



Site Visit Report

Douglas County

March 14 2023

ABSTRACT

Documentation of contacts with Criminal and Juvenile Justice service providers on the issue of appointment of counsel for clients who qualify for state-funded representation

Prepared by Trial Division

Introduction

Douglas County is a jurisdiction with a lower-middle population size but large geographical area in Oregon. The Circuit Court consists of five elected judicial officers and one pro tem judge hired by the County. Within the jurisdiction are also four Municipal courts in Sutherlin, Winston, Reedsport, and Roseburg, and two Justice Courts in Myrtle Creek and Canyonville. The District Attorney's office is headed by an elected District Attorney and contains at least four other attorneys.

Public defense work in Douglas County is primarily handled by three entities: Umpqua Valley Public Defender (UVPD), a non-profit public defense firm; Arneson, Stewart, and Styarfy (AS&S), a for-profit firm with significant public defense contracts; and the Roseburg Defense Consortium (RDC), an association of private attorneys who collectively contract with

At the time of the site visit, UVPD employed nine full-time and two part-time attorneys. UVPD is contracted by OPDS to provide 4.85 MAC worth of criminal defense representation – including .65 MAC worth of specialty courts – and 3.3 MAC worth of juvenile representation under the PCRCP model. UVPD is also contracted to provide 1.0 MAC of supervision and .65 MAC of training for its attorney workforce.

AS&S employed five full-time attorneys, contracted to provide 1.0 MAC worth of criminal defense representation and 3.0 MAC worth of juvenile representation under the PCRCP model.

RDC subcontracts with nine attorneys and is contracted to provide 2.25 MAC worth of criminal defense representation and 4.8 MAC worth of juvenile representation under the PCRCP model. Of note, RDC consistently assists with covering needed juvenile casework in nearby counties.

Douglas County was identified as having a need for a site visit based on concerning reports about high turnover in the county, specifically at UVPD and in the District Attorney's office. Of note, on the day of our site visit, an additional attorney gave notice to UVPD of their intent to move to a public defense provider in a neighboring county.

Preparation for Site Visit

To prepare for the Douglas County site visit, OPDS staff identified four employees to handle the site visit: the Trial Division Deputy and the Program Analyst in charge of the county, a The Legislative and Provider Liaison, and the Executive Director.

In preliminary discussions surrounding the planned site visit, it was decided that the site visit would consist of a preliminary written survey, individual stakeholder meetings, and a final stakeholder conference including as many stakeholders as we could get to attend. The survey was sent to public defense providers ahead of the

site visit with questions to assist in understanding the issues relevant to local practice, as well as to give members of the provider community who would not be able to meet in person the opportunity to provide feedback. The list of providers who were sent the survey included all attorneys at UVPD, AS&S, and RDC, as well as attorneys who had recently accepted assignment of cases in Douglas County on an hourly basis.

Court staff, including the Presiding Judge and Trial Court Administrator, the District Attorney, and the leaders of the contract entities were contacted to schedule meetings.

While several attempts were made to contact the District Attorney and schedule a meeting with that office, no response was received, and the District Attorney's office did not attend any of the conversations that occurred during the site visit.

Survey Responses

Surveys were designed to identify whether the attorney's experience was in criminal practice, juvenile practice, or both, and to determine approximately the extent of that experience. Respondents were also asked to identify from which jurisdiction the bulk of their experience came and, if not from Douglas County, their level of experience with Douglas County specifically.

Respondents were asked which Douglas County court practices facilitated and/or hindered the efficient appointment and effective practice of criminal and juvenile law. Respondents were also asked the same question about District Attorney practices and public defense practices. Respondents were asked what made Douglas County courts unique, and what the biggest barriers were to criminal and juvenile practice in Douglas County. Finally, respondents were asked what the Court, District Attorney, or OPDS could do to help improve practice in Douglas County.

In total there were ten respondents to the survey. Years of experience overall ranged from six months to thirty-two years of criminal practice experience and two and a half to nine years of juvenile experience. Of the nine attorneys who reported criminal experience, there was a relatively even spread of years of experience under ten years, followed by two attorneys who reported thirty-two years of experience, indicating a possible experience gap at the highest level of criminal defense experience. Only three attorneys indicated juvenile experience.

With regards to Douglas County Court practices, several themes were found among responses:

- Assignment of counsel is smooth and generally quick to occur when counsel is available. However, the Court recently changed how Probable Cause Affidavits are filed and has begun marking them as "Confidential," which interferes with conflict checking prior to appointment of counsel.
- There are too many procedural hearings requiring in person appearance.

- Judicial assignment occurs at the outset of a case. There are mixed opinions as to whether this is a help or a hindrance.
- The Juvenile court is willing to set hearings based on oral motions rather than needing written motions, allowing attorneys to spend more time on other case tasks.
- Remote appearance is generally available for routine or uncontested hearings in Juvenile Court
- There have been some growing pains due to a recent shift as to which judge is assigned to the Juvenile court.
- Communication between court staff and provider support staff is exceptional.
- The Court has patience for attorneys with less experience and appears to genuinely want to help improve practice.

With regards to Douglas County District Attorney practices, the following themes were observed:

- Significant discovery delays, with little infrastructure to ensure all discovery is disclosed or verify what has been received
- Plea offers are no better than sentencing after loss at trial
- Junior DDAs required to take any other settlement offer to a Senior DDA for review, leading to delays and less-than-meaningful settlement negotiations
- A perception that junior DDAs are more interested in winning than in seeing justice served

With regards to Public Defense practices, the following themes were observed:

- Historical contract payment disparities between urban and rural providers have limited rural provider ability to bring new attorneys into local practice.
- Representation in Douglas County is nearly entirely vertical, barring unexpected conflicts or attorneys leaving practice
- Caseloads have adjusted in response to additional work required on each case, such as overwhelmingly increased body cam footage to review

Respondents indicated the following as the biggest barriers to practice in Douglas County:

- Lack of attorneys or pipelines to draw new attorneys into practice and keep experienced attorneys local
- Underfunding and understaffing of defense providers leading to case backlogs
- Barriers to access to services for clients
- Volume of cases and the lack of attorneys
- The general lack of experienced attorneys in the DA's office leading to ineffective negotiations and delays

Respondents suggested the following improvements to practice in Douglas County:

- Institute a domestic violence diversion program
- Standardize defense attorney pay statewide and make it equivalent to that of District Attorneys and Attorneys General
- Improve triage in the District Attorney's office, such as declining to prosecute trespass and disorderly conduct cases where there are proof issues or considering whether school and home discipline issues become delinquency cases.
- Workload model
- Increased understanding from the Courts as to the caseload issues
- Increased funding for additional judges to handle the case volume
- Increased oversight by OPDS

Individual Stakeholder Meetings

OPDS met with providers one on one and in small groups to learn more about their experiences as public defense providers in Douglas County. Some of the take aways were:

General:

Douglas county has difficulties recruiting and retaining attorney talent. Overall, providers believe the following to be local issues impacting recruitment and retention:

- The overall share of attorneys willing to do criminal work in general is decreasing
- Douglas County doesn't have much of a night life or dating scene
- There are ideological differences between a large share of public defenders and the local community
- The housing market is incredibly tight. There are apartment complexes available, but tend to be in less safe neighborhoods.

The general consensus is that older attorneys are more likely to stay in Douglas County for the outdoor recreation opportunities. Both the DA's office and UVPD have had several job postings open for months with no applicants. Hiring profile tends to be attorneys in the first weeks of their career or those closer to retirement.

For those attorneys who do stay, the atmosphere among the bar is friendly and collegial. Some DAs start off a little aggressive, but quickly learn that there's really no need to be.

Juvenile Justice:

Providers were nearly unanimous in their opinion that the PCRCP model of representation is operating smoothly in Douglas County. Dependency practice is seeing lower case filing numbers as the local branch of the Oregon Department of Human Services is a pilot branch for a family preservation program, and many

juvenile providers are taking out-of-county cases in neighboring counties to keep their caseloads around PCRCP targets.

The only significant concern in the Juvenile Justice domain was scheduling of hearings. The Court recently implemented a Family Treatment Court without the funding and infrastructure provided to other counties that are standing up their own Family Treatment Courts. This has led to more in-court time than before, limiting the amount of out-of-court time available for attorneys to work their cases and prevent the need for litigation.

Criminal Defense:

The DA's inability to retain attorneys means that they don't yet have the knowledge and experience to use their discretion when making charging decisions, and once the instrument is filed they are required to run all settlement negotiations through a senior DA, many of whom are swamped with higher level cases and do not have time for review. At the DA's office, there is the elected DA, a senior attorney who has been in the office since 2015, and one other attorney who started in 2018. The remainder of the attorneys in the office have less than two years of experience.

Many of the initial offers impart no benefit to the client. Some directly observed training issues with the newer DAs include:

- Filing domestic violence cases the police agencies do not seem to want prosecuted
- Filing cases in which the officer indicates in their report an opinion that the accused lacks capacity for culpability
- DUIs filed without breath, blood, or DRE evidence

Complicating the practice of criminal law is a recent shift to have Probable Cause Affidavits submitted as "confidential" by court clerks. This has prevented attorneys from being able to run conflict checks prior to arraignment and sometimes prior to appointment. There have been several attempts to maneuver around this change: the courtroom clerks had been printing off affidavits ahead of arraignments, but were instructed to stop. The DA's office has been inconsistent in getting affidavits to providers prior to arraignment.

Jail: The jail has 196 beds currently. People are being held on misdemeanor charges who likely don't need to be. Attorneys try to litigate release, but there doesn't seem to be any headway. Jail staffing levels are low, causing some difficulty in communications. Hours have been limited. iPads are used to help facilitate staffing on occasion. Professionals (other than attorneys) are no longer allowed to use the attorney meeting rooms, and evaluations and other meetings now frequently occur in a common space, dramatically limiting confidentiality.

OPDS:

Consortium attorneys reported being happy with the retention initiative, and OPDS's efforts to keep caseloads manageable. They also reported that the court does not seem to be pushing local counsel to go beyond their contractual limits.

Providers generally prefer the contracting model over taking individual cases on an hourly basis as it provides consistency of income and the likelihood of a failure of legislative funding seems lower.

The community could use additional training support, especially around Measure 11 cases. It is difficult for defense attorney who have not handled those cases to find a trial to second-chair, and most of the measure 11 trials in Douglas County resolve. OPDS may be able to help identify those opportunities.