Cash Bail's Impact on Crime: A Meta-Analysis Proposal

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This paper is a proposal to the Campbell Collaboration for a meta-analysis on cash bail's impact on crime prevention. I will begin by providing background on the use of bail, the criminology theories that have been applied to bail studies, and the political framing that has resulted in recent state laws on bail across the United States. I will then discuss the four existing reviews that answer important but different questions related to pre-trial policy effects. Finally, I will present in detail the strategy for this meta-analysis including search strategy, inclusion criteria, and analytic strategy. This research will connect important criminology research on bail to politicians with competing expectations.

Background

How Bail Works

When someone is arrested for a crime in the United States, they must be charged with a crime or released within 48 hours (Siegel & Worrall, 2022). If charged, there will then be a post-charge hearing where a judge determines conditions of release or detention in jail. The options are: to release a defendant on a recognizance bond, where the defendant is informed of their requirement to reappear in court at a later date; to deny bond, in circumstances where the defendant poses a threat to public safety; or to assign cash bail, an amount of money a defendant must pay to be released from jail that will be returned once they reappear for trial later (Siegel & Worrall, 2022). Judges have discretion that varies throughout states and sometimes rely on risk assessment tools to inform their decisions. The United States also has a bail bond industry, where companies will post an assigned bail for a defendant in exchange for keeping 10% and often requiring some type of collateral (Burke et al., 2019; Siegel & Worrall, 2022).

Criminology Theoretical Approaches

Pre-trial criminal justice policies are not often considered in the context of crime prevention. However, a handful of criminologists have studied cash bail and pretrial detention (most commonly due in the U.S. to the assignment of cash bail) from a crime prevention, deterrence, and social control perspective. For example, Goldkamp and White (2006) experimented to see if failure to appear consequences have a specific deterrence effect, and also considered the potential general deterrence effect of a "culture of consequence" (p. 172). Monaghan et al. (2002) considered the amount of bail assigned to see if increasing bail had an increased specific deterrent effect, but found that amount did not matter due to inability to pay lower or higher amounts for many. They did find that granting more recognizance bonds does increase failure to appear (referred to as FTA henceforth). Like deterrence perspectives, this was grounded in rational choice theory. Page & Scott-Hayward (2022) review literature and present theoretical framing of bail as a mechanism of social control utilized since the 1950s and of crime control during the tough-on-crime era of politics in the 1980s and 90s. They focus on the assignment of cash bail as a punitive measure meant to control individual behavior and how it is regularly used by judges beyond attempts to avoid additional crime, but instead is used to maintain control over people arrested for a crime. This proposal is more concerned with how lawmakers are framing cash bail as a crime prevention tool.

Bail Reform Policies and Political Framing

In line with Campbell Collaboration proposal requests (Campbell, 2023), I will give an overview of the policy relevance along with the conflicting political framing. Cash bail was first introduced as a progressive policy reform to counter the default of being detained in jail while awaiting trial. Over time the reliance on cash bail has been observed to be a contributor to racial and economic disparities (Arnold, Dobbie, & Yang, 2018; Arnold, Dobbie, & Hull, 2022;

Donnelly & MacDonald, 2018; Demuth & Steffensmeier, 2004; Free, 2004; Schaefer & Hughes, 2019). In 2015, the Obama Administration released a report from the Council of Economic Advisers that detailed the disproportionate impact of criminal fines, fees, and bail on the poor (2015). Soon after, the Department of Justice began to focus on specific county bail systems, investigating Harris County for having practices that made it an unconstitutional debtor's prison (Rosenberg, 2017). After years of federal oversight and several court cases, Harris County revamped its cash bail system to do away with cash bail for all misdemeanor charges.

State-level policy reforms also moved away from a reliance on cash bail. Washington, DC was the first area to shift away from a default cash bail system in the 1990s (NPR, 2018). In 2017, New Jersey became the first state to transition away from a default cash bail system, with California following in 2018 (California Courts, n.d.). There are now a handful of states and separate counties that have reformed their cash bail system to either not default on cash bail for misdemeanors or for neither misdemeanors nor felonies.

These reforms to cash bail reliance are supported by rights groups and politicians that tend to be aligned with the Democratic Party. For example, the Justice Policy Institute (2012) and the Prison Policy Institute (Sawyer & Wagner, 2023) point to cash bail harming low income and people of color disproportionately. This is in line with what drove Harris County's changes by the Department of Justice under the Obama Administration (Council of Economic Advisors, 2015; Rosenberg, 2017). The U.S. Commission on Civil Rights, a bi-partisan government research group, but under the Biden Administration, points to cash bail as a main driver for an increase in pre-trial detention over time – specifically a 433% increase from 1970 to 2015 (U.S. Commission on Civil Rights, 2022). Because most people who are held in jail pre-trial are there because they cannot afford to post bail (Leslie & Pope, 2017; Stevenson, 2018), it is framed that

reducing or ending cash bail would decrease pre-trial detention and result in reducing economic and racial disparities in pre-trial detention. The U.S. Commission on Civil Rights suggested that the federal government work with Congress to pass bail-free legislation (2022).

Bail Requirement Policies and Political Framing

Alternatively, a recent increase in violent crime over the pandemic years resulted in Republican state lawmakers blaming bail reforms (Keck, 2022; McCullough, 2021; Ruiz, 2023). The bail bond industry has also claimed that reducing pretrial detention will increase crime rates (Wilson, 2018). Politicians and candidates for office have adopted the language of "revolving door," connecting lax bail usage to people quickly returning to society and committing additional crimes (Abbott, 2023; Ortt, 2023).

Texas recently passed stricter requirements of applying cash bail and restricting judges from giving recognizance bonds, citing crime rates and people being released and going on to commit additional crimes (McCullough, 2021). In 2018, Illinois passed a law that would end the use of cash bail entirely, but before it went into effect, it was stalled, amended, and continues to experience considerable pushback (Bishop, 2023). In New York, where some reforms were previously passed, their budget process is currently stalled with attempts to remove funding for bail reform efforts (DeWitt, 2023).

Given these competing framings and recent policy conflicts, it is useful to synthesize research to connect it to state lawmakers. The research question of this meta-analysis proposal is: Does the assignment of cash bail prevent crime? Research that tests cash bail assignments impact on failure to appear, re-arrest, and recidivism will be included to understand the full scope of crime prevention as it relates to the pretrial population. Further, alternative explanations proposed by politicians in reform regions will be included to see if racial and low-income disproportionality is impacted by cash bail assignment. The goal is to connect state-level policy

reasoning to the research that tests these expectations to better inform lawmakers on the work of criminologists.

Existing Meta-Analyses

A few reviews have been conducted on either cash bail's impact on measures outside of the scope of this review, or on a different mechanism's impact on the outcomes of interest. Some systematic reviews and meta-analyses have considered crime prevention outcomes like recidivism, rearrest, and failure to appear for a court date. Yet they are focused on risk assessment tools that may influence assignment of cash bail but do not isolate the result of the risk assessment. Without a bail policy component, it is unclear how much discretion individual judges have compared to state and regional policy requirements.

A 2017 meta-analysis reviewed the use of a pretrial risk assessment tool (Bechtel, et al). These are implemented with great variability across the country with some regions relying heavily on them and others ignoring them. This review observed FTA and re-arrest. Risk assessment tools had a "fair" rate of predictability for FTA with an average effect size of .220. Their main takeaway was the lack of research design rigor and comparison/control group to rely on the results of most of the studies. Though this study looks at one outcome of interest, it only considers the use of a risk assessment tool and not how they are applied or interact with differing cash bail policies. Another review of risk assessment tools for consideration of pre-trial release was conducted in 2019 (Viljoen, et al.), and found preliminary results of small effects on recidivism. Once bias concerns were addressed, the results were no longer significant. They determined it was unclear how risk assessment tools may impact racial and ethnic disparities.

A more recent meta-analysis examined case outcomes of those detained pre-trial (St. Louis, 2023). They found 57 studies that fit their inclusion criteria, with those detained

experiencing strong effects for likelihood of incarceration, medium effects on convictions, guilty pleas, and dismissals, and null effects on charge reductions. All the aggregate effects were in the direction of greater penalties/harsher punishments for those held pre-trial. Pre-trial detention gets at bail assignment more closely given the majority of people held in jail pre-trial are there due to an inability to pay a set bail amount and not because of bail denial. However, the outcome measures do not get at the crime prevention element claimed by lawmakers.

Finally, one additional meta-analysis examines risk factors that are associated with pretrial failure (Bechtel, et al., 2011). Pretrial failure is defined as re-arrest, failure to appear in court, new crime, and any failure to comply with pre-trial release conditions. It seeks to connect the risk tool assessments to realized risks of pretrial failure. Most of the risk factors as predictors examined were not statistically significant. Some were found to be in the opposite direction theorized. For example, injury to a victim, using a weapon, and abusing alcohol were associated with statistically significant lower levels of pretrial failure. I propose that using crime accusation type as a predictor of pretrial failure might be unexpected because these are accusations. It is unknown if the criminal behavior took place, rather it is simply known that a charge has been filed. This meta-analysis is insightful in connecting risk factors to those assumed predictive in risk assessment tools for pretrial release and assignment of bail amount. However, they only examine those released and do not note which were released due to posting a cash bail. Once again, this meta-analysis does not connect assignment of cash bail to the public safety and crime prevention discourse of state-level politicians and subsequent policies.

Search Strategy

Building from Bechtel et al.'s (2011) approach, I will begin by identifying articles in the Pretrial Research Bibliography. This is a resource created by the Pretrial Justice Institute in 2014

that attempts to capture all pretrial empirical research to date. I will then incorporate Viljoen's (2019) methodology, by utilizing 13 databases to capture both published and unpublished works. The databases are: PsycINFO, PsycARTICLES, PsycBOOKS, National Criminal Justice Reference Service, MEDLINE, Criminal Justice Abstracts, Google Scholar, Sociological Abstracts, Social Services Abstracts, Social Sciences Abstracts, Social Sciences Full Text, Web of Science, ProQuest Dissertations & Theses. I will include unpublished student works and government reports that fit the inclusion criteria (discussed below). This approach is a tradeoff to avoid publication bias that can impact meta-analyses (Lipsey & Wilson, 2001). Keyword search terms will be "bail", "bond", and "failure to appear", along with "bail" and "re-arrest", "recidivism", "race", "disproportionality", "poor", and "income."

After identifying potential articles, I will utilize the PRISMA Search Protocol which provides a checklist of 16 items to collect on each article (Rethlefsen, et al., 2021). This information will be collected on all articles considered for this meta-analysis. This is to create transparency and systematization in the information collection process (Rethlefsen, et al., 2021; Wilson, 2013). Rayyan Online Software will be accessed in order to organize, manage, and code evidence for the review. This software will allow for collaboration between coders and utilizes machine learning to identify elements of the articles and save time (Rayyan, 2023).

Inclusion and Exclusion Criteria

Implementing Campbell Collaboration guidance, I will follow the PICOS Framework in determining each area of inclusion and exclusion criteria. PICOS stands for Population/Participants/Problems, Interventions, Comparison Group, Outcomes, and Study Design (Wilson, 2013). First, data will be only from the United States, given the unique nature of American bail and pre-trial detention reliance, particularly because only the United States and

the Philippines allow a bail bond industry (Baughman, 2017). It is important to review bail impact and subsequent pretrial detention impact within the country to understand how our unique system works to impact the outcomes targeted by lawmakers. Publications before 1984 will be excluded due to the Bail Reform Act of 1984's impact on the pre-trial justice system (Lay & Hunt, 1985).

Studies that capture outcomes for both crime prevention and reform expectations will be included. This decision is informed by Campbell Collaboration's advice to include unintended affects and unexpected outcomes as well as those of specific interest (Campbell, 2023). Therefore, the crime prevention expectation outcomes will be: failure to appear, re-arrest, and recidivism. Failure to appear in court is considered a crime, a pre-trial failure, and one of the large theories that cash bail is built around. Re-arrest and recidivism are widely accepted outcome measures that are tracked in studies to understand crime prevention. The reform expectation outcomes will be economic disproportionality and racial disproportionality. In terms of study type, random control trials and some quasi-experimental designs will be included. Quasi-experimental studies must include a control or comparison group. The comparison group will be no cash bail assigned and release. Assignment to treatment or control should be random, near-random, or matched pre-test. These studies have stronger internal validity (Trochim, et al., 2016). The population for the first set up crime prevention outcomes will be individuals charged with a crime. For the fairness measures of race and economic disproportionality, aggregate measures will be considered given the need to understand disparity through aggregate units of analysis. Studies will be at the state or county level, given the rare reliance of bail in federal court (Doyle, 2017). Research deemed not to fit the inclusion criteria will still be tracked in

Rayyan noting reason for exclusion to follow the expectations of appendix items for Campbell reviews (Wilson, 2013).

Analytic Strategy

Two researchers will code each article for intercoder reliability (Campbell, 2023; Wilson, 2013). Beyond the PRISMA protocol of information collected for each article, data will be structured in a hierarchical manner (Wilson, 2013). This means that there will be a line collected for each outcome rather than for each study, to account for when studies have more than one outcome of interest. Coding for bias estimates will also be integrated. Following Campbell Collaboration's advice, I will use the Cochrane Risk of Bias Framework (Wilson, 2013). Cochrane's GRADE Pro software will be integrated to aggregate the quality of across the full analysis (Cochrane, 2023; Wilson, 2013). Bias types may include performance bias, attrition bias, detection bias, and reporting bias.

In addition, the strategy will integrate the most appropriate standardized effect measure. Researchers suggest that selecting the standardized effect measure that requires the fewest transformations is best (Polanin &, Snilsteveit, 2016). Based on a preliminary search of articles within the inclusion criteria, odds ratio requires the fewest transformations. This is in line with St. Louis' (2023) advice that odds ratio is the preferred effect size when case outcomes are dichotomous. It is likely that articles focusing on economic and racial disparity outcomes will require a standardized mean difference measurement, given that it is based on aggregation. So standardized effect size will be different between the individual measures and the aggregate measures. Finally, I will utilize the Lipsey and Wilson (2001) meta-analysis companion calculator to convert effect sizes. This follows the Campbell policy on conversion and accounts for consistent results (Polanin & Snistveit, 2016).

Conclusion

In this meta-analysis proposal, I presented the competing political framings on the effects of cash bail, along with criminology theoretical approaches, and recent state law changes. Four insightful meta-analyses have been conducted, but none examine the assignment of cash bail on the crime prevention and fairness discourse of state-level politicians that are informing laws. This research gap will be addressed by identifying and systematizing articles that test bail impact on crime prevention measures – failure to appear, re-arrest, and recidivism, along with fairness measures of race and economic disparity. Search strategy builds from previous criminology work to identify articles and consider publication bias. PRISMA Protocol will be implemented to systematize article information collection. The PICOS Framework guided inclusion criteria, which includes articles from the United States, published after 1984, that take place at the state or county level, and are randomized control trials or quasi-experimental designs with a control group. The analytic strategy will include two coders and incorporate the Cochrane Risk of Bias Framework. Differing effect sizes from the articles will be standardized by using the odds ratio measurement for individual level outcomes and the standardized mean difference measurement for aggregate level outcomes. Recent state law changes and current proposals suggest a need to connect research to state policymakers. This meta-analysis will fulfill that need.

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