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ENDNOTES

1. U.S. Const. Amend. VI, XIV; Ark. Const. Art. 2, § 10
2. Brink, M. N., Yu, J., & Metzger, P. R., *Grading Injustice: Initial Appearance Report Cards*, Deason Criminal Justice Reform Center, at 65 (Sept. 2022).
3. The Supreme Court adopted an amendment to Rule 8.2 in 2017 to clarify that counsel is required to attend and represent the arrested person first appearance. “This clarifies what Rule 8 has always required: that judges appoint lawyers for indigent defendants to represent them at the first appearance,” *In re Supreme Court of Arkansas Comm. on Criminal Practice*, 2017 Ark. 370 (per curiam). For the former text of the rule, see *In re Supreme Court of Arkansas Comm. on Criminal Practice*, 2016 Ark. 220 (per curiam).
4. Stamps, B.P., Comment: *The Wait for Counsel*, Ark. L. Rev. 67:4, 1055, at 1056 (2014). “Gregg Parrish, executive director of the Arkansas Public Defender Commission, said the Arkansas Rules of Criminal Procedure were amended in 2017 to clarify a lawyer has to be appointed to indigent defendants during their earliest appearance before a judge. ... The rule was changed because in some parts of the state, people could spend 30 to 60 days or more in jail after their first appearance before being appointed a lawyer, Parrish said.” Ron Wood, *Federal Lawsuit Aimed at Making Benton County Follow the Rules, Lawyer Contends*, Northwest Arkansas Democrat Gazette (July 3, 2022).
5. Jail records show that his first court hearing was held on August 24, 2020. He was appointed counsel on September 2, 2020.
6. The facts of Mr. Price’s case came from the Complaint, *Estate of Larry Eugene Price. v. Sebastian County, et., al.*, U.S.D.C.—W.D. Ark. 23-cv-02008-PKH (Jan. 13, 2023).
7. *Isaiah Sinclair*, 26, died in his cell at the Pulaski county jail the night after being booked into the jail. *Maria Landrum*, 41, died shortly after being jailed in the Sebastian County Detention Center.
8. *Phillip Alan Cole*, 41, died of suicide in Sumter County Detention Center, a week after his arrest. *Charles Ziska*, 26, died of suicide in the Miller County Jail, where he was being held pretrial on property crime charges. *Treveon McDaniel*, 22, died of suicide in the Jefferson County Jail roughly 10 days after his arrest.
9. A Frankin County detention center employee was arrested and accused of sexually assaulting an inmate in May 2023. A Perry County detention center employee was arrested and charged with sexually assaulting a prisoner in May, 2023. In April, 2023, an individual working for a medical provider in the Pulaski County jail admitted to sexually assaulting multiple prisoners.
10. For example, consider a person who is arrested for being a felon in possession of a firearm, but had not in fact convicted of a felony. With counsel, a person might be able to clear up the issue before the case proceeds further. See *Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 195 (2008).
11. Ark. R. Crim. P. 8.5. The factors include the nature and extent of family relationships and other ties to the community, the person’s character and reputation, people who agree to assist the person in attending court, and mitigating factors that may bear on the likelihood of conviction. Ark. R. Crim. P. 8.5(b)(vi).
12. See generally Metzger, P.R., & Hoeffel, J.C., *Criminal (Dis)Appearance*, 88 Geo. Wash. L. Rev. 392, 407–408 (2020).
13. See, e.g., Martin, M., *I lost my job, apartment, vehicle, and time with my kids due to unjust pretrial detention*, Vera Institute of Justice (July 6, 2023).
14. Lowenkamp, C.T., VanNostrand, M, & Holsinger, A., *The Hidden Costs of Pretrial Detention*, The Arnold Foundation, at 19 (Nov. 2013).

15. A study estimated that, if Cook County, Illinois, provided counsel within 24 hours of arrest, it would shorten jail stays and save up to \$43.9 million annually. Sykes, B.L., Solowiej E., & Patterson, E. J., *The Fiscal Savings of Accessing the Right to Legal Counsel Within Twenty-Four Hours of Arrest: Chicago and Cook County, 2013*, 5 U.C. Irvine L. Rev. 813 at 813, 841 (2015). See also Felony Early Representation Unit, 11th Judicial Circuit Court of Florida, Law Office of the Public Defender (last accessed May 31, 2023).
16. An Arkansas Legislative Audit of the Association of Arkansas Counties' required State Inmate Cost per Day report found that, in 2021, sample counties paid on average (excluding highest-cost and lowest-cost counties) \$64.59 per person, per day to hold state prisoners in local jails. Letter from Arkansas Legislative Audit to Arkansas Legislative Council (Aug. 22, 2022). For more on the report's methodology, see Association of Arkansas Counties, *State Inmate Cost Study for Calendar Year 2020*, at 2.
17. Complaint, *Estate of Larry Eugene Price. v. Sebastian County, et., al.*, U.S.D.C.—W.D. Ark. 23-cv-02008-PKH (Jan. 13, 2023).
19. Soto, D. & Lipkin, M., *Representation at Arraignment: The Impact of "Smart Defense" on Due Process and Justice in Alameda County*, Impact Justice Research & Action Center, at 21 (Dec. 2018).
20. Worden, A.P., et. al., *What Difference Does a Lawyer Make? Impacts of Early Counsel on Misdemeanor Bail Decisions and Outcomes in Rural and Small Courts*, 29 Crim. Just. Pol'y Rev. 710, 710–723 (2018).
21. See, e.g., Omnibus Motion for New Trial and Petition for Review and Notice of Appeal, *State v. Comstock*, No. 04CR-22-1427 (Benton Co. Cir. Ct. July 13, 2022) (Bail proceedings "occurred in Benton County Jail beginning at 6 a.m.").
22. Supreme Court of Arkansas, Administrative Order 4—Verbatim Trial Record (2023). The Supreme Court added a note in 2023 that states that first appearances are considered proceedings requiring a verbatim record.
23. *Duncan v. State*, 291 Ark. 521, 528 (1987).
24. Stamps, *The Wait for Counsel* at 1075.
25. The U.S. Supreme Court has said, "[A] defendant subject to accusation after initial appearance is headed for trial and needs to get a lawyer working, whether to attempt to avoid that trial or to be ready with a defense when the trial date arrives." *Rothgery*, 554 U.S. at 210.
26. Hoyt, R., Caught Up in Court: Public Defenders Warn of Backlogs in Busy Arkansas Courts, THV 11 (May 2, 2023).
27. Langhorne, W., Some Arkansas Public Defenders Expect Parole Overhaul to Lead to More Criminal Cases Going to Trial, Ark. Democrat Gazette (May 14, 2023).
28. See *David v. Missouri*, Case No. 20AC-CC00093, Mo. Cir. Ct. (Feb. 6, 2023) (holding public defender waitlists unconstitutional and ordering that counsel be provided in time to assist with the bail or bond hearing); Judge Orders Missouri to Provide Defendants Counsel; Declares Waiting List Unconstitutional, ACLU of Missouri (Feb. 9, 2023).
29. The public defender office for Pulaski and Perry counties "has faced a high turnover rate with at least 13 experienced attorneys having left since June. ... Because of a lack of experienced attorneys, [the] office recently began objecting to court appointments to represent defendants facing the death penalty." Langhorne, *Some Arkansas Public Defenders*.
30. Stamps, *The Wait for Counsel* at 1077.
32. *David v. Missouri*, Case No. 20AC-CC00093, Mo. Cir. Ct. (Feb. 6, 2023) (holding public defender waitlists unconstitutional and ordering that counsel be provided in time to assist with the bail or bond hearing); *Lavallee v. Justices in Hampden Sup. Ct.*, 442 Mass. 228 (Mass. 2004).
33. See, e.g., *Betschart v. Garrett*, Case No. 23-CV-010970-CL, Opinion and Order, U.S.D.C. – D.OR (Aug 17, 2023) (holding that people detained following initial appearance who have not been appointed counsel must be released within ten days); *Lavallee v. Justices in Hampden Sup. Ct.*, 442 Mass. 228 (Mass. 2004) (finding that a person cannot be held in custody without counsel; if counsel was not provided the person must be released and the case must be dismissed without prejudice).

34. For example, in January 2023, Oregon allocated \$10 million on an emergency basis to help the state hire and retain public defenders. The allocation included both increased hourly rates for appointed counsel and paying \$15,000 in retention bonuses for public defenders. Oregon Live, [State finalizes \\$10M plan to ease public defender crisis](#) (Jan. 15, 2023).
35. See Metzger, P. R., Buetow, C., Meeks, K., Skiles, B., & Yu, J., *Greening Criminal Legal Deserts in Rural Texas*, Deason Criminal Justice Reform Center (October 2022).
36. See [Texas HB 4487](#) (2023).