



CASH BAIL REFORM: TESTING COMPETING POLITICAL EXPECTATIONS

Rebecca Larsen

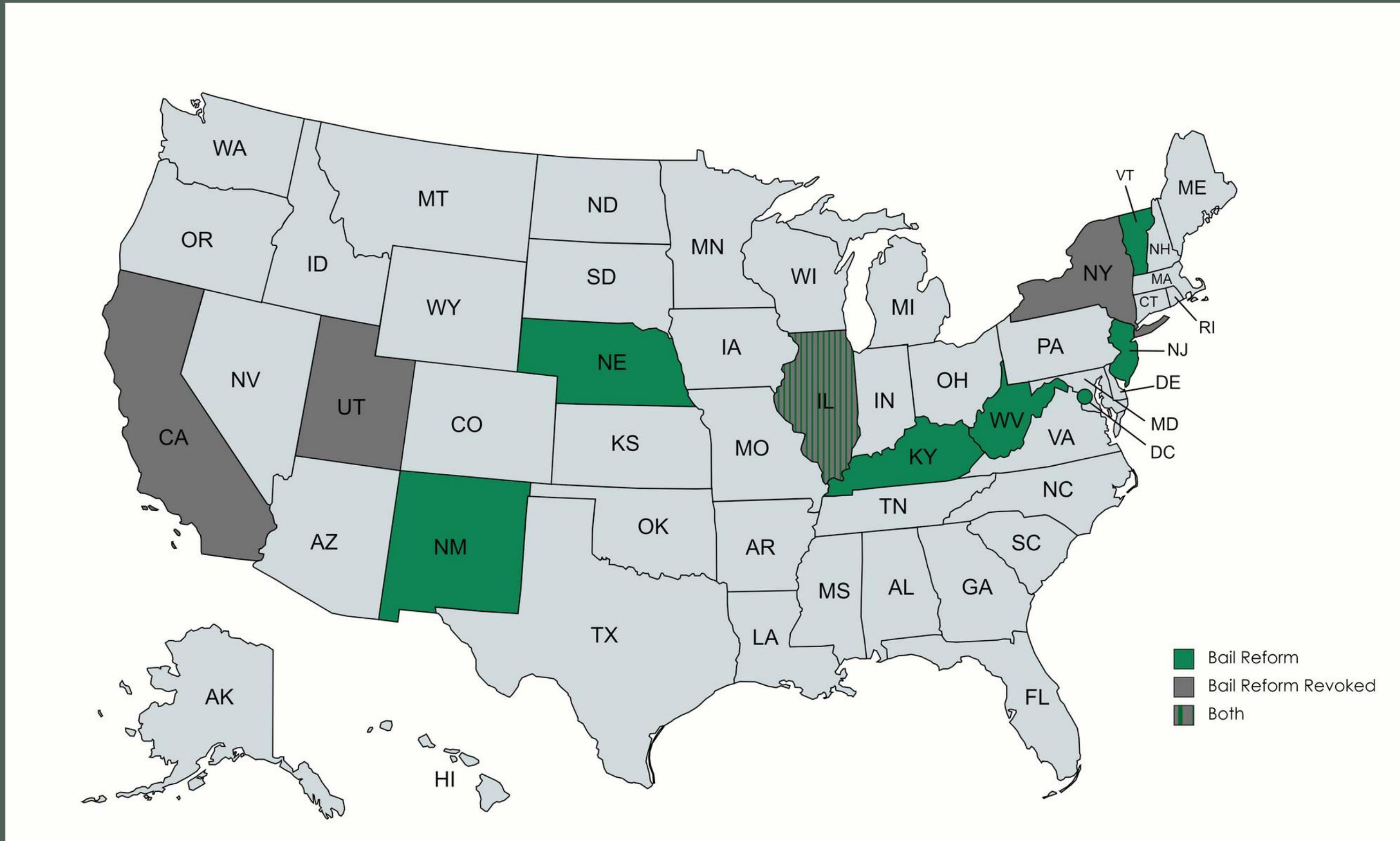
Ph.D. Student, Public Policy and Political Economy
University of Texas at Dallas

Assistant Professor of Practice,
Texas Tech University

BACKGROUND

Cash Bail Reform =

- A statewide policy to reduce reliance on cash bail.
- Through presumption of release for certain crimes, and requirement to consider ability to pay.



BACKGROUND

Opponent Expectations:

- Bail reform increases violent crime and creates a public safety risk.
- "Revolving door."
- Republican state lawmakers and PACs.
- Support:
 - Rearrest rates increasing/not reducing post-reform (Mayson, 2018 Sardar, 2018 Stevenson, 2017)

Proponent Expectations:

- Bail reform reduces pretrial detention and inequity externalities.
- Initial bipartisan support for passage, shift to Democratic state lawmakers and reform groups
- Support:
 - Majority of pretrial population in jail because of inability to pay (Leslie & Pope, 2017; Stevenson, 2018)
 - County-level reform lead to reduced pretrial rate (Heaton, 2022)

Literature Limitations:

- Focus on individual counties.
- Counties are urban.
- Focus on reforms by DA or elective decisions by judge but not statewide reform impact.
- Natural crime trends often not accounted for.

RESEARCH QUESTION:

HOW DOES CASH BAIL REFORM IMPACT PRE-TRIAL DETENTION AND VIOLENT CRIME RATES?

Hypothesis 1 (Opponent):

**Reforming cash bail increases
violent crime**

Hypothesis 2 (Proponent):

**Reforming cash bail
reduces pre-trial detention.**

DATA

Unit of Analysis: U.S. States

Independent variable: Statewide bail reform implemented

Dependent variable 1: **Violent Crime Rate** (FBI UCR)

- Violent crimes committed per 100,000 people

Dependent variable 2: **Pretrial Rate** (Vera Institute)

- People held in jail without conviction per 100,000 people

2000-2018

Controls:

- Death Penalty
- Judicial Election
- Priv Bond Ban
- South
- Private Jail
- State Party
- Poverty Rate
- Pop 15 to 64

OLS RESULTS

<i>Dependent variable:</i>	
	Violent Crime
Bail Reform	−53.004 (40.742)
Death Penalty	0.370 (12.298)
Judicial Election	58.506*** (16.025)
Priv Bond Ban	−1.255 (14.809)
South	65.512*** (12.948)
Private Jail	7.008** (3.542)
State Party	−10.403 (7.290)
Poverty	1.478 (1.833)
Pop 15 to 64	0.00001*** (0.00000)
Constant	269.463*** (23.631)
Observations	855
R ²	0.132
Adjusted R ²	0.122
Residual Std. Error	147.859 (df = 845)
F Statistic	14.244*** (df = 9; 845)

Note: *p<0.1; **p<0.05; ***p<0.01

<i>Dependent variable:</i>	
	Pretrial Rate
Bail Reform	77.866*** (22.949)
Violent Crime	0.052*** (0.019)
Judicial Election	−12.550 (9.045)
Priv Bond Ban	−15.669* (8.310)
South	67.786*** (7.148)
Private Jail	29.939*** (1.996)
State Party	13.854*** (4.015)
Poverty	13.227*** (1.031)
Pop 15 to 64	−0.00000*** (0.00000)
Constant	23.914* (14.005)
Observations	855
R ²	0.577
Adjusted R ²	0.573
Residual Std. Error	83.204 (df = 845)
F Statistic	128.184*** (df = 9; 845)

Note: *p<0.1; **p<0.05; ***p<0.01

SYNTHETIC CONTROL METHODOLOGY

Four States: Kentucky, New Jersey, New Mexico & Nebraska

From dataset of non-bail reform states, create a synthetic version of a reform state matched on pre-policy outcomes and covariates:

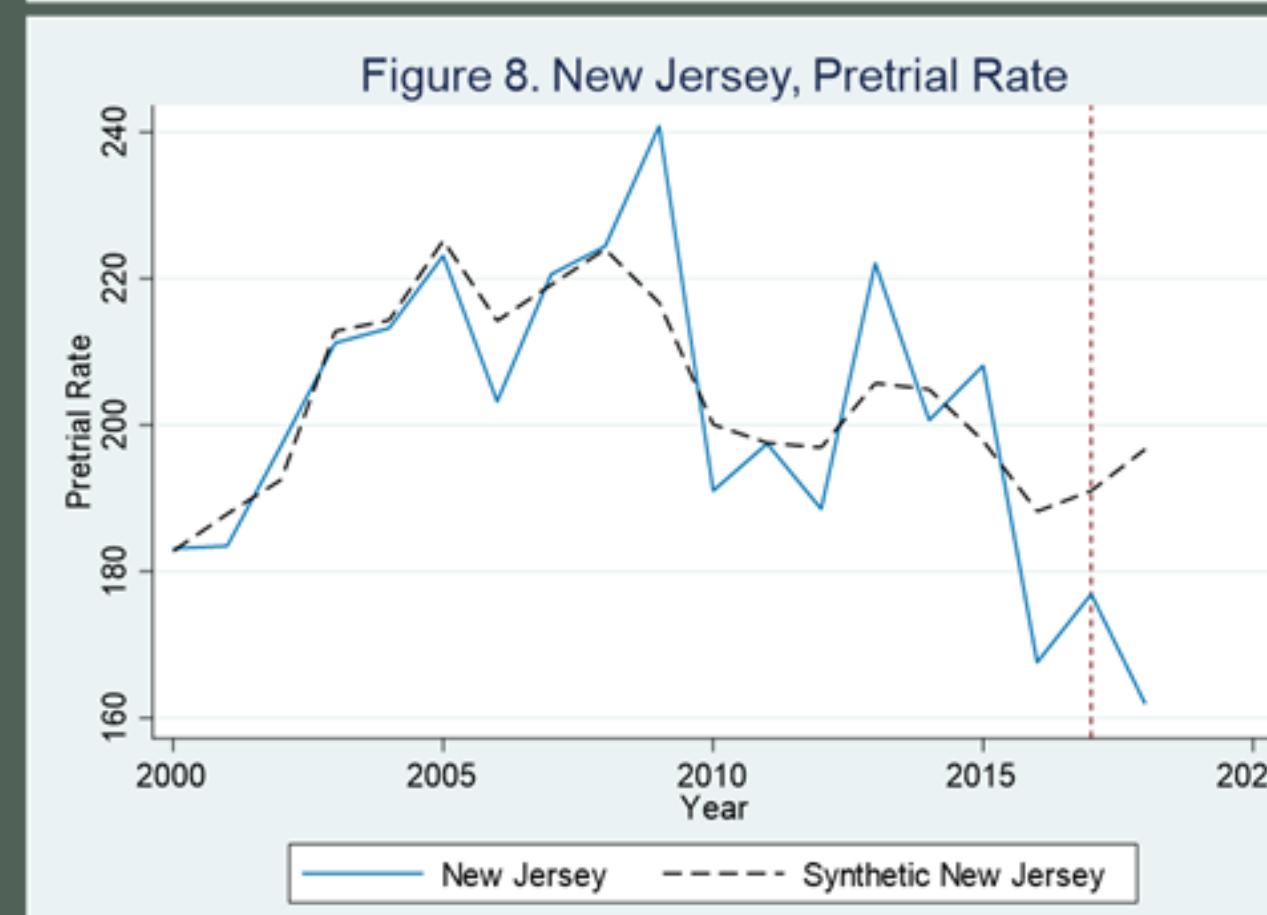
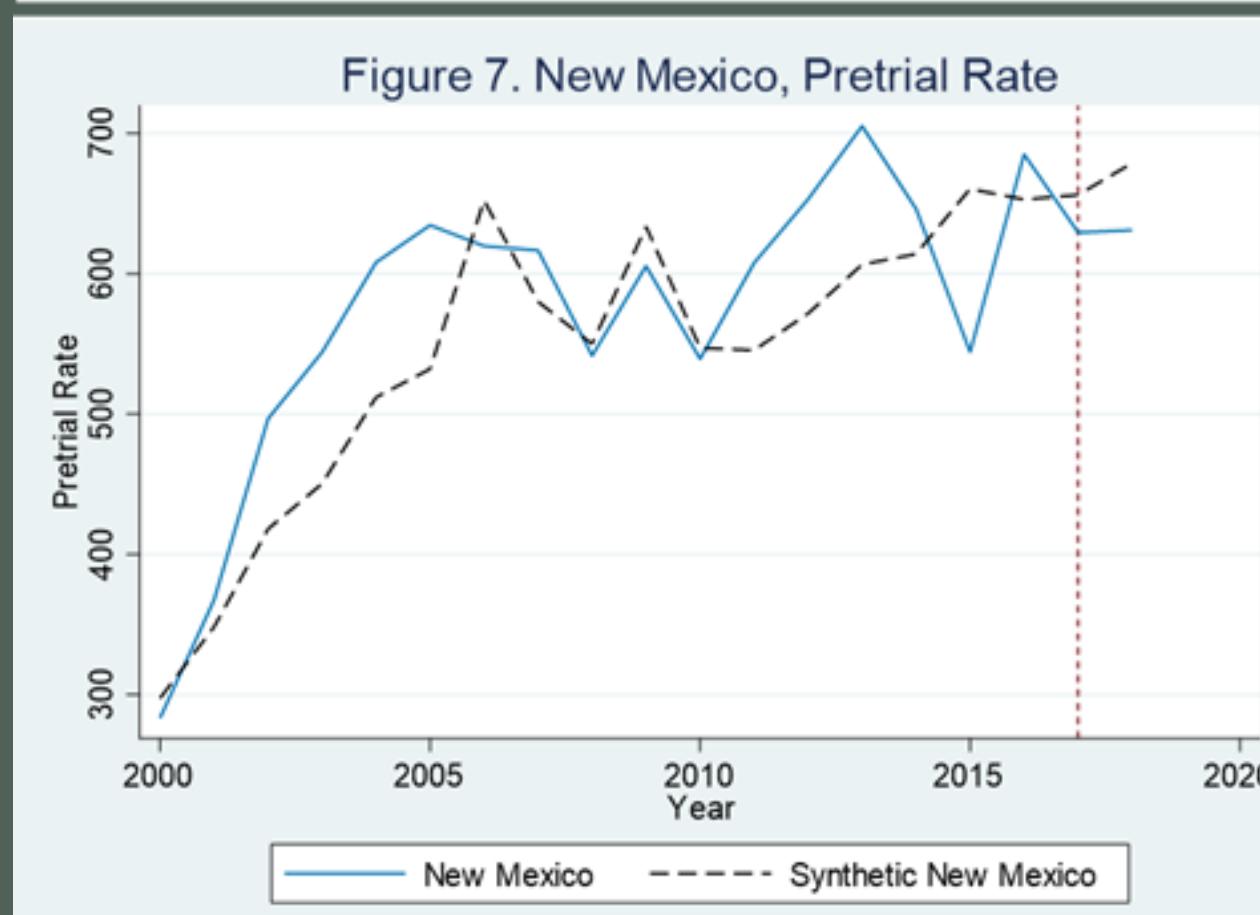
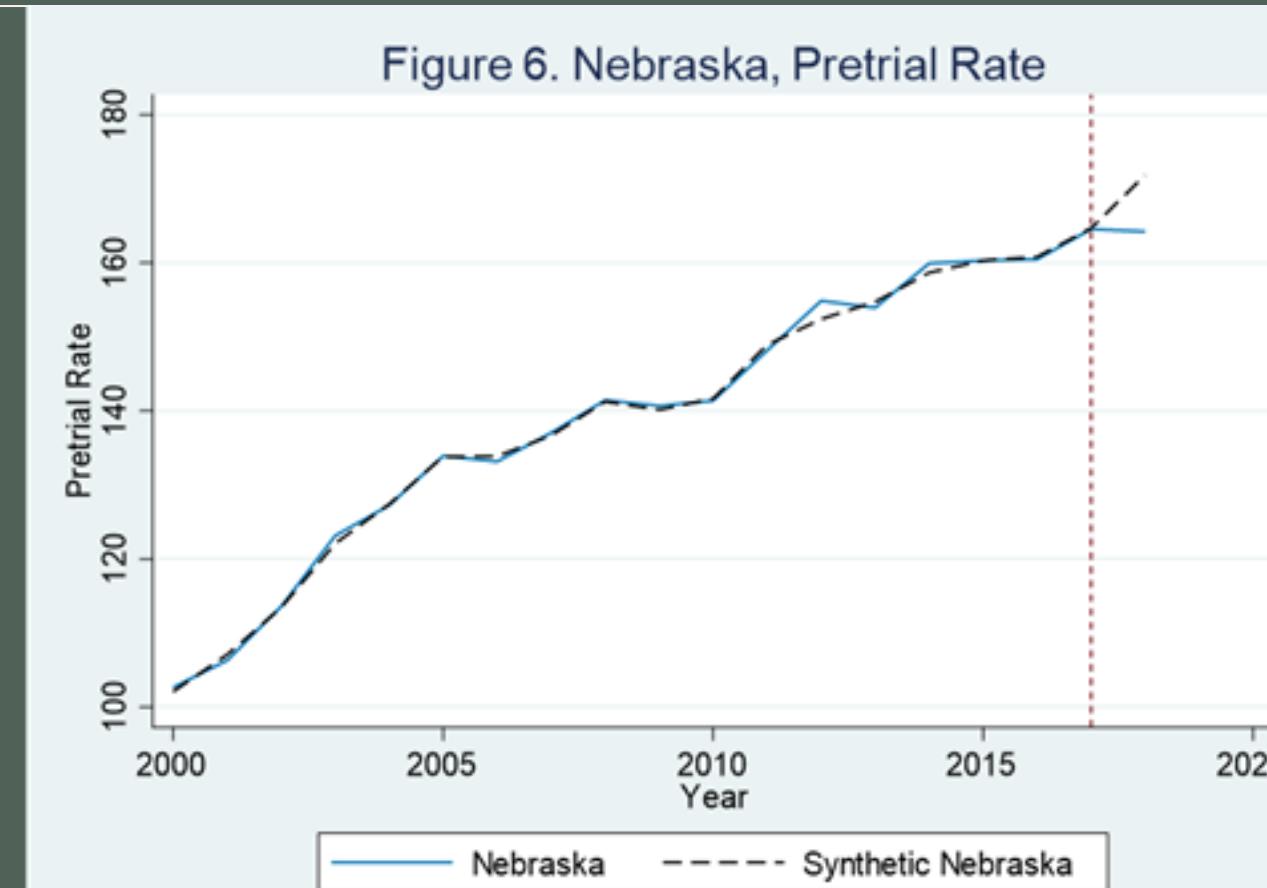
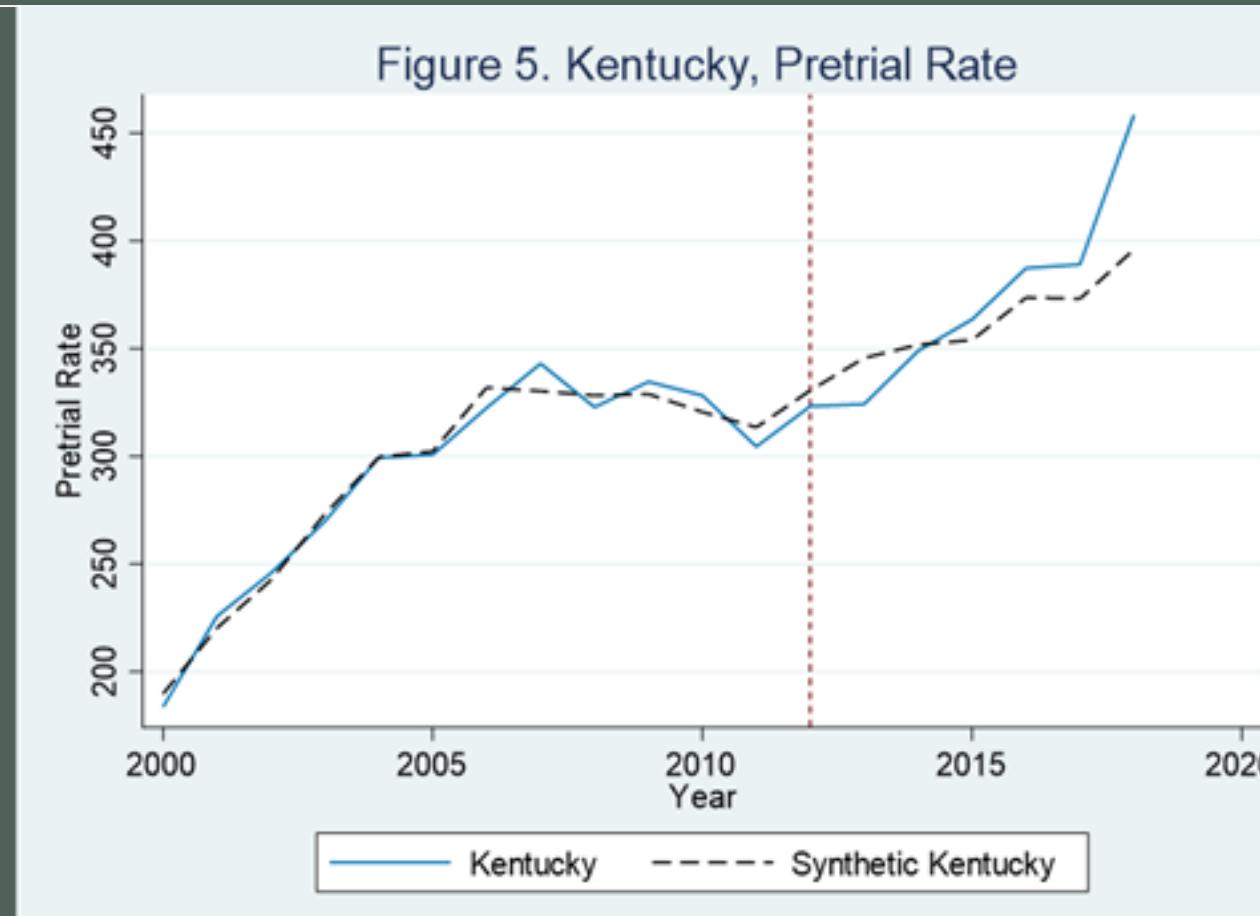
- Male jail rate, female jail rate, Black jail rate, white jail rate, Latino/a jail rate, jail admission rate, jail rate, poverty, proportion 15 to 64, state party (Vera Institute).

(Abadie, et al., 2010; Abadie, 2021; Lu, 2021)

Violent Crime - no effect, across specifications and robustness checks.

- KY - Decrease ($p < 0.001$); NJ - Decrease ($p < 0.1$)

SYNTHETIC CONTROL - PRETRIAL RATE



NM - Not interpretable (Root Mean Squared Percentage Error)

KY - Increase, significant ($p < 0.1$)

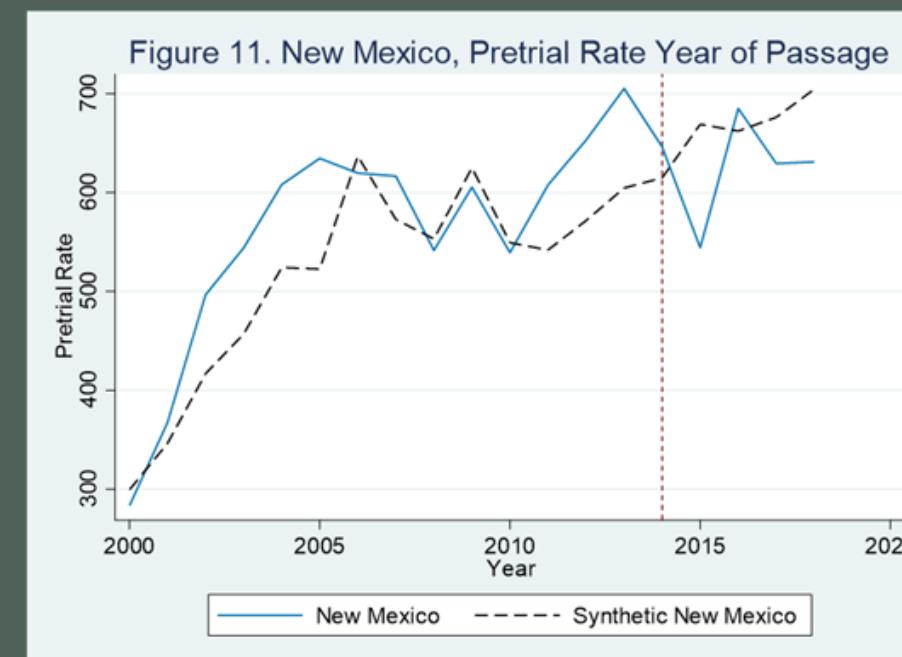
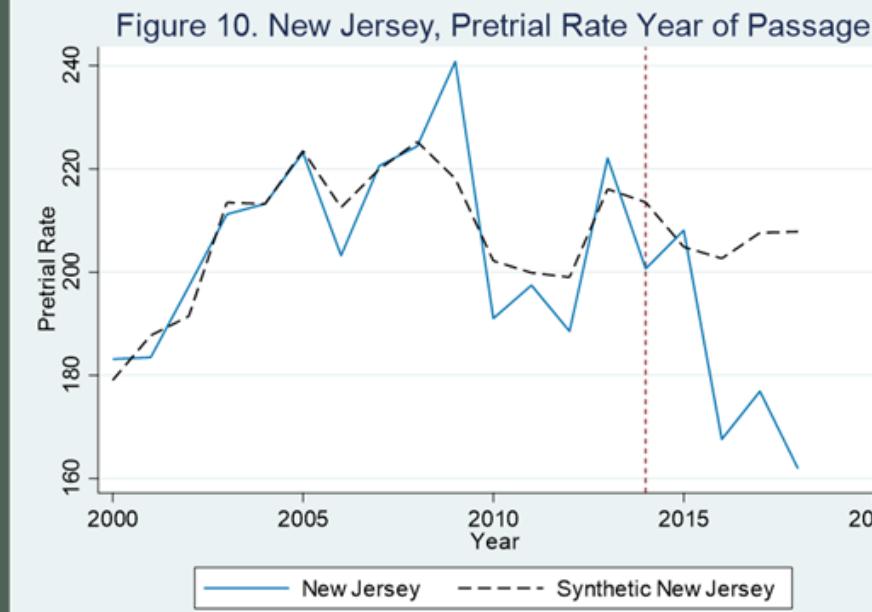
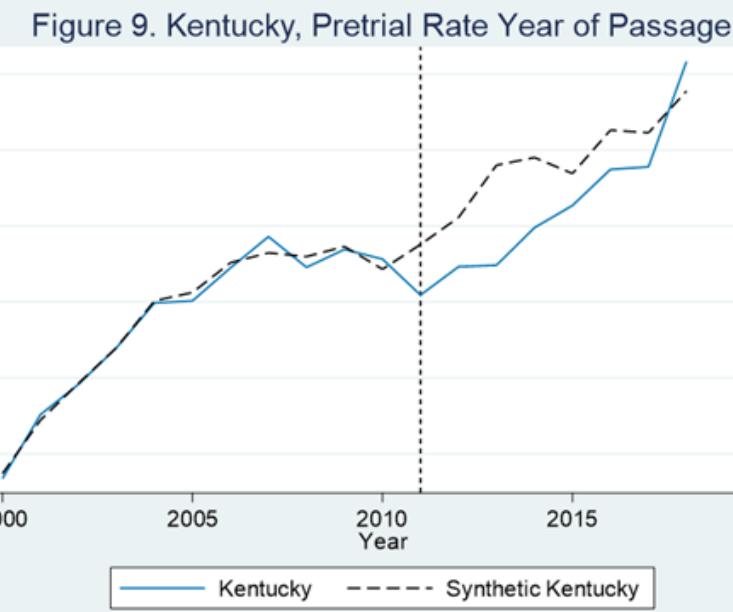
NE - Maintain, Not significant ($p > 0.1$)

NJ - Decrease ($p < 0.1$)

Variation in pretrial rate - Why?

- Implementation
- Passage Effect

ALTERNATIVE EXPLANATION - PASSAGE EFFECT



SCM fit improved compared to implementation

NM - Uninterpretable

KY - Decrease (p=0.1); Remove 2018: (p<0.05)

NJ - Decrease (p<0.05)

	Dependent variable:			
	Pretrial Rate			
	(1)	(2)	(3)	(4)
Reform Passed	82.085*** (17.604)	-18.651 (34.935)	23.345 (34.799)	33.197* (19.496)
Violent Crime	0.048** (0.019)	0.031 (0.020)	0.046** (0.019)	0.028 (0.019)
Jud. Election	-9.814 (9.028)	-10.244 (8.976)	-12.744 (9.137)	-9.151 (8.879)
Priv Bond Ban	-17.526** (8.256)	-14.954* (8.244)	-20.162** (8.352)	-13.653* (8.150)
South	69.948*** (7.123)	74.273*** (7.199)	69.882*** (7.111)	76.797*** (7.116)
Private Jail	29.721*** (1.985)	29.013*** (1.985)	29.602*** (1.983)	28.184*** (1.973)
State Party	13.988*** (3.988)	14.811*** (3.972)	13.879*** (3.982)	15.423*** (3.931)
Poverty	12.841*** (1.032)	12.583*** (1.029)	12.641*** (1.036)	12.163*** (1.023)
Pop 15 to 64	-0.00000*** (0.00000)	-0.00000** (0.00000)	-0.00000*** (0.00000)	-0.00000** (0.00000)
Passed*Violent Crime		0.265*** (0.079)		
Passed*Jud. Election			79.653* (40.728)	
Passed*Private Jail				78.453*** (14.388)
Constant	26.051* (13.935)	33.401** (14.027)	32.021** (14.243)	37.442*** (13.862)
Observations	855	855	855	855
R ²	0.582	0.588	0.584	0.596
Adjusted R ²	0.578	0.583	0.579	0.592
Residual Std. Error	82.712 (df = 845)	82.222 (df = 844)	82.574 (df = 844)	81.340 (df = 844)
F Statistic	130.836*** (df = 9; 845)	120.270*** (df = 10; 844)	118.529*** (df = 10; 844)	124.730*** (df = 10; 844)

LIMITATIONS

OLS - endogeneity and omitted variable bias.

SCM not a good fit for all states.

Short-term change given data cutoff point.

NEXT STEPS

Two Ways Fixed Effects

County-level Analysis

Impact of bail reform and judicial election on pretrial rate.

- Proximity to election (Huber & Gordon, 2004)
- How does public opinion impact judicial response to reform?

CONCLUSION

Violent Crime

- Across models, bail reform does not increase violent crime.

Pretrial Rate

- Bail reform implementation has a net positive effect on pretrial rate but varies across states.
 - SCM helps to control for confounders and natural trends: Pretrial rate outcome varies.
- Passage date of reform has a stronger effect on pretrial rate (OLS and SCM).
 - Helps to explain seemingly disparate outcomes in NJ and KY.
 - Both see a decrease in pretrial rate but Kentucky's increases in 2018.
 - Policy process, public opinion

Thank
You!

QUESTIONS?

Rebecca.Larsen@utdallas.edu
Rebecca.Larsen@ttu.edu



REFERENCES

Arnold, D., Dobbie, W. S. & Hull, P. (2022). Measuring Racial Discrimination in Bail Decisions. *American Economic Review*, 112(9): 2992 – 3038. <https://doi.org/10.1257/aer.20201653>

Arnold, D., Dobbie, W., Yang, C.S. (2018). Racial bias in bail decisions. *The Quarterly Journal of Economics*, 133(4): 1885 – 1932. <https://doi.org/10.1093/qje/qjy012>

Austin, A. (2017). The presumption for detention statute's relationship to release rates. *Federal Probation*. https://www.uscourts.gov/sites/default/files/81_2_7_0.pdf

Demuth, S., & Steffensmeier, D. (2004). The Impact of Gender and Race-Ethnicity in the Pretrial Release Process. *Social Problems*, 51(2), 222–242. <https://doi.org/10.1525/sp.2004.51.2.222>

Donnelly, E.A. & MacDonald, J.M. (2018). The downstream effects of bail and pretrial detention on racial disparities in incarceration. *The Journal of Criminal Law and Criminology*, 775.

Free, M.D. (2004). Bail and pretrial release decisions. *Journal of Ethnicity in Criminal Justice*, 2(4). 23-44. https://doi.org/10.1300/J222v02n04_02

Heaton, P. (2022). The effects of misdemeanor bail reform. *Quattrone Center for Fair Administration of Justice*. <https://www.law.upenn.edu/live/files/12290-the-effects-of-misdemeanor-bail-reformpdf>

Leslie, E. & Pope, N. (2017). The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from NYC Arraignments. *Journal of Law and Economics*, 60 (3): 529–57.

Mayson, S.G. (2018). Dangerous defendants. *The Yale Law Journal*. <https://www.yalelawjournal.org/article/dangerous-defendants>

NYPD. (2020). *NYPD Announces Citywide Crime Statistics for February 2020*. <http://www1.nyc.gov/site/nypd/news/pr0305/nypd-citywide-crime-statistics-february-2020>

Sardar, M. B. (2018). Give Me Liberty Or Give Me Alternatives: Ending Cash Bail and Its Impact on Pretrial Incarceration Notes. *Brooklyn Law Review*, 84(4), 1421–1458.

Schaefer, B. P., & Hughes, T. (2019). Examining judicial pretrial release decisions: The influence of risk assessments and race. *Criminology, Criminal Justice, Law & Society*, 20(2), 47–58.

Stevenson, M. T. (2018). Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes. *The Journal of Law, Economics, and Organization*, 34 (4): 511-542. <https://doi.org/10.1093/jleo/ewy019>

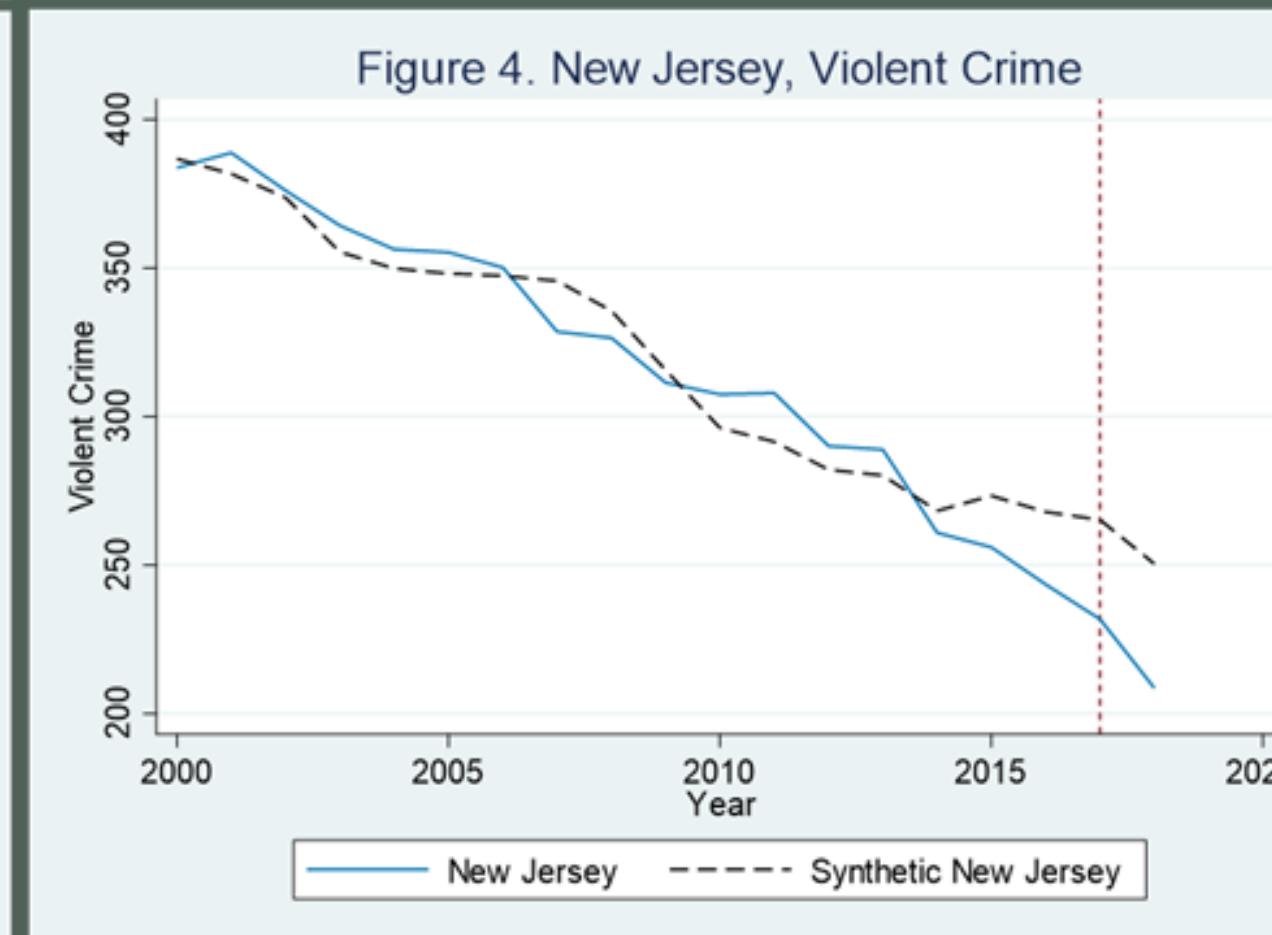
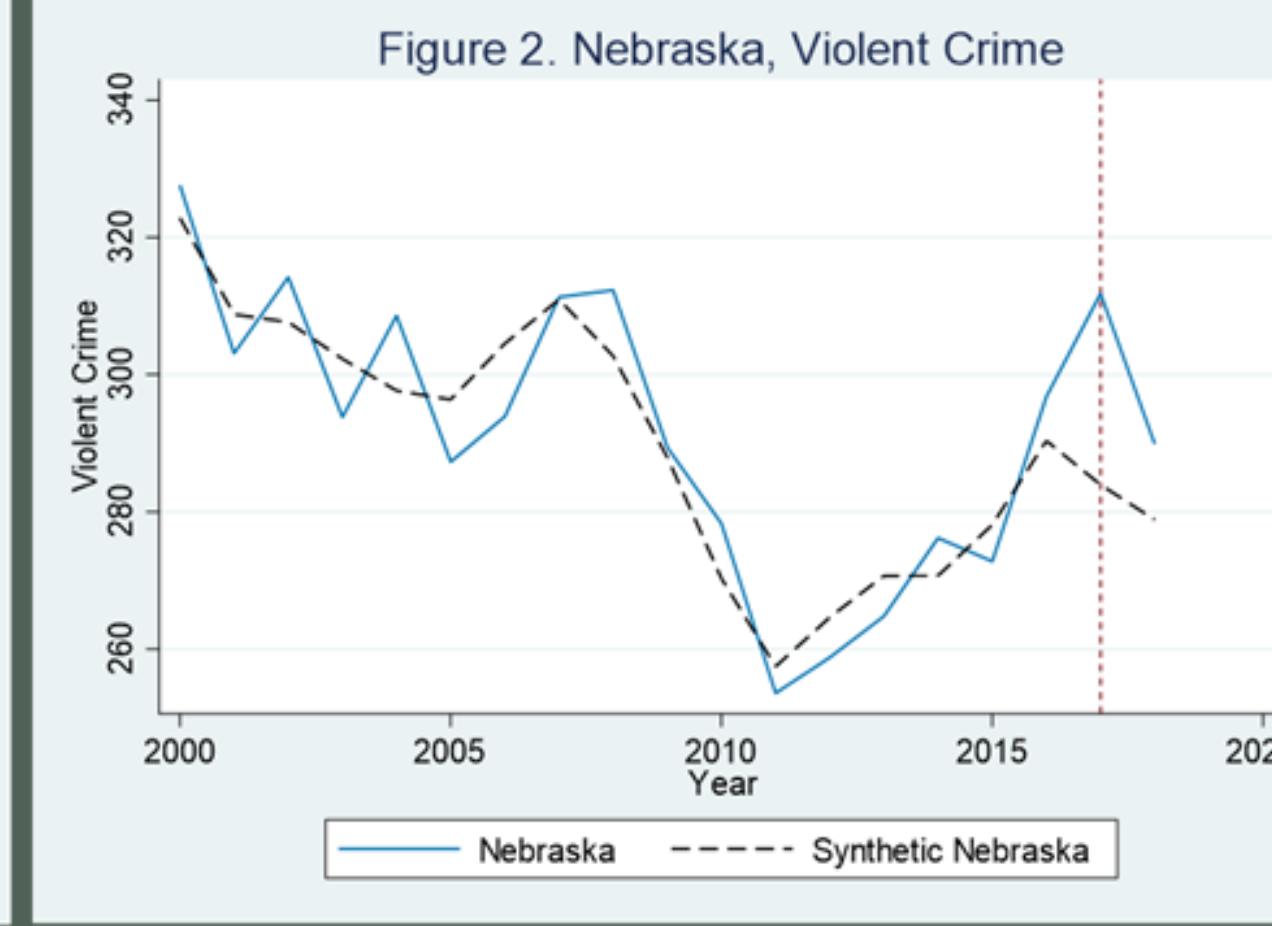
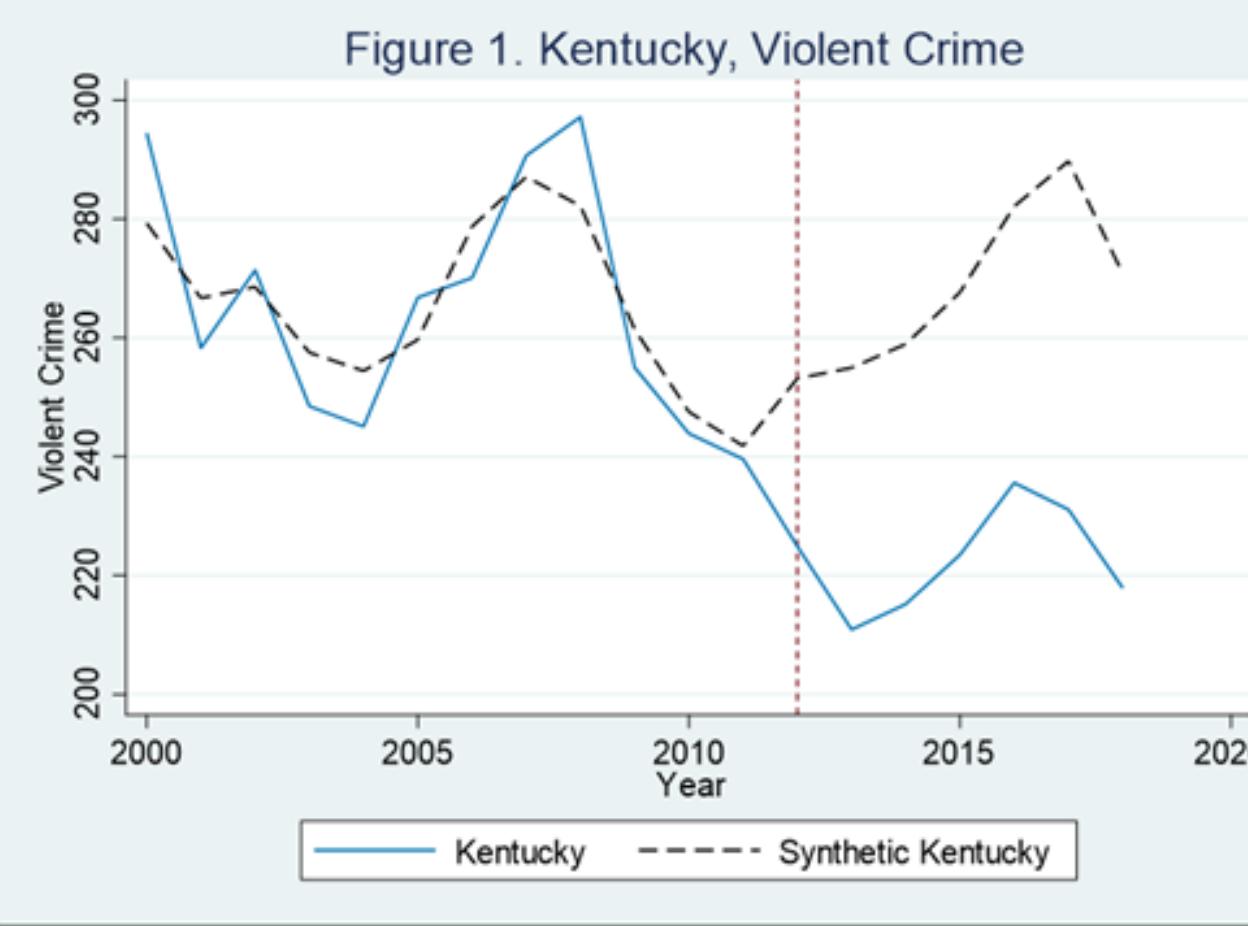
U.S. Commission on Civil Rights (2022). The Civil Rights Implications of Cash Bail. <https://www.usccr.gov/files/2022-01/USCCR-Bail-Reform-Report-01-20-22.pdf>

Additional Information for Questions

	Year Passed / Implemented	Reform Process	Bail Reform Type
Implemented:			
District of Columbia	1992 / 1993	State legislation.	Presumption of release without conditions. Judges cannot assign bail with the effect of pretrial detention.
Kentucky	2011 / 2012	State legislation.	Presumption of release with limits on when judge should assign cash bail and least restrictive conditions required.
New Mexico	2014 / 2017	2014 NM Supreme Court ruling / 2016 Const. Amendment affirming / 2017 enacted.	Constitutional amendment prohibited setting unaffordable bail.
New Jersey	2014 / 2017	State legislation.	Presumption of release with limits on when judge can assign cash bail and least restrictive conditions required.
Nebraska	2017 / 2017	State legislation.	Presumption of release with least restrictive conditions required and ability to pay considered.
Vermont	2018 / 2019	State legislation.	Cash bail eliminated for certain misdemeanors and ability to pay must be considered when assigning bail.
West Virginia	2020 / 2021	State legislation.	Presumption of release with limitations on when a judge should assign cash bail.
Not Implemented:			
New York	2019 / Rolled back 2020	2019 state legislation, 2020 state legislation rolling back, 2021	Initially, cash bail was prohibited for misdemeanors and nonviolent felonies. In 2020, added to the list of crimes that judges can assign bail for, limiting the reform's effect.
California	2018/ Overturned in 2020 / 2021	2018 state legislation, 2020 referendum overturning, 2021 CA Supreme Court ruled system unconstitutional.	2021: Unaffordable bail is unconstitutional. No policy passage to enforce or clarity from upper court enforcing yet.
Illinois	2017 / 2018 2021 / 2023 (Ongoing repeal efforts but planned to go into effect Sept 2023)	2018 state legislation, 2021 state legislation, 2023 IL Supreme Court affirmed	2018: Cash bail cannot be "oppressive" and must consider ability to pay. 2023: Would abolish cash bail with ability for judges to deny release based on flight or safety risk.
Utah	2020 / Repealed in 2021	State legislation.	Presumption of release with limitations on when a judge should assign cash bail.

	Kentucky	Nebraska	New Mexico	New Jersey
Year Passed / Implemented	2011 / 2012	2017 / 2017	2014 / 2017	2014 / 2017
Pretrial Outcome	Increase	Flatten	Flatten (but poor SCM fit)	Decrease
Bail Reform Type	Presumption of release with limits on when judge should assign cash bail and least restrictive conditions required and ability to pay considered.	Presumption of release with least restrictive conditions required and ability to pay considered.	Constitutional amendment prohibited setting unaffordable bail.	Presumption of release with limits on when judge can assign cash bail and least restrictive conditions required.
Judicial Selection	Nonpartisan election	Gov appointment from committee then retention election	Partisan election then retention election	Gov appointment with state senate approval
Private Bail Industry	Banned	Banned	Not Banned	Not Banned
Number of Private Jails	2000-2018: 0	2000-2018: 0	2000-2018: 3 (Mode)	2000-2018: 0
State Party Control	2000-2016: Mixed; 2017-2018: Rep Trifecta	2000-2018: Rep Gov Control (Unicameral legislature non-partisan)	2000-2002: Mixed, 2003-2010: Dem Trifecta; 2011-2018: Mixed	2000-2001: Rep Trifecta; 2002-2009: Dem Trifecta; 2010-2017: Mixed; 2018: Dem Trifecta
Poverty	Pre-treatment average: 15.5; post-treatment average: 17.7	Pre-treatment average: 10.2; post-treatment average: 11	Pre-treatment average: 18.8; post-treatment average: 18.15	Pre-treatment average: 9.2; post-treatment average: 9
Region	South	Midwest	West	Northeast

SYNTHETIC CONTROL - VIOLENT CRIME



NM - Not interpretable (Root Mean Squared Percentage Error)

KY - Decrease ($p < 0.001$)

NE - Decrease, Not significant ($p > 0.1$)

NJ - Decrease ($p < 0.1$)

OLS Results Confirmed: No evidence of bail reform increasing violent crime.