



Assessing a Social Worker Model of Public Defense

Findings and Lessons Learned from Genesee County, Michigan

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March 2021

Since the 1970s, social workers have been embedded in public defense offices across the US to support attorney-client relationships, improve client experiences in court, and help mitigate client sentences. Yet little research has assessed how social worker programs affect the quality of public defense services or case outcomes of public defense clients, particularly within systems of assigned counsel (Senna 1975; Andrews 2012; Tomes 1997). This brief aims to fill this gap by evaluating the Social Worker Defender Program (SWDP) piloted in one Michigan county's assigned counsel system. Beginning in 2018, the Urban Institute partnered with the Michigan Indigent Defense Commission (MIDC) to assess SWDP's implementation and evaluate its client outcomes. Case file reviews and interviews with court actors and program participants show that, despite implementation challenges, a social worker's presence is beneficial to both court actors and clients¹ of assigned counsel attorneys. We hope this study's results inform the field about efforts to design and implement social worker programs in assigned counsel systems and embolden more jurisdictions to use similarly innovative strategies to ensure quality representation.

In this brief, we discuss the existing literature on social workers in public defense, the social worker's role in SWDP, qualitative and quantitative data findings, and implementation challenges.

History of Social Workers in Public Defense

Social workers joined the criminal legal profession in the 1970s by working in public defender offices on both youth and adult cases, and they have been particularly crucial in capital punishment cases (Senna 1975; Andrews 2012; Tomes 1997). Since joining forces with public defenders, social workers have played a critical role in ensuring that public defense clients receive needed services outside of the criminal justice system. Their work often includes evaluating client needs and referring clients to services. Additionally, they often prepare written reports and appear in court on behalf of their clients (Senna 1975). Although social workers' responsibilities vary across offices and programs, their focus is to consider the client as a whole person and provide the court with insights on the extenuating circumstances behind the client's actions as well as resources to support their success in the community.

As part of incorporating social workers in the day-to-day work of attorneys, public defender offices have increasingly embraced "client-centered," "community-oriented," and "holistic" models of defense to better serve clients and support their well-being as they move through the criminal legal system (Buchanan and Nooe 2015).

Several differences exist between the roles and goals of social workers in standard public defense models versus holistic models. Social workers in holistic defense offices are advocates for clients and critical partners to attorneys (i.e., social workers are part of the defense team); social workers' roles in a traditional office, however, are more limited because they serve as clinicians working parallel with the attorney (Steinberg 2005; Steinberg and Feige 2002; Steinberg and Keeney 2016). While standard defense models tend to focus narrowly on the immediate legal issues of the case, holistic defense models consider broader issues affecting the client (e.g., substance use, mental health, poverty, and family and social support), potential responses or resolutions to these issues, and reentry and the collateral consequences of involvement in the criminal justice system (Steinberg 2005; 2013).

Public defender offices have more recently expanded their practice to include social workers. For example, the 2010 Supreme Court exerted in *Padilla v. Kentucky* that public defenders need to consider collateral consequences of criminal justice involvement when providing representation (DeHart et al. 2016). Immigration status, housing, health care, and eligibility for government assistance programs are all affected by justice contact and cause a cyclical effect of unsupported reentry leading to future recidivism, which the Supreme Court indicated public defense providers need to give more attention. Many public defenders saw this case outcome as a call to action to promote institutional change, which prompted the hire of more social workers in an effort to consider clients as whole people, not only cases on their docket (Smyth 2011).

Previous Evaluations

Although social workers have now been working alongside public defenders for more than four decades, there continues to be little knowledge of social worker models, best practices for implementing social worker programs, and the legal and nonlegal outcomes associated with social worker services. Among the studies that have been conducted, the evidence suggests that embedding social workers in public defense offices can lead to lower caseloads for attorneys, increased case dismissals, and reduced sentence lengths and likelihood of incarceration—decreasing costs at the state and county levels (Anderson, Buenaventura, and Heaton 2019; Buchanan and Nooe 2015; Pott 2016; Steinberg 2013; Walker and Miller 2016).

Although most studies of the efficacy of holistic defense models focus on the immediate legal outcomes of a case, involving social workers in criminal cases can and should impact a client's life beyond the courts. For example, in an article focusing on the nonlegal outcomes of clients, the author found that the Bronx Defenders model of holistic defense has helped clients secure legal immigration and obtain health insurance, as well as prevent clients from home eviction (Steinberg 2013).

These studies provide initial evidence that social workers play a key role on defense teams and in clients' lives. Yet many studies published to date suffer from small sample sizes and lack longitudinal evidence that social worker programs are effective. However, one study published in 2019 found that over the span of ten years, recidivism rates for those who received holistic representation were the same or lower than those without that service (Anderson, Buenaventura, and Heaton 2019). Additionally, we lack research on client perspectives of social worker programs and models that are particularly promising, which could be used as a guide for systems interested in implementing social worker programs in the future.

BOX 1

State Indigent Defense Models

The sixth amendment guaranteed that if people going through the criminal court cannot pay for private counsel, they can be assigned counsel. This attorney is commonly referred to as a public defender, and states and localities use various models to deliver these services. The three most common indigent defense models are as follows:

- **Public defender programs.** These are nonprofit organizations with full- or part-time salaried staff defending their clients.
- **Assigned counsel programs.** Courts appoint private attorneys from a list of willing and available attorneys.
- **Contract attorneys.** This is where a governmental unit contracts private attorneys, bar associations, or private law firms to provide defense services to indigent clients for a set time.

Source: BJS (Bureau of Justice Statistics). 1996. *Indigent Defense*. Washington, DC: Bureau of Justice Statistics.

Michigan's Indigent Defense System

In a 2008 report, the National Legal Aid and Defender Association (NLADA) found that “the state of Michigan fails to provide competent representation to those who cannot afford counsel in its criminal courts.” In Michigan, those who cannot afford counsel represent 60 to 90 percent of cases prosecuted in criminal courts across the state. Michigan's story is familiar: large caseloads and insufficient time and resources can cause public defenders to prioritize time and speed over their clients' needs (Beeman 2012).

In response to these problems, the Michigan legislature created the Michigan Indigent Defense Commission (MIDC) in 2013 to lead efforts to improve legal services for those unable to pay for private counsel. In 2017, MIDC received a federal grant to pilot test a program to place a social worker inside Genesee County's assigned counsel system, located in Flint and the surrounding area. The project had three objectives: (1) embed one social worker within the assigned counsel system to act as an advocate for people charged with a felony criminal offense; (2) assess SWDP implementation and effectiveness through an intensive process and outcome evaluation; and (3) develop a program manual to increase practitioners' knowledge of social workers as a resource for public defense, guide replication, and enhance sustainability.

Genesee County is one of many assigned county systems in the state of Michigan. As an assigned counsel system, clients in Genesee County are assigned attorneys from a list of approximately 80 available private attorneys. These attorneys represented more than 80 percent (on average) of people with a criminal case in the county's Circuit Court during the years SWDP was in operation (2018–early 2020); approximately 20 percent of the population in Genesee County live at or below the poverty level.² Of the people with criminal cases in the District and Circuit Courts between 2018 to June 2020, more than 40 percent were Black or African American, despite only 20 percent of the Genesee County population identifying as Black or African American³ (see table 1).

TABLE 1

Genesee County, MI, Case Characteristics, 2018–June 2020

	District ^a			Circuit		
	2018	2019	2020	2018	2019	2020
Total cases^b	17,143	16,977	–	1,920	1,913	469
Gender^c						
Male	5,571	5,281	2,140	1,444	1,457	367
Female	1,997	2,020	771	207	248	58
Race						
White/caucasian	3,853	3,739	1,514	727	787	189
Black/African American	3,554	3,335	1,290	877	873	213
Other	3	6	4	54	42	23
Age						
Under 18	189	191	58	60	26	5
18–24	1,234	1,356	570	323	261	60
25–34	2,289	2,458	977	595	620	137
35–49	1,848	2,226	926	492	557	180
50–64	780	976	352	167	229	37
65 and older	90	100	33	16	21	6
Legal representation						
Assigned counsel	2,697	2,868	1,222	1,477	1,600	473
Private/retained counsel ^d	–	–	–	380	288	56
None/unknown	5,335	4,825	2,364	146	51	9
Top offense sentenced						
Violent offense	424	418	92	365	405	140
Sex offense	8	7	2	99	92	44
Property offense	925	996	284	469	392	128
Drug offense	306	215	72	495	392	128
Weapons offense	144	123	33	253	263	75
Driving offense	81	91	59	128	188	64
Probation or parole violation	8	8	1	4	29	2
Other	367	440	123	35	53	26

Notes: ^aIn Michigan, all adult criminal proceedings begin in the District Court. The District Court issues arrest and search warrants, sets bail, accepts bonds, conducts arraignments and probable cause conferences, and presides over preliminary examinations. The Circuit Court presides over felony cases that proceed from the District Court.

^b This number represents the total caseload of new filings; totals were not available for 2020.

^c Individual and case characteristics are counted at the case level; the numbers do not total across categories because of missing data.

^d Information not available for the District Court.

BOX 2

Racial Equity Implications of Quality Representation

The quality of indigent defense has a direct impact on racial disparities in the criminal justice system. The criminal justice system both highlights and exacerbates socioeconomic racial disparities. Black or African American people make up a disproportionate share of the impoverished population in the country, largely because of systemic discrimination in education, employment, and other areas of society (Beyer 2020). Further, Black or African American people are more likely to become involved in the criminal justice system because of several factors including over-policing and pervasive poverty and lack of economic opportunity. This has a cyclical effect because economic barriers for those with criminal justice records often stand between incarceration and successful reentry.

Because public defenders' clients are impoverished and often disproportionately Black or African American, they face tremendous adversities. There should be high expectations for quality defense to decrease the racial disparities in the criminal justice system. Further, multidisciplinary teams, including social workers, allow public defense providers increased opportunities to support clients' needs based on the external economic challenges they face.

Structure of SWDP

SWDP was developed in collaboration with an interdisciplinary team of researchers, social workers, and attorneys from across the US. A primary goal of the program was sentence mitigation, or to increase use of community sentences for people charged with lower-level felony offenses. For this reason, SWDP focused specific attention to those cases that straddled community and jail sanctions on the Michigan sentencing grid—also called straddle-cell cases.

SWDP was designed to focus on straddle-cell cases because in these cases that judges have the most discretion to impose intermediate sanctions in lieu of prison sentences, including treatment, community service, supervision, or restitution; additionally, they may be more likely to consider the broader circumstances surrounding clients' lives, providing a context in which social workers may have the most significant impact.

The social worker in the SWDP worked with program participants to develop alternative sentencing plans, which were presented to the court. These sentencing plans allowed the defense team to provide a comprehensive image of the client, including background information, any past or present circumstances that may account for why the person has been and/or is currently involved with the criminal legal system, personal references, and recommendations for addressing their individual needs and ensuring success in the community (i.e., substance use treatment, educational or job placement services, counseling, etc.). The sentencing plan also included any progress they made to date to enroll in treatment, counseling, educational, or other support services.

Although secondary, another goal of SWDP is to increase advocacy for people involved in the criminal justice system, collaboration between criminal justice actors and community workers, and

referrals to community services for people involved in SWDP. High caseloads and a lack of funding constrain the amount of time public defenders can devote to this work, but social workers can work with community organizations to strengthen the connection between their client and the community to which they belong (Taylor 2011).

Methodology

The SWDP in Genesee County operated from September 2018 to January 2020. During this time, 78 adults were referred to SWDP, and 39 adults completed the program, meaning Sentencing Mitigation Plans were completed and submitted to the court. Sentencing Mitigation Plans are reports filed with the court that summarize the client's background, the goals, and recommendations for community-based services. Referrals to SWDP came from seven roster attorneys—five who identified as female and two who identified as male—who agreed to participate in SWDP. The referral process began with the attorney determining whether their client was eligible for referral to SWDP based on the seriousness and potential outcomes of the case (i.e., whether the case could receive a community or jail sentence according to the Michigan sentencing guidelines).

As an attorney, participation in SWDP required completing a six-hour training on how to work collaboratively with the social worker and then involved referring clients to the social worker, conferring with the social worker on cases, keeping her updated on court dates and outcomes, and presenting the alternative sentencing plan to the judge for review before the sentencing hearing. Because attorneys in Genesee County are paid by the hour, participating attorneys received a small stipend to compensate them for each case in which the social worker was involved.

Over the course of the grant, Urban in collaboration with MIDC conducted a process evaluation including five data collection activities: (1) case file reviews of 83 SWDP program participants; (2) approximately one and a half years of ongoing and monthly interviews with the social worker; (3) semistructured interviews with five attorneys pre- and postimplementation; (4) semistructured interviews with two judges postimplementation; and (5) semistructured interviews with 10 clients postimplementation (four female identifying; six male identifying). Although the initial intent of this project was to conduct a rigorous outcome study, program start-up challenges, delays, and the low number of people served by the program prevented the ability to conduct a more rigorous quantitative study.

Results

Beginning in September 2018, a total of 78 people were referred to SWDP by their respective attorneys who worked with the program. Of the 78 referrals to SWDP, 13 were determined ineligible for the program because they either did not consent to participate in the program when it was presented by the pretrial worker, accepted a plea bargain, or their case was dismissed before the social worker was able to make contact. More than half of those referred to and enrolled in the program were charged with a

violent or drug offense (37 percent and 27 percent, respectively). Around 90 percent reported prior criminal justice involvement, and 75 percent had previously served time in prison (see tables 2 and 4).

TABLE 2
Social Worker Defender Program Referrals and Outcomes

	N
Contact with the program	
Referred	78 (80%)
Unable to contact	2 (2%)
Retained private counsel ^a	4 (4%)
Ineligible referral ^b	13 (14%)
Assessments completed	
Yes	61 (63%)
No	36 (37%)
Sentencing Mitigation Plan submitted to the court	
Yes	39 (40%)
No	58 (60%)
Number of client contacts (per client with a completed assessment)	
1	15 (25%) ^c
2	27 (44%)
3	13 (21%)
4	3 (5%)
5-10	3 (5%)
Number of family/acquaintance contacts (per client with a completed sentencing report)	
1	12 (31%)
2	12 (31%)
3	7 (18%)
4	5 (13%)
5-10	1 (2%)
Missing data	2 (5%)
Service recommendations and referrals (per sentencing reports)	
Educational counseling	6 (15%)
Mental health treatment	16 (41%)
Substance use treatment	22 (56%)
Anger management	6 (15%)
Life skills counseling	27 (69%)
Parental supports	1 (2%)
Housing supports	3 (8%)

Notes: ^aIncludes two people who retained private counsel after they were enrolled in the program and an assessment was completed.

^bIncludes people who did not consent to participate in the program or whose case was dismissed or sentenced (i.e., a plea was accepted) after referral but before the program could begin.

^cIncludes six cases in which data was missing on the number of client contacts; however, we assumed at least one client contact because an assessment was present.

Following an initial meeting with the attorney, the social worker met privately with clients to provide an overview of the program, address any questions the client may have, and complete a psychosocial assessment. Psychosocial assessments are used widely across holistic defense programs with social workers, and they provide an opportunity to learn about the participant, understand the

context that brought them into contact with the criminal justice system, and understand their needs and goals. Key information gathered in the SWDP assessment included demographic information, education and employment history, physical and mental health, substance use history, living situation, and relationship and family dynamics, including history of trauma. As noted by the social worker, “completing the assessment was a tool for change with many clients because they had never done a review of their lives and saw how past encounters and experiences had bearing on their current conditions and behaviors.”

Case File Reviews

A total of 61 assessments were completed with people referred to SWDP. Of those who completed an assessment, 82 percent identified as male and 56 percent identified as Black or African American, respectively. The largest share of people who completed an assessment were between the ages 25 and 34 or 35 and 44. The majority reported having one or more children and were unemployed. Around 70 percent reported a history of witnessing violence or another traumatic experience, 64 percent reported suffering from mental or emotional health issues in the past, and 85 percent reported a history of substance use (see table 3). The most common mental health concern reported was bipolar disorder (44 percent), followed by attention deficit hyperactivity disorder (30 percent) and depression (26 percent; see table 3).

TABLE 3
Program Participant Background Characteristics (n = 61)

	N
Gender	
Male	50 (82%)
Female	11 (18%)
Race	
White	22 (36%)
Black or African American	34 (56%)
Missing	5 (5%)
Ethnicity	
Hispanic	2 (3%)
Non-Hispanic	59 (97%)
Age	
18–24	12 (20%)
25–34	21 (34%)
35–44	21 (34%)
45–54	2 (3%)
55–64	5 (9%)
Married	
Yes	3 (5%)
No	56 (92%)
Missing	2 (3%)
Children	
No children	15 (25%)
1	15 (25%)

	N
2	11 (18%)
3 or more	19 (30%)
Missing	1 (2%)
Highest grade completed	
Lower than high school	7 (11%)
Some high school	12 (20%)
High school graduate	16 (26%)
GED	15 (25%)
Some college, no degree	10 (16%)
Associate's (2-year) degree	0 (0%)
Bachelor's (4-year) degree	0 (0%)
Missing	1 (2%)
Employed	
Yes	24 (39%)
No	36 (59%)
Missing	1 (2%)
CPS/foster system history	
Yes	10 (16%)
No	50 (82%)
Missing	1 (2%)
Special education reported	
Yes	27 (44%)
No	33 (54%)
Missing	1 (2%)
History of interpersonal violence	
Yes	29 (47%)
No	31 (51%)
Missing	1 (2%)
History of witnessing violence/trauma	
Yes	44 (72%)
No	16 (26%)
Missing	1 (2%)
Mental health history	
Yes	39 (64%)
No	21 (34%)
Missing	1 (2%)
Substance use history	
Yes	52 (85%)
No	8 (13%)
Missing	1 (2%)
Parental substance use history	
Yes	45 (73%)
No	15 (25%)
Missing	1 (2%)
Parental CJS involvement	
Yes	12 (19%)
No	48 (79%)
Missing	1 (2%)

Because part of the program's goal was to connect the client to community-based services, the social worker collected documentation of service coordination, including client acceptance or service

enrollment letters, or participation and/or completion of services to submit to the judge. The most common service recommendations and referrals included in Sentencing Mitigation Plans were life skills counseling (69 percent), substance use treatment (56 percent), and mental health treatment (41 percent).

In addition to connecting people to community programs and services, the social worker gathered information that established client community support. Specifically, during the assessment the social worker asked the participant to identify family members, friends, coworkers, or other resources in the community who could serve as a reference for the person and whom could speak to their character and willingness to succeed in the community. Letters of support were gathered when possible, and conversations were integrated in the Sentencing Mitigation Plan. In 62 percent of cases, the Sentencing Mitigation Plan included one to two family or acquaintance references; in 31 percent of cases two to three family or acquaintance references were included in the Sentencing Mitigation Plan.

A total of 39 Sentencing Mitigation Plans were submitted to the court over the course of SWDP. Thus, in 22 cases in which an assessment was completed, a case was either dismissed or diverted, a plea was agreed to, contact was lost with the client, or the person retained private counsel. Each plan was unique because it discussed the past and present circumstances that accounted for the person's contact with the criminal legal system, the goals and needs as articulated by the client, and options for community-based sentencing, which paralleled the community service needs and any connections made to date by the social worker.

Interview Insights

Although SWDP was implemented for fewer than two years, interviews with court actors and program participants indicate the program was perceived as having a positive impact on judges' knowledge of community treatments and supports, sentencing decisionmaking and outcomes, attorney-client relationships, and defendant experiences within the court system.

Across the board, all attorneys and judges interviewed during this pilot test felt as if SWDP increased their awareness of resources available to clients in the community. To assist judges in understanding the recommendations the social worker presented, she would describe the community programs in the report. Both judges interviewed for this study indicated that they appreciated the description provided, which helped them learn about resources available in their community and the programs suggested by the social worker. Additionally, attorneys appreciated that the social worker took initiative to seek out programs not widely recognized by court workers and assist their clients in connecting with community services before sentencing—a role they did not feel they had time to fill. One attorney said, "It was new things and not run of the mill things for treatment options. She came up with different programs none of us knew about. Probation didn't know the places and felt like it was too much work to look into."

When asked whether SWDP had any impact on case outcomes, court actors and program participants believed the program positively affected judges' impressions of their clients and the

sentences administered. Specifically, six out of the ten program participants interviewed indicated that they felt as if the Sentencing Mitigation Plan impacted the outcome of their case. The report was perceived as influential in judicial decisionmaking because it provided an opportunity for judges to gain a more holistic understanding of the defendant. One participant interviewed said, “I really think that the report did have an impact because [judge] saw that I had never been in trouble and saw what was going on in my life. There was just so much stuff going on in my life and having her write it out helped the judge understand it more than what I went in there and said, or just what the charges said.”

This reflected a larger trend that the social worker’s reports humanized the participants for the judge. One judge agreed, noting, “I consider myself to be a compassionate person and when thinking about the sentences that people received...I appreciated the report because it is important to know where someone comes from, their life history, as well as their potential...I don’t think that there is a judge that doesn’t think that more information is not useful...I wish it were more expansive. I would have loved to received more of them.”

Judges and attorneys indicated that they often seriously considered the recommendations included in the Sentencing Mitigation Plans, and in many cases the social worker and attorneys felt as if the plans either impacted the sentencing decision or that the recommendations were considered significant enough to be included in the probation terms. Notably, just under a quarter of people ($N = 13$) who completed an assessment received a jail sentence; more than half of people received a sentence of probation (see table 4).

TABLE 4
Program Participant Justice System Involvement and Case Outcomes ($n = 61$)

	N
Prior criminal justice system involvement	
Yes	55 (90%)
No	6 (10%)
Prior time served in prison	
Yes	46 (75%)
No	13 (22%)
Missing	2 (3%)
Currently on supervision	
Probation	12 (20%)
Parole	3 (5%)
No	46 (75%)
Current case top offense charged	
Violent offense ^a	22 (37%)
Sex offense ^b	0 (0%)
Property offense ^c	5 (8%)
Drug offense ^d	16 (27%)
Weapons offense ^e	7 (11%)
Serious driving offense ^f	7 (11%)
Probation or parole violation	1 (<1%)
Unknown	0 (0%)
Other	3 (5%)
Case outcome	

	N
Case dismissed	5 (8%)
Diverted to drug court	5 (8%)
Probation	33 (54%)
Jail sentence < = 30 days	4 (7%)
Jail sentence 31 days–364 days	8 (13%)
Jail sentence 1–2 years	4 (7%)
Jail sentence 3–5 years	1 (2%)
Other ^g	34 (56%)
Unknown	13 (21%)
Top offense sentenced	
Violent offense	21 (35%)
Sex offense	0 (0%)
Property offense	5 (8%)
Drug offense	16 (27%)
Weapons offense	5 (8%)
Serious driving offense	7 (11%)
Probation or parole violation	2 (3%)
Unknown	2 (3%)
Other	3 (5%)

Notes: ^a Excludes sex offenses below; examples are murder, robbery, and assault.

^b Examples are rape, sexual assault, sexual conduct with a minor, indecent exposure.

^c Examples are burglary, arson, larceny, motor vehicle theft.

^d Examples are possession, use, sale or furnishing of a drug or intoxicating substance or drug paraphernalia prohibited by law.

^e Examples are possession, carrying, use, sale, or manufacture of weapons prohibited by law.

^f Excludes motor vehicle theft; examples are driving under the influence of alcohol, driving with license revoked, driving resulting in an accident/injury, and reckless driving.

^g Most common other case outcomes include restitution and court fees.

A final but important outcome of the SWDP program was the impact the social worker had on attorney-client relationships and defendant experiences in court. Importantly, all attorneys interviewed indicated they felt as if the social worker’s role had a positive impact on their interactions with clients and their ability to advocate for clients in court. Further, attorneys indicated that they spent more time with their clients both during the initial interview and throughout the case as a result of SWDP, and they believed their clients had a better understanding of their charges, court proceedings, and potential outcomes. Interviews with program participants confirmed this perspective—eight out of the ten people interviewed indicated they felt the social worker helped them work with their attorney and understand how their case was proceeding.

BOX 3

Potential Benefits of Incorporating Social Workers in Public Defense Offices

Legal and case outcome benefits associated with incorporating a social worker in public defense work can include the following:

- reduced caseloads for attorneys;
- increased case dismissals;

- reduced sentence lengths and likelihood of incarceration;
- diminished costs at the state and county level partially because of lower incarceration rates;
- increased information sharing with judges to aid their sentencing decisionmaking, and with attorneys to increase their ability to advocate for their clients' case outcomes;
- reducing future recidivism;
- improving attorney-client relationships and defendant experiences within the court system; and
- increasing clients' understanding of court proceedings.

Nonlegal, or outside the courtroom, benefits can include the following:

- assisting clients in identifying goals and needed services;
- providing clients referrals to community services;
- promoting client engagement with the community;
- information sharing with family and friends of incarcerated people through the court process;
- increasing knowledge about community services across criminal justice actors;
- increasing collaboration between the criminal justice system and community-based organizations; and
- influencing the culture of public defense practice (i.e., normalizing multidisciplinary or holistic practices).

Implementation Challenges

SWDP struggled with three primary challenges: (1) competing professional standards regarding confidentiality; (2) determining eligibility; and (3) implementing a social worker program within an assigned counsel system. In the SWDP, conflicting requirements existed related to professional conduct and client confidentiality. In Michigan, social workers are considered mandatory reporters, meaning they must disclose to authorities whenever they learn of child abuse, abuse of vulnerable adults, or an imminent harm to a recognizable third party.⁴ Violation of their ethical standards means loss of license among other penalties. Attorneys, on the other hand, are expressly prohibited from disclosing client communication unless there is client consent.⁵ Like social workers, attorneys are also vulnerable to professional censure and loss of license and civil damages if these confidences and professional rules are breached without client consent.

Thus, one key lesson learned through this pilot test is the imperative to understand the statutes regarding mandatory reporting and client-attorney privilege and to secure social worker and attorney buy-in before hiring social workers or implementing holistic models of defense. Equally critical is statewide legislation that extends the protection of attorney-client privilege to social workers working as part of a defense team.

A second challenge to implementing SWDP was determining client eligibility. The intent of SWDP was to mitigate sentences in cases that straddled community and jail sanctions on the Michigan sentencing grid, as it was envisioned that in those cases a social worker can have the most impact on the outcome of a case. The burden to determine whether a case was eligible was on the attorneys, and many indicated it was challenging to determine eligibility within the time frame referrals were to be made to SWDP and with the limited information initially received about a case. Because attorneys were making referrals after they were assigned a case and before the probable cause conference, they often lacked criminal history and other information on their clients that would allow them to determine whether the case was strictly a straddle-cell case, and on several occasions they felt as if they missed referring cases that would have benefited from the program, or they referred cases that would result in prison sentences regardless of the social worker intervention.

Finally, implementing SWDP in an assigned counsel system did illuminate issues that would not be present if the same program were implemented in a more organized public defender office. In particular, assigned counsel attorneys in Genesee County do not work in one central office, making communication, coordination, and collaboration between the social worker and attorneys more difficult than if members of the team were co-located.

Additionally, because assigned counsel attorneys work independently from each other and no formal chief or leader sets standards of culture, structure, and practice, achieving buy-in from attorneys to incorporate a social worker in their practice may be a struggle across the board.

Implications for Future Research

The positive outcomes of SWDP suggest that similar implementation of a social worker in various public defense models could result in higher-quality defense representation. Thus, future research should examine social worker programs and holistic models of defense that are implemented in diverse public defense systems. This research should not focus strictly on the impact of social workers on sentencing outcomes, but also consider how social workers influence the culture of public defense practice, attorney-client relationships, client perspectives of their court experiences, and client engagement with community services.

Additionally, longitudinal research is needed to understand whether social worker interventions have a lasting impact not only on sentencing outcomes, but also on client outcomes related to treatment, employment, recidivism, and other social outcomes. In public defense systems across the US, offices continue to struggle to secure funding for social workers and other support staff to advocate for the needs of clients moving through the criminal legal system. Continued research showing the positive effects and importance of integrating social worker professionals in defense models can provide additional leverage for systems to secure funding, as well as a foundation to assist offices in implementation by identifying the challenges to implementation and best practices for the field.

Conclusion

Although social workers have been embedded in public defense offices across the country since the 1970s, very little rigorous research has been conducted on the impact of social worker programs, including which models show the most promise and best practices for implementation in diverse defense systems. In this paper, we assess a social worker program that was pilot tested in one Michigan county's assigned counsel system. The goals of the program included mitigating sentences and connecting publicly assigned counsel clients to community services.

Interviews with court actors and program participants indicate the program did have a positive effect on judicial considerations in sentencing, attorney-client relationships, defendant experiences with the court systems, and connecting clients to community services, as well as building court actors' knowledge of services available in their own community. Although implementing a social worker program in an assigned counsel system presents unique challenges, they are not unsurmountable. As one attorney stated, "people shouldn't be unable to participate because of how their county system is set up. The defendants shouldn't have to suffer because of that. We demonstrated that it can work in this system with how we are set up, just as it works in other systems. At least from my vantage point, the program is essential everywhere."

Notes

- ¹ Throughout this brief, we use the term "clients" to refer to people facing criminal charges in court, known in many spaces as "defendants." We have chosen the term clients for because it represents a defense-side perspective on their relationship to social workers and defense attorneys.
- ² "Genesee County, Michigan Profile," US Census, 2018, <https://data.census.gov/cedsci/all?q=genesee%20county%20mi>.
- ³ "Genesee County, Michigan Profile," US Census.
- ⁴ Mich. Comp. Laws § 722.623 (2017) (mandating social workers report child abuse or neglect if they have reasonable cause to suspect harm); Mich. Comp. Laws § 400.11a (2017) (mandating social workers report abuse toward vulnerable adults); Mich. Comp. Laws § 330.1946 (2017) (mandating social workers report a threat of physical violence against a reasonably identifiable third person).
- ⁵ Mich. Rules of Prof'l Conduct R 1.6.

References

- Anderson, James, Maya Buenaventura, and Paul Heaton. 2019. "The Effects of Holistic Defense on Criminal Justice Outcomes." *Faculty Scholarship at Penn Law* 132 (3): 819–93.
- Andrews, Arlene B. 2012. "American Bar Association Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases: Implications for Social Work." *Social Work* 57 (2): 155–64.
- Beeman, Marea. 2012. *Using Data to Sustain and Improve Public Defense Programs*. Westminster, CO: The Justice Management Institute.
- Beyer, Don. 2020. *The Economic State of Black American in 2020*. Washington, DC: US Senate Joint Economic Committee.

- Buchanan, Sarah, and Roger M. Nooe. 2015. "Defining Social Work within Holistic Public Defense: Challenges and Implications for Practice." *Social Work* 62 (4): 1–7.
- DeHart, Dana, Steven Lize, Mary Ann Priestler, and Bethany A. Bell. 2016. "Improving the Efficacy of Administrative Data for Evaluation of Holistic Defense." *Journal of Social Service Research* 43 (2): 169–80.
- Pott, Robin C. 2016. "The Flint MDT Study: A Description and Evaluation of a Multidisciplinary Team Representing Children in Child Welfare." In *Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System*. Washington, DC: ABA Center on Children and the Law.
- Senna, J. Joseph. 1975. "Social Workers in Public Defender Programs." *Social Work* 20 (4): 271–77.
- Smyth, McGregor. 2011. "'Collateral' No More: The Practical Imperative for Holistic Defense in a Post-Padilla World... Or, How to Achieve Consistently Better Results for Clients." *Saint Louis University Public Law Review* 31 (1): 139–68.
- Steinberg, Robin G. 2005. "Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers, and More Satisfied Clients." *NYU Review of Law and Social Change* 30:625–35.
- Steinberg, Robin. 2013. "Heeding Gideon's Call in the Twenty-first Century: Holistic Defense and the New Public Defense Paradigm." *Washington and Lee Law Review* 70:961–1018.
- Steinberg, Robin, and David Feige. 2002. *Cultural Revolution: Transforming the Public Defender's Office*. Boston, MA: Executive Session on Public Defense.
- Steinberg, Robin, and Elizabeth Keeney. 2016. "Shared Roots and Shared Commitments: The Centrality of Social Work to Holistic Defense." *The Haim Striks School of Law Journal* 22:211–42.
- Taylor, Kate. 2011. *System Overload: The Costs of Under-Resourcing Public Defense*. Washington, DC: Justice Policy Institute.
- Tomes, Jonathan P. 1997. "Damned If You Do, Damned If You Don't: The Use of Mitigation Experts in Death Penalty Litigation." *American Journal of Criminal Law* 24 (2): 359–99.
- Walker, Robert and Miller, Jaime. 2016. *SFY 2014 Evaluation Report: Kentucky Department of Public Advocacy Alternative Sentencing Worker Program*. Lexington: University of Kentucky Center on Drug and Alcohol Research.

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Acknowledgments

This project was supported by Grant No. 2016-AJ-BX-K044 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The views expressed are those of the authors and should not be attributed to the Urban Institute, its trustees, or its funders. Funders do not determine research findings or the insights and recommendations of Urban experts. Further information on the Urban Institute's funding principles is available at urban.org/fundingprinciples.

The authors would like to thank the Michigan Indigent Defense Commission, particularly Jonah Siegel and Jessica Flintoft, who contributed to the research and development of this evaluation. Also, the authors are deeply indebted to the social workers, attorneys, judges, and program participants from Genesee County who graciously gave of their time to provide input to this evaluation.



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