Forensic Social Work

Psychosocial and Legal Issues Across Diverse Populations and Settings

Second Edition

Tina Maschi
George S. Leibowitz

EDITORS

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Forensic Social Work
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George S. Leibowitz, PhD, LICSW
Editors
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Preface

We are thrilled to offer this second edition of *Forensic Social Work: Psychosocial and Legal Issues Across Diverse Populations and Settings*. Since the 2009 publication of the first edition, the recognition of the need for a specialized and integrated workforce in the field of forensic social work has grown. Both nationally and abroad, the growing public awareness of bias and discrimination and the disproportionate involvement of minority populations, especially based on race, class, and gender, have affected the social work profession with a call to fulfill its long-forgotten mission to respond and advocate for justice reform and health and public safety.

Forensic social workers practice far and wide where issues of justice and fairness are found. As we emphasize throughout the book on the diversity of populations and settings, social workers would best serve their clients by adding a forensic or legal lens to their practice. The diversity of settings with forensic clients include social services agencies, schools, hospitals, substance abuse and mental health programs, child welfare agencies, and courts and prisons throughout the world.

Regardless of the location of practice, to be the most effective forensic practitioners, social workers must share common professional needs. We need to have the integrated forensic knowledge, values, and skills of practice, research, advocacy, and collaboration to assist individuals, families, organizations, and communities who may be struggling with an array of problems, especially human rights, social justice, and legal issues that include human rights violations (e.g., trauma and abuse), unjust policies, and lack of legal protections. In the changing world of integrated health and behavioral health services, it has become a further imperative to work collaboratively with professionals and other key stakeholders, especially the clients most affected by these issues, to respond to a mixture of financial, psychological, emotional, social, and legal concerns.

This book targets the important and emerging practice specialization of forensic social work, a practice specialization that speaks to the heart, head, and hands (i.e., knowledge, values, and skills) of social work using a human rights and social justice approach integrated with a forensic lens. Consistent with the first edition, we define forensic social work to include not only a narrow group of people who are victims or convicted of crimes and subsequently involved in the juvenile justice and criminal justice settings, but broadly all the individuals and families involved with family and social services, education, child welfare, mental health, and behavioral health or other programs in which they are affected by human rights and social justice issues, or federal and state laws and policies. Examples include social workers advocating for legal protection for undocumented workers, those assisting individuals and families in need as they apply for entitlements such as Medicare or Social Security disability benefits, and those providing mental health treatment to inmates with special needs in a correctional setting.

Goals of the Book

Overall, this new edition prepares students and professionals to practice at the intersection of human rights, social work, public health, and the legal system in order to tackle contemporary social problems, including health disparities and mass incarceration. Many forensic populations, such as racial and ethnic minorities, at-risk youth, the elderly, veterans, immigrants, lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals, people...
with disabilities, or those living in poverty or communities of violence, often lack access to quality services and political, civil, social, economic, and cultural justice.

Practitioners who read this book will learn and apply a human rights legal framework and social justice and empowerment theories to guide multilevel prevention, assessment, and interventions with historically underserved individuals, families, and communities. They also are exposed to innovative practice, research, and advocacy solutions that address the psychosocial determinants of health, well-being, and justice. After reading this book, individuals will increase their knowledge, values, and skills for collaborative and integrated forensic practice with diverse populations in diverse practice settings, such as health care, social service, and legal settings, including protective services, the courts, and corrections. The book can be used with advanced year content, professional continuing social work, or interprofessional education credits and infuses clinical, macropractice and leadership, and research and evaluation skills.

Special or vulnerable populations and salient human rights practice, research, and advocacy issues addressed in the second edition include:

- Children, adolescents, and family (including children of incarcerated parents)
- Racial and ethnic minorities
- Women
- Immigrants and refugees
- Undocumented workers
- Veterans
- Older people
- HIV/AIDS patients
- LGBTQ individuals
- People living in poverty
- People who are homeless
- People with mental health and substance use issues
- People with serious and terminal illnesses
- People with serious offense histories
- Trauma survivors and victims of crimes
- Prisoners
- Others

These individuals and groups are highlighted because of the higher likelihood that they will experience health and justice disparities.

In general, this book fills a critical gap in the knowledge, values, and skills for human rights and social justice-focused social work education and training. According to the 2015 Council on Social Work Education (CSWE) accreditation standards (see Table P.1), generalist and specialized knowledge values and skills of engagement, assessment, intervention, evaluation, research, policy practice, interprofessional practice, legal knowledge, and advocacy that advance human rights and social justice are essential for social workers while they balance

**TABLE P.1   Forensic Lens With Nine Core Competencies**

| 1. Demonstrate Ethical and Professional Behavior |
| 2. Engage Diversity and Difference in Practice  |
| 3. Advance Human Rights and Social, Economic, and Environmental Justice |
| 4. Engage in Practice-Informed Research and Research-Informed Practice |
| 5. Engage in Policy Practice  |
| 6. Engage With Individuals, Families, Organizations, and Communities |
| 7. Assess Individuals, Families, Organizations, and Communities |
| 8. Intervene With Individuals, Families, Organizations, and Communities |
| 9. Evaluate Practice With Individuals, Families, Organizations, and Communities |

*Source: CSWE EPAs (2015).*
the dual goals of public health and public safety. Yet the implications of legal issues are rarely addressed or integrated in social work education in a meaningful and practical way. This book addresses this perceived oversight. Readers of the book will become more confident and competent in integrating sociolegal knowledge, values, and skills, especially with forensic practice, research, advocacy, and collaboration across diverse populations and settings.

New to This Edition

Changes to the new edition include:

- Incorporation of the 2015 CSWE Educational Policies and Accreditation Standards (EPAs) as outlined in Table P.1
- Application of a human rights and social justice approach to forensic populations and settings, and integration of micro, mezzo, and macro skills (e.g., research, practice, and advocacy)
- An expanded pedagogical program, now with chapter competencies and objectives, theoretical knowledge, and detailed coverage of core themes and strategies of forensic practice and forensic skills
- Updated case studies and Voices From the Field of social work and allied professionals, making this text ideal for social work, psychology, legal, public health, and other allied professionals
- Additional pedagogical tools, including end-of-chapter summaries, exercises, and web-based resources, as well as instructor PowerPoints, sample syllabi, and psychosocial assessment and other tools
- An array of interdisciplinary emerging and seasoned scholars and practitioners from diverse disciplines, such as social work, psychology, criminal justice, and the law, as featured authors
- Expanded and updated chapters from the first edition that include the history of forensic social work, child welfare, juvenile justice, immigration, and victim advocacy
- An updated section (Part II) that now includes new chapters emphasizing race and the criminal justice system using a mass incarceration lens, health care and persons with disabilities and serious illnesses, housing and persons who are homeless, adult protective services and older people, and veterans
- A new section (Part III) that features updated chapters on core forensic skills, including evidence-based assessment and intervention, motivational and forensic interviewing, expert testimony, family engagement, restorative justice theory and practice, empowerment practice, case- and policy-level advocacy, interdisciplinary collaboration, technology, and supportive televisiting

Intended Audience

The intended audience for this book includes social work and other interdisciplinary students, such as psychology students, Juris Doctor/MSW students, and criminal justice majors at the bachelor’s and master’s level. It is largely intended as an advanced-year elective but also can be used in foundation-level courses that target diverse populations and settings. This book also is relevant for continuing education programs and professionals who want to expand their practice skills to include the intersection of practice and the law or legal issues.

Organization and Content

Forensic Social Work is structured so that the reader can make the most of its content. It is divided into three parts that move from the broad discussion of the conceptual and historical foundation of forensic social work to specific populations and settings, as well as core forensic social work skills. Part I, A Human Rights and Social Justice Approach to Forensic Practice,
prepares the reader with a definition of collaborative forensic social work practice. Assuming a human rights and social justice systems approach, we define this specialty practice area to include all practice fields that operate in some way in the sociolegal environment. These fields range from health, social, and mental health services to the juvenile and criminal justice systems and can involve individuals, families, organizations, and communities. Readers are guided on a journey through the conceptual and historical foundation of forensic social work from its roots in human rights and social justice. It reviews the social work profession’s charity and corrections movements to its current manifestation as the work of professional clinicians, researchers, and policy advocates. The use of a human rights and social justice systems approach helps readers visualize their practice within a holistic and integrated environment. A comprehensive description of human rights and the law, social work, and ethics and the law, along with a review of civil and criminal law, helps readers understand and infuse the legal issues and procedures that affect client populations and professional practice.

In Part II, Systems of Care and Forensic Practice, readers are introduced to diverse populations and settings affected in some way by human rights, social justice, and the legal system. In this section, readers learn what it means to use forensic integrated practice that involves practice, research, advocacy, and collaborative knowledge, values, and skills within diverse issues and settings, such as family and social services, education, child welfare, behavioral health, veteran’s services, adult protective services, juvenile justice, criminal justice, and immigration justice sectors of care. In the complementary Voices From the Field supplementary readings, readers also have the opportunity to hear from seasoned practitioners and experts about the types of clients or practice issues they may encounter in a specific system of care.

Part III, entitled Core Skills: Practice, Research and Evaluation, Policy, and Advocacy, highlights the majority of core skills that forensic social workers commonly use. The skills include the use of forensic-oriented risk assessments and evidence-based practices, motivational interviewing, forensic interviewing, expert testimony, restorative justice theory, and practice. We also highlight core forensic skills using empowerment practices, family engagement interventions, mental health and recovery skills, interdisciplinary and intersectoral collaboration, forensic research and evaluation, case- and policy-level advocacy, and the use of technology advances with families at risk of or involved in the criminal justice system.

After reading this book, social workers will be better positioned to use a forensic lens to engage, assess, prevent, and intervene with individuals, families, organizations, and communities across various fields of practice. They will also be better prepared to integrate forensic specialized knowledge, values, and skills in practice, research, advocacy, and interdisciplinary and intersectoral collaboration with a variety of key stakeholders.

**Learning Tools**

As previously noted, this new edition also includes expanded learning tools. These tools include chapter objectives based on the 2015 CSWE EPAs, end-of-chapter exercises, and chapter summaries and conclusions. They also include Voices From the Field: perspectives of forensic social workers in diverse settings that give readers a realistic look at what it is like to work in diverse forensic settings with diverse populations.

**Instructor’s Resources**

Additional resources found on the Springer Publishing website for the book benefit instructors and students. Instructors will find chapter PowerPoint presentations, sample syllabi, and other resources such as a sample biopsychosocial assessment, case studies, and more.
Students and professionals who read this book are offered the gift of an early lifelong learning process in the specialized field of forensic social work practice with a variety of populations across a wide range of practice settings. It is our recommendation to accept this gift and be sure to pass it along!

Reference

Acknowledgments

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Forensic Social Work
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Chapter 1

Conceptual and Historical Overview of Forensic Social Work

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CHAPTER OBJECTIVES

The major objectives of this chapter are to:
- Describe a forensic practice framework using a human rights and social justice systems approach.
- Articulate the definition and theme-based strategies that distinguish forensic social work from social work practice as usual.
- Review the history of forensic social work, especially as it relates to the United States.

CHAPTER COMPETENCIES HIGHLIGHTED

- Competency 3: Advance Human Rights and Social, Economic, and Environmental Justice
- Competency 5: Engage in Policy Practice

Section One: Central Concepts and Theme-Based Strategies in Forensic Social Work

Social work has been an enduring and dynamic force, and its presence has helped improve individual and societal conditions. Born out of early-20th-century efforts of charity workers or “friendly visitors,” social work has grown from being a loose-knit group of community volunteers who were “doing good” to an internationally recognized profession endowed with the responsibility of providing social welfare services and advocating for social change (Addams, 1910; Ehrenreich; 1985; Richmond, 1917). However, contemporary social work practice finds itself in a complex and interactive global society fraught with social problems, and has arrived at a critical crossroad in which advancing the mission of social work involves equipping practitioners with additional skills.

Today, social workers are called on more than ever to navigate the legal system, collaborating from within the system to create lasting social change. Madden (2003) stressed the point: “If the social work profession is to be in control of its future, it must become committed to the role of exerting influence on the legal system through education, advocacy and proactive legal policy development” (pp. 3–4).

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In contemporary social work discourse, scholars and practitioners have advanced the Grand Challenges (Uehara et al., 2013) to promote dialogue and policy reform about a range of social justice issues, including health disparities, mass incarceration, the interrelationship between substance use and incarceration, unemployment and education, and racial and ethnic inequalities in the juvenile and criminal justice systems (Poe-Yamagata & Jones, 2000). The mission of the Grand Challenges is to “galvanize social workers’ collective contribution to the quality of life and promotion of an equitable society in the 21st century” (Uehara et al., 2013), relying on social innovation to increase health and well-being among vulnerable populations, which are broadly a concern for forensic social workers. Additionally, social workers are compelled to be data driven and apply the empirical literature and the evidence from scientific research to address the most pressing social problems (Maschi & Youdin, 2012) (For more information see http://aaswsw.org/wp-content/uploads/2013/12/Intro_Context_GCSW.pdf or From Mass Incarceration to Smart Decarceration. American Academy of Social Work & Social Welfare at http://aaswsw.org/wp-content/uploads/2015/03/From-Mass-Incarceration-to-Decarceration-3.24.15.pdf).

To this end, this book frames forensic social work and collaboration through the lens of central guiding conceptual models of social work practice: a human rights, social justice and person-in-environment perspective along with social systems theory. We propose an integrated theoretical perspective that we refer to as a human rights and social justice systems (HR-SJS) approach. This perspective is useful for visualizing practice with clients influenced by a combination of social and legal issues. Figure 1.1 presents a conceptual diagram of the HR-SJS approach to forensic practice.

The HR-SJS approach, described in more detail in Section Two of this chapter, helps to visualize forensic social work practice in any practice setting. As illustrated, social workers working with individuals and families involved in the service systems are affected by social issues as well as laws, legal issues, and policies. As the arrows indicate, social workers can be involved with clients sequentially or concurrently, and be affected by civil law (e.g., going through a divorce, death of a loved one, sexual harassment on the job) or criminal law (e.g., victim of a violent crime, arrested for a nonserious or serious criminal offense).

The specialization of forensic social work is an ideal vehicle for navigating the sociolegal environment that goes beyond social work practice as usual. It is an integrative practice model that incorporates social work ethics, generalist and specialist practice, and the

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**Figure 1.1 A Conceptual Model of a HR-SJS Approach to Forensic Practice**

![Diagram](https://via.placeholder.com/150)

HR-SJS, human rights and social justice systems.
knowledge and skills of research, as well as the nature of evidence, law, policy practice, and interdisciplinary or interprofessional and intersectoral collaboration. In fact, a commitment to practice that involves psychosocial and legal interventions is consistent with the historic two-pronged integrated approach to social work practice.

The Two-Pronged Approach to Social Work Practice

Social work has long used a two-pronged approach to facilitate change: (a) assisting individuals and families to improve functioning, and (b) combating unjust and unfair community and societal conditions through strategies of social reform (Bartlett, 1958; see Figure 1.2). These strategies are explained in the mission statement of the National Association of Social Workers’ (NASW) Code of Ethics (1996) in which a historic and defining feature of the social work profession is “individual well-being in a social context and the well-being of society” (NASW, 1996). Central to the social work mission is consideration of the “environmental forces that create, contribute, and address problems in living” (NASW).

Figure 1.2 A Two-Pronged Approach to Practice in the Sociolegal Environment That Influences Forensic Social Workers’ Activities Across the Fields of Practice
The two-pronged approach also is echoed in the Social Work Dictionary’s definition of social work. It is defined as an “applied science of helping people achieve an effective level of psychosocial functioning and effecting societal changes to enhance the well-being of all people” (Barker, 2003). Consequently, social work practitioners target their interventions at the micro level (e.g., individuals), the mezzo level (e.g., families and groups), and/or the macro level (e.g., institutions, organizations, cultures and communities, and society) (Zastrow & Kirst-Ashman, 2012). Miley, O’Meila, and DuBois (2012) outlined four major goals for practice addressing multilevel assessment and intervention strategies. These four goals are:

1. enhancing people’s individual functioning, problem-solving, and coping abilities;
2. linking clients to needed resources;
3. working to develop and improve the social service-delivery network;
4. promoting social justice through the development of social policy.

It is interesting that the seemingly opposite roles of helper and advocate have both unified the profession (a common person-in-environment perspective) and divided it (should the primary target of change be the individual or the environment? Bartlett, 1970). In social work literature, the environment is commonly referred to as the “social environment.” We argue that expanding the definition of a “social environment” to include the ever present “justice environment” is necessary for achieving the best possible positive outcomes consistent with the dual mission of social work to enhance empowerment and individual, family, and community well-being.

Advancing a HR-SJS Perspective for Forensic Practice

Applying a Human Rights Framework

Applying a human rights framework to the laws, policies, and practices with forensic populations and settings can be used to assess the extent to which these laws meet basic human rights principles. In particular, the principles of a human rights framework can provide assessment guidelines for developing or evaluating existing public health and criminal justice laws or policies, such as U.S. compassionate and geriatric release laws. The underlying values/principles of a human rights framework include dignity and respect for all persons, and the indivisible and interlocking holistic relationship of all human rights in civil, political, economic, social, and cultural domains (United Nations [UN], 1948). Additional principles include participation (especially with key stakeholder input on legal decision making), nondiscrimination (i.e., laws and practices in which individuals are not discriminated against based on differences, such as age, race, gender, and legal history), transparency, and accountability (especially for government transparency and accountability with their citizens; Maschi, 2016).

The Universal Declaration of Human Rights (UDHR) also is an instrument that provides assistance with determining the most salient human rights issues affected. Ratified in 1948 as a response to the atrocities of World War II, 48 countries, including the United States, voted in favor of the UDHR (UN, 1948). It provides the philosophical underpinnings and relevant articles to guide policy and practice responses to the aging and seriously and terminally ill in prison. The UDHR preamble underscores the norm of “respect for the inherent dignity and equal and inalienable rights” of all human beings. This is of fundamental importance to crafting the treatment and release of the aging and seriously ill persons in prison.

Using a case example of aging and seriously ill people in prison, there are several UDHR articles that are important to consider when providing a rationale and response to the aging and seriously ill population in prison. For example, Article 3 states, “Everyone has the right to life, liberty, and the security of person.” Article 5 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 6 states, “Everyone has the right to recognition everywhere as a person before the law.” Article 8 states “Everyone has the right to an effective remedy by the competent national tribunals for
acts violating the fundamental rights granted him by the constitution or by law,” and Article 25 states, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food and clothing” (UN, 1948).

The Social and Justice Environments

The social environment is often viewed as the place in which person-in-environment interactions occur (Zastrow & Kirst-Ashman, 2012). However, although the social environment is commonly viewed as omnipresent, the justice environment that is informed by human rights is equally present. The justice environment consists of individuals, families, and communities seeking fairness, equality, freedom from oppression, and the balance of power, as well as the laws, policies, and legal system that affect the social environment (Barker, 2003).

The presence of justice, if not explicitly stated, is implicit in the descriptions of the social environment as usual. The social environment may range from an individual’s interactions with social or organizational settings (e.g., home, school, society, work, agency, and neighborhood), social systems (e.g., individuals, groups, families, friends, work groups, and communities), attributes of society (e.g., laws and social norms and rules), social institutions (e.g., health care, social welfare, education, juvenile and criminal justice, and governmental systems), to social forces (e.g., political, economic, cultural, environmental, and ideological forces; Zastrow & Kirst-Ashman, 2012). Although person-in-environment interactions describe social settings and interactions, it also suggests justice situations (e.g., denied employment because of a disability or history of incarceration) or settings (e.g., involvement in juvenile and criminal justice settings) and justice-oriented interactions (e.g., associating with delinquent peers, being arrested by the police for driving while intoxicated, being a victim of a bias or hate crime, or losing one’s home to eminent domain).

Envisioning Forensic Practice in a Sociolegal Environment

Most clients are affected by some type of legal issue, such as divorce, custody of children, accessing civil rights, death and inheritance, or being convicted of a felony (Madden & Wayne, 2003; Saltzman & Furman, 1999; Schroeder, 1997). In the United States, it is critical that social workers be aware of how our federal legal system operates. The U.S. legal system is made up of different branches, levels, and types of government. Laws range from the federal level—governing the entire United States—to individual state laws, as well as local ordinances and regulations from municipalities, counties, and quasi-public agencies (Saltzman & Furman, 1999). Madden (2003) argued that law, with its legal rules and mandates, should be viewed as a mechanism that frames social work practice.

A HR-SJS Perspective

We propose a social justice systems (SJS) perspective that conceptualizes the interaction of persons within a “social justice” environment. The core social work value of social justice is a central aspect of this perspective. Barker (2003) defined social justice as “an ideal condition in which all societal members have the same rights, protection, opportunities, obligations, and social benefits.” The sociolegal environment represents a combination of social justice (person-in-environment interactions that seek a balance toward social justice or fairness) and the legal environment (which represents the law, the legal process, and institutions that seek individual and community protection). Thus, the SJS perspective allows social workers to pursue optimal social and justice outcomes for their clients across all fields of practice.

Figure 1.3 depicts a HR-SJS map that shows the different pathways individuals and families may travel in across the social service and/or justice systems of care. These service trajectories may span a continuum from the least to most restrictive service environments. The human rights and social justice system is comprised of an individual’s proximal social system and the “social and justice sectors of care.” Each sector of care represents a service...
subsystem in which individuals are affected by this sector’s laws and policies. Although health and education are universal services, the other subsystems are specifically designed to provide services for individuals and/or families at risk. Individuals and families may have varied patterns of system bias and discrimination, unmet service needs, and/or concurrent and/or sequential service-use patterns that include health, education, social services, child welfare, mental health, substance abuse, and juvenile justice and criminal justice service sectors of care.

The HR-SJS framework builds upon a generalist social systems theory. Social systems theory focuses on “the relationships that exist among members of human systems and between these systems and their impinging environments” (DuBois & Miley, 2012). Within each larger system are smaller nested subsystems. A change in one part of a system affects other parts of the system (L. C. Johnson & Yanca, 2015). For example, social work practitioners commonly assess and intervene in the subsystems of family, health care, education, and social service, as well as political and legal systems.

In an ideal world, these social systems would function at their optimum potential. Families would be able to care for the physical, emotional, and social development of young and elderly family members; health and mental health institutions would assist all individuals in achieving and maintaining optimal physical, mental, emotional, and spiritual health; educational institutions would help all individuals to achieve the knowledge and skills needed to excel in society; social service systems would be able to help all individuals
in need; and the political and legal system would provide protection, safety, and human rights to all individuals and families by developing or implementing laws, maintaining order, and fostering their creativity and potential.

However, the reality of our global society, in which oppression of individuals and groups based on difference, does not match this ideal. The interaction between and among systems is often conflicted because of social tension, service barriers, missed opportunities, power struggles, oppression, and other social injustices. L. C. Johnson and Yanca (2015) argue that when applying social systems theory, individuals’ needs and rights must be considered in the context of larger systems because of these divergent environmental demands.

When applying a HR-SJS approach, social interactions among individuals and their environment also are viewed as dynamic and multidimensional. The interaction between individuals and the different systems in their environment may significantly affect their level of functioning. For example, a single mother with four children who has no mode of transportation will be unable to travel to obtain much-needed public assistance or food stamps. Because social workers “strive to ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people” (NASW, 1996), a social worker for this family can apply a two-pronged approach to intervention: He or she may provide resource links to public assistance and employment services and transportation as well as advocating for the development of free or affordable shuttle services for social service recipients.

Social workers also must recognize that individuals and families may be involved in multiple systems concurrently or sequentially (Garland, Hough, Landsverk, & Brown, 2001). For example, a child with emotional and behavioral problems may simultaneously be involved in special education services, community mental health services, and probation. Another child may have initially entered the child welfare system and then later gone through the juvenile justice system. The role of the social worker will include identifying obstacles, making resource linkages, or advocating for needed resources across these social institutions (Finn & Jacobson, 2003).

A HR-SJS approach balances the goal of maximizing outcomes on both individual and societal levels. It also emphasizes the need for the knowledge and skills in forensic or legal issues, interprofessional and intersectoral collaboration, and generalist social work that integrates advanced clinical and/or policy practice. The HR-SJS approach helps to frame social workers’ efforts in pursuing social change, especially for vulnerable and oppressed populations affected by systemic issues (e.g., poverty, discrimination). Consistent with the NASW Code of Ethics (NASW, 1996), assessing for social and justice outcomes can “ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people.” Thus, the jurisprudent social worker who is savvy with both policy and the law can more competently engage in multilevel intervention strategies that include direct practice, community organizing, supervision, consultation, administration, advocacy, social and political action, policy development and implementation, education, and research and evaluation (NASW, 1996).

Conclusion

This section reviewed the essential definitions and core concepts of social work practice in a sociolegal context. It presented a HR-SJS approach in which the “environment” of the human rights, social justice, and person-in-environment perspective represents social and justice issues. The need for forensic social work to integrate a two-pronged approach to practice, in which practitioners act as facilitators in which individuals, families, and communities empower themselves within sociolegal environments as well as changing those environments directly, was reinforced. Given the complexity of social problems in contemporary communities and societies, adopting a two-pronged approach is one way to uphold U.S. (NASW, 1996) and international (International Federation of Social Work, 2000) mandates for social work practice.
Section Two: Definitions and Central Themes of Forensic Practice

As a professional social worker, inevitably you will encounter diverse individuals, families, or communities affected by social/environmental and legal issues. Poverty, homelessness, parental divorce, exposure to family or community violence, and juvenile or criminal offending are just some of the hardships clients face. Frontline social workers in a variety of settings (e.g., community-based child and family services, health care, education, child welfare, mental health, substance abuse, social services, juvenile justice, and criminal justice systems) interact daily with clients who have multiple problems, including legal ones. For example, a social worker may have a client who is a single father facing allegations of child neglect. He knows little about the child welfare policies and laws affecting his family or how to navigate the court system. Thus, it is imperative that social workers supplement their generalist and specialized practice expertise with knowledge of the laws and policies that influence their client populations. The practice of forensic social work is ideal because social workers are positioned to take action in a sociolegal environment because justice issues are much more explicitly present.

We argue that all social workers across all fields of practice, not just those in juvenile and criminal justice settings, often assist clients affected by laws and policies or problems in accessing resources. Therefore, it is imperative that practitioners integrate their understanding of collaboration, the law, and specialized skills with generalist social work practice. This book helps prepare practitioners with the knowledge, values, and skills to navigate the social and legal issues that affect clients.

Definitions and Themes of Forensic Social Work

- Generalist practice
- Forensic specialization
- Forensic ethics
- Therapeutic jurisprudence
- The use of evidence and evidence-based practices
- Collaboration
- Cultural humility

We also argue that effective forensic social work practice requires a two-pronged approach to helping clients. This dual approach involves intervening with clients on both an individual level to address a client’s social well-being (e.g., referral to mental health counseling) and/or at the legal or policy levels (e.g., representing a youth in court as a child advocate or participating in lobbying efforts to advocate for legislation that addresses special population needs). We define forensic social work as an integrated (i.e., generalist, specialized, and collectivistic) approach to social work practice with diverse populations across diverse practice settings in the sociolegal environment. Exhibit 1.1 illustrates this definition. This exhibit depicts a broad definition of forensic social work that integrates the knowledge and skills of generalist and specialized social work, forensic social work, and collaboration.

The integrated role of forensic social workers allows us to assume multiple professional roles, functions, and activities. This strategy is designed to improve clients’ social functioning and environmental conditions through collaboration with clients, professionals, and other stakeholders within and across different systems of care. The “forensic” or “legal” aspect of the work situates social workers in a position to honor their professional commitment to social justice through the use of legal knowledge and skills, including advocacy and policy practice.
### Exhibit 1.1 A Broad Conceptualization and Definition of Forensic Social Work and Interprofessional Practice

<table>
<thead>
<tr>
<th>Human Rights, Social Justice, and Legal Framework</th>
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<tbody>
<tr>
<td>Forensic Lens With Nine Core Competencies (Council on Social Work Education, 2015)</td>
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<tr>
<td>1. Demonstrate Ethical and Professional Behavior</td>
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<td>2. Engage Diversity and Difference in Practice</td>
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<td>3. Advance Human Rights and Social, Economic, and Environmental Justice</td>
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<td>4. Engage in Practice Informed Research and Research Informed Practice</td>
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<td>5. Engage in Policy Practice</td>
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<td>6. Engage With Individuals, Families, Organizations, and Communities</td>
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<td>7. Assess Individuals, Families, Organizations, and Communities</td>
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<td>8. Intervene With Individuals, Families, Organizations, and Communities</td>
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<td>9. Evaluate Practice With Individuals, Families, Organizations, and Communities</td>
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<th>Forensic Social Work = Generalist + Forensic + Collaboration</th>
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<tr>
<td><strong>Generalist Social Work</strong></td>
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<tr>
<td>• Generalist Knowledge, Values, and Skills</td>
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<tr>
<td>• Apply to the Process of Change With Individuals, Families, Groups, Organizations, and Communities</td>
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<tr>
<td>• Integrated Strategies Incorporate: Ethics, Direct Practice, Case Management/Care Coordination, Research, and Advocacy</td>
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<th><strong>Forensic Specialization</strong></th>
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<td>• Specialized Social Work at the Intersection of Public Health and Public Safety</td>
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<td>• Actively Incorporates the Use of Legal Knowledge, Laws</td>
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<td>• Actively Incorporates Use of Evidence and “Facts” and Evidence-Based Practice/s</td>
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<th><strong>Collaboration</strong></th>
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<tr>
<td>• Collaboration Knowledge, Values, and Skills With Individuals, Families, Organizations, and Communities</td>
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<tr>
<td>• Interprofessional, Interdisciplinary, and Intersectoral Collaboration</td>
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<tr>
<td>• Integrative Care and Practice</td>
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### Definitions

**Generalist Social Work**

Embedded in our definition of forensic social work are the general principles of social work practice, such as the International Federation of Social Work’s (IFSW) definition. According to the IFSW:

> The social work profession promotes social change, problem solving in human relationships, and the empowerment and liberation of people to enhance well-being. Utilizing theories of human behavior and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work. (IFSW, 2000)
Forensic Social Work

There are a number of definitions of forensic social work. They range from general to specific and they may focus on one or more practice settings or populations. For example, Barker and Branson (2000) placed forensic social work in a broad “legal” environment, and they defined it as a “professional specialty that focuses on the interface between society’s legal and human service systems.” In contrast, Hughes and O’Neal (1983) defined forensic social work as specifically relating to the intersection of mental health and law, in which social workers “function in this space in which mental health concepts and the law form a gestalt.” Roberts and Brownell (1999) described forensic social work in terms of the knowledge and skills needed for the specific populations served, particularly victims and offenders. In this case, forensic social work is the “policies, practices, and social work roles with juvenile and adult offenders and victims of crime.” In comparison, Green, Thorpe, and Traupmann (2005) defined forensic social work more broadly as “practice, which in any manner may be related to legal issues and litigation, both criminal and civil.”

In the scholarly literature, Barker (2003) perhaps provides the broadest definition:

The practice specialty in social work that focuses on the law, legal issues, and litigation, both criminal and civil, including issues in child welfare, custody of children, divorce, juvenile delinquency, nonsupport, relatives’ responsibility, welfare rights, mandated treatment, and legal competency. Forensic social work helps social workers in expert witness preparation. It also seeks to educate law professionals about social welfare issues and social workers about the law.

Forensic Ethics and Evidence-Based Practice

An important part of understanding the landscape of ethical dilemmas in forensic practice involves the recognition that the criminal and juvenile justice systems have vacillated between implementing overly punitive, reactive sentences for offenders (rather than providing opportunities to avoid incarceration) and offering treatment.

Among the most important decisions in juvenile justice, for example, was the U.S. Supreme Court decision to outlaw the death penalty (Roper v. Simmons, 2005; a case that involved the murder of elderly women by a 17-year-old during the course of a burglary) on the basis of the finding of developmental neuroscience that the adolescent brain matures into the 20s (Steinberg, 2008). Forensic social workers should consider that in the child welfare and juvenile justice fields, efforts to shape policy are related to helping the public and policy makers apply findings from the empirical literature in comprehensible ways, and understand how specific fields such as neuroscience and structured risk assessment can inform our understanding of adolescent behavior, and what the limitations are in terms of the incomplete understanding of the relationship between an immature brain and immature behavior (S. B. Johnson, Blum, & Giedd, 2009). There are ongoing debates about the ways in which scientific evidence can be used to determine the extent to which adolescents can be held accountable for delinquent or criminal acts (Aronson, 2007). Generally, clarifying the role of the social worker and exactly how evidence-based interventions are conceptualized and applied in forensic settings is an important undertaking.

Ethical questions regarding accountability are intricately tied to the methods of risk determination used in the justice system. Social workers must consider the research evidence concerning the strengths and limitations of specific structured risk assessment tools often used by forensic evaluators to make judgments about the likelihood that a person will commit harm in the future. The interactions of various risk factors used in assessment must be considered, such that a person who is found to be at risk for future violence (e.g., based on an offense history) may also be at risk for health problems and mental health disorders (e.g., depression, suicidality, and substance abuse). In addition to risk factors, protective factors must also be included as part of assessments.
Of relevance to the ethics of risk assessment in forensic practice, there is often a dual relationship between public health and public safety in criminal justice. Integrated health and public safety approaches that combine functions of criminal justice and treatment, such as providing community-based care for drug offenders simultaneously with implementing appropriate monitoring and supervision, can effectively address recidivism and improve social function (NIDA, 2011). Social workers can play a role in advocating for reforms that impact outcomes among specialized populations. For example, regarding registry and community notification policies for sex offender management, we know that policies that are better informed by research evidence result in a better allocation of resources. Such reforms could also address stigma, reduce barriers to offender reintegration, and potentially reduce recidivism (Levenson, Grady, & Leibowitz, 2016).

**Therapeutic Jurisprudence**

A central concept of the HR-SJS approach is viewing laws and policies as an intervention level. This principle is derived from the therapeutic jurisprudence literature, which examines the therapeutic (i.e., positive) and antitherapeutic (i.e., negative) consequences of legal rules, procedures, and actions (Madden & Wayne, 2003). According to Madden and Wayne (2003), “at the heart of therapeutic jurisprudence is the concept that law, consistent with justice, due process, and other relevant normative values, can and should function as a therapeutic agent” (p. 339). Thus, the impact of the law on a client may have positive or negative effects. For example, an individual with disabilities may win a court case for job discrimination based on legal protections inherent in the Americans With Disabilities Act. This is an example of how a law provides positive protections for this individual. In contrast, a single mother being released from prison on a controlled dangerous substance offense is denied public assistance based on a law that denies benefits to individuals with prior drug charges. This is an example of how a law provides negative or antitherapeutic effects on this mother’s ability to receive needed services for herself and her family. Therefore, social workers must evaluate the intervention effects of the legal process and the outcomes on individuals, families, and communities. Based on this evaluation, an intervention strategy that incorporates a two-pronged approach, which enhances social functioning and improves social justice outcomes, can be devised.

Social workers who adopt principles of therapeutic jurisprudence will also be positioned to create conditions that empower clients or influence the development of laws and the ways current laws and policies can be applied most beneficially. Therapeutic jurisprudence is a useful perspective for social workers in interprofessional settings who are working with professionals such as medical providers, psychologists, psychiatrists, police officers, probation officers, or attorneys. This perspective crosses professional boundaries and incorporates another important element, interdisciplinary collaboration, which is particularly concerned with creative problem solving in which the combined knowledge, skills, and techniques of multiple professionals seek to achieve social and justice outcomes (Madden, 2003; Madden & Wayne, 2003; Petrucci, 2007). A professional specialty, forensic social work, which focuses on equipping social workers with additional legal knowledge, is particularly well suited to take a leading role in the rapidly growing practice arena of the sociolegal environment.

**Collaboration**

As the various definitions suggest, social workers who practice in a sociolegal environment must be well versed in collaboration. This includes working with other professionals (e.g., attorneys, doctors and nurses, and victim advocates), law enforcement personnel, and clients, family members, and other stakeholders.
Historically, social workers have practiced in a variety of “host” agency settings, such as hospitals, schools, industries, psychiatric clinics, police departments, and court and criminal justice settings (Brownell & Roberts, 2002; Jansson & Simmons, 1986; see Section Three in this chapter). With the increasing intricacies of social problems and dwindling resources, social workers’ involvement in interdisciplinary collaboration within and across agencies is often unavoidable (Bronstein, 2003; Graham & Barter, 1999; Guin, Noble, & Merrill, 2003; Payne, 2000).

In particular, forensic social workers often work with interdisciplinary teams. When they do, the elements of interdisciplinary team practice often consist of

- a group of professionals from different disciplines;
- a common purpose;
- the integration of various professional perspectives in decision making;
- interdependence;
- coordination and interaction;
- communication;
- role division based on expertise (Abramson & Rosenthal, 1995).

The ability to work interdependently with others is critical to achieving successful client outcomes. As Bronstein (2003) noted, interdisciplinary collaboration is an “effective interpersonal process that facilitates the achievement of goals that cannot be reached when individual professionals act on their own.” Social workers who incorporate interdisciplinary collaboration into forensic practice are able to address sociolegal issues with the help of a variety of professionals in a group problem-solving process, which makes it possible to examine the problem from all angles (Abramson & Rosenthal, 1995).

In addition to multidisciplinary practice skills, multicultural competence is critical for forensic social work practice in which diverse populations are served. The following section underscores the important role of diversity in social work practice.

**Diversity and Cultural Humility**

*Diversity* or other related terms, such as *cultural humility, multiculturalism, cultural competence, and vulnerable populations*, are commonly used in social work practice (Barker, 2003; Beckett & Johnson, 1995; Logan, 2003). The *Social Work Dictionary* defines diversity as “variety, or the opposite of homogeneity” (Barker, 2003). Diversity within social organizations commonly refers to the “range of personnel who more accurately represent minority populations and people from varied backgrounds, cultures, ethnicities, and viewpoints” (Barker, 2003).

**Incorporating Cultural Humility in a Human Rights and Social Justice Paradigm**

1. to engage in self-reflection and self-critique;
2. to bring into check the power imbalances, by using person-focused interviewing and care;
3. to assess anew the cultural dimensions of the experience of each person/family;
4. to relinquish the role of expert to the client, becoming the student of the client;
5. to see the client’s potential to be a capable and full partner in the therapeutic alliance.

**Cultural Humility Self Reflection**

1. Identify your own cultural and family beliefs and values.
2. Define your own personal culture/identity: ethnicity, age, experience, education, socioeconomic status, gender, sexual orientation, religion . . .
3. Are you aware of your personal biases and assumptions about people with different values than yours?
4. Challenge yourself in identifying your own values as the “norm.”
5. Describe a time when you became aware of being different from other people (based on Alsharif, 2012).

**The Diversity Dilemma**

How can forensic social work develop a “way to be” that is affirming and inclusive of diversity? Many of the professions that collaborate in correctional settings are struggling with this question. In law, attorneys speak of “antioppressive legal practice” and the activation of “privilege and disadvantage” (Kafele, 2005). In psychiatry, a leading text reminds the reader that cultural considerations should be paramount, for example, when offering expert assessment in areas such as competency to stand trial, the presence of mental illness, or the use of psychological testing across cultures (Tseng, Matthews, & Elwyn, 2004). In mental health treatment, the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA) published extensive guidelines in 2001 mandating that correctional settings create comprehensive plans for addressing cultural practice in their settings.¹ In medicine and health care delivery, practitioners discuss the importance of “providing care within a framework of cultural meaning,” expecting all colleagues to do so as standard practice (Hufft & Kite, 2003). And in social work, the core of our ethics mandates cultural competence, even when correctional institutions may not seem responsive to such concepts.²

**Diversity and the Justice System**

A glaring example of the lack of cultural responsiveness, indeed the lack of acknowledgement of the role of privilege and race in the U.S. justice system, can be found in the overrepresentation of persons of color and persons from communities in poverty among the incarcerated population. James (2000) provided a good overview of some of these issues, citing rates of arrest for working-class crime versus typical “white-collar” crime; the use of those in prison as a source of labor; the overrepresentation of African American men in justice system “supervision” (e.g., probation, incarceration, or parole); uneven statistics for lengths of sentences and state executions; and inconsistencies between the U.S. justice system and some provisions of international human rights. James (2000) also noted that when state justice systems deny political rights (including, at times, the right to vote) to those who are or have been incarcerated, this disproportionately affects people of color and the poor. Addressing these issues is squarely within the realm of “diversity practice,” and it is social work’s responsibility to respond, as a profession that is based on an ethics of human rights.

**Diversity in Practice**

Diversity and forensic social work practice encompass several overlapping mandates. At the micro end of the spectrum, recruitment and retention of personnel throughout service and justice systems should reflect the diversity of the communities in which those systems operate. Those systems must also accommodate all individuals who are participating, whether accused, aggrieved, or employed, and respond to their diverse characteristics and abilities. Forensic social workers are ethically bound to develop practice skills grounded in an understanding of clients in their contextual identities and lives. In the mezzo section of the spectrum, social service programs and services must be vigilant regarding unintended structural biases that favor or accommodate individuals with certain backgrounds or characteristics over others. This extends to governmental agencies as well, whose policies and procedures may rise to

¹These can be accessed at: [http://store.samhsa.gov/shin/content/SMA14-4849/SMA14-4849.pdf](http://store.samhsa.gov/shin/content/SMA14-4849/SMA14-4849.pdf)
²See, for example, Van Wormer (2001) on the conflicting paradigms of the two arenas.
the level of regulation or law and thus have even more impact on individuals’ and families’ lives. Finally, at the macro end of this continuum, the intersection of forensic social work with considerations of diversity points to the need to work for the improvement of human rights conditions throughout all nations. Wherever a forensic social work practitioner finds herself or himself on this continuum, the remaining segments cannot be ignored.

Conclusion

The broad definition of forensic social work incorporates the knowledge, values, and skills of social work, policy practice, the approaches to the law, collaboration, and diversity. Consistent with the mission of social work, forensic social work involves a two-pronged approach to assessment and intervention with diverse clients in a sociolegal environment. With the increased complexity of social problems, adopting this approach will help increase social and justice outcomes for the diverse populations we serve. Section Three of this chapter describes the history of forensic social work using the United States as the case example to illustrate how a two-pronged approach to practice was integrated throughout this specialized arena of practice.

Section Three: The History and Evolution of Forensic Social Work

Social workers respond to individuals in the criminal justice system, and work to change the system in which such individuals find themselves. Moreover, social workers not only respond to individuals affected by state and federal laws, but also work to change those laws. Forensic social work is as old as social work itself, and it represents the full diversity of our profession, which includes advocating for those accused or convicted of a crime; standing up for victims; responding to youth in juvenile justice systems; testifying in court on behalf of both litigants and defendants; supporting and working alongside law enforcement professionals; and working to improve or change the processes and policies of the U.S. justice system.

How could social work not be present in all these arenas? Our profession revolves around social justice and human rights. Throughout U.S. history, social justice (and in later years, global and universal human rights) has been the core of the theory and practice of social work. Social workers stand for those who cannot; speak for those who have been silenced; and seek to create conditions of empowerment for individuals, families, and communities.

In this light, the history of forensic social work is hard to separate from the history of social work. In fact, one of social work’s first professional societies was the National Conference of Charities and Corrections. Formed in 1879, pioneer social worker Jane Addams became the leader of the organization in 1909. This suggests the importance given to corrections, both in early conceptualizations of social services formed over a century ago and in today’s understanding of the proper venues for social workers as actors and advocates. To trace the history of forensic social work, we first need to look at the history of forensic policy in the North American colonies and then at the creation of social work and the introduction of social workers to carry out or change those policies. Exhibit 1.2 lists major historical events in the history of forensic social work in the United States.

The History of Forensic Policy

The Colonial Era

No history of social work can be written without reference to the English Poor Laws of 1601. One reason they are significant is that they represent a merging of law and social
policy, a codification of society’s responses to individuals in distress with an emphasis on
government as the entity in charge of those responses. The laws responded to people in
poverty, dividing them into three categories: deserving, undeserving, and children (P. J. Day,
2012). The Poor Laws are also significant because they represent the first opportunity for
intervention by individuals who would later create the field of social work: advocates for
those on the receiving end of the law.

### Exhibit 1.2 Major Events in the History of Forensic Social Work in the
United States

<table>
<thead>
<tr>
<th>General U.S. History</th>
<th>Social Work History</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europeans leave European continent, settle in North America. Enslavement of Africans, Native Americans, and later the Irish begins</td>
<td>1700s—Men on patrol looked for “criminals”; punishment was usually corporal</td>
</tr>
<tr>
<td>1766—North American colonies become independent from England, create the United States</td>
<td>1790—Concepts of prisons as being rehabilitative grow; the first prison in the United States opens in Philadelphia: the “Walnut Street Jail” Conceptualizations of corrections develop to include proportionate sentencing and programs encouraging reform</td>
</tr>
<tr>
<td>1787—An Age of Rationality spreads through Europe and influences the writers of the U.S. constitution</td>
<td>1800s—Theorists note that determinate sentences undermine efforts at individual reformation</td>
</tr>
<tr>
<td>1812–1814—United States and Great Britain at war</td>
<td>1875—The Society for Prevention of Cruelty to Children is created</td>
</tr>
<tr>
<td>1845—Portions of Mexico are annexed as Texas, setting off the Mexican–American war from 1846 to 1848</td>
<td>1876—The concept of parole is born; the first parolee is released from the Elmira Reformatory in New York</td>
</tr>
<tr>
<td>1861–1865—U.S. Civil War</td>
<td>1879—National Conference of Charities and Corrections is formed</td>
</tr>
<tr>
<td>Late 1800s—Varieties of internal combustion engines are perfected, setting the stage in the United States for the Industrial Revolution</td>
<td>1899—Illinois opens the first juvenile court</td>
</tr>
<tr>
<td>1920—U.S. women gain the right to vote</td>
<td>1907—The National Council on Crime and Delinquency was formed</td>
</tr>
<tr>
<td>1929—U.S. stock market crash sets off the Great Depression</td>
<td>1920—Two thirds of U.S. states institute procedures for probation, a concept originated in Massachusetts</td>
</tr>
<tr>
<td>1939–1948—Portions of the world fight in World War II and the development of the Universal Declaration of Human Rights (UDHR)</td>
<td>1921—The American Association of Social Workers is formed</td>
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<td></td>
<td>1925—Forty-six states now have juvenile courts</td>
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<tr>
<td></td>
<td>1940s—Police social workers return to prominence in forensics</td>
</tr>
<tr>
<td></td>
<td>1948—Postwar ratification of the UDHR</td>
</tr>
</tbody>
</table>

(continued)
Later, early English colonists were influenced by the laws and systems of England. Legally, this meant they also codified responses to the impoverished members of their settlements: individuals were divided up and then either shuffled to almshouses (for those who could not work) or workhouses (for the able bodied). They were reluctant, however, to turn to the government as the appropriate and responsible institution for maintaining law and order (perhaps exhibiting what might now be understood as communal posttraumatic stress disorder from their experiences living under a monarch perceived to be overly rigid and tyrannical). As a result, early police forces were made up of men patrolling neighborhood streets, first at night, and later during the day as well (Blakely & Bumphus, 1999). If a "criminal" were caught, the colonists sought swift punishment, usually of a corporal nature (Popple & Leighninger, 2014). Concepts of right and wrong—and views of human nature at the time—did not suggest that criminals would benefit from rehabilitation or that their victims needed support and advocacy.

The first institutions associated with crime and punishment were jails, which were simple holding cells for individuals, both children and adults, awaiting trial or punishment. The ensuing political break from England and concomitant development of Enlightenment philosophies, however, popularized a valuing of rationality that in many ways survives today.

3This is well before several professions, such as psychology, helped to develop conceptions of childhood and children as developmentally different from adults.
“Rational man” was thought to be changeable if shown the error of his ways; extrapolated to corrections, this gave rise to “proportional” punishments rather than “punitive” ones and engendered early concepts of rehabilitation. After the Revolutionary War, the first prison in the United States—“Walnut Street Jail”—was constructed in Philadelphia in 1790 (Popple & Leighninger, 2014). Because at that time crime was seen as arising from disorder, prison staff imposed strict discipline, schedules, and order on incarcerated individuals. This philosophy often carried over to almshouses and workhouses, which by definition were not correctional institutions, but whose operation was often indistinguishable from prisons. More opportunities for social work collaborative intervention were thus being created.

The 1800s

The 19th century saw a vigorous application of new legal and correctional policies. By midcentury, however, many were questioning if the philosophy was effective. If prisoners were sentenced to a fixed length of time, and if they were going to be incarcerated until their sentence was completed, regardless of their behavior, what incentive did they have to participate in the rigors of rehabilitative programs? Thus, the concept of early release as a reward for “good behavior” was created: Persons under incarceration began to be released early through parole. The first such individual was set free from the Elmira Reformatory in New York in 1876.

John Augustus, a wealthy shoe manufacturer in Boston, began social reform in the early 1840s when he started the practice of interviewing adults awaiting incarceration, personally posting their bail, and taking responsibility for their reformation, a pattern that was later instituted by Massachusetts as the process of probation. The practice spread to two thirds of the states by 1920 (Popple & Leighninger, 2014). Probation extended the concept of rehabilitation: those committing crimes could change their ways, either through discipline and programs in prison that could lead to early release, or through strict supervision and reform that could prevent incarceration completely. Though we cannot claim Augustus was a social worker, his actions foreshadowed those of the pioneers in forensic social work and helped solidify approaches to human nature that emphasized a person’s ability to change and grow. Such views would soon extend to those in other “legal” institutions, such as almshouses and workhouses.

The 20th Century and the Birth of Social Work

**National Conference of Charities and Corrections**

Having declared independence, fought two wars with Britain, another among its own citizens, and experienced many social upheavals, the United States was grappling with a myriad of social issues. It was in this climate that social work as a profession began to develop. The first social work training school opened in 1898. Earlier, in 1879, the National Conference of Charities and Corrections (formerly the Conference of Boards of Public Charities) was created, becoming the National Conference of Social Work in 1917, and joining a collaborative to become the National Association of Social Workers in 1955 (Zenderland, 1998). Trailblazing social workers were concerned with social reform, and law and justice issues were a primary focus (Barker & Branson, 2000; Roberts & Brownell, 1999). The plight of the poor was a major concern of Mary Richmond, a pioneer in social work and the founding mother of casework (Colcard & Mann, 1930). Jane Addams, a Nobel Prize-winning social work pioneer, targeted the systems and policies that affected the poor of her day. Addams was also the founder of settlement houses (P. J. Day, 2012).

**The Creation of Juvenile Courts**

A key accomplishment of early social workers was to change the policy regarding young persons charged with criminal offenses (Platt, 1969, 1977). Julia Lathrop, Jane Addams, and Lucy Flower pushed to get children out of penal institutions, where individuals as young as 5 years old were incarcerated with adults. Their efforts led to the birth of the juvenile
justice system in 1899 (Center on Juvenile & Criminal Justice, 1999). The new system saw several innovations. The Juvenile Psychopathic Institute, founded as a result of advocacy by several residents of Hull House, including Florence Kelley, Alice Hamilton, Julia Lathrop, Ellen Gates Starr, Sophonisba Breckinridge, and Grace and Edith Abbott, began to conduct psychosocial assessments of children in the justice system (Open Collections Program, Harvard University Library, n.d.). Again, many collaborators came together—this time to create separate juvenile courts, the first seated in Illinois in 1899. By 1925, 46 states and the District of Columbia had created juvenile courts, where hearings considered delinquency as well as the needs of abused and neglected children. The New York Society for Prevention of Cruelty to Children (NYSPCC), founded in New York in 1875 and modeled after the early Societies for Prevention of Cruelty to Animals, presaged these later juvenile justice reforms (NYSPCC, n.d.).

These institutional changes were both fueled by and gave birth to new theories of human nature and childhood. Mary Richmond’s efforts, first in Baltimore’s Charity Organization Society and later as the director of the Russell Sage Foundation, argued for private social work practice, and for creating a system of social work education for “recognizing human differences and adjusting our systems of . . . law, of reformation and of industry to those differences” (quoted in Colcard & Mann, 1930). Jane Addams’s efforts called for structuring policies that saw children not as “mini-adults” but as developmentally different, young individuals needing guidance and care, who could not be expected to see the world or make decisions as adults do. Children were thus afforded closed hearings and, eventually, confidentiality of their court records and limitations of the records’ availability once the children attained adulthood (Center on Juvenile & Criminal Justice, 1999).

**Collaborative Reforms in Adult Courts**

At the same time that juvenile courts were being created, U.S. policies regarding the larger criminal justice system were also in flux. With the advent of parole in the mid to late 1800s and the creation of juvenile courts at the end of the century, reformers gained a renewed commitment to rehabilitation, a concept that had found itself on shaky ground prior to these changes. Prisons were renamed “penitentiaries,” and their goals included repentance (hence the name) and reform of the individual (Blakely & Bumphus, 1999). These goals fit well with the dual aims of social work: changing social systems and changing the individuals who have strayed from those systems. For the latter, social casework was the proper response and individuals in penitentiaries were appropriate recipients. With the creation of the American Association of Social Workers in 1921 (forerunner to the National Association of Social Workers), casework became the central focus, and services focused on offenders made “correctional treatment specialists” of social workers (Roberts & Brownell, 1999).

**Social Workers Call for Social Change**

Social work swung back to an emphasis on social change, however, when the Great Depression began in 1929. Providing services for the “new poor” (i.e., individuals in poverty who were formerly working class or middle class) helped social workers realize that policy change was often the proper arena for their profession. Social workers testified before congressional committees calling for policy revisions, and many New Deal programs were influenced by their expertise. As Secretary of Labor, Frances Perkins, who had been trained by Mary Richmond, was instrumental in creating reforms, including regulations ensuring safe conditions for American workers and the design and establishment of Social Security (P. J. Day, 2012; Frances Perkins Center, 2008). Social worker Harry Hopkins, appointed by President Hoover and again by President Roosevelt, oversaw new initiatives in the Works Projects Administration, which focused on youth; these were the forerunners of today’s delinquency prevention programs (Roberts & Brownell, 1999).

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4 Although, see Platt’s (1977) seminal work critiquing these reforms as ultimately hurting youth, pathologizing them, and institutionalizing their subservient social position.
In the early 1920s, police social workers were common: They were women who provided social work advocacy as members of groups called Women’s Bureaus, which functioned as divisions within local police departments. These positions were cut following the Great Depression, but returned to prominence in the 1940s. At that time, youth gangs were growing in number, and hundreds of child guidance clinics opened that employed social workers as court liaisons. Community-based councils and delinquency prevention programs were created; these focused on supporting and intervening with individuals, including children who had dropped out of school, and members of what the courts labeled “problem families” (Roberts & Brownell, 1999).

From World War to Universal Human Rights (1914–1960)

The profession also continued to develop amidst a world struggling with war, peace, and human rights. At that time, World War I (1914–1918) was quickly followed by the rise of Adolf Hitler and the Nazi regime and Japanese imperialism over which World War II was fought (1939–1945). In fact, for three decades of the 20th century the world was emblazoned with two of the most destructive and wide scale wars fought by mankind. The inhumane and cruel treatment inflicted by humans on other humans, particularly during WWII, seemed unfathomable. This treatment included the attempted extermination of Jews and other groups, such as homosexuals and persons with disabilities.

The dropping of the atom bomb on the cities of Nagasaki and Hiroshima in Japan transformed a seemingly harmless mushroom cloud into an unprecedented weapon of mass destruction that could wipe out large cities and its inhabitants in a matter of minutes (Gilbert, 2004; Strachan, 2003). Yet, from the ashes of war, most world citizens and their leaders were ready for a new approach to human rights, where dignity and respect for all humans were honored. World leaders sought a new way to address world problems, which included the establishment of the UN in 1945. With Eleanor Roosevelt at the helm and the UN Commission on Human Rights, the UDHR was drafted and then ratified on December 10, 1948. The initial proclamation in the UDHR preamble continues to resound: “We the peoples of the UN [are] determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small” (UN, 1948).

The UDHR authors crafted the declaration to be a relatively short, inspirational, and energizing document usable by common people. The UDHR consists of 30 articles that are often described by three generations of rights. The first generation of rights (Articles 2–21) are referred to as negative rights, both civil and political. These are generally rights to standards of good behavior by governments or protection of the rule of law including the right to life; to freedom from torture; to own property; and to limiting where government may intrude. The second generation of rights (Articles 22–27) are often referred to as positive rights, which are economic, social, and cultural rights. These rights include the right to social security, the right to work, and the right to freely participate in cultural life. Third generation rights (Articles 28–30) are collective or solidarity rights, such as everyone is entitled to a social and international order (UN, 1948; Wronka, 2008).

The philosophy and actions of human rights are consistent with social work, especially forensic social work aims. Respect for human rights is becoming a universal principle associated with good government practice. According to Wronka (2008), “at the heart of social work, human rights are a set of guiding principles that are interdependent and have implications for macro, mezzo, and micro policy and practice.”

Government Policy Includes Forensic Social Work

As great social change unfolded in the United States over the coming decades, changes in policies and approaches to criminal justice also evolved. Within the context of a new emphasis on reform and social responsibility (Center on Juvenile and Criminal Justice, 2017), Presidents Kennedy and Johnson expanded federal policy and funding aimed at preventing or addressing juvenile delinquency. The prototype initiative was the New York City Mobilization for Youth. Created by a federal grant to the Columbia University School...
of Social Work, it laid the groundwork for a multitude of similar programs to follow (Center on Juvenile and Criminal Justice, 2017). Forensic social workers also increased their role in juvenile and adult probation services. The executive director of the National Council on Crime and Delinquency was social worker Milton Rector, who felt that probation officers should hold master of social work degrees. At the same time, federal dollars were allocated for correctional treatment programs for adults, pretrial diversion programs, and 262 youth service bureaus. During this decade, social workers worked in police departments, psychiatric settings, juvenile justice programs, and at probation offices (Haynes, 1998; Roberts & Brownell, 1999).

In the early 1970s, Massachusetts social worker Jerome Miller created the soon-copied policy of moving youth in juvenile justice systems from institutions to smaller, community-based group homes. In 1974, the passage of the federal Juvenile Justice and Delinquency Prevention Act intensified the focus on deinstitutionalization (Nelson, 1984). At the same time, forensic social workers and child welfare reformers collaborated to highlight the incidence of child maltreatment and to create programmatic responses, first at the state and later at the federal level. This led to the passage of the Child Abuse Prevention and Treatment Act (1974), which appropriated funds for child abuse assessment and treatment teams, which were usually led by medical social workers (P. J. Day, 2012).

In 1973, the first shelter for women battered by their husbands opened in Arizona; later in the decade, shelters for female victims and services for male perpetrators of family violence began to proliferate. Thus, the focus on social responsibility that grew in the 1960s in the United States led to the institutionalization of certain initial reforms in the rights of women and children at the federal level. These initiatives brought a renewed focus on victims’ needs and rights to the forensic social work arena.

A Shift From Social Reform to Individual Responsibility

Corrections policies began to focus on “get tough on crime” initiatives in the 1980s. Prison populations grew rapidly, and program dollars were stretched thin. Many correctional administrators spent the majority of their budgets on maintaining order and security in their institutions, leaving little funding for services. Feminists brought the impact of crime on survivors of domestic violence and rape to the national spotlight, highlighted by the landmark Victims of Crime Act (1984). The American public was not convinced that prisons were meeting the goal of reforming individuals and debated what to do in response to violent crime. Some have called what followed a “rage to punish,” as harsher sentences and mandatory sentencing laws proliferated (Haney & Zimbardo, 1998). Though treatment services for perpetrators of domestic violence continued to be available, they were in outpatient settings, and the correctional goal of rehabilitation for incarcerated persons began to wane (Haney & Zimbardo, 1998).

The United States was struggling to determine a philosophy for correctional work (Gebelein, 2000). Was it truly “correctional”? Or was the point of prison systems to protect the public from the violent offenders locked inside? Was it to deter those who might otherwise commit violent crime? Was the point of prison simply for members of society to feel better because the “bad guys” were punished?

Faith in the possibility of rehabilitation was dealt a severe blow with the publication—and some would say the misinterpretation—of Robert Martinson’s evaluation of reform programs, “What Works?” Martinson was one of three researchers, the last to join the project; he published the results early and without his colleagues, stating that little proof exists to suggest that rehabilitative programs are successful (Martinson, 1974; Wilks, 2004). When the full article was published, the conclusions were not as dramatic, suggesting that some efforts were effective under some conditions with some subsets of incarcerated persons (Lipton, Martinson, & Wilks, 1975). However, it was the first article to make such a claim and its strong questioning of the efficacy of rehabilitation had an impact.

In this climate, forensic social work opportunities shifted from prison-based rehabilitation to community-based victim/witness assistance programs, where it is estimated that
approximately one third of the staff are social workers (Barker & Branson, 2000; Roberts & Brownell, 1999). Community-based corrections initiatives, such as halfway programs and community courts, also turned to social workers for expertise. In the mid 1980s, federal monies were appropriated for the RESTTA initiative: Restitution Education, Specialized Training, and Technical Assistance. This program of the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) offered local probation departments and courts the resources to hold juvenile offenders accountable, either through monetary compensation, community service, or direct victim services (Roberts & Brownell, 1999). Currently such programs can be found in OJJDP Juvenile Accountability Block Grants. Related to these approaches are the youth-focused “boot camp” or “tough love” projects that seek accountability by mandating early intervention for high-risk young offenders. The success of these programs is unclear, and some high-profile failures have affected their support.5

Social Work Post 9-11

The horrific crimes that occurred in the United States on September 11, 2001, and the myriad of local, state, and federal law and justice policies that have followed, are creating a new chapter in forensic policy and changing social workers’ roles. President George W. Bush’s “War on Terror” led to many new laws, perhaps most significant of which was the Patriot Act: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, passed on October 26, 2001, and revised and reauthorized in March 2006. The Act heightened the role of governmental intervention to anticipate and prevent specific crimes and alters the protections provided for those accused. Although much of the Act focuses on international security concerns, domestic policies have shifted in its wake, affecting immigrants and those seeking refuge or asylum. In this unfolding arena, forensic social workers again face a continuum of tasks and challenges, from individual casework and intervention to policy advocacy and social change.

Forensic Social Work and Human Rights

For 21st-century practice, forensic social workers can choose to play an instrumental leadership role in advancing human rights forward in our country and abroad. So where do we go from here? A good place to start is with the essential document, the UDHR (UN, 1948). Ratified by the UN in 1948, it continues to project a life-affirming message to citizens of the world and is a universally accepted legal mandate by most world governments to fulfill human rights.

Eleanor Roosevelt’s hope that the UDHR would become the International Magna Carta for all nations appears to have come to fruition. Following the UDHR, additional international human rights agreements (e.g., covenants and treaties) were adopted by many countries. In 1976, these documents included the International Covenant on Civil and Political Rights. Today the UDHR, along with these covenants, comprise the International Bill of Rights (Wronka, 2012). Despite progress in human rights over the past 50 years, 21st-century practitioners still have remaining gaps to fill. First of all, the United States continues to lag behind in support for human rights. Since the signing of the UDHR, the United States has signed and ratified major parts of the International Covenant on Civil and Political Rights (1966), which recognizes civil and political human rights (e.g., the right to life and liberty and rights to freedom of expression). Additionally, President Carter in 1978 signed the International Covenant on Economic, Social and Cultural Rights (1966) that recognizes economic, social, and cultural rights (e.g., the rights to food, clothing, housing, and health care). However, as of 2010, the United States has made some strides, such as the election of the first African American president and a bill proposing universal health care for all Americans; the U.S. government has not yet ratified this covenant (Wronka, 2008; 2012).

The United States has ratified only a small number of other human rights international documents and lags far behind many other nations in their legal commitment to human rights. The few documents ratified by the United States include the Convention on the Prevention and Punishment of the Crime of Genocide (1948), International Convention on the Elimination of Racial Discrimination (1965), and the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984). Other important international treaties and documents remain unsigned or unratified by the United States. For example, the United States and Somalia are the only world nations who have not as yet ratified the Convention on the Rights of the Child (1989). The United States also has not ratified the Convention to Eliminate Discrimination against Women (1979), which guarantees the equality of women to men, although U.S. grassroots support for it is growing (Wronka, 2012). Forensic social workers have practice specialty areas where they can concentrate their individual and collective efforts toward advancing human rights. These areas include practice and systems reform in juvenile justice, criminal justice, health care, immigration, mental health, victims’ rights, and civil rights for racial–ethnic and homosexual minorities. For example, forensic social workers whose efforts are focused on juvenile and criminal justice human rights reform can advocate for the rights of offenders of all ages detained in penal institutions, the rights of minorities disproportionately involved in the criminal justice system, the rights of criminal offenders to rehabilitation and training, the rights of children born to women prisoners, the rights of juvenile prisoners, the rights of political prisoners, the rights of probationers, and the rights of those sentenced to capital punishment. There also is the potential to greatly improve the dehumanizing aspects of prison, including improving prison conditions themselves, and improving community conditions, such as living in poverty and crime-ridden neighborhoods, that place people at risk of engaging in criminal offenses (UN, 1994; Wronka, 2008).

Some relevant UN documents with direct implications for 21st-century forensic social work for juvenile and criminal justice reform (listed in chronological order) include the UDHR (1948); the Standard Minimum Rules for the Treatment of Prisoners (1955); the International Covenants on Economic, Social, and Cultural Rights (1966); the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment (1984); the safeguards guaranteeing protection of the rights of those facing the death penalty (1984); the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985); the Basic Principles on the Independence of the Judiciary (1985); and the Convention of the Rights of the Child (1989). Forensic social workers can familiarize themselves with the documents and the UN committees designated to address the issues that are most relevant to their practice issue and/or population (UN, 1994). Forensic social workers as collaborators for human rights also can engage in targeted intervention strategies. The UN (1994) has 10 recommended intervention strategies to help advance human rights that forensic social workers can adapt. These intervention strategies are (a) working with local, regional, and national organizations to promote, develop, and implement needed changes in policy, planning, and programming on human rights issues; (b) recognizing and adapting existing services to maximize effectiveness; (c) developing and involving appropriate and qualified leaders from the community to identify, plan, and implement needed services and advocacy efforts; (d) developing self-capacities of those disadvantaged in their human rights; (e) organizing previously unorganized disadvantaged groups for self-help; (f) forming alliances with like-minded social and political movements; (g) developing mechanisms to enhance local and global awareness, including the use of mass media; (h) fundraising for the cause; (i) assessing the impact of actions undertaken in collaboration with persons and groups affected and associated groups and organizations; (j) documenting and disseminating information on human rights abuses; and (k) promoting legislation that benefits disadvantaged groups. If forensic social workers individually and collectively engage in one or more of these strategies in their local communities, these incremental efforts can make a significant difference as evidenced in the history of forensic social work reviewed.
Black Lives Matter (BLM) Movement

BLM is a global social and protest movement that emerged in 2012 largely as a social media campaign in response to the shooting death of Trayvon Martin in Florida. It campaigns against violence and systematic racism targeting Black people. Issues of concern to the movement include racial profiling, police brutality, and racial inequality, especially disproportionate justice involvement of Black people in the criminal justice (E. Day, 2015). Michelle Alexander’s (2011) *The New Jim Crow* has been influential to social work and related causes to address and understand mass incarceration of African Americans. Social work has been advocating for a response to these issues including in the field’s major education journals (e.g., Robbins, Vaughan-Eden, & Maschi, 2015). For more information about the Black Lives Matter movement, see http://blacklivesmatter.com.

Conclusion

Over 100 years ago, social workers understood that government, as author and institutor of policy, can and should be an arena for reform. Their efforts in the justice system set a high standard for forensic social workers of today. Our forebears saw that advocating for their “clients” meant advocating for systemic reform, as they collaborated to apply a two-pronged approach to social welfare: individual and social change. This bifurcation of social action weaves throughout the history of forensic social work. In today’s sociolegal environment, the duality becomes a continuum of options for intervention, as social workers offer an integrated approach for clients across diverse settings.

Perhaps Eleanor Roosevelt (1958), in her speech to the UN Commission on Human Rights at the UN in New York on March 27, 1958, suggests where and how we might approach our next steps. She eloquently responded to her own question:

> Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world. (Roosevelt, 1958)

Eleanor Roosevelt’s words are just as applicable today as they were about a half century ago. We have the opportunity to revel in past achievements and take the lessons learned forward to shape best practices for the 21st century. Forensic social work history suggests that the most effective efforts were when individual and social level action converged. In the 21st century, advancing the mission of forensic social work involves equipping practitioners with a collective vision as well as the knowledge and skills to effectively navigate the legal system. The potential for the next century of forensic social workers is one of high anticipation. Our collective efforts of today will soon become tomorrow’s newest history chapter. And together we can make it a most memorable one.

CHAPTER EXERCISES

Human Rights Framework

Protects Civil, Political, Economic, Social, and Cultural Rights

*Basic Principles*

- Universality
Participation
Accountability
Transparency
Nondiscrimination

Human Rights and Social Justice as Ethical Issues in Social Work
International Federation of Social Work

Principles
Human Rights and Human Dignity
Social Justice
http://ifsw.org/policies/statement-of-ethical-principles
National Association of Social Work Code of Ethics
www.socialworkers.org/pubs/code/code.asp

Cultural Humility
www.youtube.com/watch?v=SaSHLbS1V4w

Additional Resources
Convention on Elimination of All Forms of Discrimination Against Women: www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx
Core International Human Rights Instruments: www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx
Human Rights Instruments Library: www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx
Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx
Standard Minimum Rules for the Treatment of Prisoners: www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx
United Nations Principles for Older Persons: www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx
United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx

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The United States, often considered “the land of the free,” currently holds the dubious distinction of being the world’s largest prison warden (Walmsley, 2016). While comprising a mere 5% of the world’s population, the United States nonetheless has managed to account for 25% of the world’s prisoners. No country, much less one that purports a democracy, has managed to incarcerate so many of its inhabitants. To put this in perspective, the incarceration rate for the rest of the world per 100,000 people currently stands at 155; while for the same rate, the United States stands at 716.

Further, 1 in every 100 Americans is currently behind bars. The number of people incarcerated has risen by over 500% in the last 40 years (The Sentencing Project, 2017). Women are the fastest growing prison population. Millions of children report having a parent incarcerated, and in spite of copious amounts of neuroscience data on brain development, we continue to arrest, charge, and sentence young children as adults (Rios, 2006).

Despite the significant rates of incarceration, most people will eventually be released. However, the challenges postrelease are often insurmountable; longitudinal research indicates that most people will return to prison within three years (Langan & Levin, 2002).

The enmeshed consequences of incarceration and prisons are omnipresent throughout the social work profession (K. James & Smyth, 2014). Social justice is often described as the “organizing value,” or catalyst, that drives the profession of social work. The National
Association of Social Workers’ (NASW; 2008) Code of Ethics, as well as the curriculum policy statement of the Council on Social Work Education (CSWE), mandate that social workers and schools of social work education pay explicit attention to social and economic justice for all people. Yet, it is startling that critical discourse in schools of social work pertaining to mass incarceration is marginal, or in some cases completely absent (Cnaan, Draine, Frazier, & Sinha, 2008; K. A. James, 2013).

This chapter aims to provide social workers with a historical and contemporary understanding of mass incarceration in the United States. Its goal is to facilitate informed forensic social work practice and advocacy with individuals, families, and communities impacted by this destructive phenomenon.

Background and Scope of the Problem

Prison abolitionist and human rights advocate Angela Davis has long urged the United States to radically examine its mass incarceration problem. By radical, she asserts we must simply get to the root—it is here we will find the understanding necessary for an informed intervention. So while many scholars advance the conversation of mass incarceration by pointing to the “get tough on crime” policies and practices indicative of the 1960s and 1970s, the author believes it is important that we dig even deeper into our history.

The 13th Amendment is often hailed as the legislation that ended legalized chattel slavery in the United States. However, few people are aware that the amendment permits legalized slavery for someone convicted of a crime. The amendment declares that “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction” (U.S. Const. amend. XIV).

The southern states, desperate to replace the free labor thought lost with chattel slavery, established “Black Codes” immediately preceding the amendment. These codes essentially criminalized every facet of the Black experience post slavery. Former slaves, many homeless, penniless, and at a significant disadvantage in every sense of the word, had to again deal with a legalized system, specifically designed to control and exploit their labor.

Historian, sociologist, and civil rights activist W. B. Du Bois (1910) declared the Black Codes as nothing more than “neo-slavery.” The codes criminalized unemployment, and barred Blacks from occupations outside of farming and servitude to Whites. They also prohibited Blacks from looking Whites in the eye, walking on the same side of the street, and even allowed Whites to incarcerate and beat Blacks for breaking what were often exploitive and oppressive contracts. The codes further prohibited Blacks from testifying against Whites in any court proceeding (Muhammad, 2011).

With little to no means of defending oneself, an arrest under the Black Codes almost certainly led to a lengthy conviction for the former slaves (Alexander, 2010). While little research exists to quantify the impact of the codes, it is safe to say that they created a boom in the prison population; at this point in U.S. history, we truly witness the genesis of mass incarceration, or “hyper incarceration” as some scholars have countered, owing to the racialized disparity of arrest and convictions.

Once convicted, former slaves were leased out for a fee through a mechanism titled the “convict leasing system.” Railroads, coal mines, and of course plantations all lined up to take advantage of the relatively cheap and abundant labor. The convict leasing system became a very profitable business for prisons and the numerous industries that had historically relied on cheap slave labor. The financial incentive, coupled with the general anxiety surrounding the newly freed slaves, allowed the convict leasing system to usher in a perverse, but legalized form of neoslavery, as Dubois noted (Alexander, 2010).

Mancini’s (1996) One Dies, Get Another exemplifies in title and content the cruel disregard the system showed toward the former slaves. There existed no oversight within the system;
individuals were often *literally* worked to death. Graveyards were often adjacent to worksites. Friedman (1993) declares the former slaves were treated worse than animals due to their abundance and ease of replacement.

Frederick Douglass (1950), in observance of the codes and convict leasing system, noted the United States’ inclination to “impute crime to color.” This practice would be further ideologically substantiated by the work of “social scientists”—many of whom heavily contributed to quasi-theories fostering Black inferiority at the height of chattel slavery. These practices were now enrolled to ideologically substantiate Black criminality.

A highly visible publication of the time, Hoffman’s (1896) *Race Traits and Tendencies of the American Negro*, asserted that “crime, pauperism, and sexual immorality” (p. 217) were inherent tendencies of Blacks. This ideological premise, coupled with the sheer numbers of Blacks in prison, would now serve to create the imprint of Black criminality in the U.S. psyche (K. James & Smyth, 2014; Muhammad, 2011).

Alexander (2010) asserts in *The New Jim Crow* that mass incarceration is nothing more than a tool for labor exploitation and social control—specifically utilized in periods of U.S. history representing significant racial and social unrest. If that assertion is true, then the first wave of mass incarceration, or more specifically the hyper incarceration, of Blacks began with the Black Codes established during the uncertainty that preceded the 13th Amendment and Reconstruction.

The second and current wave of mass incarceration is often traced to about 1972—a mere four years from the close of the Civil Rights Movement—which was *again* a period similar to Reconstruction, representing significant racial and social unrest in America (Pratt, 2009). While the assertion may be debatable to many, what took place at the conclusion of both periods in history is well documented.

In 1972, the prison population stood at about 300,000. Today it stands at more than 2 million. One would naturally attribute this to higher crime rates, yet from 1960 to 1990, “official crime rates in Finland, Germany and the United States were close to identical. Yet the U.S. incarceration rate quadrupled, the Finnish rate fell by 60%, and the German rate was stable in that period” (Alexander, 2010).

Neo–conservative ideology of the era, very similar to ideas used to justify Black Codes and the convict leasing system, rejected any socioeconomic rationale to crime. Reagan proclaimed that “here in the richest nation in the world where more crime is committed than any other nation, we are told that the answer is to reduce poverty. This isn’t the answer” (Beckett & Sasson, 2004). He went on to say that Americans had “lost patience with liberal leniency and pseudo-intellectual apologies for crime.” The Bush presidency would echo a similar stance, stating, “we must raise our voices to correct an insidious tendency—the tendency to blame crime on society rather than the criminal.”

The “get tough on crime” mandate became the dominant rallying cry by politicians—and any who dared to go contrary to this neo–conservative paradigm were attacked and dismissed as “being soft on crime,” a label equivalent to political purgatory (Blomberg & Lucken, 2010). President Reagan officially launched the war on drugs in 1982, but many point to the passage of the New York Rockefeller Drug Laws of 1973 as its true genesis (Alexander, 2010; Pratt, 2009; Rotman, 1990).

The Rockefeller Drug Laws of 1973 legitimized the most draconian sentencing guidelines this country had witnessed. They called for a 15-year (to life) mandatory prison term for anyone convicted of selling more than two ounces of a controlled substance, or anyone possessing more than four ounces of a controlled substance (Hartnett, 2010).

By 1984, most states had mandatory prison terms for offenses ranging from drug to firearm possession (McShane & Williams, 1997). Mandatory minimums limited court and prosecutorial discretion. U.S. District Court Judge Spencer Lets was so perplexed by this loss of discretion that he verbally attacked Congress for the creation of laws which negated the court’s ability to adequately weigh all the factors necessary to determine guilt or innocence (Blomberg & Lucken, 2010). Mandatory laws were then further supported through “Truth in Sentencing.”
Truth in Sentencing, enacted by the federal government in 1987, ensured that individuals convicted of a criminal offense would serve at least 85% of their sentence prior to being eligible for parole/release from prison. Truth in Sentencing did away with early release from prison as a result of good behavior (Alexander, 2010). As indeterminate sentencing with the opportunity for early release was once used as the carrot on the stick to entice unwilling prisoners to participate in the rehabilitative process, federal funding would now be utilized to entice states to implement Truth in Sentencing–like laws.

The 1994 crime bill allocated more than 10 billion dollars to states who were willing to implement some form of Truth in Sentencing legislation. Federal aid to construct new state prisons was also used as an enticement; thus, by 1995 almost 30 states passed some facet of Truth in Sentencing (Dyer, 2000). “Three-strikes legislation” emerged around the same time as Truth in Sentencing. It allowed prosecutors to give a life sentence to someone convicted of a felony with two prior “serious or violent” convictions. The federal government and at least 24 states would implement some form of three-strike legislation by 1997. There would, however, be varying consensus regarding implementation. Some states regarded drug offenses as serious while others did not, and in eight states only two strikes were necessary to bring about a life sentence (Walker, 1998).

However, even with punitive approaches such as Truth in Sentencing and “mandatory minimums,” most people incarcerated will eventually be released from prison. The process of incarcerated individuals returning to society has been termed reentry. It is estimated that almost 700,000 people are released annually; however, their transition is often short lived (K. James & Smyth, 2014).

Recidivism is often defined as rearrest and conviction for a new crime, or in some cases a parole violation, which implies that the terms set out by the Department of Parole or Probation were not adhered to. Statistics show that recidivism numbers are extremely high. In a 1994 longitudinal study, it was determined that 68% of people released from prison were arrested for a new offense within three years, with 47% being reconvicted of a new crime while on parole (Langan & Levin, 2002). Further research also concluded that individuals who were sentenced to prison versus probation tended to have higher levels of recidivism, leading the researchers to question the efficacy of prisons as a deterrent (Spohn & Holleran, 2002).

This section highlighted the historical and contemporary mechanisms that have fostered mass incarceration in the United States. The following section examines the prevalence of jails and prisons, as well as an overview of the people who inhabit them.

System and Population Overview

The Prison Policy Initiative (2016) report titled, “Mass Incarceration: The Whole Pie 2016,” states that over 11 million people cycle in and out of jails each year. They further report that “The American criminal justice system holds more than 2.3 million people in 1,719 state prisons, 102 federal prisons, 942 juvenile correctional facilities, and 3,283 local jails.”

Many of these facilities are often located in remote regions, lacking significant oversight, and prone to gross human rights violations. In a report following the 1971 Attica riots, arguably the most famous prison riot in U.S. history, the National Advisory Commission on Criminal Justice Standards and Goals recommended in a report that no new prison facilities be built. The Commission also strongly recommended closing all juvenile facilities. The report concluded that prisons, jails, and reformatories have all failed; and “there is overwhelming evidence that these institutions create crime rather than prevent it. Their very nature insures failure” (Miller, 2009).

Many people incarcerated in these facilities are nonviolent offenders, poor, of color, and come from communities permeated by trauma, despair, and hopelessness (K. James & Smyth, 2014). Less than half of all prisoners have completed a high-school diploma (Williford, 1994). Western and Wildeman (2009) further indicate that “By the early 2000s, more than a third of young Black non-college men were incarcerated.” They also go on to state “that incredibly, 34% of all young Black male high school dropouts were in prison or jail on an average day in 2004, an incarceration rate forty times higher than the national average.” Many individuals
Incarcerated come from poor urban communities with notoriously poor schools, where funding has continued to decrease in favor of prisons and policing (Hawkins, 2010).

Weedon (2005) reports that there are almost five times as many mentally ill people in jails than hospitals. D. J. James and Glaze (2006) estimate that as many as 64% of prisoners have a mental illness. Many of these individuals also have comorbid substance abuse challenges—often utilized as a coping mechanism in lieu of treatment. Researchers also note that there exists a bidirectional relationship between homelessness and incarceration—each increasing the risk factor of the other.

“Justice is [not] blind.” More Black men are currently incarcerated than were enslaved in 1850 (Alexander, 2010). At the current pace of incarceration, it is expected that one in three Black men and one in six Hispanic men are expected to spend some time in jail or prison during their lives (Gottschalk, 2006). Federal statistics also show that the average federal sentence for Black drug offenders was 11 times higher than that of White drug offenders through 1986, but those numbers rose exponentially by 1990. The rate of Blacks convicted of drug offenses is 49% higher than their White counterparts; yet, research has shown that the usage and sale of drugs is consistent among Whites and Blacks (Alexander, 2010).

Women, specifically Black women, are at significant risk of incarceration; those incarcerated report severe histories of abuse and trauma. Zlotnick (1997) reported in one study of women in prison that 87% report being assaulted at least once, 55% report being abused as children, 53% reported being raped as adults, and almost 50% met the criteria for posttraumatic stress disorder. The rise in female incarceration also puts significant stress on already compromised families; it is reported that more than 70% of incarcerated women lived with their children as primary caretakers prior to their arrest.

There is also mounting evidence that transgender communities have been disproportionately impacted by the criminal justice system. Research indicates that transgender people have a greater likelihood of incarceration; face higher risk of “police discrimination and abuse”; and while incarcerated, they are at greater risk for sexual abuse. Reports further indicate that transgender people face significant employment discrimination, thus leading many to criminalized activities and the constant risk of incarceration (The Editorial Board, 2015)

**Current Practice, Policy, and Social Movement Trends and Debates**

In 2015 and 2016, President Obama released via clemency, pardons, and other legal mechanisms thousands of nonviolent drug offenders. The administration pointed to punitive sentencing policies as a rationale for their decision. Obama himself stated that this is “another step forward in upholding our ideals of justice and fairness” (Horwitz, 2015). And while the historical release of prisoners earned praise from criminal justice reformers, many urged the president to give greater examination to the root causes of mass incarceration, as well as the collateral consequences.

An example advocates point to is the release of 6,000 drug offenders in 2015—of which approximately 2,000 were targeted for deportation. So while there is a recognition from the administration that justice policies and practices with historical racial bias are in many ways responsible for their arrest, conviction, and sentence, there exists a dissonance in recognizing that those same factors are also now responsible for their deportation.

The “Nix 96” coalition is made up of immigration and criminal justice reform advocates who argue that criminal justice and immigration policies are intrinsically linked—with the former feeding the latter. And thus for any reform to be truly effective, it must also examine and correct the collateral consequences (i.e., detention and deportation, education, employment and housing discrimination) faced by people postrelease.

**Core Roles and Functions of Forensic Social Work in This System**

In one of the darkest periods in U.S. prison history, a period marked by unparalleled prison riots, culminating in the San Quentin Massacre and the Attica riots, the brotherhood of Attica
demanded to have “social workers” in their struggle for justice (J. James, 2005). Of all helping professionals, they identified social workers.

Social workers have a long history working directly and indirectly with justice-involved populations. Social workers provide clinical services for people in prisons, jails, and varied treatment services. Social workers also work with children and families impacted by mass incarceration. Further, social workers are very involved in policy and advocacy to change racial and oppressive laws.

The NASW has even released a policy statement illustrating the impact of mass incarceration while calling for the “increased use of forensic social workers to provide culturally competent treatment and intervention for the growing population of incarcerated individuals.”

**Relevant Theories or Framework**

Cognitive behavioral theory (CBT) is often hailed as the paragon of evidence-based practices. CBT has its roots in behavioral and cognitive theory. It is a series of “interventions based on a common theory about the connection between our thoughts, attitudes and beliefs—cognitions—and our behavior” (Feucht & Holt, 2016). It posits that maladaptive thoughts, beliefs, and behaviors can be altered by fostering self-awareness through the utilization of individual and/or group therapy, and by further providing the strategies and tools to make healthier decisions.

The National Institute of Justice (NIJ) created crimesolutions.gov as a clearinghouse for best practices with justice populations. A recent meta-analysis examining 50 CBT-rated programs by crimesolutions.gov found that “CBT programs that have been rigorously evaluated are effective at deterring crime, assisting victims and preventing recidivism” (Feucht & Holt, 2016).

The programs included in the meta-analysis provided services to adults, juveniles, or both. The research indicated that CBT appeared to be more effective with juvenile offenders. The researchers attribute the discrepancy to the belief that adults are hardwired with “deeply rooted maladaptive cognitive processes that may be more difficult to change.”

**Relevant Ethical, Legal, and Policy Issues**

On August 18, 2016, Deputy Attorney General Sally Yates issued a memorandum instructing the federal government to reduce, and ultimately end, the utilization of private prisons. She cited an “800” percent hike in federal prison populations from 1980 to 2013 as a rationale for their initial utilization, but noted that criminal justice reform from arrest, sentencing policy, clemency initiatives, as well as the “smart on crime” initiative, have resulted in a drastic drop in federal prison populations. The deputy attorney general also noted that private prisons “simply do not provide the same level of correctional services, programs, and resources . . .”—factors she noted were “essential to reducing recidivism and improving public safety.”

Many criminal justice reformers hailed the move as significant, but pointed out that the memorandum only applies to less than 23,000 people (the number of federal prisoners in private prisons). The executive director of the Sentencing Project, Marc Mauer, thought that the move, while lacking the practicality many reformers crave, should be seen as “symbolic” toward an “evolving climate on criminal justice reform.”

**Relevant Assessment, Prevention, and Intervention Strategies**

Restorative justice (RJ) is often hailed as a prevention, and/or intervention, in justice settings. RJ practitioners work with harmed communities, law enforcement, and the court system to identify and institutionalize practices that benefit all parties. RJ has specifically been utilized with great results in public school settings, which have seen significant rates of suspensions and expulsions due to zero-tolerance policies.
High levels of suspensions have seen schools become feeders not for college, but for the juvenile and adult criminal justice systems. This phenomenon has been titled the school to prison pipeline; its impact can be felt predominantly among poor students of color. Research has demonstrated the effectiveness of restorative justice in both juvenile justice and school settings.

RJ is grounded in cultivating relationships that allow voice to be given to the harmed, as well as the person who caused the harm. RJ also works to stigmatize “the act, rather than the offender” (Braithwaite, 1989). It is through these processes that mutual understanding is cultivated—leading to personal reflection and accountability necessary for restoration/reparation. It is through this process that RJ practitioners argue that we can take a dignified stance toward harm that truly allows for justice, and not just punishment.

RJ is further supported by empirical data. One school in Oakland, California, found that by implementing a RJ approach, suspensions dropped by 87%, and expulsions to zero. A West Philadelphia High School reported an over 50% reduction in suspensions, combined with a 52% decrease in acts of violence committed within the school (Schiff, 2013).

Research on the utilization of RJ programming for juvenile offenders also found it to be effective in reducing recidivism, and in general far more effective than the traditional juvenile court process (Bergseth & Bouffard, 2012).

Forensic Practice Skill Set

Karl Menninger (1968) famously criticized what he deemed the “cold war between lawyers and psychiatrists” in lamenting the criminalization of people plagued by mental health challenges. Social workers in forensic settings are often faced with a similar burden. They are often working under a system whose main priority is punishment and control, often reducing mitigating factors such as mental health, poverty, economics, and various other social determinants of behavior in favor of a paradigm that trumps individual behavior.

Social workers are trained to meet “people where they are at”—meaning a holistic examination of the individual, inclusive of all relevant mitigating factors, in weighing an intervention. This social work value is often in contradiction to the American ideal of meritocracy, which assumes that opportunity is indeed equal, and success, or the lack thereof, can be simply reduced to a choice.

Case Example and Application

A 21-year-old client, Eric (not real name), is assigned a social worker by his public defender. Eric was charged and convicted of an assault when he was 18 years old and spent two-and-a-half years in an upstate correctional facility where he did not engage with any reentry supports. He is currently charged with a quadruple attempted murder. He is alleged to have entered a home with a gun and shot two women while two toddlers were present. One woman was paralyzed from the gunshot and the other made a full physical recovery. The children were not physically harmed but witnessed the entire incident.

The social worker was tasked with uncovering Eric’s family and social history to try and elicit a more favorable plea offer from the prosecutor. Through the investigation, it was revealed that Eric’s mother had a problematic pregnancy and birth. Eric was her 13th child. His mother was diagnosed with preeclampsia and she had pneumonia during her third trimester. She went into early labor and suffered several complications during delivery, one of which restricted Eric’s oxygen supply. Eric’s mother could tell from an early age that her son was not developing in the same way as her other children; he was slow in attaining developmental milestones. It was revealed when Eric was a toddler that he suffered high levels of lead in his blood, likely due to lead poisoning in utero or during his youngest years.

(continued)
Conclusion

From Michelle Alexander’s *The New Jim Crow* to Ava DuVernay’s powerful documentary “13,” it is clear that the United States has intentionally facilitated a perverse form of neoslavery under the facade of criminal justice. It is thus imperative that the social work profession, with its organizing value of social justice, become a preeminent voice of opposition to mass incarceration; however, for that to occur, the social work profession must be willing to engage in critical dialogue with impacted people. We must also radically assess the impact of capitalism, racism, sexism, and countless other traumas within the academy, within organizations, within society, and within ourselves. It is through this dialogue, this reflection, that we can reach the roots of injustice, and it is by reaching the roots that we can truly begin to utilize that knowledge to inform our education, our practice, and our advocacy to end systems that perpetuate mass incarceration. But maybe even more fundamentally, we must use this knowledge to hold the United States accountable for her promise: the promise of justice and democracy for all people irrespective to race, religion, class, or creed.

CHAPTER EXERCISES

**Exercise 1.** With the rates of incarceration in the United States being so high, your likelihood as a future social worker to work with justice-involved individuals or impacted populations is extremely high. How prepared are you? Discuss three ways in which this chapter has helped, and three ways in which you can further prepare yourself. What (if any) socially learned biases about this population do you have? What are some ways in which you can address them? On a clinical level, how can you best balance treatment modalities focused on behavioral change, while still acknowledging, and factoring for, racial, social, economic, and the various other discrimination this population often faces?

**Exercise 2.** On a policy level, many activists are debating the merits of prison reform versus prison abolition. Examine current trends in these areas, and list three pros and cons for each. What do you feel is necessary for reform to be successful? What is necessary for prisons to be abolished? What are alternate ways of addressing crime/harm that can be instituted? Are there international models you can highlight?

**Additional Resources**

Crime Solutions: www.crimesolutions.gov

Bureau of Justice Statistics: www.bjs.gov

The Marshall Project: www.themarshallproject.org/#.SkBztcYJn

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Agency Setting

The Bronx Defenders is a community-based, multiservice organization dedicated to addressing the underlying problems of poverty in the Bronx. Our staff of 265 provides approximately 35,000 low-income residents of the Bronx with comprehensive legal services, social services, and community programs each year. Our holistic model of representation brings criminal defense attorneys, family defense attorneys, civil attorneys, social workers, civil legal advocates, parent advocates, investigators, community organizers, and support staff together under one roof to efficiently and quickly address the intersecting issues and challenges faced by individual clients. Housed within our criminal defense practice, our Adolescent Defense Project (ADP) provides specialized representation to our youngest clients: 14-, 15-, and 16-year-olds who are being prosecuted as adults. Clients in this age group face unique challenges, including homelessness, family instability, mental health issues, drug addiction, and lack of appropriate educational services. The ADP consists of three criminal defense attorneys and an experienced social worker who works with our adolescent clients to navigate those challenges and resolve their cases without a criminal record and by finding community-based alternatives to incarceration.

Practice Responsibilities

As the social worker in The Bronx Defenders’ ADP, I work collaboratively on an interdisciplinary team of advocates working to provide high-quality, holistic representation to youth accused of crimes in Bronx County. Strategizing with attorneys and other advocates, I work with clients to address both the circumstances driving them into the criminal justice system as well as the devastating consequences of that involvement. In my role, I build rapport with both clients and family members through consistent meetings in a variety of settings, including the courthouse, our community-based office, and visits to homes, jails, and juvenile detention facilities. I work with attorneys to ensure my clients understand court procedures and the legal issues they face. I advocate on the record in court and write comprehensive “prepleading investigations” for adolescent clients, which require comprehensive interviews with collateral contacts and examination of medical and treatment records. These reports are submitted to judges and prosecutors with the goal of humanizing my client’s story and making a compelling argument for why a reduced or nonincarceratory sentence is appropriate and serves the purpose of justice.

Expertise Required

This job requires a Masters in Social Work (MSW) degree from an accredited graduate school of social work and a license to practice social work. A social worker in this role must use a strengths-based approach and have experience with adolescent clients who have histories of trauma, mental health issues, and habitual absence from school. Most importantly, this
role requires that you are a true advocate, meaning that no matter the charges or allegations against your client you fight for the best case outcome.

**Ethical, Legal, Practice, Diversity, and/or Advocacy Issues Addressed**

One of the ethical challenges involved in my work is the issue of client confidentiality from parent(s). My responsibility is to the adolescent, not the parent(s), so even if my client is under 18 years old, I only share details of the case with a parent or guardian if my client gives me explicit permission to do so. The criminal justice system is the only place where the parent does not have overt access to information regarding his or her child. While this practice of attorney–client privilege may frustrate a parent, it is a critical component of our practice to protect the rights of our clients and advocate on their behalf.

**Interprofessional and Intersectoral Collaboration**

At The Bronx Defenders, social workers collaborate daily with public defenders and other advocates and liaise with staff at local jails and various community-based organizations, including alternative-to-incarceration programs. Adolescents in the criminal justice system are often at the intersection of various other systems, such as child protective services, foster care agencies, and schools. One of my priorities is to connect adolescent clients to any services that will help them achieve their goals in life and also assist in resolving their legal matters in a favorable way. To that end, I introduce them to after-school programs, mental health providers, and youth programming that can provide them with empowering experiences. A social worker entrusted with advocating for an adolescent involved in the criminal justice system cannot afford to work in a silo. It is essential that the person in this role be committed to engaging the various systems in a youth’s ecological framework in order to truly understand the client’s perspective and represent her or his best interests.