



Site Visit Report

Linn County

April 12 2023

ABSTRACT

Documentation of meetings with Linn County OPDS attorney providers and criminal system stakeholders as well as recommendations for provider or systemic improvement.

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Introduction

Linn County has a population of approximately 128,000. The Court consists of five judicial officers, including Presiding Judge Thomas McHill. Doug Marteeny has been the elected District Attorney since 2013. The Linn County Correctional Center contains 230 beds, with an average daily population in 2020 of 156.

Public Defense work in Linn County is handled primarily by two entities: Linn Defenders Inc (the criminal consortium), and Juvenile Defenders of Linn County Inc (the juvenile consortium). The law firm of Riddell & Largent also has a PCRCP contract for conflict counsel in Linn County (as well as Benton.)

Linn Defenders is an association of 13 attorneys, providing 10.3 MAC of criminal representation. Timothy Felling and Tyler Reid were the outgoing consortium administrators, with Michael Lowry and Rex White, Jr. preparing to take over.

Juvenile Defenders is an association of 8 attorneys, providing 8.15 MAC of juvenile representation under the PCRCP model. Riddell & Largent has one attorney providing .85 MAC of juvenile representation as well.

The remainder of criminal and juvenile representation in Linn County is handled by attorneys assigned on an hourly basis by OPDS or under private retainer.

Linn County was identified as having a need for a site visit because of its growing portion of cases assigned to the Unrepresented Persons List after the Criminal Consortium had began limiting their pickup.

Preparation for Site Visit

To prepare for the Linn County site visit, OPDS staff identified five employees to handle the site visit: the Criminal and Juvenile Trial Division Deputies and the Contract Analyst in charge of the county, a member of Government Relations and Provider Outreach, 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 both consortiums, Riddell & Largent, as well as attorneys who had recently accepted assignment of cases in Linn County on an hourly basis.

Court staff, including the Presiding Judge and Trial Court Administrator, the District Attorney, and the leaders of the Consortia were contacted to schedule meetings, as well as those attorneys local to Linn County who had recently taken cases on an

hourly basis. All were also invited to the full stakeholder meeting at the end of 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 Linn County, their level of experience with Linn County specifically.

Respondents were asked which Linn 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 Linn County courts unique, and what the biggest barriers were to criminal and juvenile practice in Linn County. Finally, respondents were asked what the Court, District Attorney, or OPDS could do to help improve practice in Linn County.

In total there were six respondents to the survey. Years of experience overall ranged from five to forty years of criminal practice experience. Two respondents practiced primarily juvenile defense work.

An overview of responses regarding practice in Linn County:

Local practices that support efficient attorney appointment and effective representation:

- Local attorneys cite a good working relationship with the Court
- Good communication between court staff and consortia staff
- Flexibility in not requiring written motions for uncontested matters like set over requests
- Judicial settlement conferences becoming more widely used

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

- DAs are aggressive in charging, with too much emphasis on minor cases
- Could exercise more prosecutorial discretion, especially on low level, "chippy" cases
- In juvenile cases the opinions of other system stakeholders are not considered, such as OYA, juvenile department, parents, medical professionals
- The DDAs are timely in providing discovery
- The DDAs are generally congenial, professional
- DDAs Tend not to respond to defense offers to resolve until the days leading up to trial, unnecessarily delaying case resolution

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

- Caseloads are too high, not enough attorneys
- Jail visitation
 - Contact visits are difficult to get and not private
 - Cannot call in to speak with client
- Overloading of cases within a month – no accommodation or consideration that you have already received several high severity cases or a high volume in case distribution.
- Not all judges are accommodating to out of county practitioner schedules
- Lack of mentorship/training opportunities for new attorneys as well as less trial experience due to high volume of case settlement
- Emphasis on settling cases quickly, disfavoring case resolution prolonged by zealous advocacy
- Court waiting to set trial dates until they are absolutely necessary can mean your calendar is full

Respondents suggested the following improvements to practice in Linn County:

- Higher salaries, higher hourly rates in line with market rates to aid recruitment and retention
- Provide resources to hire and train new/young attorneys
- Regional approach to public defense, which might allow for more mentorship and training
- A dedicated mental health/aid & assist docket

Court Observation

OPDS had the opportunity to observe several court proceedings, including arraignments, a plea and sentencing, and part of a jury trial. In arraignments and the plea, individuals in custody were not transported to the courtroom where their attorneys were. Instead, they participated via video. Restraints were ordered on some of those individuals appearing remotely without any findings or hearing.

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 Coos Co. Some of the take aways were:

General:

- The bench reports a good relationship with the defense bar
- There is no formal Bench/Bar meetings but the judges host monthly informal meetings

- Judges all operate fairly independently, creating different approaches to issues arising from the attorney shortage
- The Court is fairly permissive with remote appearances
- Out-of-county attorneys practicing in Linn County is fairly common, especially on the civil side
- There is some availability for mentorship by the Court for new attorneys
- Relationships between defense and prosecution are generally good
 - Jurors have noted the collegial atmosphere
- Judges reported that they used to be sent surveys/evaluations to complete about system stakeholders and would like to return to that practice

Juvenile Practice:

- Juvenile appearances are mostly condensed to two courtrooms
- The bench reports the attorneys appearing are prepared, no concerns about competency or effectiveness
- PCRP has improved representation over the previous case credit model
- Relationships between stakeholders are positive
- There is substantial turnover at DHS
- Juvenile bar is made up of solo entities to help with conflicts and is fairly stable
- Barriers to recruiting new public defenders include:
 - Dependency is not taught in law schools, so nobody is qualified to meet the PDSC requirements at graduation
 - Limited training and supervision capacity, would like to see funding for training and mentorship opportunities
 - Lack of resources to help a new attorney open and run their own practice
- There were concerns that the passage of SB 337 would do away with PCRP and other questions around possible effects of the bill on consortium and juvenile practice

Criminal Practice:

- All of the judges handle criminal matters
- Trials continued during the pandemic by using the fairgrounds for trials, held one at a time
- The consortium notified the Court early in the contract cycle that they were going to run out of capacity before the end of the contracting period and spearheaded an initiative to prioritize attorney assignments for in custody cases
- There were concerns from some stakeholders that the MAC model and imposition of caseload caps has hurt the criminal system – that the defense attorneys are being restrained from taking more cases by these caps and could be taking more cases.

- Some thought it was possible that OPDS created this problem for itself by creating this new case limit structure. Stating that PCR/bar complaints are the appropriate remedy for ineffective assistance of counsel, rather than bringing down caseloads proactively
- Arraignments
 - Defense attorney resources are prioritizing in custody cases
 - The Court had been arraigning out of custody cases without available attorneys and then pushing them out 30-40 days in hopes there would be attorneys available. This procedure was being amended to make a determination about release first and then appointing an attorney if an individual is held in custody.
 - Recent practice change to have PC affidavits available in the morning, though this is inconsistent
 - In custody arraignments are held in the afternoon to facilitate pre-arraignment communication with the arraigning attorney
 - This has led to individuals meeting with an attorney pre-arraignment who end up without an attorney because they were released
 - Attorneys pointed out that these pre-arraignment discussions are not compensated and unclear if they have an impact on Court decisions
- Pre-Trial Release
 - District Attorneys are asking for security on cases that historically would have been agreed to as conditional release, possibly in an effort to get attorneys appointed
 - There is limited availability of pre-trial release supervision due to court staffing limitations
 - Release assistance officers/ court staff also being used for bench probation supervision
 - There have been new release initiatives started, drawing on court experiences in other counties
- Typically a case will have 1-2 hearings before it is assigned to a judge
 - Omnibus hearings are held prior to day of trial
 - The court recently ended a practice of not allowing negotiations once trial dates have been set
- There had been concerted outreach to the civil bar to solicit participation in the OPDS civil attorney program
 - Consortium would be interested in working with/supervising civil attorneys under the program

Barriers to recruiting new public defenders include:

- Low pay
- Small hiring pool of experienced attorneys
 - Consortium positions used to be a coveted, competitive job

- Shift to employees wanting to work from home
- Difficult to hire law students due to inability to pay or bill for their time
 - Noted disparity between the fact that DOJ can pay a clerk to handle a case and OPDS does not.
- Providers need the ability to hire and pay for associates or mentorships

OPDS:

- When OPDS was appointed on a case, District Attorney treating OPDS as the attorney of record. This included sending OPDS all discovery for unrepresented cases
- Some confusion and discomfort around appointing OPDS given statutory obligations to have an attorney appointed
- District Attorney position that the Court should appoint attorneys and then have attorneys request market-rate pay from OPDS when billing
- The tiered case system does not take into account case complexities

Takeaways

- Both the criminal and juvenile consortia have dedicated, experienced attorneys who work hard and work well together
- PCRCP has been successful in creating a sustainable, stable juvenile bar that works well together and with the court
- Low pay below market rate has significantly hindered the criminal consortium's ability to recruit new attorneys
- Both the criminal and juvenile consortia would find value in funding for supervision, mentorship, and training to bring new attorneys into their groups
- Linn County has a high level of professionalism and collegiality between criminal system stakeholders, with a strong shared concern over the current attorney shortage
- This collegiality extends to a focus on case resolution, which some feel may be hindering or disincentivizing zealous advocacy by defense
- Criminal system stakeholders worked together to prioritize defense attorney resources, but after several months there is some strain/impatience caused by the prolonged attorney shortage
- There is skepticism cited by prosecution and judiciary that defense attorneys are at their true capacity, instead believing attorneys are being restrained by OPDS caseload limits
- With a few exceptions, criminal public defenders continue to cite high caseloads as a barrier to practice in Linn County
- On both the criminal and juvenile side, providers cite aggressive prosecution practices for increasing their workloads
- There is a desire to return to periodic stakeholder surveys on local practices and practitioners to keep OPDS informed on local issues