

How to Solve the Initial Appearance Crisis



! THE PROBLEM

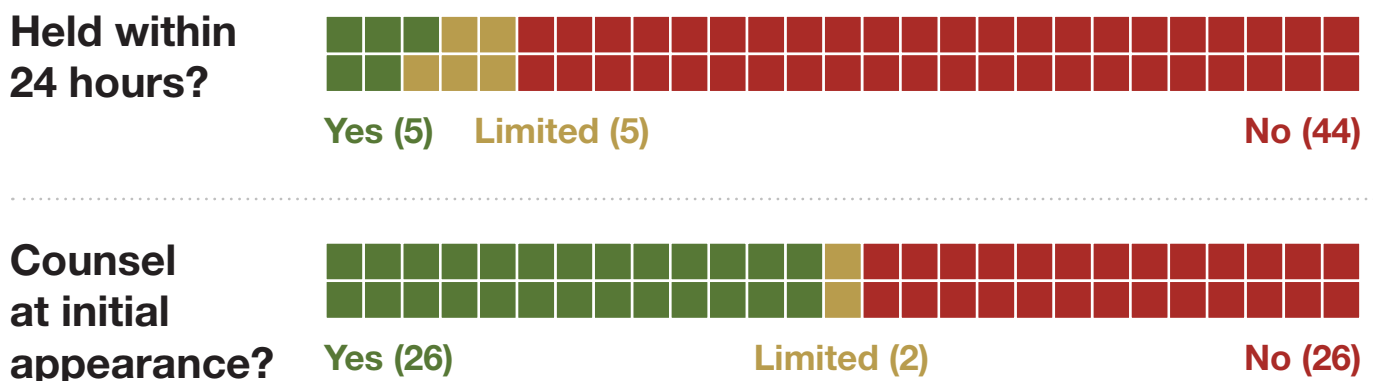
Across the United States, people are arrested and held behind bars for days, weeks, and sometimes even months, without ever seeing a judge or attorney. These delays violate the United States Constitution’s promise that an arrested person—who is innocent unless proven guilty—will have prompt access to the courts, the assistance of counsel, and a fair and speedy trial.¹

These due process milestones begin at initial appearance: the first time an arrested person sees a judge about their case.² At an initial appearance, the judge should inform an arrested person of the charges against them. The judge should also make an informed decision about whether, and under what conditions, to release a person from jail pending trial. The judge should hold this initial appearance promptly after arrest, and an attorney should advocate for the arrested person. Too often, none of these things happen.

✓ THE SOLUTIONS

Initial Appearance within 24 Hours	4
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FIGURE 1
Most U.S. Jurisdictions Fail to Provide Basic Due Process at Initial Appearance³



Delayed and uncounseled initial appearances have devastating consequences:



Longer pretrial detention

Jessica Jauch was arrested following indictment in Choctaw County, Mississippi. Under then-existing Mississippi law, Ms. Jauch was not entitled to see a judge until the next term of court—nearly three months after her arrest. Ms. Jauch spent 96 days in jail without seeing a judge or an attorney. When Ms. Jauch finally had an initial appearance and a lawyer’s assistance, things changed rapidly. Within a week, Ms. Jauch’s lawyer obtained her release. Within a month, the attorney established Ms. Jauch’s innocence and obtained a dismissal of all charges.⁴



Loss of income and housing

Carl Murdock spent seven weeks in jail without an initial appearance. Unable to work, Mr. Murdock lost weeks of income. His landlord evicted him, and his car was repossessed. His arrest was due to a clerical error. But no one discovered the error until Mr. Murdock’s initial appearance.⁵

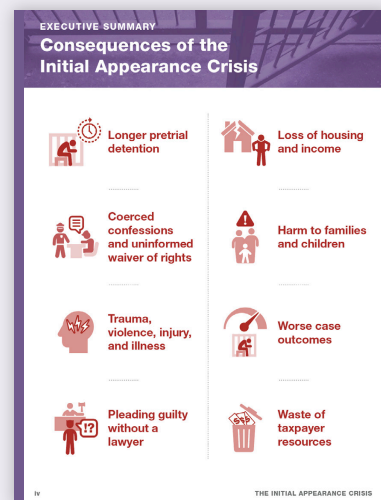


Trauma, violence, and even death

Trequelle “Tre” Vann-Marcoux was 18 years old when he hanged himself in jail after days of begging, in vain, for the court to appoint a lawyer to help him.⁶ Sadly, his suicide is not uncommon. More than 75% of jail suicides occur during pretrial detention, with a significant percentage occurring in the first week after arrest.⁷

Learn more about the consequences of delaying initial appearance. Read the Report.

Ending Injustice: Solving the Initial Appearance Crisis



✓ SOLUTIONS SUMMARY

To honor the United States Constitution and protect the rights of all arrested people, all jurisdictions must ensure compliance with five best legal practices:



Initial Appearance within 24 Hours

Initial appearance must be held within 24 hours of arrest.



Delay Requires Release

If initial appearance is delayed, the arrested person must be automatically released from detention.



Counsel at Initial Appearance

Arrested people must be provided with an attorney to represent them at initial appearance.



Defense Counsel within 72 Hours

The lawyer who will defend the case must be appointed within 72 hours of arrest to promptly begin an investigation.



Prompt Review if Detained

If a person is detained after initial appearance, a hearing must automatically be held within 72 hours, with counsel, to review and reassess the conditions of release.

In September 2022, the Deason Center published *Grading Injustice: Initial Appearance Report Cards*.⁸ The *Report Cards* provided an in-depth look at the laws governing post-arrest procedures in each U.S. state, the District of Columbia, and three territories. No jurisdiction guarantees all of the legal protections necessary to ensure prompt and meaningful access to counsel and the courts.⁹

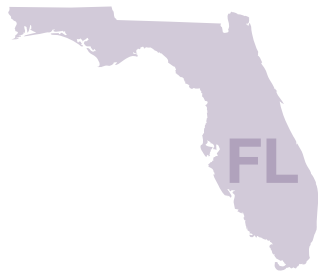
POLICY BRIEF



✓ SOLUTION 1

Require Initial Appearance Within 24 Hours of Arrest

Every detained person must have an initial court appearance within 24 hours of arrest. Several states already require initial appearances within 24 hours, including Alaska, Arizona, Florida, Maryland, and New York.¹⁰



MODEL LANGUAGE

“Prompt First Appearance

Except when previously released in a lawful manner, every arrested person must be taken before a judge . . . within 24 hours of arrest.”

Fla. R. Crim. P. 3.130(a)

States establish the 24-hour requirement in a variety of ways:

- Alaska and Maryland establish their requirements by statute.¹¹
- In Florida and Arizona, the requirement is part of their Rules of Criminal Procedure.¹²
- In New York, the state’s highest court ruled that initial appearances must be held within 24 hours.¹³

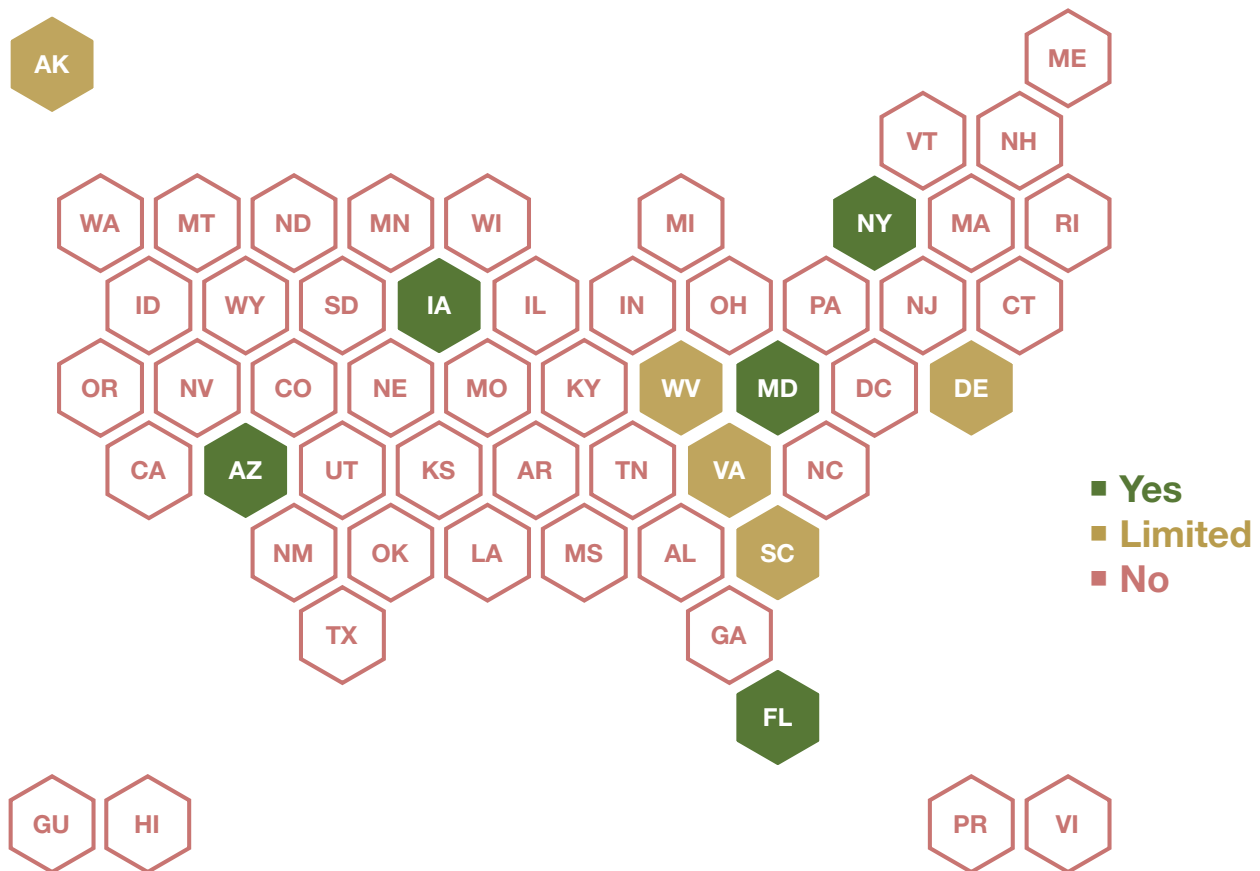
A 24-Hour Initial Appearance Requirement Complies with ABA Standards

*“[T]he defendant should **in no instance be held by the police longer than 24 hours without appearing before a judicial officer.** Judicial officers should be readily available to conduct first appearances within the time limits established by this Standard.”*

ABA Criminal Justice Standards, Pretrial Release §10-4.1

FIGURE 2

Some Jurisdictions Already Require Initial Appearance within 24 Hours¹⁴



Delaying Initial Appearances Has Dire Consequences

Judges release many arrested people at their initial appearances. But, if their initial appearances are delayed these people linger in jail unnecessarily. As New York’s highest court noted, “the deprivation entailed by pre-[initial appearance] detention is very great with the potential to cause serious and lasting personal and economic harm to the detainee.”¹⁵ For this reason, the court held that detention of more than 24 hours before initial appearance must be presumed unlawful.¹⁶

SOLUTION 1

Initial Appearance within 24 Hours

Detention for just three days costs a person

\$29,000

over their lifetime

■ Delays Irreparably Injure Arrested People

Arrest and detention are traumatic. Police or jailers strip-search the arrested person, confiscate their clothing and personal belongings, and book them into jail.

Jails are often filthy and overcrowded.¹⁷ Arrested people may lack access to important medications. Those who are drug dependent frequently go into withdrawal. Those with mental health issues decompensate.¹⁸ Suicide is the leading cause of death in jails. Almost half of jail suicides occur within the first week in custody, and more than one-third occur within the first three days.¹⁹

■ Delays Harm Families

Delays in initial appearance also have long-term consequences for families. Waiting in jail for an initial appearance, an arrested person can lose custody of their children.²⁰ An employer may fire the arrested person for missing work, thrusting the family into financial instability.

A study by the Cato Institute found that, over a lifetime, arrested people “lose an average of \$29,000 when detained in jail for just three days while awaiting the resolution of their criminal cases.”²¹

FIGURE 3

Prompt Initial Appearance Can Mitigate the Harms of Arrest Disparities

Most people associate traffic stops with tickets, but traffic stops also lead to arrests. A 2019 study of four million police stops in California showed that **police officers jailed Black people after traffic stops almost twice as often as they jailed White people.**²²

Arrested after traffic stop²³



The sooner an arrested Black person has an initial appearance, the sooner counsel can advocate for release and protect Black families from the impacts of prolonged detention.

SOLUTION 1

Initial Appearance within 24 Hours

■ Delays Reduce Public Safety

Even brief delays in initial appearance and release increase a person's likelihood of further justice system involvement. Recent studies show that the longer a person spends in pretrial detention, the more likely they are to recidivate.²⁴ One study in Kentucky compared outcomes for low-risk people released within 24 hours to those held for 8-14 days. It found that those held for less than 24 hours were:

↓ **36% less likely to be rearrested before trial; and**

↓ **34% less likely to recidivate after sentence completion.**²⁵

■ Delays Waste Taxpayers' Money

Jails are expensive. On average, each night of incarceration costs taxpayers \$93 per person.²⁶ Often this expense is unnecessary. Most arrested people—especially those accused of lower-level offenses—are eligible for pretrial release.²⁷ When their appearances are delayed, these people linger in jail at the taxpayers' expense.

FIGURE 4

24-Hour Initial Appearances Save Money

If a jurisdiction arrests 100 people per day and releases 70% of them at initial appearance, holding initial appearance within 24 hours, rather than 72 hours, results in significantly less jail use. At an average cost of \$93 per day in jail, the jurisdiction would save over \$90,000 per week.²⁸

Jail use for new arrestees for one week

24-hour initial appearance

1,960 days in jail

72-hour initial appearance

2,940 days in jail

\$
Savings of
\$90,000
per week

✔ STRATEGIES FOR SUCCESS

Centralization and Specialization

Jurisdictions that successfully provide initial appearances within 24 hours often create centralized initial appearance courts or specialized dockets. Arrested people appear before a judge whose primary responsibility is to preside over these important proceedings.

Several jurisdictions have used centralization or specialization to achieve prompt initial appearances.



In **New York City**, each borough has a centralized booking and initial appearance location. Arrested people are taken to these central locations and have their initial appearances before a dedicated court.²⁹



In **Pima County, Arizona**, initial appearance dockets occur twice daily, at 9:00 a.m. and 8:00 p.m.³⁰ Arrested people are taken to the next initial appearance docket.³¹ Magistrate judges volunteer to cover these dockets, and Pima County pays them a modest stipend for each evening and weekend session.³²



In **Maryland**, arrested people are taken to dedicated “commissioner stations,” where district court commissioners conduct initial appearances. Many commissioner stations are open 24 hours a day, facilitating prompt initial appearances.³⁴



In **Florida** counties—both urban and rural—special “duty judges” conduct initial appearances on weekends and holidays.³⁵ In the Fourteenth Judicial District, five rural counties consolidate their weekend and holiday initial appearances.³⁶ Each judge is on duty for weekend initial appearances approximately once every ten weeks.³⁷

SOLUTION 1

Initial Appearance within 24 Hours

“The [consolidated initial appearance] process has been in place for at least 15 years and is viewed favorably by the bench as a more efficient use of judicial time.”³³

Pima County Administrator

CAUTION

Be Wary of Remote Appearances

Conducting initial appearances by telephone or video might be an easier way to meet a 24-hour deadline. But what is easy may not always be fair.

Remote proceedings may make it harder for an arrested person to get a fair outcome. They also contribute to costly and unnecessary pretrial detentions.³⁸ A 2010 study of bail hearings in Chicago found a “sharp increase in the average amount of bail set in cases [using videoconferencing], but no change in cases that continued to have live hearings.”³⁹ Remote proceedings also interfere with private attorney-client communications.⁴⁰

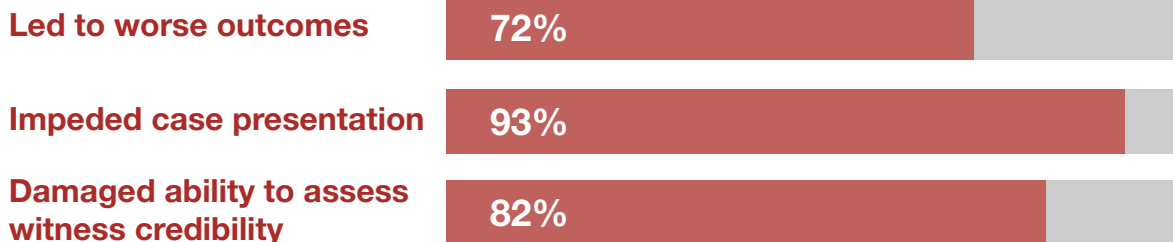
In a 2021 study, 72% of criminal defense attorneys reported that online proceedings led to worse outcomes for arrested people.⁴¹ Defense attorneys also asserted that online proceedings impeded the effective presentation of their cases (93%)⁴² and hindered their ability to assess and challenge witness credibility (82.3%).⁴³

SOLUTION 1

Initial Appearance within 24 Hours

FIGURE 5

Defense Attorneys Report That Remote Appearances Result in Unfair Proceedings



STRATEGIES FOR SUCCESS

Reduce Harms and Hold Rapid In-Person Review Hearings

If remote initial appearances are the only way to meet a 24-hour deadline, the remote hearing process must be carefully designed to minimize negative impacts.⁴⁴ For example, to ensure full access to counsel, it may be beneficial to have the initial appearance attorney in the same room as the arrested person. Further, if an arrested person is detained after a remote initial appearance, a court must automatically hold an in-person review hearing, with counsel, within 72 hours (see Solution 5).

✓ SOLUTION 2

Automatic Release for Delayed Initial Appearance

To incentivize timely initial appearances, state law must require jailers to release any person held for more than 24 hours without an initial appearance. A release requirement creates a clear and immediate consequence for courts, prosecutors, and jails that allow initial appearance delays. To be an effective remedy, the release must be:

- **Automatic**—Release should not require permission from a judge or prosecutor.
- **Timely**—Release should occur as soon as the initial appearance deadline has passed.
- **Without conditions**—The arrested person should be released on personal recognizance, without any bond or other conditions.

Arizona and Louisiana already require such releases when the state misses its initial appearance deadline.⁴⁵



MODEL LANGUAGE

“Prompt Appearance Before a Magistrate

An arrested person must be promptly taken before a magistrate for an initial appearance. . . . If the initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody.”

Ariz. R. Crim. P. 4.1

Without an automatic release law, an arrested person could get lost in the system. They likely will not know when their initial appearance should have occurred, and they cannot effectively request a lawyer or a hearing from jail. Therefore, they cannot realistically seek release or remedy a delay.

✓ STRATEGIES FOR SUCCESS

Notice Before Initial Appearance Deadlines Expire

Mandatory notification of impending initial appearance deadlines can reduce or eliminate the need to release arrested people without judicial process. For example, Maine requires jails to notify the district attorney 12 hours before an initial appearance deadline expires.⁴⁶ Proper notification allows a prosecutor or a court to bring a person into court for a timely initial appearance.

✓ SOLUTION 3

Guarantee Counsel at Initial Appearance

Initial appearance is usually the arrested person's first opportunity to seek pretrial release. It is also when an arrested person first learns about their rights, hears the charges against them, and has an opportunity to contest those charges. Yet, many states do not provide indigent defendants with an attorney at initial appearance.⁴⁷ Instead, arrested people stand in court alone, with no one to explain the proceedings or speak for them.

No one should be forced to represent themselves at initial appearance. Every arrested person must be represented by counsel. Many states already guarantee counsel at initial appearance. All states should.



FIGURE 6

Many States Guarantee Counsel at Initial Appearance⁴⁸



Why Counsel at Initial Appearance Matters

Without an attorney, an arrested person cannot argue effectively for pretrial release, leading to a prolonged, harmful, expensive, and often unnecessary pretrial detention.

■ Screening for Wrongful Arrests

Without counsel, arrested people may misunderstand the charge against them and even lose the opportunity to raise arguments that could negate their charge at this earliest phase. For example, a person arrested for felon in possession of a firearm likely could not, without the aid of an attorney, demonstrate that they were not previously convicted of a felony.⁴⁹ However, counsel could obtain a criminal history, demonstrate the error, and likely obtain an immediate dismissal.⁵⁰

■ Improving Judicial Decision-making

To make a pretrial release determination, a judge should consider the arrested person's circumstances, including a person's employment, housing, and financial situation, their ties to the community, and any past involvement in the criminal legal system.⁵¹ Without guidance from counsel at initial appearance, an arrested person is unlikely to know what facts to raise or how best to raise them.

In New York, for example, 2.1 million people have inaccurate, incomplete, or misleading criminal histories that could negatively impact a judge's pretrial release decision.⁵² Counsel at initial appearance could help to identify and correct such errors, increasing the likelihood of pretrial release.

■ Protecting Rights

Counsel at initial appearance can also protect the procedural rights of the arrested person, such as the right to start their speedy trial "clock" or the right to request a preliminary hearing.

SOLUTION 3 Counsel at Initial Appearance

2.1 million

people in New York have inaccurate, incomplete, or misleading criminal histories that could negatively impact a judge's pretrial release decision.

An attorney could identify and correct those errors, increasingly the likelihood of pretrial release.

DEFINITIONS

Counsel at Initial Appearance — The attorney who represents an arrested person at their initial appearance. This might be a "duty attorney" or an "attorney for the day," whose limited scope representation ends when defense counsel enters the case.

Defense Counsel — The attorney who will represent an arrested person through the disposition of their case. In some instances, defense counsel might also be the initial appearance attorney. In other situations, defense counsel may replace the initial appearance attorney.

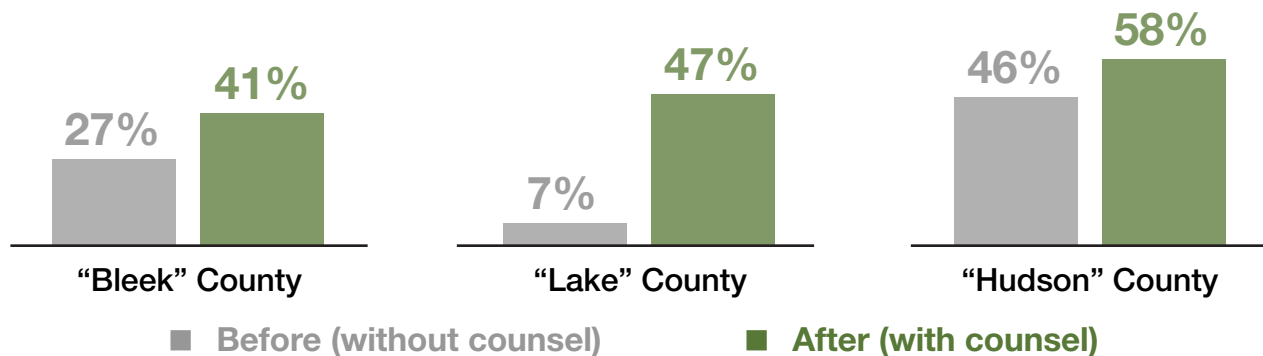
Impact of Counsel at Initial Appearance

Studies show that having counsel at initial appearance improves the likelihood of pretrial release. When Alameda County, California, provided counsel before and during initial appearance, the number of people released increased dramatically—from 1% to 24%.⁵³ After Maryland introduced counsel at initial appearance, 70% of arrested people were released the first time they went to court.⁵⁴ A study of three anonymized New York counties showed increases in pretrial release following the introduction of counsel at misdemeanor initial appearances.⁵⁵ In one county, release at initial appearance rose from 7% to 47%.⁵⁶

Counsel at initial appearance also saves taxpayers' money. A study of Cook County, Illinois predicted that providing an attorney within 24 hours of arrest would save the county between \$12.7 and \$43.9 million annually in jail costs and allow it to close 22 jail units.⁵⁷

By increasing the likelihood of pretrial release, counsel at initial appearance can also help reduce the pressure to plead guilty in exchange for a sentence of “time served.”⁵⁸ A Philadelphia study concluded that “pretrial detention leads to a 13% increase in the likelihood of being convicted[.]”⁵⁹ Worse still, many of these unjust convictions were obtained because “defendants who otherwise would have been acquitted or had their charges dropped” gave up and pleaded guilty.⁶⁰

FIGURE 7
In Three New York Counties, Providing Counsel at Initial Appearance Increased Pretrial Release⁶¹



✔ STRATEGIES FOR SUCCESS

Initial Appearance Units and Duty Lawyers

Several public defender offices have created specialized units of lawyers who represent arrested people at initial appearance. In jurisdictions where a specialized unit is not feasible, a duty lawyer often handles all initial appearances occurring in a day. These lawyers challenge illegal arrests, argue for pretrial release, screen clients for medical or mental health needs, and address other issues that commonly arise at initial appearance.

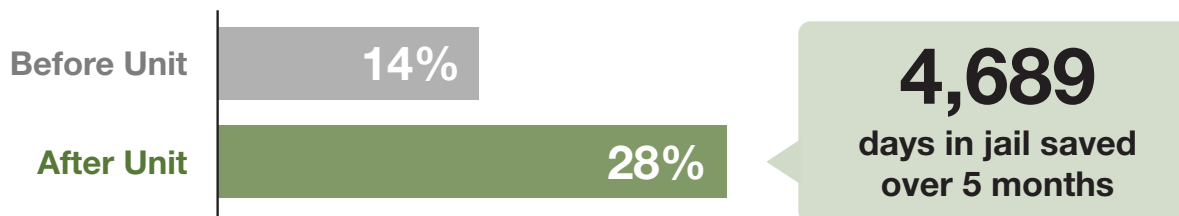
In **Miami Dade County**, an Early Representation Unit represents arrested people at initial appearance. The unit “promotes a more cost-effective and efficient judicial process and saves Miami-Dade County taxpayers over \$2 million a year.”⁶²

In 2017, the **San Francisco** Public Defender’s office created a Bail Unit that represented arrested people from booking through initial appearance.⁶³ During its first five months, the unit doubled the percentage of arrested people released at initial appearance from 14% to 28% and reduced San Francisco’s jail population by an average of 940 jail days per month. This saved taxpayers the cost of 4,689 days in jail over five months.⁶⁴

FIGURE 8

San Francisco Bail Unit Leads to Increase in Pretrial Release

Percent Released at Initial Appearance



In **Huron County, Michigan**, a duty lawyer is assigned to handle all of the initial appearances occurring in one day.⁶⁵ After the duty lawyer program was introduced, a judge reported that initial appearance hearings “‘feel[] more complete’ and that he feels more confident in the bonds that he issues.”⁶⁶

In **Massachusetts**, duty lawyers handle initial appearances. If qualified, the duty lawyer may also serve as defense counsel, representing the client through trial, plea, or dismissal.⁶⁷

ACCOUNTABILITY

Identify Defense Counsel

Courts should appoint a specific attorney, rather than a law firm or public defender's office. General appointments are insufficient to ensure that an individual lawyer is responsible for the case. If the named defense counsel does not enter an appearance within 72 hours, the judge should promptly address the failure to enter an appearance with the firm or public defense agency.

DEFINITION

Continuous Representation — Representation of an arrested person, from initial appearance through disposition, by two or more lawyers, who sequentially assume responsibility for the case without any gaps in representation.

ACCOUNTABILITY

Ensure Continuous Representation

To ensure continuous representation, the initial appearance attorney must represent the client until a defense attorney is assigned and is working on behalf of the client. In Maine, for example, if a court appoints counsel for the limited purpose of initial appearance, that attorney is required to continue their representation until defense counsel is assigned.⁶⁸

TRE VANN-MARCOUEX'S STORY

The Need for Continuous Counsel

Trequelle "Tre" Vann-Marcouex was only 18 years old when he hanged himself in jail. At Mr. Vann-Marcouex's initial appearance, a duty lawyer represented him. The judge then placed him on a waitlist for defense counsel. After twelve days in jail without an attorney, Mr. Vann-Marcouex was forced to represent himself at a preliminary hearing.

Predictably, the prosecution won the hearing, and Mr. Vann-Marcouex was returned to jail. Less than 12 hours later, Mr. Vann-Marcouex attempted suicide. He died five days later.⁶⁹

✓ SOLUTION 4

Ensure Appointment of Defense Counsel within 72 Hours



Some attorneys are appointed for the limited purpose of providing representation at initial appearance.⁷⁰ In such cases, another attorney will act as defense counsel and represent the arrested person through disposition of their case. That defense counsel must be assigned within 72 hours of arrest.

Delays in the appointment of defense counsel can create gaps in representation.⁷¹ These gaps are particularly damaging for people in jail who need an attorney to investigate alternatives to pretrial detention, marshal evidence in support of their release, and petition for a change in release conditions.

Prompt appointment of defense counsel is also critical to gathering and preserving evidence. Surveillance camera evidence is often taped over within 72 hours.⁷² Witnesses may disappear or forget important details. If a person is detained pretrial, prompt investigation can also be the difference between a quick release and months—or even years—in jail.

MICHAEL LOWE'S STORY

The Importance of Prompt and Continuous Representation

In July 2021, Michael Lowe was on vacation in New Mexico when police arrested him on a Texas warrant and booked him into a local jail.

After eight agonizing days, Mr. Lowe finally had his first court appearance. The judge could not explain the charges. But he encouraged Mr. Lowe to waive all factual and legal objections to his return to Texas. Without a lawyer, Mr. Lowe followed the court's advice. He then waited another nine days behind bars before the jail released him without explanation.

During his 17 days of detention, Mr. Lowe was strip-searched, slept on the floor of a cell, and witnessed violent assaults. As a small business owner, he also lost thousands of dollars. His business never recovered.

Once he was released, Mr. Lowe quickly hired a lawyer. The lawyer demonstrated that Mr. Lowe had been wrongly identified and the authorities dropped all charges.⁷³

SOLUTION 4 Defense Counsel within 72 Hours

Barriers to Appointment of Counsel

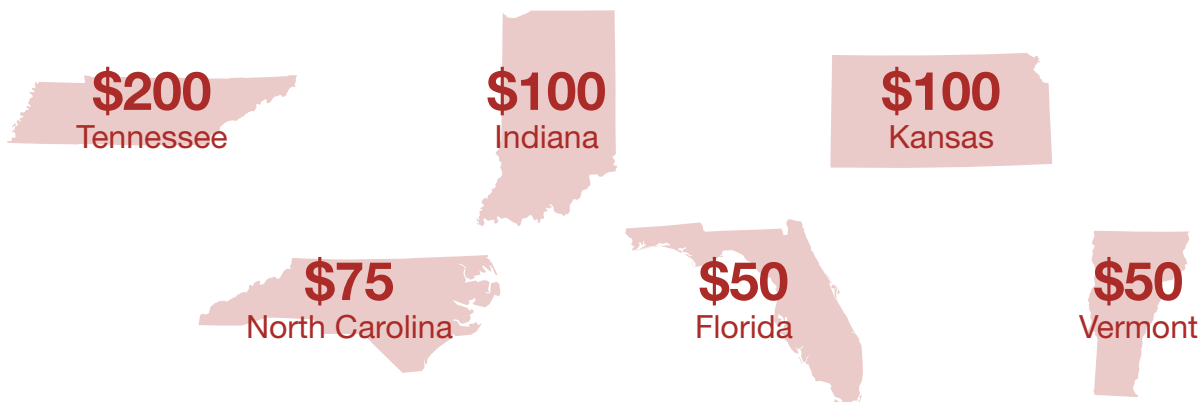
Application fees often inhibit arrested people from seeking counsel, and complex application procedures delay courts in appointing counsel. Common barriers to appointment include:

- Applications that require people behind bars to produce **extensive financial documentation**.⁷⁴
- Requiring people to **sign the application under oath and penalty of perjury**.⁷⁵ This can deter people who do not fully understand the application questions from applying for counsel.
- **Application fees**, which can be as much as \$200.⁷⁶

Complex application procedures present additional difficulties for non-English speakers, those with learning or visual disabilities, and people who are illiterate. As a result, vulnerable people are too often forced to navigate the crucial early days of the criminal process alone, without a legal advocate to explain the process, investigate the facts, negotiate with prosecutors, and advocate for their release.

FIGURE 9

Public Defense Application Fees Are a Barrier to Prompt Appointment of Defense Counsel⁷⁷



STRATEGIES FOR SUCCESS

Simplify Appointment of Counsel

To expedite appointment of counsel, jurisdictions should simplify applications and appointment procedures. All people who remain in jail after their initial appearance should be presumed to qualify for a public defense attorney, and counsel should be immediately appointed.⁷⁸

✓ SOLUTION 5

Prompt Automatic Review Hearings if Detained

When a person remains in jail following initial appearance, a court must automatically hold a review hearing within 72 hours. At this hearing, the detained person must be represented by defense counsel. With the benefit of defense counsel’s advocacy, a court must reevaluate the facts and make a new ruling about pretrial release.

Review hearings effectively reduce unnecessary pretrial detention. In Maryland, every person who remains in jail following their initial appearance receives a review hearing during the next court session.⁷⁹ Between July 2016 and September 2017, Maryland review hearing judges released over 7,500 people from jail without bond.⁸⁰

Massachusetts similarly holds prompt review hearings.⁸¹ In one study, 2,511 people who were unable to meet the conditions set at their initial appearance petitioned for a review. After the review, 39.6% of those people had conditions revised, and 27% of those who petitioned were released.⁸²



🌿 MODEL LANGUAGE

“Review of Commissioner’s Pretrial Release Order

(a) Generally. A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody after a commissioner has determined conditions of release . . . shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court. . . .

(c) Determination by Court. The District Court shall review the commissioner’s pretrial release determination and take appropriate action in accordance with the standards and requirements set forth in [the rule on pretrial release]. If the court determines that the defendant will continue to be held in custody after the review, the court shall set forth in writing or on the record the reasons for the continued detention.”

Md. Rule 4-216.2

72-Hour Review Hearings Ensure Accountability

■ Guaranteeing Process for People without Counsel

Automatic review hearings guarantee that no one falls through the cracks. The alternative—hearings only “on demand”—unfairly disadvantages people who do not yet have defense counsel. Without an automatic hearing, these people might wait weeks before anyone reviews their release conditions.

■ Confirming Defense Counsel’s Involvement

Holding automatic review hearings allows the court to confirm that every person in jail has defense counsel. If no defense counsel appears at the automatic review hearing, a judge should act quickly to ensure that counsel is aware of the assignment and working on the client’s behalf.

■ Reconsidering Release Conditions

When an arrested person is ordered released upon conditions at initial appearance but remains in jail 72 hours later, something has gone wrong. Detaining someone after a judge has approved their release harms them and their families. It also costs taxpayers. A prompt review hearing, with defense counsel, provides an effective check against unnecessary, expensive, and dangerous pretrial detention.

SOLUTION 5 Prompt Review if Detained

Importance of Review: Non-Lawyer Judges

Automatic detention review hearings serve as an important check, ensuring that the decision to detain someone pretrial is reconsidered, preferably by a law-trained judge. Careful reviews guarantee that decisions comply with the state’s laws on pretrial release. In jurisdictions from Alaska to Maine, the judicial officers who conduct initial appearances—sometimes called commissioners, justices of the peace, or magistrates—are not always required to be lawyers.⁸³

In Delaware, for example, justices of the peace—who need not be lawyers—preside at initial appearances and make pretrial release determinations.⁸⁴ However, Superior Courts then conduct *de novo* reviews for any person detained for more than 72 hours.⁸⁵ Similarly, in Maryland, initial appearances are held before commissioners. However, for any individual who remains detained following an initial appearance, the District Court holds a review hearing, with defense counsel, during the next court session.⁸⁶

CONCLUSION

Policymakers Can Solve the Initial Appearance Crisis

The Constitution promises that every person in jail will have access to the courts and to counsel. Yet far too often, people languish in jail alone, afraid, and undefended.

To honor the Constitution's promise, jurisdictions must guarantee initial appearance, with the assistance of counsel, within 24 hours of arrest. To enforce these rules, jurisdictions should adopt accountability measures such as automatic review hearings and automatic release. These reforms can help to end the initial appearance crisis.

✓ THE SOLUTIONS

Initial Appearance within 24 Hours

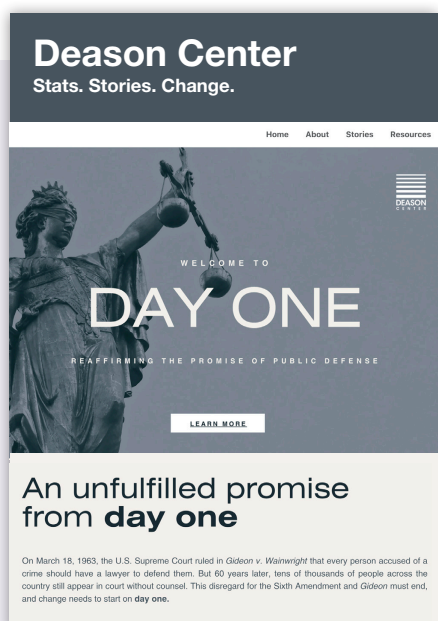
Delay Requires Release

Counsel at Initial Appearance

Defense Counsel within 72 Hours

Prompt Review if Detained

Endnotes and references available at bit.ly/deasonendnotes



The Deason Center researches best practices in early-stage criminal procedure.

Deason Center faculty and staff are available to provide testimony, draft model legislation, and offer other assistance to policymakers interested in improving initial appearances.

Contact us at DeasonJusticeCenter@smu.edu

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