



**TFDP**

**TEXAS FAIR DEFENSE PROJECT**



**Strengthening Juvenile  
Defense Representation  
by Partnering with  
Social Workers  
A Holistic Approach**

*Susanne Pringle*

## About TFDP

The Texas Fair Defense Project's mission is to improve the fairness of Texas's criminal courts and ensure that all Texans have access to justice.

TFDP focuses on improving the public defense system and challenging policies that create modern-day debtors' prisons filled with poor people who cannot afford to pay commercial bond fees and post-conviction fines and costs.

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Any mistakes, however, should be attributed to the staff of TFDP.

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**TEXAS FAIR DEFENSE PROJECT**

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# Strengthening Juvenile Defense Representation by Partnering with Social Workers

## A Holistic Approach

**CRIMINAL DEFENSE ATTORNEYS ACROSS THE NATION HAVE ADOPTED HOLISTIC MODELS** of lawyering in the face of increasing recidivism and the expansive collateral consequences of conviction. While a traditional criminal defense lawyer may have measured success in wins and losses at trial, a holistic practitioner looks beyond the resolution of the criminal case to consider the case's impact on the rest of the client's life, as well as what brought the client into the criminal justice system in the first place. Ultimately the attorney wants to help the client avoid returning to the criminal justice system. Toward that end, the holistic practitioner often employs advocacy and services that go beyond the courts. Because each client's legal, social, and familial situation is different, each client requires an individualized strategy.

Holistic representation generally requires collaboration between attorneys and other professionals who can provide social services, mental health services, investigation, civil legal representation, or other services that are necessary to help the client succeed, but that are beyond a criminal defense attorney's expertise. Defense attorneys most frequently partner with social workers in an effort to improve client outcomes. Social workers contribute interview skills and case management training, as well as connections to and knowledge of community services and an understanding of how community and family systems act on individuals. With these skills, social workers can help defense attorneys better identify defendants' goals, strengthen defense strategies, and develop service plans to help a defendant succeed during pretrial release, diversion, or probation. Social workers can be especially necessary and effective collaborators in the representation of the most vulnerable criminal defendants, including juveniles and adults with mental illness. For these defendants, a service plan may be essential to case outcomes or to helping a defendant successful be after disposition.

This report provides an introduction to the role social workers can play in holistic representation, with a focus on juvenile defense. The report first explores some definitions of holistic representation, as well as some positive individual and social outcomes of holistic representation. Second, the report addresses why holistic defense is especially effective and necessary for defendants with mental health problems and juvenile defendants. Examples of different holistic defense models from across the country are included to illustrate how holistic models have been implemented in practice. Finally, this report explores the most common holistic collaboration in criminal defense—social workers working with attorneys. The benefits of collaborating with social workers are described and key distinctions between the legal and social work professions that can create conflict are outlined. This section concludes with best practices to lessen the impact of those conflicts.

## Holistic Representation—Looking Beyond the Criminal Case

Holistic representation originated in the realization by defense attorneys that a defendant's criminal case cannot be fully addressed without considering the case within the context of the defendant's overall life circumstances.<sup>1</sup> Holistic representation is criminal defense that goes beyond conventional representation to consider other factors impacting the long-term stability and well-being of the defendant. It seeks the best possible resolution for the pending charges against the defendant while enabling her to make the changes necessary to prevent future court involvement.

Though the goals are similar, implementations of holistic representation in real life are diverse and there are varying definitions and terms for the practices.<sup>2</sup> The Bronx Defenders, a public defense office in New York, is commonly recognized as the pioneer of holistic defense as a model of criminal defense.<sup>3</sup> Their robust implementation of holistic representation includes social workers, legal advocates, family court advocates, immigration attorneys, civil attorneys, and investigators, collaborating with defense attorneys on teams. Other holistic models use social workers only for a specific part of a case and in a particular stage of the process. Many models pair defense attorneys with social workers on cases where the defendant is especially vulnerable, perhaps because of her age or mental health. This report uses the term "holistic representation" to describe a range of defense practices that focus on the client beyond her case, including models that incorporate social work resources for only one aspect of a case, as well as those models that are as robust as The Bronx Defenders.

In practice, holistic representation can accomplish a range of objectives from strengthening the defense case for dismissal of the charges to stabilizing the defendant's mental health condition. Holistic defenders say that their approach allows them to get to know their clients better so they can more effectively advocate for the client's desired legal outcome in the criminal case, while also addressing issues that may impede a client's success post-disposition.<sup>4</sup>

## The Impact of Holistic Representation

Proponents of holistic representation, especially its practitioners, say that it leads to better case outcomes and life outcomes for clients than traditional criminal defense does. Specifically, advocates cite increased case dismissals, higher acquittal rates, and higher rates of probation for defendants represented by holistic or interdisciplinary teams.<sup>5</sup> Defense offices have also demonstrated a decrease in recidivism among defendants receiving holistic representation, as well as increased engagement with community services upon completion of a defendant's case.<sup>6</sup> The practice of considering collateral consequences while navigating the criminal case should also lead to fewer collateral consequences in some cases and a lessening of their impact in others. Additionally, advocates give anecdotal evidence of improved life outcomes for clients who are able to retain housing, maintain employment,

or improve their family situation because of services they have been connected to through holistic representation. Advocates also point to the money they save the criminal justice system if holistic representation can prevent long-term criminal justice involvement, especially for youth.<sup>7</sup> Finally, The Bronx Defenders has used client surveys to document an increase in their clients' confidence in their attorneys, which they attribute to their holistic defense practices.<sup>8</sup>

Some attorneys and scholars who are wary of holistic representation claim that it is too time-intensive, and therefore could interfere with an attorney's ability to provide zealous legal advocacy to all her clients.<sup>9</sup> Those attorneys also cite time constraints when worrying that a holistic model would not be scalable to an entire defense practice.<sup>10</sup> Some defender offices have also hesitated to add holistic services when budgets are already limited and offices must choose between hiring additional attorney staff or hiring or contracting with non-lawyer professionals. Advocates of the holistic model would counter that the initial costs of adding interdisciplinary staff should lead to savings when the defendants they serve are able to succeed outside detention or avoid repeat involvement with the criminal justice system. The Bronx Defenders has shown that holistic representation does not have to be substantially more expensive than the traditional defender model by maintaining a cost-per-case that is similar to that for other defender offices within their jurisdiction.<sup>11</sup> Additionally, smaller offices have found that they could make their practices more holistic by redefining the roles of individuals already employed by their office and not having to change their budgets.<sup>12</sup> The question of whether and how much holistic representation impacts case outcomes and recidivism has also sparked several ongoing national studies, including one currently funded by the National Institute of Justice.<sup>13</sup>

## Holistic Representation of Defendants with Mental Health Needs

Holistic representation is most commonly practiced with defendants who have mental health needs. This representation is often prospective and forensic in nature. For defendants with mental illness, their charges frequently stem from behavior associated with their illnesses, including misdemeanor offenses like public intoxication or criminal trespassing. To adequately represent a defendant with mental illness, the legal team must have an understanding of the defendant's medical history and health needs, as well as the ability to connect the defendant to community services. Often, developing a



strong service plan is the most effective thing an attorney can do for the client, both for the outcome of the criminal case and the client’s life. For example, a plan that connects a defendant to an appropriate community-based treatment center may be what gets a defendant released on bond or secures probation. Because attorneys are not trained to conduct social interviews, understand medical histories, or work with social services, the representation of these clients with special needs is dramatically enhanced when attorneys work with social workers to gather knowledge, consider case dispositions, and provide social services.

Several models exist for providing holistic defense representation to defendants with mental health needs that effectively integrate social workers. Some defender organizations have a social worker on staff or in a contract relationship and attorneys are able to refer individual cases to the social worker. Other defender organizations have created units or even stand-alone defender offices, with attorneys and social workers dedicated to working with defendants with mental illness in a team model. Texas is an example of a state where several indigent defense offices have created mental health teams that include social workers, while other counties have created stand-alone Mental Health Public Defender Offices.<sup>14</sup> Thus far, the stand-alone offices in Texas generally represent only adults, though the mental health units within larger public defender offices that also provide juvenile representation have enabled occasional participation from staff social workers in juvenile cases.<sup>15</sup>



## Juvenile Clients Need Holistic Representation

Of all criminal defendants, juveniles facing delinquency adjudication or adult prosecution are likely the most in need of holistic representation. The youth in the juvenile justice system have long been recognized to be among the most vulnerable youth in society. They are disproportionately youth of color, are more likely to live in poverty than their counterparts outside the justice system, are more likely to have experienced trauma in their short lives, and are more likely to suffer from mental health and substance abuse problems.<sup>16</sup> National estimates indicate that as many as 70% of youth in juvenile detention have a mental health problem, and that nearly 30% of youth in juvenile detention have disorders that are serious enough to require immediate and significant intervention.<sup>17</sup>

Juveniles' behavior is often strongly influenced by things beyond their control, such as violence and instability at home or a dysfunctional school environment.<sup>18</sup> A holistic representation model can more effectively address the issues that contributed to the original court involvement and create a risk for future court involvement. In contrast with adults, juveniles—including those who have committed serious and violent offenses—have a high capacity for rehabilitation.<sup>19</sup> Ensuring an accurate mental health diagnosis and access to the right set of social services, which can be achieved through the use of a social work or mental health professional as part of a holistic team, are crucial to setting a youth up for success.

Youthful offenders could most benefit from representation that focuses on what brought them into the system and how their system involvement will impact the lives that stretch out before them. However, many juveniles currently fail to receive holistic, zealous representation.

## Juvenile Representation Historically and Today

Despite the clear need for juvenile defendants to receive zealous legal representation combined with other client-centered services, juveniles have historically received less aggressive legal advocacy than their adult counterparts.<sup>20</sup> This stems in part from the historically patriarchal approach of the juvenile courts and from the juvenile justice system's origins as an institution intended to reform youth.<sup>21</sup> Because the system was seen as reformatory rather than punitive, zealous advocacy was not thought to be necessary. Even as the juvenile justice system became increasingly punishing, many of the actors in the system continued to view juvenile courts as *parens patriae* that had the children's best interests in mind.

After *In re Gault*, 387 U.S. 1, the U.S. Supreme Court's decision that juveniles have a constitutional right to counsel, the legal landscape of juvenile representation did begin to shift.<sup>22</sup> However, in many jurisdictions, the reality of juvenile representation has not caught up with the constitutional requirements.<sup>23</sup> Today, juveniles continue to receive less than zealous advocacy across the country, including in Texas.<sup>24</sup> Juvenile defense attorneys have

cited a number of reasons for this failure, including excessive caseloads, insufficient funds to hire independent investigators, and insufficient office support, in addition to a court culture that still considers zealous advocacy to be in conflict with rehabilitation.<sup>25</sup>

The need for effective advocacy has become especially acute as the consequences of juvenile adjudication have become increasingly serious.<sup>26</sup> The number of juveniles prosecuted in adult court has increased dramatically in recent years exposing those youth to the collateral consequences of adult conviction.<sup>27</sup> Additionally, the seriousness of the collateral consequences of juvenile adjudication has also continued to increase. The collateral consequences of juvenile delinquency findings include “sex offender registration, preclusion from public housing, limited employment and educational opportunities, or ineligibility to serve in the military.”<sup>28</sup>

## Holistic Representation Can Identify and Address Juveniles’ Mental Health Needs

Holistic representation, especially through collaborations with social workers, can especially benefit juveniles facing delinquency because so many of them suffer from mental health problems. National estimates find that as many as 70% of the youth in the juvenile justice population likely meet criteria for a mental health diagnosis.<sup>29</sup> This means that detained youth have mental health disorders at two to three times the rate of youth in the general population.<sup>30</sup> Further, a significant majority of the youth that meet the criteria for one mental health disorder actually meet the criteria for two or more disorders. One study found that 79% of youth in the juvenile justice system with one mental disorder actually had multiple disorders.<sup>31</sup> Accurately assessing a youth’s mental health problems and particular needs is the first step to obtaining treatment and to addressing the youth’s delinquency case. Securing adequate mental health treatment for these youth can dramatically impact the disposition of their case in addition to easing their daily lives. Treatment also makes a huge difference in whether youth are likely to reenter the justice system in the future.<sup>32</sup>

Further, youth often become court-involved because of behavior that is associated with their mental illness or substance abuse problem.<sup>33</sup> Social workers are trained to understand mental illness and how it affects a person’s cognition. A social worker can help a defense attorney understand the impact a youth’s mental state may have on her case, as well as the youth’s immediate needs. Mental illness in youth can be especially tricky to pinpoint.<sup>34</sup> Traditional case-focused conversations between a defense attorney and a young client are less likely to reveal a client’s true mental health status than a thorough interview by a social worker. Additionally, even when the signs of mental illness are evident, a defense attorney may not be trained to identify them like a social worker is. A social worker’s interview generally addresses a youth’s medical history as well as her family and social history and is more likely to identify mental health needs.<sup>35</sup>



Social workers can develop individualized service plans that prevent or limit detention for youth with mental illness. This is vital because youth who are detained risk mistreatment and deterioration of their mental conditions.<sup>36</sup> Juvenile mental health experts consistently report that mental health treatment for youth is generally less effective in juvenile detention than through community-based treatment options, and can even be counter-productive.<sup>37</sup> Community-based treatment options are also cheaper than detention and detention-based treatments.<sup>38</sup> Holistic representation, especially through collaborations with social workers, can help better serve the youth in the juvenile justice system than can traditional criminal defense.

## Profiles of Holistic Offices

There are many different effective models of holistic representation of both juveniles and adults operating throughout the country. These models range from smaller offices that include one social worker who consults on select cases, such as the Children and Family Justice Center in Chicago, to large offices that employ dozens of social workers attached to specialized practice areas, such as the Legal Aid Society of New York’s Criminal Practice. Some models include civil attorneys or immigration specialists, such as The Bronx Defenders in New York. This section profiles just a few of the different offices across the nation using social workers to provide holistic representation. They are intended to illustrate some of the methods and environments in which organizations are using holistic practices to represent their clients.

Several of the offices on the following pages have practices in common. They generally provide training in their holistic practice models for both social workers and attorneys, as well as other staff members. These offices also incorporate Masters of Social Work (MSW) interns into their representation. MSW candidates are required to perform field training for their degree and can provide valuable additional help to an office seeking to incorporate social workers into its work.

## **The Legal Aid Society of New York – Criminal Practice**

New York City, New York – 5 trial offices, 1 administrative office

- 230,000 cases per year (primarily adult)
- 400 youth in adult court matters/year
- 550 staff attorneys
- 66 social workers
- Nearly 200 additional staff, including investigators, paralegals, support staff, administrative staff
- State and city funding with private funding for social workers

The Legal Aid Society of New York’s Criminal Practice uses a referral model for its adult clients, in which a defense attorney can refer a client to receive social worker services. Other adults receive social work services because they are part of a vulnerable population such as victims of sex trafficking. Every juvenile case is assigned both an attorney and a social worker.

For adult clients, key decisions as to whether to staff a case with a social worker include whether a specific skill (interviewing, assessment, or dispositional planning) is required for the case and whether social work involvement will have an impact on fact-finding, disposition, or the client’s circumstances.

The MICA Project, a project of the Legal Aid Society of New York, partners a team of mental health attorneys with licensed clinical social workers and a Rikers Island community liaison to represent adults with serious mental health and substance abuse issues. The MICA Project focuses on securing alternatives to incarceration for clients who can be diverted into community-based treatment programs. The project couples diversion advocacy with long-term case management support that includes community services and monitoring for 18 to 24 months for individual clients. The Project has seen its clients successfully complete diversion programs and treatment programs and create lives without further criminal justice contact.

The Juvenile Rights Project, another office within the Legal Aid Society of New York, was one of the first offices in the country to engage social workers in the representation of youth. The Juvenile Rights Project represents 90% of the children who appear before the Family Court in New York City in child protective cases, terminations of parental rights, Person in Need of Supervision cases, and juvenile delinquency petitions. Once an attorney is assigned to a particular juvenile client, she represents the client throughout the case and any supplemental proceedings, which may span multiple years. The Project has a social work team, the Juvenile Services Unit, which partners on particular cases. The social workers in the Juvenile Services Unit are also available for consultations or emergency assistance to attorneys for clients that are not on the Unit’s caseload. Social workers specialize in particular types of cases (delinquency, child protective, etc.). The social workers develop strategy with the attorneys and train the attorneys about the non-legal issues affecting the cases. The Juvenile Rights Project also has a unit devoted to education advocacy.

## Youth Advocacy Division, Committee for Public Counsel Services

Massachusetts – 9 offices

- 10,000 (all juvenile)
- 34 staff attorneys
- 11 social workers on staff, distributed throughout the offices
- Additional staff includes an Education Law Project
- State, foundation and individual donor funding

The Youth Advocacy Division (YAD) represents individual juvenile defendants with a team of defense attorneys, education attorneys, social workers, and community outreach workers, employing what it calls the “Youth Development Approach.” Their focus on the “Five Domains” of development stresses that youth who are given opportunities to succeed will do so. The Five Domains are physical and mental health, nurturing and positive relationships, safe places to live and learn, educational and economic opportunity, and structured activities and civic participation.

YAD also operates the state’s Juvenile Defense Network, which provides mandated training for the more than 400 private attorneys throughout the state that are certified to serve as private-assigned counsel for juveniles. In addition to trainings for private counsel appointed to juvenile cases throughout the state, the Juvenile Defense Network also provides continuing support to private juvenile defenders through advice calls, an expert database, and a statewide listserv.

YAD defense attorneys seek to provide zealous legal advocacy while also acting as a nurturing adult for the juvenile client and encouraging the client’s whole development. According to their website, **“YAD works to ensure not simply case success, but life success for its clients. YAD is an important part of reducing crime and violence in children’s lives and in communities.”**

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## The Bronx Defenders

Bronx County, New York

- 28,000 criminal cases year (adult and juveniles charged as adult) and 1,000 family cases
- 100 criminal defense attorneys, 30 family defense attorneys, 16 immigration attorneys, eleven civil generalist attorneys
- 20 social workers and 5 attorneys with combined JD/MSW
- City contract funding

The Bronx Defenders is widely considered to be the pioneer of holistic defense. Their professional staff includes criminal defense attorneys and social workers, as well as family defense attorneys, immigration attorneys, and civil attorneys who work on interdisciplinary teams in an open office layout to promote collaboration. Social workers participate in all aspects of the case, assisting in crisis intervention, identifying diagnoses and mental health needs, preparing mitigation documents for court, testifying in court, connecting clients to services, mediating client issues with programs, and assisting attorneys in court when communicating with judges and prosecutors.

The Bronx Defenders describes social workers as a “critical component” of their model of holistic defense. Masters-level social workers contribute to determining defense strategy, basing their input upon the client’s needs and existing strengths. They use written and oral advocacy to humanize clients and educate judges and prosecutors about the clients and their lives. Through a network of service providers, they are also able to connect clients quickly with the services needed to reach their long-term goals. And they facilitate improved communication between attorneys, clients and family members.<sup>39</sup>

***The Center for Holistic Defense*** – The Bronx Defenders created the Center for Holistic Defense as a resource center for public defender offices, advocates, and policy makers. The Center also provides short-term and long-term assistance to defender organizations who want to develop a more holistic approach to defending poor people who have been arrested and criminally charged. This work is made possible through a grant from the U.S. Department of Justice Bureau of Justice Assistance and conducted in collaboration with the Center for Court Innovation. The Center for Holistic Defense offers training and technical assistance to offices and individual practitioners and also provides written resources regarding holistic defense.

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## **Travis County Mental Health Public Defender**

Travis County, Texas

- 400 cases for representation per year; 450 cases for case management per year (all adults)
- 3 defense attorneys, 2 MSW social workers, 3 case managers
- County funding

Established in 2007, the Travis County Mental Health Public Defender represents indigent misdemeanor defendants who have one of three mental health diagnoses – schizophrenia, bi-polar disorder, or major depression and/or schizoaffective disorder. Every client that receives legal representation from the Mental Health Public Defender is assigned a social worker. The social worker and attorney on each case collaborate on disposition, discharge plans, mitigation, and monitoring mentally incompetent clients. The social workers often help clients secure housing, medical care, and public benefits.

A study conducted of the first five years of the Mental Health Public Defender’s work concluded that the office significantly reduced recidivism among its clients and avoided \$1,199,000 in costs the county would have incurred to pay for that recidivism.<sup>40</sup>

In addition to working with the attorneys in the Public Defender’s Office, the social workers on staff work with private attorneys who have been appointed to represent defendants with mental health diagnoses. These defendants may be facing either misdemeanor or felony charges. The social workers provide case management for these defendants, as well as mitigation and sentencing advocacy.

## Colorado State Public Defender

Colorado – 23 offices

- 160,000 cases/year total, 11,000 cases/year juvenile
- 400 currently active cases utilize social worker services
- 500-800 juvenile cases per year are projected to use social worker services
- 780 total staff, 10 full-time social workers, 8 of whom are legislatively mandated for juvenile cases
- State funding

The Colorado State Public Defender (CSPD), created by the legislature in 1970, has a total budget of \$83 million and is the primary indigent defense service provider for the State of Colorado. In 2014 the state legislature mandated that CSPD hire eight full-time social workers to assist in defending juveniles. According to Supervising Attorney Karen Knickerbocker, social workers help attorneys before adjudication by identifying community resources to support arguments for pre-adjudication release. Social workers also draft biopsychosocial reports to present as mitigation either in support of a better plea offer or during sentencing. The legislature funded this effort in order to decrease the amount of time juveniles spend in pre and post-adjudication detention and therefore reduce government detention costs and improve outcomes for youth.

Social workers at the CSPD also frequently provide mental health support to clients during crisis in a confidential but non-therapeutic setting. They work closely as a member of the defense team to provide comprehensive representation to the indigent accused.

“As a practicing attorney with an MSW I see the collaboration between attorneys and social workers to have endless amounts of potential to improve the lives of our indigent clients within the context of our role as defense attorneys,” Knickerbocker said. “I would be happy to talk to anyone about the new juvenile social workers here in Colorado as this is a new and exciting time for us as well.”

## **Social Workers Collaborating with Attorneys— the Roots of Holistic Representation**

The most common professional collaboration in holistic representation is criminal defense attorneys working with social workers. The different sets of training and skills that social workers and attorneys contribute to a defense team can lead to more complete and effective representation for the defendant, especially juvenile defendants. Potential benefits include improved client communication, a broader understanding of clients' goals and needs, a better understanding and utilization of community services, and improved client support during and after the life of the legal case. However, the differences in training and professional culture between social work and law create the potential for conflicts. Additionally, differences between the state-specific rules governing professional conduct for lawyers<sup>41</sup> and the NASW Code of Ethics<sup>42</sup> can lead to ethical dilemmas. A defender office considering collaboration with social workers can create administrative systems and policies to in part prevent and manage these differences. Policies should consider the structure of any collaboration, what disclosures to clients are necessary, and which standards of confidentiality apply to which relationships.

## **Social Workers Expand Attorneys' Ability to Effectively Represent Clients**

The diverse skill sets of social workers and attorneys complement each other such that together they can more broadly and effectively represent clients' interests. Social workers are trained to connect people to social services, interview and counsel people, and advocate for individuals and communities. Attorneys, in contrast, are trained to solve legal problems. Though a criminal defendant indeed has a legal problem, there is a world beyond the law that contributed to the defendant entering the criminal justice system. While the attorney can focus on the criminal legal problem, the social worker can consider the reasons the defendant became court-involved, determine a service plan, and support clients through accessing those services.

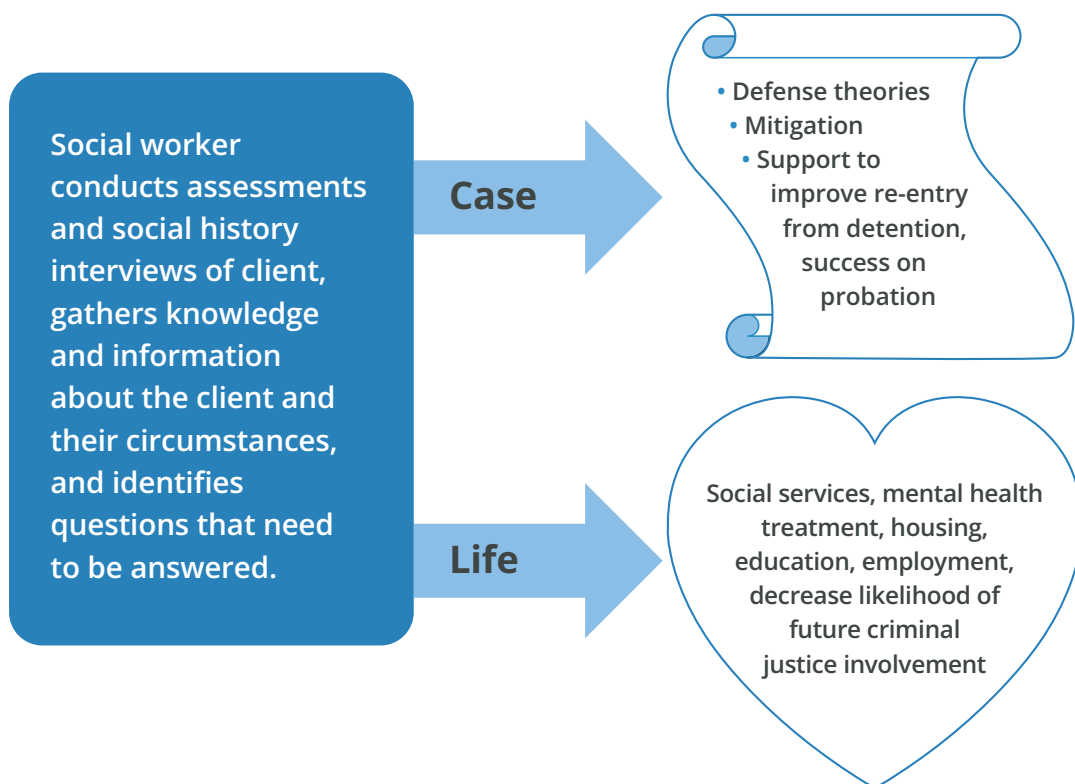
## **How Social Workers Support Conventional Defense Litigation Functions**

One way that a criminal defense team can integrate a social worker is at the beginning of the client relationship, by having the social worker conduct client assessments and social history interviews. These assessments and interviews provide a wealth of knowledge and information to the defense team for possible defense theories and strategies, avenues of investigation to develop helpful mitigation, and potential pitfalls to avoid. Through this process the social worker often develops a close relationship with the client, members

of the client's family, and other key players in the case. Her knowledge and insights can contribute to brainstorming defense theories and mitigation plans. For a client with a serious mental illness, a social worker can assess a defendant's mental health needs and help the attorney devise both short-term and long-term plans for the client and her case. Throughout litigation, the social worker can play a role in maintaining the client and family relationships, developing additional mitigation evidence and assisting attorneys in determining how the client's background and experiences impact case strategy. Finally, a social worker can help assess potential plea offers in terms of the client's ability to fulfill any probation conditions.

## How Social Workers Support Long-term Client Success

The same assessments and social histories that can be a springboard for social worker involvement in the litigation form the foundation for a social worker supporting a client's broader goals to avoid system involvement in the future. With detailed knowledge of the client's history, mental health condition, and other needs, the social worker is able to identify social services such as mental health treatment or appropriate housing. Post-adjudication, a social worker may also provide support to improve re-entry from detention or decrease the chance of repeated involvement with the criminal justice system. Additionally, social workers are trained to communicate with individuals who may have mental health issues, have experienced trauma, or have other difficulties communicating with or trusting individuals.



This training can not only help bridge any gap in the attorney's ability to communicate with the client, but can also assist in maintaining a constructive relationship between the client and probation, which will decrease the likelihood of a probation revocation.

## Incorporating Social Workers into Juvenile Representation

Social work contributions to the juvenile defense team have the capacity to turn a youth's case around. For example, in the juvenile justice system, youth and their families do not have the option to post a cash bond but must convince the decision-maker that the youth will be released into a home environment with sufficient supervision. A social worker can identify resources, such as after school programs, alternative schooling, or housing to make it possible for a juvenile to be released from detention back into her home environment more quickly or in cases where the court would not have released the youth without the social worker's contributions.

A social worker's capacity to provide the defense attorney with mental health information and develop mitigation through assessments and interviews is particularly valuable in the juvenile context. In some jurisdictions, juvenile defense attorneys are accustomed to relying on juvenile probation, rather than social workers, to perform mental health assessments and evaluate a juvenile's need for social services and interventions. This practice is problematic for several reasons. First, a zealous advocate cannot rely on a third party who is not part of the defense team to effectively gather investigative information. The defense team should include a social worker so it can ensure the confidentiality and accuracy of its interviews and assessments. Second, relying on juvenile probation to make social services and treatment placement can delay the youth's opportunity to participate in services and programming until after adjudication of their case. Not only does this mean that the youth must wait to receive the services she needs, it also deprives the youth of the opportunity to show the court that she has the capacity to work on improving her situation before adjudication.<sup>43</sup>

Social workers can also provide case management for juveniles on probation to help the client and the client's family maintain a constructive relationship with the juvenile probation officer. By regularly attending probation meetings, the social worker will also be able to update the defense attorney on any problems regarding compliance with probation before a motion for revocation of probation is ever filed.

Finally, particular social workers have specialized training and expertise to work with juveniles. Representing juveniles effectively requires the ability to communicate with youth as well as a sophisticated understanding of adolescent development, current research on brain development, and the impact of trauma on that development.<sup>44</sup> Attorneys can expand their ability to understand adolescent development by partnering with social workers already trained in this area.



## The Potential for Conflicts in Social Worker-Attorney Collaborations

Attorneys and social workers have been collaborating within legal services and public defender offices since at least the 1960s.<sup>45</sup> Though both professions provide direct services and work to change socio-legal systems in our society that oppress poor people, the two professions sometimes differ in their approach and their values.<sup>46</sup>

Lawyers, for example, prioritize their client's autonomy. Though a lawyer acts as counsel to her client, and provides advice, the client is the ultimate driver of any legal case and there are particular decisions that must ethically and constitutionally be left to the client. Social workers are also taught to promote a client's autonomy and self-determination in an effort to improve a client's capacity to help herself.<sup>47</sup> However, social workers are more likely than lawyers to focus on what they consider to be the best interests of their clients,<sup>48</sup> rather than the clients' expressed interests.<sup>49</sup> Social workers, as a profession, also place a premium on assessing and supporting or improving social systems, in addition to providing direct services to individuals. Attorneys, in contrast, are expected to place their client's express interests over almost everything else.



Social workers are taught to remain impartial,<sup>50</sup> while lawyers are ethically bound to be zealous advocates. A social worker's broader view can thus be in contrast with a lawyer's almost myopic focus on the legal case at hand. A social worker will likely be more focused on the eventual best outcome for the client while an attorney has a duty to candidly advise a client and then to abide by the client's decision.<sup>51</sup> While the professional differences are the key to why the collaboration can benefit clients, the differences can also lead to professional conflicts. To address these conflicts, the office implementing collaboration may need a policy stating whether the goal of representation is to further the client's express interests or work toward a larger social goal. To comply with attorneys' professional responsibilities, the representation of individual clients will need to focus on a client's express interests, but the office may choose to adopt policy or community-based projects that allow social workers and other staff members to advocate for broader changes.

## Ethical Concerns that Arise in Social Worker-Attorney Collaborations

The fundamental tenet of the attorney-client relationship is that anything a defendant says to her attorney is protected by the attorney-client privilege.<sup>52</sup> That privilege is sacrosanct to attorneys and key to developing the trust necessary to effectively represent a defendant. Ideally, any professional collaborating with a defense attorney would be considered part of the defense team and, as such, would also be covered by the attorney-client privilege. However, in practice whether this is true depends upon the different state laws governing mandatory reporting and evidentiary practices. It also depends on whether the attorney acts in a supervisory role over the social worker or whether the social worker works more independently.

Mandatory reporting refers to the legal requirement that a particular person or professional report information to a state agency if that person gains knowledge that child or elder abuse has occurred or will occur in the future. In many states, attorneys are exempt from any mandatory reporting requirements, while other professionals, including social workers, are not. Among those states, it is generally not clear whether social workers and other professionals who are considered mandatory reporters are treated differently if they are working under the supervision of a defense attorney where the client-attorney privilege applies. There is a smaller subsection of these states where case law or an Attorney General opinion has explicitly indicated that if such a professional is working under the direction of a lawyer on a particular legal team, they are exempt from the mandatory reporting rules.<sup>53</sup> However, in most states the law on this issue has not been fully developed. Additionally, the social worker or other professional facing a particular fact situation may worry about their own professional ethics if they choose not to make a report when their profession would otherwise require one. For example, social work ethics codes typically include statements to the effect that social workers are expected to comply with any legal requirement to report.<sup>54</sup>

In some states, such as Texas, any person, including attorneys and social workers, is a mandatory reporter if she has reason to believe a child has or will suffer abuse or neglect.<sup>55</sup> In these states, conflicts may still arise with regard to attorney-client privilege and testimony in court, depending on the jurisdiction's evidentiary laws, but there is not a mandatory reporting conflict. For example, under Texas law, the mandate to report trumps attorney-client privilege.<sup>56</sup> In Texas, these rules apply to suspected elder abuse as well.<sup>57</sup>



## Practices That Can Prevent or Minimize Conflicts

A defender office anticipating the addition of social worker staff can take several steps to avoid organizational headaches. First, the office should develop express administrative policies that define the professional role of social workers within the office. The office should also develop policies regarding confidentiality of client communications and other information gathered, taking into consideration mandatory reporting laws and evidentiary concerns. These policies should also address any record-keeping concerns that impact mandatory reporting or evidence. Both attorneys and social workers should be trained regarding the role social workers will be playing in the office and any unique policies addressing mandatory reporting and confidentiality.

For offices implementing a holistic team approach, training should also be provided to both social workers and attorneys designed to bridge the gap between the two professional cultures. Social workers should receive training regarding how to work with attorneys and the unique issues that may come up in a legal case, and attorneys should be trained in what social work is, what skills social workers offer to a defense team, and how to work effectively with a social worker.

The office will need to decide whether attorneys will refer individual cases to social workers or whether social workers will be integrated into the defense team(s). The office will also need to decide whether social workers report to supervisory attorneys or whether they report to a supervisory social worker. In offices where social workers act in a referral capacity, rather than being integrated into the legal team, clients should generally receive a disclosure form explaining a social worker's mandatory reporting duties and should be able to choose whether they are willing to meet with the social worker.

In offices where social workers are integrated into defense teams and there is an attorney supervising the social worker, an appropriate policy could require the social worker to speak with the supervising attorney before making a report. An office might also decide that all disclosures should go from the client, through the attorney, before reaching the social worker and that the clients need to sign an informed waiver of the attorney-client privilege for those disclosures.

There are a number of different ways to implement policies that define professional barriers within an office. The key is to ensure that all professionals and clients understand the professionals' roles and any potential confidentiality concerns at the outset of representation.

## Endnotes

- <sup>1</sup> See Cara Tabachnick, “Can the ‘Holistic Approach’ Solve the Crisis in Public Defense,” The Crime Report at [www.thecrimereport.org/news/inside-criminal-justice/2011-03-can-the-holistic-approach-solve-the-crisis-in-public](http://www.thecrimereport.org/news/inside-criminal-justice/2011-03-can-the-holistic-approach-solve-the-crisis-in-public) (last visited Dec. 1, 2014); Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 *FORDHAM URB. L.J.* 1067, 1067-1068 (2003).
- <sup>2</sup> See e.g. Justice Policy Institute, *System Overload, Part V Doing it Better: Holistic and Community-Based Approaches* at 29-31, 2011; Patricia Puritz & Wendy Wan Long Shang, *OJJDP Juvenile Justice Bulletin: Innovative Approaches to Juvenile Indigent Defendants* (1998).
- <sup>3</sup> Robin Steinberg, *Heeding Gideon’s Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm*, 70 *WASH. & LEE L. REV.* 961 at 986.
- <sup>4</sup> April Frazier-Camara, *Fighting for Social Justice for Indigent Clients: The Link that Binds Public Defenders and Civil Legal Service Providers Together*, *MGMT. INFO. EXCH. J.* 27, 28 (Fall 2013).
- <sup>5</sup> Tabachnick, *supra* note 1 (citing data provided by The Bronx Defenders); DOTTIE CARMICHAEL, PHD, PUBLIC POLICY RESEARCH INSTITUTE, ET AL. REPRESENTING THE MENTALLY ILL OFFENDER: AN EVALUATION OF ADVOCACY ALTERNATIVES 59 (2010) (evaluating the Travis County Mental Health Public Defender and Dallas County Mental Health Public Defender).
- <sup>6</sup> Carmichael, *supra* note 5 at 59.
- <sup>7</sup> Tabachnick, *supra* note 1 (citing Joshua Dohan, Director of the Youth Advocacy Division, which provides holistic representation to youth charged with crimes throughout Massachusetts).
- <sup>8</sup> Robyn Steinberg, *Innovations in Public Defense: Using a Multidisciplinary Approach to Improve Justice System Outcomes*, National Criminal Justice Association webinar, available at <http://vimeo.com/33363080>.
- <sup>9</sup> See e.g. Brooks Holland, *Holistic Advocacy: An Important but Limited Institutional Role*, 30 *N.Y.U. REV. L. & SOC. CHANGE* 637, 643, 647-48 (2000).
- <sup>10</sup> *Id.*
- <sup>11</sup> Steinberg, *Heeding Gideon’s Call*, *supra* note 3.
- <sup>12</sup> For example, the Tribal Defender of the Confederated Salish and Kootenai Tribes. Ann Sherwood, Managing Director, Tribal Defender of the Confederated Salish and Kootenai Tribes, *Low Cost, High Impact* presentation at Community-Oriented Defense Conference, Washington D.C., August 2014.
- <sup>13</sup> EXAMINING THE EFFECTIVENESS OF INDIGENT TEAM SERVICES: A MULTISITE EVALUATION OF HOLISTIC DEFENSE IN PRACTICE, Award Number 2012-R2-CX-0011, awarded to the National Center for State Courts by the National Institute of Justice.
- <sup>14</sup> Texas indigent defense programs with mental health teams include Bexar County, Lubbock County, and Montgomery County. There are stand-alone Mental Health Public Defender Offices in Collin County, Fort Bend County, and Travis County. Texas Indigent Defense Commission, *Direct Client Services Indigent Defense Programs in Texas: October 2014*, available at <http://tidc.texas.gov/media/30231/150107DirectClientServicesChart.pdf>.
- <sup>15</sup> This is true for both El Paso and Harris County Public Defender Offices, based upon conversations with William Cox, El Paso Public Defender and Steve Halpert, Harris County Public Defender.
- <sup>16</sup> Julie Biehl, *Keynote Address at the Jane Addams Hull House Association, Jane Adams Symposium*, Chicago, Illinois, September 16, 2010, available at <http://www.modelsforchange.net/newsroom/357>; Patricia Puritz, *In Defense of Children*, 42 *HARV. C.R.-C.L. L. REV.* 577, 578 (2007); TEXAS APPLESEED, *SELLING JUSTICE SHORT: JUVENILE INDIGENT DEFENSE IN TEXAS* (2000).

- <sup>17</sup> JENNIE L. SHUFELT, M.S. & JOSEPH J. COCOZZA, PHD, NATIONAL CENTER FOR MENTAL HEALTH AND JUVENILE JUSTICE, YOUTH WITH MENTAL HEALTH DISORDERS IN THE JUVENILE JUSTICE SYSTEM: RESULTS FROM A MULTI-STATE, MULTI-SYSTEM PREVALENCE STUDY (2006).
- <sup>18</sup> JENNIFER WOOLARD, NATIONAL JUVENILE DEFENDER CENTER, ADOLESCENT DEVELOPMENT, MODULE 1. TOWARD DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING CURRICULUM, at 35-38 (2009).
- <sup>19</sup> *Graham v. Florida*, 560 U.S. \_\_\_, \_\_\_ (2010); Biehl, *supra* note 16.
- <sup>20</sup> ROBIN WALKER STERLING, NATIONAL JUVENILE DEFENDER CENTER ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 3-5 (2009).
- <sup>21</sup> *Id.*
- <sup>22</sup> See e.g., *Morales v. Turman*, 326 F. Supp. 677 (E.D. Tex. 1971) (holding that juveniles under the jurisdiction of the juvenile justice system have the same right to private consultation with their attorneys as adults under the jurisdiction of the criminal justice system do).
- <sup>23</sup> See Katayoon Majd & Patricia Puritz, *The Cost of Justice: How Low-Income Youth Continue to Pay the Price of Failing Indigent Defense Systems* GEO. J. ON POVERTY L. & POL'Y 543 (2009).
- <sup>24</sup> See Puritz & Shang, *The Cost of Justice*, *supra* note 2 at 1; Texas Appleseed, *supra* note 16.
- <sup>25</sup> Majd & Puritz, *The Cost of Justice*, *supra* note 23 at 555; Texas Appleseed, *supra* note 16 at 4.
- <sup>26</sup> Patricia Puritz & Katayoon Majd, *Ensuring Authentic Youth Participation in Delinquency Cases: Creating a Paradigm for Specialized Juvenile Defense Practice*, 45 FAM. CT. REV. 466, 471 (2007).
- <sup>27</sup> *Id.*
- <sup>28</sup> *Id.*
- <sup>29</sup> Shufelt & Cocozza, *supra* note 17.
- <sup>30</sup> Linda A. Teplin, et al., *Psychiatric Disorders in Youth in Juvenile Detention*, 59 ARCH GEN PSYCHIATRY 1136 (2002).
- <sup>31</sup> Shufelt & Cocozza, *supra* note 17 at 3.
- <sup>32</sup> Barbara Kahn, et al. *Making the Connection: Legal Advocacy and Mental Health Services*, 45 FAM. CT. REV. 486 (2007).
- <sup>33</sup> KATHLEEN SKOYRA & JOSEPH J. COCOZZA, PHD, NATIONAL CENTER FOR MENTAL HEALTH AND JUVENILE JUSTICE, A BLUEPRINT FOR CHANGE: IMPROVING THE SYSTEM RESPONSE TO YOUTH WITH MENTAL HEALTH NEEDS INVOLVED WITH THE JUVENILE JUSTICE SYSTEM at 6 (2006).
- <sup>34</sup> David Katner, *The Mental Health Paradigm and the Macarthur Study: Emerging Issues Challenging the Competence of Juveniles in Delinquency Systems*, 32 AM. J.L. & MED. 503, 538 (2006).
- <sup>35</sup> Katner, *The Mental Health Paradigm*, *supra* note 34 at 538; David Katner, *Raising Mental Health Issues – Other than Insanity in Juvenile Delinquency Defense*, 28 AM. J. CRIM. L. 73, 75-76 (2000).
- <sup>36</sup> BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INSTITUTE, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES at 8 (2006).
- <sup>37</sup> Kahn, et al., *supra* note 32 at 487; Skoyra & Cocozza, *supra* note 33.
- <sup>38</sup> Kahn, et al., *supra* note 32 at 487.
- <sup>39</sup> [www.bronxdefenders.org/our-work/soc-work/](http://www.bronxdefenders.org/our-work/soc-work/)
- <sup>40</sup> See Liz Carmack, *Spending Sanely: Report shows Travis County Mental Health Public Defender Office is cost-effective* COUNTY (December 20, 2012) available at <http://www.county.org/magazine/features/Pages/Spending-Sanely.aspx>.
- <sup>41</sup> Each state has adopted a set of ethical rules for attorneys licensed to practice in the state. For Texas, those rules are the Texas Disciplinary Rules of Professional Conduct. Tex. Disciplinary R. Prof. Conduct, (1989) reprinted in Tex. Govt Code Ann., tit. 2, subtit. G, app. (Vernon Supp. 1995)(State Bar Rules art X [[section]]9)).

- <sup>42</sup> N. A. Workers NASW CODE OF ETHICS (GUIDE TO THE EVERYDAY PROFESSIONAL CONDUCT OF SOCIAL WORKERS). Washington, DC: NASW (2008).
- <sup>43</sup> Interview with Cathryn Crawford, Dec. 9, 2014.
- <sup>44</sup> Majd & Puritz, *The Cost of Justice*, *supra* note 23 at 557.
- <sup>45</sup> See Paula Gallowitz, *Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123 at 2130 (1999).
- <sup>46</sup> See e.g. Gallowitz, *supra* note 45 at 2133 (citing Heather B. Craig and William G. Saur, *The Contribution of Social Workers to Legal Services Programs*, 14 CLEARINGHOUSE REV. 1267 at 1267 (1981)).
- <sup>47</sup> Katherine R. Kruse, *Lawyers Should be Lawyers, but What Does That Mean?: A Response to Aiken & Wizner and Smith*, 14 WASH. U.J.L. & POL'Y 49 (2004).
- <sup>48</sup> See e.g. CLINICAL SOCIAL WORK ASSOCIATION CODE OF ETHICS, available at <http://www.clinicalsocialworkassociation.org/about-us/ethics-code>;
- <sup>49</sup> This is an especially important distinction to make within juvenile representation because of the history of juvenile courts' and juvenile attorneys assuming to act in the best interest of juveniles. As juvenile advocates have argued for zealous advocacy of children facing delinquency charges, they have distinguished between advocating for a client's express interest, as a criminal defense attorney is expected to do and advocating for what the attorneys consider to be in her client's best interest, which is more akin to the role of a guardian ad litem than a defense attorney. See Sterling, *supra* note 20 at 3, 6, 12.
- <sup>50</sup> See e.g. CODE OF ETHICS OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, available at <http://www.utexas.edu/ssw/dl/files/academic-programs/other/nasw-code-of-ethics.pdf>.
- <sup>51</sup> See Kruse, *supra* note 50 at 49.
- <sup>52</sup> The attorney-client privilege is codified in state and federal rules of evidence and attorney rules of professional conduct. See, Rule 5.03 of the Texas Rules of Evidence, Rule 5.03 of the Texas Rules of Criminal Evidence, Rule 5.01 of the Federal Rules of Evidence for the United States Courts and Magistrates, and Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct.
- <sup>53</sup> NATIONAL ASSOCIATION FOR PUBLIC DEFENSE, NAPD FORMAL ETHICS OPINION 14-1, SOCIAL WORKERS AND OTHER HEALTHCARE PROFESSIONALS MAY NOT REPORT CHILD OR ELDER ABUSE WITHOUT THE EXPRESS CONTEMPORANEOUS PERMISSION OF THE LAWYER FOR WHOM THEY ARE DOING THEIR WORK (2014).
- <sup>54</sup> See e.g. CLINICAL SOCIAL WORK ASSOCIATION CODE OF ETHICS, available at <http://www.clinicalsocialworkassociation.org/about-us/ethics-code>; CODE OF ETHICS OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, available at <http://www.utexas.edu/ssw/dl/files/academic-programs/other/nasw-code-of-ethics.pdf>.
- <sup>55</sup> TEX. FAM. CODE SEC. 216.101.
- <sup>56</sup> TEX. FAM. CODE SEC. 216.102.
- <sup>57</sup> TEX. HUM. RES. CODE SEC. 48.051.



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