cash bail on FTA rates, and cash bail's effect on the re-arrest of released defendants.

Hypotheses

Rational choice models of behavior predict that making a behavior more expensive reduces that behavior.

Cash bail is designed to increase the costs of missing a court appointment, and should therefore decrease the likelihood of FTA. Cash bail will likely, for this reason, increase appearance rates and ROR will likely depress appearance rates. While recent research has found that a reliance on cash bail and certain alternatives actually increases FTA and re-arrest rates rather than reducing them, one of the common justifications for cash bail relies on rational choice thinking, so it is important to test it. Thus, our first hypothesis is:

Hypothesis 1: granting defendants ROR will increase FTA and re-arrest rates.

One of the motivations for bail reform focuses on unaffordable bail, so it is critical to investigate the impacts of bail amounts. Rational choice models might lead one to predict that increasing bail amounts will decrease FTA rates. On the other hand, looking closely at the details of cash bail suggest otherwise.

Defendants released on cash bail have either a secured or unsecured bond. Unsecured bonds do not require upfront payment, and defendants have to pay the bail amount only if they FTA. Secured bonds require defendants to pay either a deposit on the bail amount (usually ten percent) or to rely on a commercial bond dealer who pays the bond. Defendants using commercial bond dealers often only have to pay a small percentage of their bail amount, a “bond premium.” This matters because in many cases, defendants will be unable to afford the full bail amount.

Increasing a defendant’s bail from a number that is already financially ruinous, though strictly speaking making FTA more expensive, is unlikely to have a larger deterrent effect. If a defendant will be unable to repay a \$1000 bond, then a \$5000 bond is unlikely to provide a greater deterrent. This suggests a second hypothesis:

Hypothesis 2: cash bail amount will not significantly affect the rate of FTA.

When comparing individuals who receive cash bail versus ROR, we are not always comparing similar individuals. Placing conditions on pretrial release, such as drug testing, generates more opportunities to have one's bail revoked or one's trial outcome be less favorable, simply by generating more opportunities for one to fail to meet those conditions. Not only has earlier work found that pretrial release conditions do not reduce rearrest or FTA rates, there is reason to think the opposite is true. If there are differences in the conditions applied to those who are released on cash bail versus ROR, then there will likely be differences in the FTA rate. This suggests a third hypothesis:

Hypothesis 3: stricter conditions applied as part of a defendant's release terms will increase the FTA rate.

Finally, the criminal justice system appears to treat defendants differently according to their race at all stages (Baldus et al., 1983; Blair et al., 2004). The literature on bail decisions is mixed on this point, with some results suggesting race plays a role in determining what kind of bail a defendant is granted (Ayres & Waldfogel, 1993; Sacks et al., 2015) and some suggesting race plays a role only occasionally (Katz & Spohn, 1995a). Research more often than not, however, finds that race and ethnicity have an effect on bail decisions, including whether pretrial release is denied, whether ROR is granted, the bail amount if ROR is not granted.

Some have explained these results by appeal to racial and ethnic stereotypes mediated by "focal concerns" during pretrial and sentencing decisions. Judges focus on factors like blameworthiness and community protection, and implicit racial stereotypes influence judges' thinking about these focal concerns (Steffensmeier & Demuth, 2001). The stereotype explanation has considerable plausibility in the pretrial

stage because judges have access to less information regarding legal factors than they do post-trial (i.e. during sentencing hearings) (Demuth & Steffensmeier, 2004, p. 225). If stereotypes and implicit biases play a role, they are more likely to do so in lower information decision settings. This explains the common findings that Black defendants are more likely to be denied bail, less likely to be granted ROR, and tend to have higher bail amounts. These studies also frequently find that Black defendants are more likely not to post bail, plausibly because they tend to be more economically vulnerable and therefore less likely to afford bail (Demuth, 2003; Schlesinger, 2007). In keeping with the various results suggesting that race has an impact on judicial decisions at various stages of the criminal justice system, plausibly explained by the focal concerns framework and therefore exacerbated in the pretrial stage, and further exacerbated by Black defendant's likely difficulty in posting bail, we are led to a final hypothesis:

Hypothesis 4: Race will influence bail decisions; in particular, Black defendants will be less likely to receive ROR decisions, will tend to receive higher bail amounts, and will have stricter prerelease conditions.

Study Design

To study the impact of bail throughout the criminal justice system, we utilize data from Orleans Parish in Louisiana. Specifically, we received the data used from Orleans Parish² Sheriff's Office (OPSO) for individuals that had state charges for a felony but were released pretrial.³ The unit of analysis is the individual, and reports their demographics as well as their crime and prerelease conditions between December 1, 2018 to November 30, 2019. In all, 2977 individuals that were charged with felonies are included with complete information.

² Orleans Parish and the city of New Orleans are a consolidated city-parish government

³ Data was provided directly to AHdatalytics, a consulting firm in New Orleans, run by Jeff Asher and Ben Horowitz. Preprocessing to anonymize the data was done before providing it to authors.

We study three sets of outcomes in the analysis: pre-release conditions, FTA, and being re-arrested while released. We discuss each of these sets of models in turn.

Prerelease Conditions. We first analyze the conditions of prerelease decisions. For that set of analysis, we use four dependent variables:

1. Whether the individual received ROR (as opposed to cash bail);
2. The amount of bail given if the individual was released on cash bail;
3. Whether drug testing was required as part of ROR;
4. The number of days the individual was held in jail prior to release.

ROR and bail amounts are determined by taking the sum of bail paid by the individual per charge. If no bail amount is paid and the individual was released with at least one charge having a ROR disposition, then the individual was considered as ROR. If the individual received ROR, we create a dichotomous variable with the value 1, and 0 for all those receiving cash bail.

The variable for cash bail is the numeric amount in 1000-dollar increments. Of the 2977 total individuals, 1922 received cash bail and are analyzed to understand differences in the amounts given.

If the individual received ROR, we test whether they were subjected to at least one drug test with a dichotomous variable. 1055 individuals were given ROR, of which 31 percent were required to take at least one drug test.

Finally, we study the amount of time individuals spent incarcerated prior to release by taking the difference between the date of their booking and their release.

In order to predict these four pre-release conditions, we build a model utilizing data on the charges against the individual and their demographics. Specifically, we include a measure for the most serious charge against an individual specifying whether it was a violent crime, a property crime, a drug crime, related to firearms, or was an unspecified non-violent felony. For the charges, an unspecified non-violent felony is the reference category which the other four charges types will be compared to in the results. More

serious charges, particularly violent crimes and those related to firearms, should be met with harsher pre-release condition; in particular, they should be more likely to be released on cash bail and receive larger amounts of bail.

In addition to their most serious charge, we include in the model the demographics of the individual. We first include a variable for their race, identifying whether they are African American, white, or any other race. For race, white is the omitted category. In addition, we include whether the individual is male and their age. Because age may have a non-linear impact upon these outcomes, we also include a squared term. These regressions collectively test hypothesis three and four.

Because ROR and drug test are both dichotomous variables, logistic regression is used to analyze their predictors and odds ratios are reported for the coefficients. The amount of bail and time spent in jail are both modeled using ordinary least squares (OLS). Both dependent variables are counts that were found to be over-dispersed, so the results were compared to negative binomial regressions; however, the OLS estimates did not differ in the direction or level of significance for any independent variables, so for the sake of interpretability we present their results. Robust standard errors are reported for all regressions.

Other variables that may predict pretrial conditions for release are absent from the data provided by Orleans Parish and thus cannot be included. In particular, the individuals past criminal history, past instances of FTA, and any other circumstances that may impact how a judge views their risk are not able to be assessed. The findings must be interpreted in light of these limitations, which we discuss in more depth in the conclusion.

Failure to Appear. We next analyze factors that predict whether individuals failed to appear at any court date. Court data includes FTA and alias capias event codes, but these codes appear to have only been used consistently since late 2018 which limited the cases studied from December 1, 2018 through November 30, 2019. FTA is a dichotomous variable and we thus use logistic regression with odds-ratios to model it.

We include the same measures of charge type and demographics used to estimate pre-release conditions to predict whether a defendant fails to appear at trial. In addition, we include the pre-conditions of release studied earlier to understand how they impact a defendant's likelihood of FTA. Specifically, we include whether the individual received ROR, the amount of their bail (0 for anyone on ROR), whether they were drug tested, and the number of days individuals spent in jail prior to release. These regressions collectively test hypotheses one and two.

Rearrest. Finally, we analyze whether individuals were re-arrested while awaiting trial. We convert the count of re-arrests to a dichotomous variable and use logistic regression with odds-ratios as with the earlier models. We use the same models used to predict FTA, with FTA added as an additional dichotomous independent variable. These regressions collectively test hypothesis one.

All variables used across the three sets of models are described and summarized below in Table 1. As shown, thirty-five percent of individuals in the data were given ROR, meaning that the remaining sixty-five percent were offered cash bail. Among those getting cash bail there was significant dispersion in the amounts, with many only needing a few thousand dollars but a maximum value of \$250,000 present in the data. Thirty-two percent of those given ROR were drug tested at least once, while the average inmate spent 6 days in jail prior to being released. Regardless of the preconditions of release, eighteen percent of defendants failed to appear, while seventeen percent were re-arrested.

Insert Table 1 Below.

Results

Insert Table 2 Below.

Prerelease conditions. Table 2 reports results for four types of pre-release condition: Whether the defendant is released on their own recognizance, the number of days they were detained before being released, the amount of bail given if offered cash bail, and whether they were drug tested if given ROR. The type of crime the individual is held for as their most serious offense has a substantial impact on the odds

of being given ROR. The odds of being given ROR were .006 times as high for someone who committed a violent crime as someone that committed an unspecified nonviolent felony, holding the individuals race, gender, and age constant. Property, firearm, and drug crimes are also significantly less likely to be given ROR, with odds that are .57, .63 and .03 times as high respectively.

Holding the type of crime and all else constant, the race of an individual has an impact on the chances of ROR as well. African American are less likely than whites to be granted ROR, as are other races collectively. Specifically, the odds that an African American were given ROR were .67 times as high as that of whites, while other races had odds that were only .18 times as high. In addition, males have odds that are .63 times as high as females to be granted ROR, holding all else constant. Finally, older defendants are less likely to receive ROR, as each additional year of age reduces the odds by 7 percent.

The second column reports results from an OLS for the number of days an individual was held in jail. Those that committed property or firearm related offenses were typically held longer in jail prior to release; specifically, having a property or firearm offense as the most serious charge is associated with an increase in the number of days incarcerated of 3.56 and 3.06, holding all else constant. In addition, holding the most serious offense, gender, and age constant, African Americans were held .18 days longer than white defendants. Similarly, males were held .64 days longer prior to release than females, holding all else constant.

The third and fourth columns look at subsets of the data for additional conditions given to those that received cash bail or ROR. For those receiving cash bail, the specific offense committed made a difference in several cases. Specifically, those that committed a violent crime, or a firearm related offense were given bails of \$6.05 thousand and \$8.41 thousand more than those that committed an unspecified nonviolent felony. The only other variable to reach statistical significance was gender, where males had bails over \$5.06 thousand more than females, holding all else constant.

Finally, we look at whether drug testing was required as part of a ROR. The odds of drug testing were 89 percent higher for those arrested for a drug charge, holding all else constant. In addition, Black defendants granted ROR, which they were less likely to be given, had odds that were 42 percent higher for being given a drug test as part of their release. Finally, other races had odds 425 percent higher than whites of being given drug tests, though that result only reaches low levels of significance despite the size of the effect.

Insert Table 3 Below.

Failure to Appear. The second analysis turns to the question of how prerelease conditions impact FTA. Looking first at the bivariate relationship between ROR and FTA, it appears that those released without cash bail were more likely to skip a court appearance. However, that relationship is explained by other factors, particularly whether the individual was required to take drug tests. Specifically, when drug tests are included, and particularly when interacted with ROR, the significance of the effect disappears and is shifted entirely to the additional condition. Those required to take a drug test had odds 336 percent higher of having an FTA, holding all else constant.

Other factors also predict whether a defendant will FTA. The number of days that someone is held in jail before release raises the odds of FTA, although the magnitude of the effect is less than .01 percent. In addition, those arrested for property crimes as the most serious offense raises the odds of failing to appear by 43 percent. Finally, Black defendants are less likely to FTA holding all else constant, though the effect fails to reach high levels of statistical significance.

Insert Table 4 Below.

Rearrest. Finally, we look beyond FTA and more broadly at public safety by analyzing who is re-arrested while awaiting trial. In particular, in no model does being granted ROR predict a higher rate of re-arrest, and when including other factors, it actually lowers the odds (though the difference is insignificant).

Conversely, a larger cash bail positively predicts being rearrested while awaiting trial as each additional \$1,000 raises the odds by roughly 1 percent.

People that FTA are also more likely to be rearrested, which may sometimes be a direct result of them not arriving for a court date. However, the robustness of the relationship is further demonstrated by the lack of substantial shifts when excluding and including the variable for failure to appear. In particular, FTA raises the odds of having been re-arrested by 198 percent in our data, when holding all else constant.

In addition, those charged with violent crimes were less likely to be re-arrested with odds only 70 percent as high as unspecified felonies, holding all else constant. Finally, Black and male defendants were both more likely to be rearrested, with odds that were 72 and 97 percent higher than whites and females respectively.

Discussion

In this paper we have studied cash bail in relation to the determination of prerelease conditions and its impact on the likelihood of FTA and re-arrest. Our results are consistent with three of our four hypotheses. We find that, consistent with hypotheses two, three, and four, increasing the bail amount does not decrease the likelihood of FTA, more stringent pretrial release conditions increase the probability of FTA and re-arrest, and that the defendant's race influences bail decisions. Our findings regarding hypothesis three renders our first hypothesis false. While defendants who are RORed have a higher FTA rate than those with cash bail in general, this difference becomes insignificant when we control for additional pretrial release conditions. In cases where defendants released before trial are not drug tested, ROR does not significantly increase the probability of FTA.

The analysis here adds to a growing body of evidence that cash bail does not reduce the likelihood a defendant misses their court date (Barno et al., 2019; Ouss & Stevenson, 2019b). As such, the central reasoning underlying the cash bail system continues to be challenged. In addition, we find evidence that cash

bail has other, unequal and pernicious effects. Similar to Katz and Spohn (1995b), we find that race and gender have an impact on pretrial decisions and that cash bail increases the likelihood of being rearrested (Gupta et al., 2016).

Defendants are presumed innocent until proven guilty, yet we know that the realities of pretrial detention can be incredibly costly for the accused. Although the Supreme Court has determined that the financial and other costs that accrue to defendants as a result of their bail and pretrial conditions do not amount to punishment, this seems clearly to be rooted in practical considerations. We have not provided courts with the resources to make the trial process so speedy that there is no need for pretrial detention. We must then make some allowance for the state to force presumed-to-be innocent individuals to bear costs that are strikingly similar to the ones that would occur after a guilty verdict. Still, we should be highly sensitive to these costs and seek to minimize them wherever possible.

Specifically, we ought to minimize pretrial detention because it generates burdens that are essentially identical to those borne by those determined to be guilty. We ought not to punish (or burden in this way) those not found to be guilty. We ought to treat individuals equally, based on determinations of their guilt or risk to the community, not based on their level of wealth or race. These normative principles entail that we ought to reduce reliance on cash bail and reduce cash bail amounts where possible. These changes will decrease the number of individuals who are incarcerated though not found guilty or incarcerated because they are indigent (rather than because they are dangerous or a flight risk). The negative results found here attached to cash bail, particularly higher rates of re-arrest for those receiving large amounts, speak to the pernicious impacts such a system creates.

Though not studied in this paper, these issues are particularly predominant for misdemeanor cases. By definition, misdemeanors are punishable only by short jail terms. When innocent defendants are detained pretrial, and they opt for a trial rather than accepting a plea deal, it is likely that their pretrial detention will be similar in length to their jail term if found guilty. This results in a strong incentive to plead

guilty and avoid incarceration, or to plead guilty with one's pretrial detention qualifying as "time served" to cut incarceration short (Natapoff, 2018b; Sardar, 2018). Again, this scenario can be avoided via cash bail, but only for those who can afford it. In other words, cash bail distorts the basis of the adversarial legal system and for this reason, threatens its legitimacy.

Balanced against these goals, there are two basic cost-related concerns about increasing the number of individuals who are released pretrial. The first is the social cost, or public safety, concern: if more individuals are released pretrial, especially with ROR, then criminal activity might increase. The second is a financial cost concern: if individuals FTA at a higher rate, then the costs of administering justice might increase. When government budgets are strained, this is a serious consideration. If we take seriously the view that political societies must bear some costs to prevent punishing the innocent, then we'll have to accept FTA rates above 0. For that reason, the public safety concern ranks above the financial cost concern. When we put these considerations of cost and obligations of justice together, the result is that if we can increase the use of ROR without increasing costs to safety or administration of justice, we ought to. Additionally, if we can reduce bail amounts without increasing costs to safety or administration of justice, we ought to.

The findings described in this paper suggest few costs associated with ROR, and several negative side effects of cash bail. As such, the analysis suggests that ROR should be expanded as the equality concerns outweigh those of public safety. In addition, in light of the result that ROR increases FTA rates primarily because of stringent pretrial release conditions, we should seriously consider removing those conditions. There are, in a real sense, release conditions on everyone: the criminal law. So, eliminating release conditions, especially controversial conditions like drug testing, does not amount to a "free for all."

Our findings suggest that there are other problems with bail determinations in Orleans Parish. We find that drug tests are given out in racially unequal ways *and* that drug tests decrease appearance probability. This racial inequality means that Black defendants have to deal with more invasions of their

privacy and are placed into conditions that makes FTA more likely. This, of course, carries its own additional set of burdens. Because there are likely to be racial inequalities in prior components of the criminal justice system (like arrest rates), these inequalities compound the severity of existing inequalities.

It is worth pausing to reflect on the fact that the pretrial conditions that contribute to these additional burdens are themselves of dubious legitimacy. Political philosophers have argued that drug prohibitions are themselves unjust (Huemer, 2004; Husak, 1992) and economists have found them to be counterproductive (Boettke et al., 2013; Resignato, 2000). They contribute, at least to some extent, to mass incarceration (Alexander, 2012). If we have independent reasons for being skeptical of the justice and usefulness of drug prohibition, the fact that vigorously monitoring for drug use increases FTA and rearrest rates amounts to a strong case for eliminating them.

We have found that the duration of pretrial detention increases the likelihood of FTA. This is an important finding because it suggests that, like drug tests, pretrial detention appears to backfire and exacerbate these problems. The counterproductivity of pretrial detention in cases where we do not want to eliminate the possibility of pretrial release amplifies the normative concerns one might have about pretrial detention.

Finally, if we can reduce the costs of detention by reducing the amount of time individuals spend in jail, then we can offset at least some (perhaps even all) of the costs of administration of justice that go up as FTA rates go up. It should be emphasized that not all FTAs are the same. In many, perhaps the vast majority, of cases, defendants who FTA are not fleeing. Rather, they are simply unable to make it to their trial, either because they can't get time off work, find childcare, or simply because they forgot their court date. The normative significance of FTA can vary substantially, and this must be taken account of in the crafting of criminal justice policy. In other words, these are the kinds of costs one might reasonably expect courts to accept in the administration of justice.

Our results are thus consistent with much of the bail reform agenda. They support the policy reform experiments taking place under progressive prosecutors. They also support those that took place in New York City in 2020, where legislation reduced the number of charges that were eligible for cash bail. Unfortunately, shortly after the legislation took effect, several crimes garnered widespread attention (Denney et al., 2020). The “Willy Horton effect” struck again, and by April 2020 new legislation expanded the number of bail-eligible crimes (Rempel & Rodriguez, 2020). Our results, in addition to the existing body of research, suggest that the backlash to bail reform will likely result in ineffective and undesirable policy outcomes.

This paper is not without limitations. In particular, the data provided by the Orleans Parish Sheriff’s Office provided a unique opportunity to analyze prerelease conditions. However, the data lacked information on several factors that may impact the outcomes studied. In particular, there was no information on whether a lawyer was present or whether the lawyer was hired or provided by the court. In addition, information was not available about the criminal history of defendants, which may have particularly had an impact on their pretrial conditions or likelihood of re-arrest. The variable for age, which shows lower odds of ROR for older defendants, may be capturing some impact for the likelihood of past history. Older individuals would have more years to accrue a criminal history, despite age generally lowering the threat one is typically perceived as posing. In addition, any other life circumstances, such as investment in the community or the presence of family, are omitted. Those concerns are in addition to the typical constraints of studying data from a particular place and a particular time. As such, these results must be interpreted cautiously. The fact they align with other recent research strengthens them, but there is still need for further work. In particular, future work that can track changes around reforms or look at variation across multiple jurisdictions and policies will be important.

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Table 1. Summary Statistics

Variable	Obs.	Mean	Std. Dev.	Min	Max	Variable
Given ROR	2977	0.35	0.48	0	1	Given ROR
Amount of Bail (\$1K)	1923	9.91	16.93	0.05	250	Amount of Bail (\$1K)
Given Drug Test	1055	0.31	0.46	0	1	Given Drug Test
# of Days Incarcerated	2977	6.48	18.83	0	273	# of Days Incarcerated
Failed to Appear	2977	0.18	0.38	0	1	Failed to Appear
Rearrested	2977	0.17	0.38	0	1	Rearrested
Most Serious Offense - Violent Crime	2977	0.30	0.46	0	1	Most Serious Offense - Violent Crime
Most Serious Offense - Property Crime	2977	0.12	0.32	0	1	Most Serious Offense - Property Crime
Most Serious Offense - Drug Crime	2977	0.24	0.43	0	1	Most Serious Offense - Drug Crime
Most Serious Offense - Firearm	2977	0.13	0.34	0	1	Most Serious Offense - Firearm
Most Serious Offense - Other	2977	0.21	0.41	0	1	Most Serious Offense - Other
Race - White	2977	0.17	0.38	0	1	Race - White
Race - African American	2977	0.81	0.39	0	1	Race - African American
Race - Other	2977	0.01	0.11	0	1	Race - Other
Male	2977	0.78	0.42	0	1	Male
Age	2977	34.43	12.12	17	84	Age

Table 2. Regressions for Pre-Release Conditions

VARIABLES	(1) Given ROR Logit ^b	(2) Days Incarcerated OLS ^c	(4) Bond Amount (\$1k) OLS ^c	(6) Drug Tested Logit ^b
Most Serious Offense - Violent Crime	0.0061*** (0.0019)	1.69* (0.95)	6.05*** (0.80)	1.37 (0.85)
Most Serious Offense - Property Crime	0.57*** (0.079)	3.56** (1.46)	-0.10 (0.72)	0.83 (0.17)
Most Serious Offense - Drug Crime	0.63*** (0.074)	-1.05 (0.85)	0.074 (0.66)	1.89*** (0.29)
Most Serious Offense - Firearms	0.034*** (0.0079)	3.06** (1.32)	8.41*** (1.09)	1.40 (0.64)
Race-African American	0.67*** (0.084)	2.04*** (0.70)	-0.29 (1.08)	1.42** (0.24)
Race-Other	0.18*** (0.097)	0.14 (3.16)	0.89 (3.23)	5.25* (4.63)
Male	0.64*** (0.076)	2.48*** (0.72)	5.06*** (0.69)	0.91 (0.14)
Age	0.93*** (0.022)	0.053 (0.16)	0.020 (0.19)	0.97 (0.031)
Age Squared	1.00*** (0.00029)	0.00018 (0.0019)	-0.00100 (0.0022)	1.00 (0.00039)
Constant	11.3*** (5.36)	-0.26 (3.28)	2.28 (3.90)	0.47 (0.30)
Observations	2,977	2,977	1,922	1,055
R-squared		0.014	0.057	
Robust SE	Yes	Yes	Yes	Yes
Log Lik	-1250	-12942	-8108	-638
Pseudo R2	0.35			0.026
AIC	2520	25904	16237	1295

a. *** p<0.01, ** p<0.05, * p<0.1

b. Logit regressions report odds-ratios

c. OLS regressions report coefficients in the unit of the dependent variable

Table 3. Regressions for Failure to Appear

VARIABLES	(1)	(2)	(3)
	FTA Logit ^b	FTA Logit ^b	FTA Logit ^b
Given ROR	2.24*** (0.22)	1.24 (0.17)	1.14 (0.17)
Amount of Bail (\$1K)		1.00 (0.0035)	1.00 (0.0035)
Given Drug Test		4.37*** (0.61)	1.96 (0.84)
Drug-ROR Interaction			2.52** (1.14)
# of Days Incarcerated		1.00** (0.0023)	1.00** (0.0022)
Most Serious Offense - Violent Crime		0.83 (0.15)	0.81 (0.14)
Most Serious Offense - Property Crime		1.43** (0.24)	1.43** (0.24)
Most Serious Offense - Drug Crime		1.04 (0.15)	1.04 (0.15)
Most Serious Offense - Firearms		1.22 (0.24)	1.24 (0.24)
Race-African American		0.80* (0.10)	0.79* (0.10)
Race-Other		0.83 (0.42)	0.80 (0.41)
Male		1.10 (0.14)	1.09 (0.14)
Age		1.01 (0.023)	1.01 (0.023)
Age Squared		1.00 (0.00029)	1.00 (0.00029)
Constant	0.15*** (0.010)	0.12*** (0.060)	0.13*** (0.064)
Observations	2,977	2,977	2,977
Robust SE	Yes	Yes	Yes
Log Lik	-1354	-1291	-1288
Pseudo R2	0.025	0.070	0.072
AIC	2713	2609	2607

a. *** p<0.01, ** p<0.05, * p<0.1

b. Logit regressions report odds-ratios

Table 4. Regressions for Re-Arrest

VARIABLES	(1) Rearrested Logit ^b	(2) Rearrested Logit ^b	(3) Rearrested Logit ^b
Given ROR	0.93 (0.096)	0.86 (0.12)	0.82 (0.11)
Amount of Bail (\$1K)		1.01*** (0.0031)	1.01*** (0.0030)
Failed to Appear			2.98*** (0.36)
Given Drug Test		1.13 (0.19)	0.79 (0.14)
# of Days Incarcerated		1.01*** (0.0022)	1.01*** (0.0023)
Most Serious Offense - Violent Crime		0.71** (0.12)	0.71** (0.12)
Most Serious Offense - Property Crime		1.30 (0.23)	1.20 (0.22)
Most Serious Offense - Drug Crime		1.22 (0.18)	1.21 (0.18)
Most Serious Offense - Firearms		0.78 (0.15)	0.74 (0.14)
Race-African American		1.62*** (0.24)	1.72*** (0.25)
Race-Other		0.79 (0.44)	0.80 (0.44)
Male		1.97*** (0.28)	1.97*** (0.28)
Age		1.04 (0.025)	1.04 (0.025)
Age Squared		1.00* (0.00030)	1.00* (0.00030)
Constant	0.21*** (0.013)	0.043*** (0.021)	0.035*** (0.018)
Observations	2,977	2,977	2,977
Robust SE	Yes	Yes	Yes
Log Lik	-1354	-1315	-1275
Pseudo R2	0.00017	0.029	0.058
AIC	2711	2658	2580

- a. *** p<0.01, ** p<0.05, * p<0.1
b. Logit regressions report odds-ratios