Probable Causation, Episode 84: Alex Albright

Jennifer [00:00:08] Hello and welcome to Probable Cause Causation, a show about law, economics and crime. I'm your host, Jennifer Doleac of Texas A&M University, where I'm an economics professor and the director of the Justice Tech Lab. My guest this week is Alex Albright. Alex is a research economist with the Opportunity and Inclusive Growth Institute at the Federal Reserve Bank of Minneapolis. Alex, welcome to the show.

Alex [00:00:30] Hi. Thanks so much for having me. I'm excited to be here.

Jennifer [00:00:33] Today, we're going to talk about your research on money bail and bail reform. But before we dove into that, could you tell us about your research expertise and how you became interested in this topic?

Alex [00:00:44] Sure, absolutely. So I'm an applied micro economist and I study law and economics and equality and I also work on a lot of research about the criminal legal system, which includes this paper about money bail reform. When it comes to how I became interested in this topic, I'll just say broadly, I became interested in the criminal legal system and criminal justice system during an RAship after college. So I worked at Stanford Law for a few years and learned a lot about mass incarceration in this country. So learned about the history of it over the last few decades in the U.S. and also learned about how much the U.S. is an outlier relative to other OECD countries. And I think that that was really what propelled me towards doing work related to the criminal justice system. When it comes to bail specifically, I remember, I think back in so this was 2018, California was going to pass Senate Bill ten, and there were all of these different articles about how California was going to become the first state to completely end the usage of money bail.

Alex [00:01:47] And I remember seeing those headlines and thinking, Oh, wow, that's a really big change. I wonder if it's going to go through and I wonder what else is happening in the country. California actually didn't end up going through, but it's what got me interested in this. I ended up reading just a lot of articles and looking for data, and that's what led me down this path.

Jennifer [00:02:04] So your paper is titled "No Money Bail, No Problems Trade Offs in a Pretrial Automatic Release Program." So let's start with some basics here. What is money bail? How common is it and what is its purpose?

Alex [00:02:17] Sure. So generally when we talk about bail in the pretrial system, people think of money bail, but bail really just means conditions for release and those can be financial or nonfinancial. But money bail is the most salient and well-known example of a bail condition in this country, and it requires that you deposit some amount of money in order to be released from jail. So this is a requirement for you to actually leave jail after you're booked. You know, it's hard to say across all cases, as I'm sure some listeners are aware of a lot of what we know nationally about the criminal justice system is through Bureau of Justice Statistics reports, and those usually just cover felonies for pretrial. So if we just think about felony numbers, it's probably about 60% of cases receive money bail, I can tell you that in Kentucky, across all cases, it's about 55%. So I feel comfortable saying it's often like modal experiences to get some amount of money bail assigned to you if you're somebody who's been arrested. And the purpose of money bail right now, the purpose of it is to ensure court appearance.

Alex [00:03:24] So to try to make sure that people come back to court and to try and reduce or have, you know, avoid re-arrest. So to try to disincentivize potentially re-offending because you have some money on the line, this is something that also has actually changed over the years. So decades ago, it was all just about court non-appearance, it wasn't about re-arrest, but that's actually something that I think changed in the eighties. So another fun bonus fact about how actually even some of the objectives of these things have changed over history.

Jennifer [00:03:55] And so am I understanding correctly so if you're required to put down bail to get out money bail, to be released pretrial, then if you show back up in court and don't have any new re-arrest or, you know, other misconduct the court is worried about, you get at least most of that money back. Is that right?

Alex [00:04:12] Yes, yes, yes, yes. So it's meant as you put this money up and then if you show back up to court and you're complying with requirements, then you're going to get most of the money back. Usually some amount might be taken as a fee or if you use a bail bonds person, which isn't going to be relevant in Kentucky where I study this, but in other states you usually have to give up 10% of the amount regardless as a fee to someone. So most of the amount you should be getting back.

Jennifer [00:04:40] Got it. And so why is there all this interest in reform? Why is money bail controversial?

Alex [00:04:47] That's yeah. So I think that, you know, if you couldn't hear it in my voice, I mean, the practice of requiring people to put on money in order to be released from jail is quite controversial because if you're not able to make the bail, if you don't have the resources, this does mean that you are now going to be in jail.

Alex [00:05:07] So there's a lot of concern about the disparate impacts of this practice on disadvantaged communities, rightfully so, but there's also then concerns on the other side well, if we reform money bail, you know, what is the alternative and what's going to happen? And like will our court system to be able to function? And also, that's a lot of the tension there.

Jennifer [00:05:26] And I think in theory, at least, judges are supposed to, at least in most jurisdictions, consider your ability to pay when setting money bail, but I guess the concern is that they're just not doing that very well. Is that right?

Alex [00:05:41] Yeah. So there's actually been some court observations on this that are anecdotal but I think are interesting to think about where people have gone into courts and watched how the bail setting process works. I think this was done in Chicago. Basically, court observers took notes on how often judges actually are asking about this and I think the takeaway is just, you know, it's not happening all the time. And so if there's no information actually on how much someone is able to pay, so there's a lack of information, on ability to pay, then bail might be set in this very standardized way where you're not thinking about someone's economic resources and so in that case, you very well might have effects of the same bail amount out, right like $5,000 could affect one person very differently than another person based on the available income that they're bringing in, but also based on like the wealth of their networks and all of this.

Jennifer [00:06:31] Yeah. Okay. So you're going to study the effects of a major bail reform program in Kentucky called Automatic Release. So before that reform, what were the

pretrial options for someone who was arrested and booked in Kentucky? And then what did this policy change?

Alex [00:06:45] Yeah.

Alex [00:06:46] So before this policy in Kentucky, all cases were going to judges who had discretion in how they set bail. Let's go through the three big options that judges had. So the first option was to set money, bill, money bail we've already talked a little about this. This is an ex ante requirement. You have to post some amount of money in order to be released from jail at all. Another option judges had was to set unsecured bill what that is, is you could set a money amount like $500. The defendant doesn't have to pay $500 to be released from jail, but if they fail to appear or re-arrested, that's an amount of money that they're going to owe ex-post. So that's happening if there's misconduct and then released on recognizance is the last one. I also call this unconditional release in the paper. This is no financial conditions attached, so there's no bail amount attached to either your release from jail or misconduct. Though I will just highlight that we shouldn't think of release on recognizance as a setting where there's no sort of negative consequences to failing to appear in court that does always, you know, potentially lead to a warrant or additional fines and fees. Natalia Emanuel and Helen Ho, actually have some related work on that.

Alex [00:07:57] Anyway so this is all to say that there's these three big options that judges have in the pre-period. In the post period after the program eligible cases are actually going to just be assigned automatically to release on recognizance. So there's no judge involved. This makes the program very striking and is why I'm going to see really large effects of the program on bail conditions. So if a case is eligible, it's just assigned to that release on recognizance rather than going to a judge who gets to pick between the three options.

Jennifer [00:08:25] And it's targeting, I imagine, lower risk defendants how ever, we define this.

Alex [00:08:31] Yeah, so the eligible cases here are eligibility depends on three different factors, but the main one to think about is the case has to be related to a non-sexual, nonviolent misdemeanor. So in my context, that often means shoplifting, public intoxication and drug possession. So low level misdemeanor offenses. Yes.

Jennifer [00:08:53] Okay. And so what are the various ways that this reform might affect behavior that we're interested in?

Alex [00:09:01] Sure. So there's a lot of behavior we could talk about here. I'll just focus for now on the behavior of people who have been arrested. So, first off, you know, if you no longer have to pay bail at all, just mechanically, there's going to potentially be a big change in detention because people don't actually have to engage in the behavior of paying bail. So that one's quite obvious potentially, but the other one to think about here is the behavior when it comes to a court appearance and re-arrest.

Alex [00:09:29] We could split this into two different channels that are perhaps quite familiar to people who have done work related to economics and crime, incapacitation and deterrence. Right. So there's going to be less people who are mechanically incapacitated during their court appearances or just generally when they could be rearrested, but then there's also potentially a change in behavior conditional on release, because let's say you're released on recognizance as opposed to released with a $500 bail. The distinction

potentially here is that in one case, you put down $500 and you can lose that if you don't come back to court, but in the released on recognizance situation, that's not the case you don't have the same money on the table. So we might think that that has some effect on misconduct behavior.

Jennifer [00:10:12] So, yes, that's the incentive effect that you're talking about earlier that is sort of driving the use of money bail here. Yeah. And then I guess there's also the possibility this doesn't change anything if judges were releasing all of these eligible people already, right?

Alex [00:10:28] Oh, yeah, absolutely. So if it were the case that all of the eligible cases had been receiving released on recognizance to begin with, then this isn't going to do anything right.

Jennifer [00:10:40] Yeah.

Alex [00:10:40] Because we're already at 100%. And then we're saying, okay, automatically give everyone a release on recognizance, then we're still going to be at 100%.

Jennifer [00:10:46] Yeah. Okay. So what had we known before you started digging into this about the effects of money bail, first of all, and then the effects of bail reform?

Alex [00:10:56] Sure. So there's a ton of literature on the effect specifically of pretrial detention. So if we think about how that's related to this topic, really, it's money bail is one of the channels that leads to pretrial detention. Right. And so pretrial detention, we know, can worsen the legal outcomes and labor market outcomes of detained individuals. And that's been well documented by a variety of people, such as Crystal Yang, Megan Stevenson, Emily Leslie and coauthors and other people. There's also a bunch of papers that, instead of focusing just on pretrial detention, do focus specifically on money bail and have also validated similar results as what's been found with pretrial detention. So Gupta, Hansman and Frenchman have found that money bail increases convictions and increases recidivism in the future and then there's also been some work that focused on what does it mean to lower money bail amounts. So instead of shifting away from money bail totally just like what if you lower the amounts for some group of people in the system.

Alex [00:11:58] This is here I'm referencing a paper by Abrams and Rohlfs who found that lower money bail did lead to higher FTAs and re-arrest, but also higher release. So that tells you something about the incapacitation and deterrence, mixed effects. And then we also have, I would say, the closest related work definitely to mine is a paper by Megan Stevenson and Aurelie Ouss, who focused on a prosecutor led reform which was related to trying to reduce the use of money bail in Philadelphia. In their context, they find that released on recognizance when it's increased by about ten percentage points. They don't find impacts on pretrial release or FTA or re-arrest. So that's a context where what they're thinking about is what is just the deterrence effect of cash bail and they're not finding much there.

Jennifer [00:12:47] Yeah, and just to talk through that a little bit more. So basically the change was in whether the prosecutors asked for money bail, but if I'm recalling correctly, basically what they're finding is that all these people would have gotten out anyway. Just-

Alex [00:13:00] Exactly.

Jennifer [00:13:01] There's no change in whether they're detained for more than a couple of days or whatever their threshold was. And so really, the only treatment then that they're looking at is kind of what's this incentive effect of having cash on the line?

Alex [00:13:14] Yeah, exactly. And another distinction between our two settings that I'll highlight is that in the prosecutor led reform, there's discretion on the prosecutor's side in terms of like who to make these changes related to bail for. Right. So I think they have a two percentage point reduction in money bail and so the prosecutors are going to be able to allocate that change across people. That's very different than in my setting, where it's going to just be automatically applied to anyone who's in this eligible group. So that's another distinction in terms of the empirical settings.

Jennifer [00:13:49] Yeah. Out of curiosity, do you know how many other places have this sort of automatic release feature, or is this this is Kentucky, the only one I've heard of, but you're closer to this.

Alex [00:14:01] So I mentioned Senate Bill ten to the top of this this interview, actually. So California's attempts to reform bail went through many iterations from probably 2018 to present. And actually on at one point there was a proposition, I think it was prop 25 for Californians part of what people were voting on was the introduction of what was very much going to be automatic release in California, it was built to, I think, even mimic some of the language in Kentucky. So that didn't end up going through, but I know that other places are very much interested in it. But to my knowledge right now, I'm not sure how many other places are implementing similar programs.

Jennifer [00:14:45] Yeah, that's automatic feature is super interesting, which we can talk more about later, but all right, so obviously there you know, there's been a lot of interest in bail reform. Lots of places are trying different kinds of bail reforms, you know, to various degrees. But as you said, we don't know much yet about what the impacts are of these kinds of changes. So what are the challenges here that researchers like yourself have to overcome in order to measure these causal effects as the hold up in a data challenge, or is it an identification challenge or something else?

Alex [00:15:17] I think the answer is it's all of these challenges. First off, I mean, for us to study reforms like this, they have to have occurred. So.

Jennifer [00:15:27] Important first step.

Alex [00:15:28] Yes. Yes. So and I mean, this is anyone who's trying to do empirical research and wants to collect data on policies and understand what their causal effects were well, if something hasn't been implemented yet, then you are going to be limited in that way and so a lot of bail reforms in the U.S. we're in a wave right now where a lot of them have been in the last five years. And so there is just going to be, I think, a natural delay in terms of working with that data and figuring out how different programs worked. So that's just the first one, right. Like occurrence is important.

Alex [00:16:01] And then yeah, identification strategies often can be quite challenging here too. Oh, I'll mention I think one of the biggest things that I've seen when it comes to bail reforms is sometimes they're bundled into much larger packages. And so what that means is if a state or a jurisdiction makes some sort of bail reform change, but then they also made five other changes. That's going to be really tricky to try to disentangle. So that can

often be a challenge as well. And also, I think like finding places where it actually had the expected impact, there's sometimes bail reforms where they seem like they're going to have really dramatic changes, but then they end up not really having large effects at all. And that might be because of behavioral changes in other actors in the criminal justice system that sort of offset, which is interesting in and of itself to study, but if what you're interested in is the shift in the bail conditions, then that's actually not going to get you it. So that's just a that's a few things and then available data as usual, that's often a big hold up as well.

Alex [00:17:00] Finding a place where data that you need for this sort of study has been collected and where there's a good data dictionary and people who are knowledgeable and people who are willing to work on these questions that can that can often be difficult as well and I'm thankful that Kentucky is an example of a state that has been very willing to work with researchers.

Jennifer [00:17:18] Yeah, there is a lot on risk assessment and pretrial and all of this stuff that has come out of Kentucky, which is says a lot of good things about Kentucky. And I agree that they're working with you all. Okay. So let's talk more about how this automatic release program was implemented in the state. When was this program adopted and how was it rolled out across places?

Alex [00:17:40] Sure. So this program had a few different iterations. The earliest iteration of it was phased in, I think, in the fall of 2013, and then the most recent version of it was implemented in January 2017. And I actually think there's even newer versions of the program that were implemented during COVID, but that's after my study period. So January 2017 for the automatic release program that I'm interested in was when it became mandatory statewide, and before that different counties were able to take up at different times based on their own discretion. So the rollout that I focus on is between November 2015 and January 2017.

Jennifer [00:18:24] Okay, great. And then who is eligible for automatic release?

Alex [00:18:28] Yeah. So we talked a little bit about this earlier. There were three requirements for being eligible for the program. One is that you as a person who's arrested, have to be brought in on a regular arrest. So this can't be a re-arrest due to a bench warrant or a violation of some conditions. The second thing is that your charge needs to be a non-sexual, nonviolent misdemeanor or some combination of those. So think of this as, again, disorderly conduct, shoplifting, drug possession. Those are some common examples. And then the third requirement is that your risk score, which is in this case going to be a public safety assessment score, has to be below an eight on a scale from two through 12.

Alex [00:19:12] So all three of these things have to be the case for you to be eligible. And if any one of them is not the case, right? If your risk score is too high, or if this was a re-arrest or anything like that, you're ineligible.

Jennifer [00:19:25] And the ineligible folks get sent to the judges as usual.

Alex [00:19:29] Yes.

Jennifer [00:19:29] Okay.

Alex [00:19:30] Yes. Ineligible folks just, you know, aren't diverted into this program. Instead, they just see a judge as they would have before the program was implemented.

Jennifer [00:19:37] Okay, great. And so how do you use these various implementation details, this, you know, gradual rollout plus the eligibility requirements to measure the causal effect of the automatic release program?

Alex [00:19:50] Yeah. So what's nice about this program is that it gives us a pretty clean identification strategy. So the way to think about it really is that I have variation in timing and in eligibility. So I'm able to see eligible and ineligible cases before the program is implemented, and I'm able to see how they're doing afterwards. And so what that means is I'm treating ineligible cases, these ones that are just going to see a judge, as usual as a control group. And I'm going to think of the eligible cases as a treated group. And then this is going to allow me to take a difference in differences approach to estimate the effects of the program on bail conditions, release and misconduct, all of these outcomes that we care about.

Jennifer [00:20:29] So you're going to look at these like the trends over time and you're going to show us that they're they look various these groups look very similar before the program goes into effect.

Alex [00:20:38] Yes.

Jennifer [00:20:38] And then suddenly you see this big change or not in in the outcomes we care about for that treatment group.

Alex [00:20:45] Yeah, exactly. So for specifically for bail conditions, you're just going to you see this big jump up, it's 50 percentage point increase in released on recognizance for eligibles and you don't see that big jump up for in eligibles. And so visually, that's really what the difference in differences is doing just in raw picture form, right. You have these two different lines moving closely together and then a big jump up and one. And that's really just the core of the identification strategy.

Jennifer [00:21:11] Yeah, it's a, it's a beautiful graph. So.

Alex [00:21:16] Clearly I'm trying to describe it.

Jennifer [00:21:18] Yeah, I know. I like it too. You know, these papers, you know, if you're doing everything right and everything goes the way you want, you have like a money graph like that. And that's that's your money graph. Your money bail money graph. Exactly. Okay, so what data are using for this.

Alex [00:21:36] Yes. So I'm using data that's from the Administrative Office of the Courts in Kentucky. So this is all administrative court data that I requested and got a few years ago. They been you know, Kentucky has, as we mentioned earlier, one thing that's really great is their pretrial services system is statewide. So this is an example of a state where I'm working with them and I actually am able to get data from the whole state all through one, all through one source rather than having to go county by county. Yeah. So that's where the data from.

Jennifer [00:22:05] And you have a note in the paper that this data was acquired through a special authorization from the Kentucky State Supreme Court. And I am so curious what the backstory is there.

Alex [00:22:18] Okay. So what it was was that specifically in a newer iteration of the paper, I wanted to get at some measure of socio economic demographics by defendants, and the only available data on that was not in my original data request, but it was something that had been captured in interviews that were done by pretrial officers.

Alex [00:22:46] So what I mean by that was pretrial officers, as they interview people who are arrested, find out things like are you employed full time or are you unemployed? And that is recorded somewhere, but it wasn't recorded in my original data ask and because it's a little bit more sensitive, it required this additional step of getting it approved by the state Supreme Court, which I managed to do, which is exciting and.

Jennifer [00:23:16] It does seem unusual.

Alex [00:23:17] Yeah, but it was very fun too. You know, you can go online and see the specific order that gave me, gave me the ability to use that data. And that's related to later on when we're talking about how this impacted outcomes differently for people who are employed as opposed to people who report being unemployed. That's why I needed that specific authorization.

Jennifer [00:23:38] And so from your perspective, was basically just like a standard public records request that just got elevated to a different office? Or did you have to, I don't know, like provide a whole bunch of additional information or something?

Alex [00:23:49] It was something where. So again, I'm very thankful to the people in Kentucky who I've worked with on this project for many years. So this is an example of something where I would have had no idea how to get this or what was required, but I brought up and I was interested in trying to learn a little bit more about people's employment status. And is that something that possibly I could get added into the data. And the executive director of pretrial at the time, Tara Blair, who is extremely knowledgeable, she told me that this was something that potentially I could pursue. And, yeah, she she really was the one who figured out how how I could do this.

Alex [00:24:28] So very thankful to her, but it was just an example of asking around, seeing if there was some method to get this additional data that I was interested in and they were able to help me out.

Jennifer [00:24:39] That's awesome. Okay, one more data question. What outcomes are you most interested in here?

Alex [00:24:45] Yeah. So the outcomes that I'm most interested in for the core results of the paper are bail conditions. Right. So we first off, first question here is just how much does this program actually have the effects that it was trying to have, right. So how much do we actually have any effect on reducing the use of money bail, increasing the use of release on recognizances and then I'm also interested in pretrial release and pretrial detention. So, for instance, I'm interested not only in are you released within a day or three days, but I'm also interested in well, I have a continuous measure of how long you were in detention overall. So total detention hours is also something that I'm interested in.

Alex [00:25:24] And lastly, pretrial misconduct. We've already talked about this failure to appear zero one and re-arrest zero one. So these are binary variables.

Jennifer [00:25:33] Okay. All right. So the first thing that you do is check whether this policy change affected the types of cases that jails and courts were dealing with. So what was the effect of the automatic release program on the number of arrests and the composition of cases?

Alex [00:25:49] Yeah, so this is a great question. The main reason why I want to look into this is because this could potentially be a threat to identification. So if the administrative if the automatic release program impacts offending because now it's lower cost, then case composition would be changing just continuously at the point of program uptake.

Alex [00:26:09] And that would be an issue similar point for just the composition of cases and I don't find changes on either of these margins. So so that is promising for us to move forward with the difference in differences strategy.

Jennifer [00:26:21] Yeah, it would have been a very different paper if you'd found big effects there. It would have been just like that.

Alex [00:26:26] It would still be very interesting.

Jennifer [00:26:27] Yeah, exactly.

Alex [00:26:28] Know exactly.

Jennifer [00:26:29] Exactly. If all these players are responding on these other margins.

Alex [00:26:32] Yeah. And you totally could imagine that that would happen in a different context.

Jennifer [00:26:36] Yeah.

Alex [00:26:36] Just in this case, it did.

Jennifer [00:26:37] Yeah. Okay. So then how did automatic release affect bail conditions?

Alex [00:26:42] Great. So again, we see this 50 percentage point increase in released on recognizances for the eligible cases. So one thing that's notable about that is it means that even these low level offenses, in the absence of this program, they weren't getting the most lenient bail conditions. Right. So that's how it's possible to have this 50 percentage point increase. And then there's about a 20 percentage point drop down in money bail. If you care about just the continuous variable, you know how much money is required for release that drops by about 77%. So these are just really huge effects for the eligible group.

Jennifer [00:27:19] Well, how much money are we typically talking about with this group?

Alex [00:27:22] For this group, it's usually around $500. That's the median amount. Yeah. So we should think of this as hundreds of dollars. We shouldn't think of it as $50,000 or something like that.

Jennifer [00:27:33] Got it.

Alex [00:27:34] And again, that makes sense. This is our this is targeting lower level offenses. So targeting, you know, shoplifting, you're usually not going to give someone $10,000 bail for low level misdemeanor.

Jennifer [00:27:46] Okay. And then so what was the effect on pretrial detention?

Alex [00:27:49] So we also see big effects here and they're mainly coming from quicker releases. So released within one day goes up by about 14 percentage points if you care about total hours in detention. So I can show you just like the two distributions of detention hours, that drop goes down by about 42%. So total hours in detention decreases by 42% if you want to know what that is in levels. So to put this in a more tangible framework, that means across my population there's about 25 less person years total in detention.

Jennifer [00:28:22] Added up across everybody.

Alex [00:28:24] Across everyone. Yes, exactly. For the whole system.

Jennifer [00:28:28] Yeah. Which also just highlights the fact that you're seeing an effect on pretrial detention for these relatively low bail amounts, highlights how sensitive this population is to even relatively small amounts of money that they need to find to get out.

Alex [00:28:44] Yeah, exactly. I think the mean amount was $380, so you might have had a prior that. Oh, well, shifting that down, it's not going to have big effects, but you really do see that it can change the total amount of hours by a lot.

Jennifer [00:29:03] Yeah. And even if someone's just so. So part of this could just be like, you know, it's automatic instead of having to wait the 24 hours or whatever. But 24 hours in jail can still be consequential. You might lose your housing, you might lose your job. So this is. This is like a meaningful effect, right?

Alex [00:29:26] Yeah, exactly. So you could split this out and think, okay, well, part of the gains here, gains being less hours in detention are going to be driven just by the automatic nature of this.

Alex [00:29:37] Right. So you don't have to wait to queue up the case for a judge. And then another part of it is, well, okay, let's assume that the judge was going to give released on recognizance anyway. How much is actually just due to the inability to pay that was happening beforehand?

Jennifer [00:29:52] Right.

Alex [00:29:52] So that's why I also have this that's the reason that I like this release within one day variable because in the absence of program, people were seeing judges within 24 hours, so.

Jennifer [00:30:04] Got it.

Alex [00:30:05] That one day I think is a nice way of telling you something that's more about the money bail changes and the 42% decrease is a combination of the this is administratively more efficient with also there is a change in what you have to post.

Jennifer [00:30:19] Got it. Yeah, that's super interesting. Okay. So we see a decline in pretrial detention. How did this affect likelihood of pretrial misconduct?

Alex [00:30:28] Yeah. So what I find here is that failure to appear in court, so court not appearance does increase. This goes up by about three percentage points. Another way to think about this, again, using this like annual levels method is about 360 more court non appearances for the population in a year. The effects that I find for re-arrest are insignificant. I can rule out effects above about 1.7 percentage points, but you know, these are not going to be as striking and positive as the failure to appear results. I can do a similar exercise with violent re-arrest and there I'm going to rule out effects above 0.6 percentage points. So results are insignificant for re-arrest and violent re-arrest, but we do find a three percentage point increase for failure to appear.

Jennifer [00:31:15] So pretrial detention falls, but pretrial misconduct at least FTAs increase. How should we think about the tradeoffs here?

Alex [00:31:23] One of the big thoughts I have in working on this is that a lot of our criminal justice reforms focus on trying to find a way to improve on one margin with no effects on any others, right. So like holding all else equal, can we release more people and a lot of the time those things are theoretically possible, but in practice sometimes we might see there are costs on the other side. And I think that it's really important for us to take seriously what these what the tradeoffs are. I don't think that it's the case that if there is an improvement on one art margin, but there's a change on another that might not be desirable, that, oh, well, we don't learn anything from this. Right. I think that there's still something to learn about what the magnitudes are. So this is really now an exercise in comparing the magnitudes of the effects.

Alex [00:32:11] So there's not a free lunch, but if we take the effects seriously here and let's say a social planner cares about total detention hours and total misconduct instances, then really it's a question of, you know, across the full population in a year, would you rather have 25 detention years or 360 non-appearances if you think that there is constant cost to both of those, so just a way of saying that is like each day of detention cost the same thing, each non appearance cost the same thing, then really this simplifies down to 26 detention days in comparison to one on appearance. So that is the tradeoff that I calculate with my with my results.

Jennifer [00:32:52] Great. And yeah. So there often you'll see in I guess mostly econ papers. We try to put numbers on everything, right? We try to put a dollar numbers on everything. So on on jail days or prison days, it's, you know, a huge number of caveats around these estimates, but the rule of thumb number I usually have in my head is about $100 per person per day. I guess the main challenge here is it's really hard to estimate what the cost of a failure to appear is because it's not in most of these cases like we're not sending out law enforcement to go search for you or something. And so we're not actually incurring like staff time or something, but there is still this sense of like cost to society. It's not free to society that you've not showed up in court. So it does like actually just providing that ratio is in this case, I think the most helpful way to move forward. But yeah, I mean, you've probably spent some time trying to put a number on that and gave up is my hunch.

Alex [00:33:52] Yeah. You've, you've hit on exactly why I moved away.

Jennifer [00:33:56] Yeah.

Alex [00:33:56] From putting the dollar amounts on. I think there is, there are some other papers where they put dollar amounts on failure to appears but it was often those numbers came from basically asking they came from just asking in interviews what people who work in courts or what bail bonds people think that amount is. I think that originally it was like $500 of court costs just based on lack based on losses to efficiency in $500 to pay for some bounty hunter to try to go get you, but that's not going to be relevant in these low level cases what's going to be relevant in the low level cases is really just that like sometimes if you don't show up, you're just going to be charged an additional fine and you could end up just owing some amount of money and they could decide that without you even there.

Alex [00:34:44] So it's not it's really hard to put the amount of money on here. And so that's why I moved away from actually having dollar amounts on each side. And I figured, you know, we might as well just give the ratio if anyone wants to try to come up with better numbers, go for it. But I think the what's exists in the literature, especially for the cost of failure to appear, is pretty difficult to apply here seriously.

Jennifer [00:35:07] Yeah. Just unsatisfying. Yeah. And I think even the ratio that you have, it's striking how many detention days you'd need to outweigh that the cost of the failure to appear. And so yeah striking on its face. And then you mentioned earlier that you got this information about race and socioeconomic status. So how did this policy change? How did this policy change affect racial and socioeconomic disparities in bail and detention?

Alex [00:35:38] Yeah. So what you can do here is you can even see the picture just with the raw data. So you can plot what the gaps are in terms of money bail and in terms of pretrial release for both black and white people and employed and unemployed people and you can see how those change. So what I mean by that is if you look at those raw gaps for ineligible cases of cases that aren't affected by the policy, you see that the black white gap for both money and pretrial release looks pretty constant, same thing for employed and unemployed. But then when you look at what happens for eligibles, these gaps that were such that white people were less likely to get money bail and more likely to be released are going to shrink noticeably. And you can just see that in the raw data.

Alex [00:36:23] And the same thing goes for employed and unemployed people. One of the things that I find the most striking actually about these pictures is that you see in the pre- period before the program that employed people with ineligible cases were actually more likely to be pretrial released before the program than unemployed people with eligible cases. So that was to say, you know, the lower level cases, you know, if you were unemployed, you were still less likely to be released than someone with a higher level case who was employed, but that is no longer the case after the program.

Jennifer [00:36:56] Interesting. Okay. And then you do a bunch of work to dig into the mechanisms here, trying to figure out whether all of these effects are driven by changes in incapacitation, that is just locking people up and keeping them from various forms of misconduct or changes in deterrence. So tell us briefly about how you approach this question and what you find.

Alex [00:37:20] Sure. So this is a really hard thing to do.

Jennifer [00:37:22] Yes.

Alex [00:37:23] Because in my part, one, this is difficult. So in my context, right, this reform is impacting incapacitation and deterrence. At the same time, there is not going to be a way to nicely decompose these with the reform that I have. However, I can just provide an accounting exercise to try to found this and to try to just lay out some ways of thinking about it. So what I mean by that is there is a group of people who we would call the compliers here. The compliers in this setting are the folks who before the program didn't get released on recognizance, but afterwards would. So people whose bail condition is impacted by it. Some of those people would have already been released, but some of them wouldn't have been released.

Alex [00:38:14] And so what that means is you can really split that group into newly released people and always release to people. And then if you think about that, the always released people, that's going to be your deterrence effect because that's conditional on being released. What is the effect of just changing the conditions.

Jennifer [00:38:32] Right. So they would have just to clarify there, so you've got these people if they would have been released anyway. What you're saying is that they would have paid the bail and.

Alex [00:38:40] Right.

Jennifer [00:38:41] And gotten out. And so here the question is, now you've got these two sets of people who are out getting out in either case. But before the reform, they had this incentive effect hanging over them of they might lose the money if they if they do anything wrong. And so that's the potential deterrent effect that you're talking about.

Alex [00:38:59] Yes, exactly. Meanwhile, the other piece, the incapacitation effect, is going to be, people say released before but now are released.

Jennifer [00:39:08] Got it. Yes.

Alex [00:39:09] And so, again, I can't disentangle these two things, but I can tell you what one would be under assumptions about the other. Right. So it's sort of like I have an equation and if I plug in one thing for X, I can tell you about Y and vice versa. So if we assume that there's no deterrence effect, that would mean that the newly released people have to be failing to appear at about a 60% rate to explain my results. However, if we think that that's way, way too high. Generally in this population, people are failing to appear at about 10 or 20%. So 60% would be really, really high for those newly released people. If instead we think something like 30% failure to appear seems more realistic, then that means deterrence is responsible for about half of the effect and incapacitation is about half of the effect.

Alex [00:39:58] So again, I can't tell you how much deterrence or incapacitation is responsible for the aggregated effect, but if you have some priors on how risky you think the newly released people are, you can learn something about what you likely think that breakdown is.

Jennifer [00:40:15] And it sounds like your hunch is that both deterrence and incapacitation are probably playing a role here.

Alex [00:40:20] Yes.

Jennifer [00:40:21] Okay. So what are the policy implications of all of these results? What should policymakers and practitioners take away from this?

Jennifer [00:40:29] So I think that one big takeaway here is just when we're looking at all of the evidence about recent bail reforms, I think a big takeaway and practitioners probably know this not all bail or forms are the same not all criminal justice reforms are the same. A lot of different reforms that are under this sort of umbrella of bail reform or ending money bail or reducing use of money bail are going to look really different and could have really different effects. So again, I'll just highlight this is an example where we're thinking about an automatic reform. It's going to be really different than discretionary reforms, but I do think what we learn about specifically the automatic reforms is they can have quite powerful effects on bail conditions, on detention, on racial and socioeconomic gaps and outcomes.

Alex [00:41:13] Another thing I want to highlight is the broad policy conversation around ending cash bail is sort of ambiguous in terms of the counterfactual, right. So what I'm studying here is moving away from money cash bail and instead moving towards release on recognizance, but there's a lot of different alternatives that are out there. So there might be an increase in usage of electronic monitoring or outright detention. And so thinking about what is taking the place of money bail is extremely important, and that comes up a lot in policy conversations around these reforms. So I think that is something that the public is is well aware of.

Alex [00:41:52] And the last thing I'll just say is, you know, there is this effect on failure to appear in my context, but that doesn't mean that there's no other ways to address that. There's a variety of other scholars who have done work about text reminders and phone calls, Aurelie Ouss has done some work on this. And I think there's also some growing interest in what does it mean to also increase access to virtual appearance in court. So thinking about are there ways to just reduce the costs of coming to court overall or is that some way that actually we could try to improve on the objectives that money bail is meant to, you know, incentivize while we move away from it with a variety of policies across the US.

Jennifer [00:42:35] Yeah, all really good points. I want to highlight and talk a little bit more about this automatic component is that, you know, you and I have both done work on risk assessments and effects of implementing risk assessment to help judges decide what to do with the person in front of them in various contexts. And what the research in this space seems to be showing is that, you know, there's a lot of potential to help correct errors in what judges are doing and help them, you know, release more of the low risk people and or, you know, make sure punishment is efficiently applied to people that are either most deserving of it or where it will improve public safety the most, but in practice, human discretion winds up undoing a lot of the potential benefits. So basically, as you were saying earlier, you know, people just can apply these things in a way that they see fit and people might vary in how they're applying them.

Jennifer [00:43:35] And so if you just implemented a a new rule where you told people to error in the direction of more release on recognizance, some judges might do it, some judges might ignore that suggestion, some judges might only give this more lenient bail condition to white people, but not people of color. And so this automatic component takes all of that away and also sort of removes this component of like, I think, a reason that we often see judges and bail magistrates sort of over incarcerate people is they're worried that

like this might be the person who goes out and commits some heinous crime and then it'll come back on them, the judge, that they let the person out. And so here it's basically like a computer that let them out and so nobody is it like protects all humans. Right. And so it's just so interesting, I mean, politically, to put a program like this in place. And so I'm curious to see both about your thoughts about like how likely it is that other places might implement a program like this, but also just in thinking through all these ways in which like this actually makes the policy work in a way that it simply would not work if we expected humans to implement it.

Alex [00:44:54] Yeah, I do think that the automatic nature of this is extremely striking and I think that part of what you're getting at getting out, I think, is this this sense that if there's a rule in place where you're not able to deviate, it gives cover in some sense, like you don't have you as a judge or you as a decision maker, like you're not going to be seen as responsible for that. So in this case, you know, the automatic release program was implemented by state Supreme Court orders.

Alex [00:45:24] It wasn't implemented by individual judges all, you know, turning their keys. So, you know, who put it in place also matters a lot. And I think that this is something that has been seen. I think that, again, this is an example where like reading court observations is really interesting. I think the appeal that a story about how judges in New York often actually will say, you know, I'm doing this because I have to. They make a statement. And that statement is basically just them saying, I want everyone here to know that I am I'm doing this because this is the rule right now that I have to follow.

Jennifer [00:46:01] This isn't on me.

Alex [00:46:02] I want you to know, like, this is not on me. That's, again, different than here, because in this case, you know, it's all administrative. So it never even goes to a judge who then has to follow something. The judge is just never going to see this person. The details of how these things are implemented and who is involved all of that really, really matters when it comes down to it. And Kentucky is also an example where there's no prosecutors involved early stage, which is really abnormal.

Jennifer [00:46:28] Mm hmm.

Alex [00:46:29] So there's not this additional actor in Kentucky that there there can be in other places. Yeah. So so those are a few of my thoughts on this.

Jennifer [00:46:37] Okay. Have any other papers related to this topic come out since you first started working on this study?

Alex [00:46:43] So many I mean, there's a million papers about bail reform generally, right. From law, from CS perspectives, from policy perspectives, reports. I think closest to our econ and crime space are probably a few of the following. So Aurelie and Megan's paper obviously has has come out since I originally got this data and they've iterated over time.

Alex [00:47:08] So their work is extremely related to mine. That's probably the closest. I think there is also this newer paper that's out that's by Anwar, Bushway and Engberg, where they're thinking about the impact of defense counsel at bail. And you might think, oh, well, that's not the title isn't about money bail, but really, at the end of the day, it is about bringing in a reform, you know, by providing people with defense counsel a bill that

lowered the use of money bail. Right. So like one of their headline results is money bail goes down by ten percentage points.

Alex [00:47:41] And then they also talk about misconduct effect. So this is extremely related in that if you think about the automatic release program, in my case as something that pushes money bail up or down, well down, then in their case, the providing people with defense counsel is their sort of tool for pushing money bail down. So that's very related. And then the last one that I'll mention is there was an MDRC report by Skemer, Redcross and Bloom that looked at a New York City supervision program. This is a report where they find that the usage of money bail goes down when they're instead doing this supervision program, but they also find that the use of released on recognizances goes down. So I think this sort of point is very important, which is when you're providing a new alternative to money bail, I think we you know, it's there might be a creep also into people who otherwise would have gotten released on reccognizances. So what that really means is you're not only subbing away from money bail, you might also be subbing away from release on recogniances. I think that's something to really look at as electronic monitoring also becomes more prevalent. I think that that sort of creep is really important to study in policy spaces.

Jennifer [00:48:52] Yeah, yeah. And then what's the research frontier? What are the next big questions in this area that you and others will be thinking about going forward?

Alex [00:49:00] Yeah, so I think I think we've touched on a little bit of them already. I was just mentioning electronic monitoring. I think there I think that anecdotally, it seems like that has become a lot more prevalent during the pandemic. And I think that understanding just the scale of its usage right now and how it's being used as an alternative for money bail is extremely important. I think Roman Rivera, who's about to be on the job market, has a job market paper on this, so everyone should check that out once it's available. And then I also think these these points about, you know, what do we want out of these court appearances. Like what does it mean to increase court efficiency and compliance with court requirements. I mentioned this earlier, but just thinking about what would it mean to actually allow people to virtually appear or to try to reduce the cost of attendance. I think that that's going to be really important in coming years. So both of these thoughts are really about how technology is going to interact with how our court system and pretrial system works. And so, you know, who knows on a lot of these things, but I think those will be really important things to look for in terms of future research questions.

Jennifer [00:50:11] Yeah. Just are all of these changes having the kinds of impacts that we are hoping they'll have and then what kinds of unintended consequences are they going to have? All the things economists love to dig into.

Alex [00:50:23] Mm hmm.

Jennifer [00:50:24] People have been teasing Roman Rivera's paper to me for months now. So excited to see. I'm very interested in electronic monitoring as another one of these types of policies. Right. That has a ton of potential if you're substituting away from the more the harsher punishment or harsher conditions. Seems to there's lots of evidence overseas that can be very beneficial, but I agree with you that if we're just it's just increasing conditions for people who wouldn't have been under supervision otherwise, it's not obvious we get those benefits and there could be other costs. And yes, I'll be I am eager to see that in other papers.

Alex [00:51:02] Shout out to Roman Rivera. Yeah.

Jennifer [00:51:08] My guest today has been Alex Albright from the Minneapolis Fed. Alex, thank you so much for talking with me.

Alex [00:51:13] Thank you so much for having me.

Jennifer [00:51:19] You can find links to all the research we discussed today on her website probablecausation.com. You can also subscribe to the show there or wherever you get your podcasts to make sure you don't miss a single episode. Big thanks to Emergent Ventures for supporting the show and thanks also to our Patreon subscribers and other contributors. Probable causation is produced by Doleac Initiatives, a 501(c)3 nonprofit, so all contributions are tax deductible. If you enjoy the podcast, please consider supporting us via Patreon or with a one time donation on our website. Please also consider leaving us a rating and review on Apple Podcasts. This helps others find the show, which we very much appreciate. Our sound engineer is Jon Keur with production assistance from Nefertari Elshiekh. Our music is by Werner and our logo was designed by Carrie Throckmorton. Thanks for listening and I'll talk to you in two weeks.