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1. U.S. Const. Amend. VI, XIV.
2. Jurisdictions use different terms for the first post-arrest court appearance. Common terms include initial appearance, first appearance, arraignment, first advisement, presentment, and magistration. See Brink, M. N., Yu, J., & Metzger, P. R., *Grading Injustice: Initial Appearance Report Cards*, *Deason Criminal Justice Reform Center* at 7 (Sept. 2022).
3. *Id.* at 65.
4. Metzger, P. R., Hoeffel, J., Meeks, K., & Sidi, S., *Ending Injustice: Solving the Initial Appearance Crisis*, *Deason Criminal Justice Reform Center* at 7 (Sept. 2021). This account of Ms. Jauch's case is taken from *Jauch v. Choctaw County*, 874 F.3d 425 (5th Cir. 2017) and Brief for Appellant, *Jauch v. Choctaw County*, 874 F.3d 425 (5th Cir. 2017) (No. 16-60690), 2016 WL 7386084.
5. *Ending Injustice*, *supra* at 19. This account of Mr. Murdock's case is taken from *Murdock v. Montgomery Cty.*, No. 2:16-cv-444-RAH, 2021 WL 4254862 at *8 (M.D. Ala. Sep. 17, 2021) and Murdock Dep. 174:22–176:15, 211:22–212:1, 218:21–220:13.
6. *Ending Injustice*, *supra* at 17; This account of Mr. Vann-Marcouex's case is taken from Koran, M., Wisconsin's 'Constitutional Crisis' is Forcing People to Sit in Jail Without a Lawyer, *The Appeal* (May 20, 2019) and Prelim. Hr'g, Case No. 18-CF-450 (Wis. Wood Cty. Cir. Ct. 2018).
7. Carson, E.A., *Suicide in Local Jails and State and Federal Prisons, 2000–2019 – Statistical Tables*, *Bureau of Justice Statistics* at 3 (Oct. 2021).
8. *Grading Injustice*, *supra*.
9. *Id.* at 10.
10. *Id.*
11. Alaska Stat. Ann. § 12.25.150 (West 2018); Md. Rule 4-212 (West 2010).
12. Fla. R. Crim. P. 3.130(a) (West 2018); Ariz. R. Crim. P. 4.1 (West 2021).
13. *Hurrell-Harring, et al., v. New York*, 930 N.E.2d 217 (N.Y. 2010) (holding that counsel's assistance at the first post-arrest court appearance is indispensable).
14. *Grading Injustice*, *supra*.
15. *People ex rel. Maxian on Behalf of Roundtree v. Brown*, 570 N.E.2d 223, 225 (N.Y. 1991).
16. *Id.*
17. See, e.g., Blakinger, K., *Why So Many Jails are in a 'State of Complete Meltdown'*, *The Marshall Project* (Oct 4, 2022).
18. Subramanian, R., Delaney, R., Roberts, S., Fishman, N., & McGarry, P., *Incarceration's Front Door: The Misuse of Jails in America*, *Vera Institute of Justice* at 17 (Jul. 29, 2015).
19. *Suicide in Local Jails and Federal Prisons*, *supra* at 3; Rabury, B., *The Life-Threatening Reality of Short Jails Stays*, *Prison Policy Initiative* (Dec 22, 2016).

20. James Cole, during his tenure as U.S. Deputy Attorney General, estimated that thousands of children require emergency custodial placements because of a parent's arrest. See Johnson, K., *Who's Watching the Kids When the Parents Get Arrested*, *USA Today* (Jul. 31, 2014); Bergin, T., Ropac, R., Randolph, I., and Joseph, H., *The Initial Collateral Consequences of Pretrial Detention*, *New York City Criminal Justice Agency* (Sep. 27, 2022) (finding that detained individuals were 41% more likely to report that their justice involvement had a negative impact on their ability to care for their children).
21. Dobbie, W., & Yang, C.S., *The Economic Costs of Pretrial Detention*, *Cato Institute* (Jan. 2022).
22. The Deason Center endeavors to use language that reflects and affirms the Center's commitment to the equal dignity and worth of all people. Consistent with the 2021 conventions of the APA style guide, the AMA style guide, the Chicago Manual of Style, and others, the Center capitalizes the terms 'Black' and 'White.' However, when citing to data collected or analyzed by other researchers or organizations, Center replicates, to the greatest extent possible, the terminology employed by the source. This reflects the Center's recognition that the accuracy of its reporting depends upon accurate categorization of any underlying data or study.
23. Loftstrom, M., Hayes, J., Martin, B., Premkumar, D., with support from Gumbs, A., *Racial Disparities in Law Enforcement Stops*, *Public Policy Institute of California* at 17 (Oct. 2021) ("[S]tops of Black individuals are more likely to result in an arrest at 9.5 percent of stops compared with 5.6 percent of stops of white individuals resulting in a jail booking. In other words, almost 1 in 10 Black people stopped are booked, while slightly more than 1 in 20 white people are."); See also *The ABCs of Racial Disparity*, *The DALLAS Project*, *Deason Criminal Justice Reform Center* (May 2021) (showing disparities in marijuana arrests in Dallas, Texas).
24. Lowenkamp, C.T., VanNostrand, M., & Holsinger, A., *The Hidden Costs of Pretrial Detention*, *Laura and John Arnold Foundation* at 19 (Nov. 2013); See also Heaton, P., Mayson, S., Stevenson, M., *The Downstream Consequences of Misdemeanor Pretrial Detention*, *69 Stanford Law Review* 3 at 761-794 (Mar. 2017); Leslie, E. & Pope, N. G., *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, *60 Journal of Law & Economics* 3 at 548-550 (2017).
25. *The Hidden Costs of Pretrial Detention*, *supra*; *Incarceration's Front Door: The Misuse of Jails in America*, *supra* at 14.
26. *Local Spending on Jails Tops \$25 Billion in Latest Nationwide Data*, *PEW Trusts* (finding the average annual jail cost per person was \$33,922/year—or \$93/day—in 2017).
27. Most offenses qualify for pretrial release. Generally, only those arrested on probation violations, parole violations, or certain violent crimes are not eligible for pretrial release. See Cohen, T.H., and Reaves, B.A. *Pretrial Release of Felony Defendants in State Courts*, *US Bureau of Justice Statistics* (Nov. 2007) ("Between 1990 and 2004, 62% of felony defendants in State courts in the 75 largest counties were released prior to the disposition of their case."); Widgery, A., *The Statutory Framework of Pretrial Release*, *The National Conference of State Legislatures* (Nov. 2020). Without an initial appearance, a person often has no path to pretrial release.
28. *Local Spending on Jails Tops \$25 Billion in Latest Nationwide Data*, *supra* (average annual jail cost per person was \$33,922/year—or \$93/day—in 2017). If a jurisdiction arrests 100 people per day and releases 70% of those people at initial appearance, then holding initial appearances at 24 hours, rather than 72 hours, would decrease jail use by 140 beds per day or 980 beds per week. (140 beds x 7 days per week = 980 beds per week; 980 beds x \$93/day = \$91,140/week).
29. *What You Need to Know If Someone You Know is Arrested*, *The Legal Aid Society* (Aug. 2022).
30. *Video Court Schedule*, *Pima County Sheriff's Department* (last accessed May 9, 2023).
31. Vesely, K., *Initial Appearance Agreement Between Superior Court, Justice Court and Tucson City Court*, *Pima County Justice Services* at 2 (Apr. 2022). Based upon the recommendation of court staff and judges, the Pima County Board of Supervisors approved a 10-year extension of this initial appearance arrangement in May 2022. See *Meeting Summary Report of the Pima County Board of Supervisors*, *Pima County*, at Item 20 (May 2022).

32. [Initial Appearance Agreement](#), *supra* at Attachment 4.
33. *Id.* at 1.
34. [Commissioners, Dist. Ct. of Maryland \(2022\)](#) (last accessed May 9, 2023).
35. See, e.g., [Ficarrotta, R.N., Administrative Order A-2022-015, 2023 Duty Judge Schedule \(13th Judicial District\)](#), (July 2022). In the 13th Judicial District, duty judges also hear other time-sensitive matters such as domestic violence temporary injunctions, juvenile detention and shelter hearings, and emergency medical procedure cases. *Id.*
36. The five rural counties are Calhoun County, Gulf County, Holmes County, Jackson County and Washington County. See [Fourteenth Judicial District of Florida](#) (last accessed May 9, 2023). These counties have a combined population of roughly 120,000. [Florida, 2020 Census, United States Census Bureau](#) (Aug. 25, 2021).
37. See [Weekend and Holiday First Appearance Schedule for Rural Counties, Fourteenth Judicial Circuit](#) (last accessed May 9, 2023).
38. [Resolution 117 on Remote Proceedings \(2020A117\)](#), *American Bar Association* at 3 (Aug. 2020).
39. [Diamond, S.S., Bowman, L., Wong, M., & Patton, M. M., Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions](#), *100 J. Crim. L. & Criminology* 869 at 870 (2010). The article also reported that the average bond amount increase ranged from 54% to 90%, depending upon the offense. *Id.* at 893.
40. [Report on American Bar Association Resolution 117 on Remote Proceedings \(2020A117\)](#), *American Bar Association* at 11-12 (Aug. 2020).
41. [Turner, J., Remote Criminal Justice](#), *53 Tex. Tech. L. Rex.* 198 at 257 (2021) (surveying Texas criminal defense lawyers); see also [Virtual Justice? A National Study Analyzing the Transition to Remote Criminal Court](#), *Stanford Criminal Justice Center* (Aug. 2021) (77.9% of respondent criminal defense lawyers strongly agreed or agreed that the shift to virtual proceedings compromised access to justice; 66.3% of respondents strongly agreed or agreed that the switch to virtual proceedings hurt client communication).
42. [Remote Criminal Justice](#), *supra* at 252.
43. *Id.* at 247.
44. If using a video appearance format, courts should ensure that they can clearly see the arrested person's face and take steps to counteract any negative inference that might occur because of a jail setting or a remote connection. [Virtual Justice](#), *supra* at 16-20; 173. It is also critical that courts offer secure virtual spaces for private attorney-client communications. In a 2010 National Center for State Courts survey, 36.9% of responding courts did not provide private communication between attorney and client during virtual proceedings. "The diminutions of [private attorney-client] communications can only result in less favorable outcomes (i.e., higher bail amounts, negative results for pretrial hearings, guilty verdicts) for defendants." [Bellone, E.T., Private Attorney-Client Communications and the Effort of Videoconferencing in the Courtroom](#), *J. Int'l Commercial L. and Tech.* 1 at 44-45 (2013).
45. [Ariz. R. Crim. P. 4.1](#) (West 2021); [La. Code Crim. Proc. Ann. art. 230.1\(C\)](#) (West 2018). Minnesota also requires release of people arrested on misdemeanors who are not provided a prompt initial appearance. [Minn. R. Crim. P. 4.02](#) (West 2016).
46. [Me. R. U. Crim. P. 5](#) (West 2015) (The Advisory Committee Notes from 1998 state, "[w]ithin the remaining period the attorney for the State can both assess the situation and provide proper guidance to the custodian.").
47. [Grading Injustice](#), *supra* at 65.
48. *Id.*

49. See, e.g., *Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 195 (2008).
50. *Id.*
51. *Stack v. Boyle*, 342 U.S. 1, 5 (1951); See also Statement of Interest of the United States, *Varden, et al., v. City of Clanton*, Case No. 2:15-CV-MHT WC (M.D. Ala. Feb. 13, 2015) (“It is the position of the United States that, as courts have long recognized, any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses in order to gain pre-trial release, without any regard for indigence, not only violates the Fourteenth Amendment’s Equal Protection Clause, but also constitutes bad public policy.”); Resolution 112C (2017A112C), *American Bar Association* (Aug. 2017).
52. Legal Action Center, *The Problem of RAP Sheet Errors: An Analysis by the Legal Action Center* at 1 (2013).
53. 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).
54. *Final Report, Commission to Reform Maryland’s Pretrial System* at 18 (2014).
55. Worden, A.P., Morgan, K.A., Shteynberg, R.V., & Davies, A.L.B., *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 at 710-723 (May 10, 2018).
56. *Id.* at 714.
57. 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).
58. *What Difference Does a Lawyer Make?*, *supra*.
59. Stevenson, M., *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, *George Mason Legal Studies* at 1 (Nov. 2016).
60. *Id.*
61. *What Difference Does a Lawyer Make?*, *supra*.
62. *Felony Early Representation Unit*, 11th Judicial Circuit Court of Florida, Law Office of the Public Defender (last accessed May 9, 2023).
63. Staffed by two attorneys and one investigator, the unit represents arrested people from booking through initial appearance. See Yarmosky, A., *The Impact of Early Representation: An Analysis of the San Francisco Public Defender’s Pre-Trial Release Unit*, *UC Berkeley Goldman School of Public Policy* (2018).
64. *Id.* at 3; 25.
65. On days with a high volume of initial appearances, a second duty lawyer may be assigned. See *Huron County District Court’s Counsel at First Appearance Pilot Program*, *Michigan Indigent Defense Commission* at 3 (2017).
66. *Id.* at 5.
67. Whether the duty attorney becomes the defense counsel depends in part upon whether the attorney is qualified under the Committee for Public Counsel Services rules to represent a person with their particular charges. See *Assigned Counsel Manual Policies and Procedures*, *Committee for Public Counsel Services* at 3.4 (Aug. 2022) (A qualified duty attorney may represent a person charged with a felony at arraignment, but then must “immediately notify the Bar Advocate Program of the need for prompt reassignment of bind-over felony case after the arraignment.”).
68. Me. R. U. Crim. P. 5 (West 2015); Me. R. U. Crim. 44 & 44B (West 2017) (“Counsel may withdraw from

a case by serving notice of withdrawal on his or her client and the State and filing the notice, provided that such notice is accompanied by notice of the appearance of other counsel. Unless this condition is met, counsel may withdraw from the case only by leave of court. A court order relieving counsel does not become effective until new counsel is appointed or the court determines that the defendant has expressly waived the right to appointed counsel, impliedly waived that right by conduct, or forfeited that right.”)

69. Ending Injustice, *supra* at 17; This account of Mr. Vann-Marcouex’s case is taken from Koran, M., Wisconsin’s ‘Constitutional Crisis’ is Forcing People to Sit in Jail Without a Lawyer, *The Appeal* (May 20, 2019) and Prelim. Hr’g, Case No. 18-CF-450 (Wis. Wood Cty. Cir. Ct. 2018).
70. For example, in Maryland, appointed counsel represents indigent arrested people at initial appearance. Thereafter, the judge appoints the Maryland Office of Public Defender, unless the office has a conflict. See 183rd Maryland Rules Order, *State of Maryland Rules Committee* at 19, 37-38 (May 12, 2014); Definitions and Protocols, *District of Maryland Appointed Attorneys Program* (last accessed May 9, 2023); Quick Reference Guide, *District Court of Maryland* (last accessed May 9, 2023).
71. See, e.g., *Farrow v. Lipetzky*, 637 F. App’x 986 (9th Cir. 2016) (delay in appointing defense counsel may violate Sixth Amendment rights).
72. The Impact of Early Representation, *supra* at 29.
73. Grading Injustice, *supra* at 6; This account of Mr. Lowe’s case is taken from Johnson, K., AZ Man Spent 17 Days in Jail for Crime He Didn’t Commit. He Blames American Airlines, *Fort Worth Star-Telegram* (Jun. 7, 2022), and *Michael Lowe v. American Airlines, Inc.* 352-333908-22, Tarrant County District Court, Texas.
74. Davies, A. L. B., Skiles, B., Metzger, P. R., Gursoy, J., & Romo, A., Getting Gideon Right: Eligibility for Appointed Counsel in Texas Misdemeanor Cases, *Deason Criminal Justice Reform Center* at 14 (April 2022).
75. Beeman, M., Elliott, K., Joy, R., Allen, E., & Mrozinski, M., At What Cost? Findings from an Examination into the Imposition of Public Defense System Fees, *National Legal Aid & Defender Assoc.* at 50 (Jul. 2022).
76. *Id.*
77. *Id.* at 82-96.
78. Udell, D., Abel, L., Chiang, E., & Bouhabib, A., Eligible for Justice: Guidelines for Appointing Defense Counsel, *Brennan Center for Justice* at 22 (2008).
79. Md. Rule 4-216.2 (West 2017).
80. Impact of Changes to Pretrial Release Rules, *Maryland Judiciary* at 36-53 (2018) (Table 3 shows that of the 37,041 people who were in custody and received a bail review, 5,324 people were released on their own recognizance after bail review; another 2,215 people were released on unsecured personal bond. In total, 7,539 people—about 20%—were released without having to pay a bond).
81. Counsel must request the review hearing. See Mass. Gen. Laws Ann. ch. 276, § 58 (West 2018). Once requested, review hearings are held promptly, often on the same day. See Courtroom Practice Guide to Bail M.G.L. c. 276 §58, *Committee for Public Counsel Services, Youth Advocacy Department* at 4 (last accessed May 9, 2023).
82. Department of Research and Planning, Survey of Pretrial Statistics in Criminal Cases FY2019, *Massachusetts Trial Court* at 49 (May 2021).
83. See The District Court Commissioner, *Maryland Department of Legislative Services* at 12 (April 2013) (listing jurisdictions in which non-lawyer judges can make pretrial release determinations).
84. Magistrate Screening, Frequently Asked Questions, *Delaware Division of Professional Regulation* (last accessed May 9, 2023) (stating that Delaware residency is the only qualification to serve as a magistrate or a justice of the peace in Delaware).

85. Del. Sup. Ct. Crim. R. 5.3 (2022).

86. Md. Rule 4-216.2 (West 2017).