



Site Visit Report

Umatilla/ Morrow Counties
May 12, 2023

ABSTRACT

Documentation of Site Visit Pendleton to learn more about Umatilla and Morrow counties. In order to educate the agency on how our services are implemented. Information on issues particular to this jurisdiction that impact the public safety system.

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Introduction

The Sixth Judicial District, located in northeastern Oregon, is one of twenty-seven different judicial districts in Oregon and has jurisdiction in Umatilla and Morrow Counties. The Sixth Judicial district is served by five Circuit Court judges at three courthouses – the courthouse located in Morrow County in the county seat of Heppner, the Umatilla County courthouse in Pendleton and the Umatilla County Courthouse in Hermiston. The two courthouses in Umatilla County are approximately 30 miles apart.

Hermiston is the largest city in Umatilla County, but Pendleton is the county seat. According to the 2020 census, the population of Umatilla County was 80,075. The county has a total area of 3,231 square miles. It borders the Columbia River across from Washington State. Low-cost electricity and good freeway access has Amazon developing large data-center operations in Hermiston. Additionally, major distribution facilities for Walmart, FedEx and UPS are all located in Hermiston. There is also significant agricultural activity with potatoes, onions, corn and more than 200 other crops grown commercially throughout the county.

Morrow County is smaller than Umatilla County. The population of Morrow County was 12,186 as of the 2020 census. The county seat is Heppner. The county has a total area is 2,049 square miles. The county is just west of Umatilla County with its northern border defined by the Columbia River. The principal industries in the county include agriculture, food processing, lumber, livestock and recreation. The Port of Morrow is an active port. It has been reported that Amazon intends to build at least five commercial data centers in Morrow County.

There are two elected District Attorneys in the Sixth Judicial District – the Umatilla District Attorney and the Morrow District Attorney. Public Defense work in the Sixth Judicial district is handled by Intermountain Public Defender, a non-profit public defender office; Blue Mountain Defenders, a consortium; Pendleton Law, a private law office.

Preparation for Site Visit

OPDS staff identified four agency employees to handle the site visit to the Sixth Judicial District: Trial Division Deputy (K.O. Berger), the Program Analyst (B.J. McCartney), the Legislative and Provider Liaison (Autumn Shreve), and the Executive Director (Jessica Kampfe).

The site visit consisted of a preliminary written survey and individual stakeholder meetings. No court observations were done because no hearings were scheduled in the Pendleton Courthouse while the site visit team was there. A 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.

Mr. McCartney contacted all providers in the Sixth Judicial District and Ms. Shreve contacted court staff and the districts attorneys to schedule meetings. Separate meetings were held with each of the public defense providers – Intermountain Public Defenders; Pendleton Law (one solo provider joined our meeting with Pendleton Law) and Blue Mountain Defenders. The site visit team also met with the Umatilla County District Attorney and two of the five judges the acting TCA and court staff.

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 the Sixth Judicial District, their level of experience with the Sixth Judicial District specifically.

Respondents were asked which Umatilla/Morrow court practices facilitated and/or hindered the efficient appointment and effective practice of criminal and juvenile law. Respondents were also asked the same questions about District Attorney practices and public defense practices. Respondents were asked what made the Sixth Judicial District unique, and what the biggest barriers were to criminal and juvenile practice in the Sixth Judicial District. Respondents were asked what the Court, District Attorney, or OPDS could do to help improve practice in the Sixth Judicial District.

There are overarching themes from the providers that are worth highlighting. First, many of the providers mentioned the difficulty of having hearings calendared in two different courthouses approximately 30 miles away without consideration of the attorney's schedule. This situation is exacerbated by the courts' willingness for lawyers to appear remotely but not allowing clients to appear remotely, raising questions about the frequency of clients appearing in person in a courtroom without counsel. The providers also commented on the DA filing practices, overall communication difficulties with the DA Office and inexperience of the deputy DAs affecting case resolution.

Individual Stakeholder Meetings

District Attorney Meeting

The OPDS site visit team first met with Daniel Primus, the Umatilla County District Attorney. While invited, the Morrow County District Attorney, Justin Nelson, did not join the meeting. Mr. Primus is also the current president of the Oregon District Attorney Association and a member of the Tri-Branch Workgroup which has been meeting about reforms to the public defense system in Oregon.

Mr. Primus agreed that having two courthouses in Umatilla County approximately 30 miles apart with no scheduling coordination is difficult. The DA and his deputies meet every morning at 7:45 am in part to ensure that all matters in both courthouses are covered. It is somewhat easier for Mr. Primus because he does have an experienced DA in the office who prefers to work out of the Hermiston office. He later noted that the Umatilla County judges have a communication gap which makes coordinate scheduling difficult

Mr. Primus also discussed the difficulty of recruiting lawyers to Umatilla County. Mr. Primus noted that he currently has three openings. He focuses on long-term recruiting needed to convince lawyers to come to work in Umatilla County. He recruits at the University of Idaho law school, because more people with rural upbringing go to that law school.

On the current unrepresented persons issue, he did not realize how much the issue was burgeoning in his jurisdiction. He stated that the number of cases filed by his office were down significantly.

Judicial Meeting

OPDS then met with the Presiding Judge, another judge, the acting TCA and court staff. They were informed of the use of the unrepresented list and the need to have cases put onto the unrepresented list. OPDS also explained to the judges that there was risk that the public defense providers in the Sixth Judicial District would meet their contractual obligations prior to the end of their contract, which has been a driver of other county's unrepresented persons problem. We learned that the Justice Court had been sending its cases to the circuit court as of six weeks prior because the public defender for Justice Court had cut off taking new cases. The judges made it clear that when the consortium met its contractual obligations, the court in Morrow County would not be able to function. OPDS encouraged the judges and court staff to not merely delay the processing of cases until the beginning of the next public defense contract (July 1, 2023), but, at a minimum, to put the cases onto the unrepresented list so OPDS could understand the extent of the lack of capacity problem in the Sixth Judicial District.

The judges noted that the Umatilla County jail was the largest jail in the region with 250 beds and that the jail was releasing 10-20 persons a day due to overcrowding (Note: providers later told OPDS that while the jail had 250 beds, only 126 of the beds were used due to staffing shortages), and that crime was surging in the area with serious violent crimes driving the numbers. The court attributed this increase in crime to the passage of Measure 110. The judges also noted that their "Aid and Assist" docket was overwhelmed to the point that the judges had never seen such high numbers of persons on that docket.

The judges acknowledged that overall, there is a significant barrier in recruiting and keeping lawyers and staff in Umatilla and Morrow counties. The District Attorney's office, public defense providers and the courts all struggle to recruit and keep

people. The judicial system stakeholders seem to be stuck on the issue of how to use the scarce resources all around. With no party wanting to step out of line into what they viewed as the other's lane.

The judges noted that courts in the Sixth Judicial District had been making use of video appearances since 1996, and their use of video appearances had expanded during the pandemic. The judges still require clients to appear in-person, but most lawyers make use of video and telephonic appearances, meaning that many clients appear personally in court while the attorney appears virtually.

The judges thought that there should be a basic PD training – like the “baby DA school” that is offered to new DAs – for public defenders. The judges expressed frustration that often when they raise concerns about lawyer's performance and are told that the head of the entity has “no control” over the lawyers.

Judge Hill suggested OPDS have three-person trial teams (one lead attorney and two less-experienced attorneys) in each county to handle cases regionally. There was not time to flesh out Judge Hill's idea, which he commented was based on his military background.

Provider Meetings

OPDS met with providers separately to learn more about their experiences as public defense providers in Umatilla and Morrow counties. The meetings were with all three of the main contracting entities, and with a provider, who had an individual contract, joining the meeting with Pendleton Law.

In our meeting with Intermountain Public Defenders (IPD) we discussed their loss of 6 attorneys in the span of six months and how caseloads were completely out of control. As a result, last year OPDS put IPD on a restricted pick-up schedule to allow the office to train and supervise the new attorneys so they could get qualified to handle felony cases. IPD indicated that their caseloads were more manageable. IPD said they were slowly building back up both the number of attorneys and the qualifications of the attorneys, IPD said they have had no issues with losing staff.

Insights from provider meetings:

Everyone was concerned about how few attorneys practice in Umatilla/Morrow and future capacity. They reported that lawyers will come there to get trained and then will leave.

Some stated said that no one can recruit there and there is plenty of retained work so that they did not need to do appointed work.

They discussed recruitment and retention efforts. generally hiring bonuses and the retention money was extremely helpful for them.

There was also promising hires on the horizon for some entities looking to staff up.

Use of electronic discovery is beginning but not streamlined just yet.

Having three courthouses (one in Morrow Co. and two in Umatilla Co) means more time spent by providers driving from courthouse to the other. They reported that the judges are liberal about allowing appearance by phone or video because it saves money for the state.

The jail had a 126- bed cap due to staffing and there is a lot of pre-trial matrixing because Umatilla sells jail beds to Morrow, Union/Wallowa counties and the tribes. The persons in beds from other counties (the "paid" beds) stay in-custody but the Umatilla County clients get matrixed out.

When asked what makes the Sixth Judicial District unique, they said that they are a high-volume jurisdiction because of the number of interstate highways that intersect in the area.

There is a lot of drug and property crimes and that the crime rates are increasing significantly, they cited Measure 110 as resulting in a significant amount of property crime.

Training and supervision, was mostly done in informal trainings and attendance at CLEs/seminars.

Some experienced attorneys have hosted regular "Teach Me How to Lawyer" lunches.

They felt that having more formalized training would be helpful for all the providers in the Sixth Judicial District, but no one had any time to do this.

Some offices felt that everyone was pretty experienced and they frequently discuss issues and cases.

They reported that there is a general lack of investigators in the area and that this was a significant barrier.

There is a real problem with having enough qualified interpreters and that slows a significant number of cases down. There are a lot of Guatemalan dialects spoken in the area.

Defense providers were told help increase the number of persons in drug court, but the way that the drug court is set up, there is no benefit to clients to get involved in drug court.

OPDS Concerns:

The providers also said that it is a problem that there is no additional credit given by OPDS on on-going dependency cases even though the cases can last for years. This results in high caseloads that are unmanageable but are not reflected in the contract count.

There were concerns about fairness among contract entities and whether OPDS or the court was taking it easy on some group over others.

There was a strong desire for the agency to move to a workload model.

There was willingness among some providers to take unrepresented cases over taking on more retained work, but that was in part because of the increased hourly rate they would receive and felt that that should continue.

Others expressed concern about individual hourly contracting proposal. They made it clear that they are not interested taking cases on an hourly basis when the legislature requires that come 2027.

DA Office Concerns:

A feeling that the DDAs charged everything and overcharged many cases. Communication with the DA office was difficult because no one knew who was responsible for what case.

DA office is understaffed that they were also losing attorneys due to low pay and high caseloads.

The DAs do not do any diversions.

DA also insists on prosecuting all FTA and DWS cases.

There does not seem to be a good working relationship with law enforcement and the DA office. There had recently been dismissal of 2 murder cases and a serious M11 case due to Brady violations and prosecutorial misconduct.

There is also a constant influx of mentally ill clients that they cannot get evaluated and often the client cannot get to the state hospital for evaluation. There is a shortage of psychological forensic evaluators able to cover the area.

Providers felt that there was not a good venue to raise systemic concerns.

They believed that the DA counts of the public defenders to train police.

They said that there have been increases to law enforcement but that results only in more crime being discovered.