Introduction

As you have learned from previous chapters, a social worker can find themselves involved in numerous diverse systems depending on their client population and area of specialty. One of the most intimidating and controversial of these systems is the United States criminal justice system. Whether a social worker is tasked with working with inmates housed in jail/prison, rehabilitating individuals on probation/parole, investigating potential child abuse, or defending the rights of crime victims, the criminal justice system is sure to have an enormous impact on nearly every aspect of a client's case and personal life. In order to best aid clients who have found themselves wrapped up in this complex system it is crucial that we as social workers have at least a basic knowledge of what the system is, how it works, basic terminology, and most importantly, the rights held by not only our clients but each person who is a citizen of this country.
What is Criminal Justice?

The United States Criminal Justice System

The United States criminal justice system is the set of agencies and processes established by the United States government to control crime and impose penalties on those who violate laws. It is directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected of criminal offenses. Contrary to popular belief, there is no one system of justice within the United States, but rather a combination of multiple smaller jurisdictions which are determined by the individual’s area of residence, type of offense, and more. The most common of these include state (police) and federal (FBI) jurisdictions. The simplest way to compare these two is to think of an individual who commits multiple crimes in one state with an individual who commits one or multiple crimes in one state and then moves to another. Since the individual in the second scenario has moved, the two states involved would be competing for jurisdiction, making it necessary to involve the Federal Bureau of Investigations (FBI) as they have national jurisdiction. Other examples of jurisdictions include county, city, tribal government, or military installation (NCVC, 2008a).

Components of Criminal Justice

*These descriptions are taken from NCVC’s The Criminal Justice System unless otherwise noted.*

Most of these criminal justice systems consist of five components- law enforcement, prosecution, defense attorneys, courts, and corrections. Each of these play a unique but critical role in criminal justice proceedings.

Law enforcement officers are tasked with hearing and investigating reports for crimes which happen in their jurisdiction. These officers investigate crimes by gathering and protecting evidence, making arrests, providing testimony during court processes, and conducting follow-up investigations as needed.

After law enforcement officers investigate a criminal offense, it is up to the prosecution to represent the state or federal government throughout the court process. Prosecutors must review the evidence gathered by officers and determine whether to file formal charges against the suspect or to drop the case. They are also tasked with presenting the evidence in court, questioning witnesses, determining what charges a suspect will be charged with, and more.

While the prosecution represents the state or federal government, it is the job of defense attorneys to represent the individuals accused of a criminal offense. They can either be hired by the defendant themselves or assigned by the court since legal representation is a basic right outlined in the Constitution.
Both the prosecution and defense attorneys are involved in the courts which are run by judges. Their role is to ensure that the law is followed along with overseeing what happens in court. Judges are able to determine whether or not to release offenders before a trial, accept or reject plea agreements, oversee trials, and sentence individuals convicted of illegal acts. Judges are easily some of the most powerful individuals in the criminal justice system.

Finally, after an individual has been investigated, tried, convicted, and sentenced, they enter the last criminal justice component of corrections including jails and prisons. These terms are often used interchangeably, but in reality jails are used to house individuals sentenced to less than one year of incarceration as well as those awaiting trial, while prisons house individuals sentenced to be incarcerated for a year or more. Correction officers are tasked with supervising convicted individuals in jail or prison, and also include probation (jail) and parole (prison) officers who are responsible for monitoring these individuals either after they have completed their sentence or in some cases in lieu of incarceration. Corrections officers typically prepare pre-sentencing reports on the individual which are used to help judges decide on sentences as well as overseeing the day to day custody of incarcerated inmates (NCVC, 2008a).

*The image provided outlines the process from arrest to incarceration including the components discussed above. As a social worker within criminal justice settings it is often beneficial to be aware of the complexity of criminal justice proceedings as well as basic timelines in order support and advocate for clients. For more information and detailed descriptions of each step in the criminal justice system process, see The American Bar Association's guide, How Courts Work.

What is the sequence of events in the criminal justice system? [https://www.bjs.gov/content/justsys.cfm](https://www.bjs.gov/content/justsys.cfm)

The Courts

In order to understand the role of a social worker in court room proceedings, a basic understanding of the various types of courts and their roles are first required. Look to the next sections to learn a few of the most common types of courts that a social worker may find themselves involved in.
United States Supreme Court

The Supreme Court of the United States is the “highest” court in the land. It has ultimate authority to hear appeals in nearly all cases decided in the federal court system. It can also hear appeals from state high appellate courts that involve a “federal question,” such as an issue involving a federal statute or arising under the Constitution of the United States. This essentially means that an individual who disagrees with a decision reached in a lower court has the right to apply for a second opinion from a higher court. They are able to practice this right by moving all the way from local courts to the top of the diagram, the US Supreme Court which can not be overruled. With that said, fewer than 100 cases are actually heard and decided by the Supreme Court each year.

There are currently nine justices on the Supreme Court: one chief justice and eight associate justices. These individuals can be thought of as a team of judges who are considered to be some of the most ethical individuals in the country nominated only by the President of the United States. The key to the number of justices is that it is an odd number when the decision on a case comes down to a vote. In order for a decision to be reached, a minimum of five justice votes are required either for or against the defendant. After each side’s argument has been presented the justices crafts a written explanation of their decision called an opinion. With that said, there can be more than one “opinion” since not all of the Justices need to agree in order for a decision to be reached. Most commonly opinions are either titled as “the majority opinion”, or “the minority opinion” and outline the details of the “winning” and “losing” arguments.

The main conditions for a Justice to hold office is found in Article III Section 1 of the Constitution, “[t]he Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office” (Constitution, 2017). Essentially this means that Justices serve for life, only being replaced due to death, retirement, or impeachment for unethical behavior. Since 2005, John G. Roberts Jr. has served as the Chief Justice and the oldest and longest serving justice is 80-year-old Anthony Kennedy appointed in 1988.

Supreme Court facts and landmark cases are available through the following links at ConstitutionFacts.com:
Michigan Supreme Court

The State of Michigan Supreme Court is the highest court in the state and can be overruled only by the Supreme Court of the United States. The Michigan Supreme Court has seven justices, one of whom is elected to be the Chief Justice as in the US Supreme Court. Following the diagram provided below, the state and federal court systems can be thought of like a pyramid starting with local courts and working all the way to the US Supreme Court. At this level, if an individual is dissatisfied with a decision from the Michigan Court of Appeals they can complete a written “application for leave to appeal”. This essentially means that they would like to invoke their right to appeal a court decision which they believe is unjust. The Michigan Supreme Court receives approximately 2,000 applications each year and “grants leave” – meaning they will hear the case – in about 100 of these cases. Unlike the US Supreme Court however, in order for a decision/majority opinion to be reached at this level, a minimum of four of the seven Justices must agree.

Michigan Court of Appeals

The Court of Appeals is a relatively new court that began in 1965. It is an “intermediate” court between the Circuit Court (where trials take place) and the State Supreme Court. Individuals who are dissatisfied by a Circuit Court decision go first to the Court of Appeals. In most cases, the person who loses in Circuit Court has the right to appeal to the Court of Appeals where the case will be argued before three judges who must reach a majority decision (2 out of 3) much like the higher courts described above. The Court of Appeals hears about 6,000 cases each year, and listens to arguments regularly in Detroit, Lansing, and Grand Rapids, and Northern Michigan.

Flowchart of the U.S. court system

Local Courts

Circuit Court

The Circuit Court is a general trial court. It has jurisdiction in all civil cases involving more than $25,000, all felony cases,
all serious misdemeanor criminal cases, and all family cases. The Family Division has jurisdiction over divorce, child
custody, child support, paternity investigations, adoptions, name changes, juvenile proceedings, emancipation of minors,
parental consent, and personal protection proceedings. The Family Division also houses the Friend of the Court, which
handles cases involving child custody, parenting time, and support.

**Probate Court**

The Probate Court handles wills, administers estates and trusts, orders treatment for individuals who are
developmentally disabled, and appoints guardians and conservators. In 2013, Probate Court handled 64,114 case
filings.

**District/Municipal Court**

The District Court handles most traffic violation cases and hears both criminal and civil cases, including small claims and
landlord-tenant disputes. All criminal cases for people 17 years old or older originate in district court. The defendant is
told the charges, rights, and possible consequences. If the charge is a misdemeanor punishable by less than one year in
jail, the District Court conducts the trial. For charges punishable by more than one year, the case goes to Circuit Court.

**Small Claims Court**

A division of the District Court, the Small Claims Court hears civil cases of $5,500 or less. A case may be presented to a
judge or an attorney magistrate. In 2013, 55,719 claims were filed here. A magistrate is a civil officer with the power to
administer and enforce laws similar to a judge.

**Court of Claims**

The Court of Claims is part of the Court of Appeals. The court hears and determines all civil actions filed against the
State of Michigan and its agencies. These cases include highway defect, medical malpractice against state-owned
medical facilities and state-employed medical practitioners, contracts, constitutional claims, prisoner litigation, tax-
related suits, and other claims for money damages.

**Amendments of the Constitution**

The criminal justice system is ultimately governed by the Constitution of the United States of America. The Constitution
is responsible for outlining the basic, inalienable rights of each citizen of the United States. Obtaining an understanding
of these rights is particularly relevant to social workers working with criminal justice populations in order to be able to
determine if a client’s rights are being denied and what protections have been put in place to defend these rights.

Some examples most pertinent to criminal justice populations include Amendment 4 which protects individuals against
unlawful search and seizure, and Amendment 8 which protects against cruel and unusual punishment.

To review these amendments as well as the entire Constitution, please follow this link: [http://constitutionus.com/](http://constitutionus.com/)
What is a Criminal Justice Social Worker?

Now that you have an idea of what the criminal justice system is and how it functions, how does social work come into play? With today’s increasingly controversial, challenging, and ever-changing legal system, criminal justice social work (also referred to as forensic justice social work) is rapidly rising as a vital public service for offering psychological and behavioral services in the criminal justice system (Coyle, 2017). Although the field of criminal justice social work is relatively new, the number of court cases and growing prison populations nationwide are creating a large demand for social workers with knowledge and/or experience within the criminal justice system.

While many mistakenly believe that criminal justice social work is limited to evaluating and treating criminal defendants in psychiatric hospitals, it is important to realize that the field is much broader and includes all social services within the civil and criminal justice systems on nearly every level. It is also important to note that, like many aspects of society, the media’s portrayal of criminal justice social work is highly inaccurate. For example, these workers are often depicted as performing and analyzing lab work which is rarely the case unless the workers specializes in research roles. It is also unlikely as a worker that you will run into the Jeffrey Dahmers of the world on a regular basis, rather you will be treating and advocating for individuals who often have significant histories of trauma and have simply made poor life decisions. So, if in reality this career is not what the media portrays it as, what exactly does a criminal justice social worker do? (Coyle, 2017).

A criminal justice social worker’s day-to-day activities largely include providing consultation to law enforcement personnel, law makers, attorneys, paralegals, community members, correctional officers, doctors, and psychiatrists on interdisciplinary teams (NCVC, 2017a). Criminal justicesocial workers often provide their clients with emotional support, guidance in navigating the court/legal systems, connections to relevant resources, housing application assistance, and individual and policy advocacy. Further, criminal justice social workers typically use their legal expertise to work within court systems in settings such as child and family agencies, hospitals, mental health agencies, substance abuse agencies, correctional facilities, prisons, and faith-based institutions.

Criminal justice social workers are also responsible for diagnosing criminal populations, making recommendations about mental status, serving as expert witnesses, training law enforcement personnel, referring defendants to community resources, and developing advocacy programs in the criminal justice system. These roles are more than likely where the
inspirations for television and other media forms stem from. However, although diagnosing criminal populations is part of what criminal justice social workers do, this task realistically makes up very little of a worker’s activity and is not nearly as glamorous and intense as one might see in a movie. For example, while again it is accurate that a criminal justice social worker may work with criminal populations, other vulnerable populations served include but are not limited to: incarcerated youth and adults, recently released inmates, children who are victims of neglect, and victims of domestic or sexual abuse (MSW Guide, 2017). In order to better outline the types of populations criminal justice social workers commonly work with and what they do, please refer to the following case study:

**Case Study**

“Jonathan” is a 37-year-old, Caucasian male who identifies as heterosexual and non-religious. He is currently in prison for domestic assault against his wife of 11 years. Although he claims to love his wife, Jonathan states that he frequently struggles to control his anger, especially after a night of heavy drinking. After being interviewed by the prison social worker it was revealed that Jonathan was abused by his father while he was a child, and he also commonly saw them fight both verbally and physically. During the initial interview Jonathan struggled to make the connection between his own traumatic upbringing and his current beliefs and behaviors.

Cases such as these are incredibly common within the criminal justice system since, as outlined in previous chapters, unresolved traumas can so often be linked to negative behaviors as adults. For Jonathan’s case the main tasks of a criminal justice social worker would include assessing Jonathan’s risk to himself or others based on his past and current behaviors, developing a treatment plan to combat symptoms of anger and possible substance abuse, educating Jonathan on various coping skills to control his anger/drinking, working to increase communication skills as an alternative to violence, meeting weekly or bi-weekly for individual therapy with subjects such as adjustment to prison and childhood trauma, detailed documentation of all activities, advocacy, testifying in court, and more. Although this case study does present a common issue that bridges social work and the criminal justice system it is just one of countless possible client populations.

For additional examples of specific career opportunities and client populations, refer to the next section.
Specific Careers as a Criminal Justice Social Worker:

As a social worker in the criminal justice system there are a wide array of career options each with specific skill requirements, education requirements, salary ranges, and of course daily tasks. Although the previous sections discuss the most common tasks of a criminal justice social worker, each of the many career options listed below are equipped with their own unique challenges and rewards. This section will outline just a few of the countless job prospects for individuals with a mental health degree as well as a passion for helping those caught up in the criminal justice system.

If you are interested in learning more about any of the following career options including degree requirements, salary, job outlook, and more, please visit the website www.payscale.com.

CPS/APS Worker

CPS and APS are common acronyms that future social workers are sure to see in their careers. They stand for Children’s Protective Services (CPS) and Adult Protective Services (APS). These careers are easily some of the most controversial and emotionally taxing that a social worker can enter (Education Career Articles, 2012). The job titles can be broken down into Investigations and Ongoing services, which are tasked with determining whether or not an allegation of abuse on a child or adult is true (investigations), or are responsible for working directly with families who have been substantiated for some form of abuse or neglect (ongoing). Unlike the common misperception these workers are not solely responsible for the removal of children from their parents, although this is a necessary part of the job in the most severe of situations for the safety of the child.

However, these workers also rely heavily on providing parenting training and other necessary resources with the ultimate goal of keeping families together. Similar to CPS, APS investigations workers determine when a vulnerable adult (mentally ill, elderly, etc.) is being improperly taken care of or taken advantage of. A common example of this is elderly adults who are being physically or financially abused by family members or other care providers. Although these individuals are not “removed” in the same sense as a victimized child may be, it is the role of the APS worker to see that the abusive situation is terminated.

The most common social work skills utilized by CPS/APS workers include case management, investigation, documentation, collaboration with other agencies and families, and quick decision-making. These careers also require frequent traveling within the worker’s county of employment in order to attend home visitations and/or court. (Education Career Articles, 2012).

Youth Correctional Counselor

Counselors working with youth in the criminal justice system help rehabilitate young offenders (Study.com, 2017b). Counselors generally work in a juvenile correctional facility, such as a detention center or residential facilities that youth are referred to by the Department of Health and Human Services, Children’s Protective Services, or Foster Care. Here counselors are responsible for supervising the youth by enforcing discipline, making and maintaining records, and implementing constructive activity programs. Counselors may also be responsible for making recommendations such as the appropriate destination for a youth after they are released from placement. For example, a counselor who believes a youth is not capable of being unsupervised, may be unsuccessful, or simply has nowhere to go, may recommend an additional residential facility, foster care, or may even help the individual obtain independent housing in his or her
community. In addition to working through various traumas with the incarcerated youth, juvenile justice counselors frequently work with youth and their families together in order to teach new skills designed to strengthen the support system of the youth, minimize conflict if/when the youth is able to return home, or even provide specialized interventions including addiction recovery and anger management. (Study.com, 2017b).

Prison/jail social worker

Also commonly referred to as correctional social workers, prison social workers are trained mental health professionals with the purpose of reducing rates of recidivism (re-arrest) in the future. Prison social workers use their knowledge and skills to prevent recidivism by addressing psycho-social issues such as past trauma, providing education, and offering social service recommendations to successfully reintegrate offenders into the community upon release. A prison social worker’s responsibilities include performing psychological assessments to determine inmates’ level of mental health functioning, evaluating the presence of mental health or substance abuse disorders, providing individual or group counseling sessions, teaching inmates life skills in rehabilitation groups, and preparing inmates for their release. Along with the clinical duties prison social workers are responsible for a wide array of administrative tasks such as authoring treatment plans, documenting thorough notes/files, and communicating with other professionals on inmates’ cases. (Social Work Degree Guide, 2017).

Probation and Parole Officer

Parole officers identify and supervise offenders who are eligible for conditional release from prison before they have completed their sentences (Roberts, 2017). In order to earn parole, prisoners must obey prison rules, perform prison jobs well, and show progress in rehabilitation and therapy programs.

In comparison, probation officers are responsible for monitoring those offenders who will be placed on probation as an alternative to jail time. The key difference between the two comes down to sentence length with prison almost always housing offenders with sentences of more than one year, while jails house both offenders awaiting sentencing and those whose sentences are less than one year. The tasks of probation and parole officers are essentially the same aside from the slight difference in the populations of offenders served (Roberts, 2017).

Some probation/parole officers work inside correctional institutions, preparing reports for parole boards. They assess prisoners’ lives before and during incarceration; how prisoners’ families will affect their rehabilitation; and what job prospects prisoners might have if released. Based on the officers’ reports and interviews with the prisoners and their families, the boards choose certain prisoners for release. Field officers on the other hand work with parolees once they have returned to their communities. Their daily tasks include helping the offenders find jobs, schools, or therapy programs, meeting with them regularly, performing drug tests, and completing detailed paperwork including meeting notes, progress reports, and treatment recommendations. Some officers also supervise halfway houses in which small groups of offenders live together to share experiences and lend each other support. (Study.com, 2017a).

Sex offender clinician

Counseling individuals convicted of sexually motivated crimes is easily one of the most difficult and emotionally taxing career paths available to social workers within the criminal justice system. It is certainly not a job that is right for everyone, and requires a great deal of confidence as well as the ability to treat all people with dignity/respect regardless of how you view their actions. On a daily basis, sex offender clinicians are responsible for psychological testing,
counseling groups, conducting sex offender programming therapy sessions, interviewing inmates for psychosexual evaluation and recommendation purposes, emergency evaluations and management, diagnosing, case management, working with case managers and contracted professionals, psychological consultation to prisons, testifying in court, and more (Hubbard, 2014).

It is most common for this job to exist within a prison setting or in a support group that is required for sex offenders on parole within the community. This is one of the highest paid positions for therapists within the criminal justice system because of its intense nature and specialty; these positions are almost always reserved for the most experienced professionals within the field due to their difficult nature (Hubbard, 2014).

Victim advocate

If advocacy and helping those in crisis is your calling, a career as a victim advocate may be perfect. Rather than working with offending populations as is most common for a criminal justice social worker, victim advocates, as the name implies, are tasked with assisting victims of crimes on many different levels. Victim advocates are professionals trained in mental health or criminal justice related professions, but often require only a bachelor’s degree. These workers offer victims information about legal processes and their rights, emotional support after experiencing a traumatic crime, assistance finding resources and completing paperwork, and more. Victim advocates often support their clients by accompanying them to court and even offer clinical services when appropriately trained. Many advocates are employed by crisis hotlines or the courts themselves or as group counselors within the community. For this career path, the ability to speak a second language is particularly valuable. (NCVC, 2008b.).

Substance abuse counselor

A substance abuse counselor is another example of the specialized populations with which clinical social workers in the criminal justice system can work (Substance Abuse, 2017). These counselors work with individuals who use or abuse drugs and alcohol with the goal of overcoming addiction. As you may recall from previous chapters, substance abuse is a notoriously difficult mental disorder as it almost always involves relapse. Due to the difficult nature of this particular career, a substance abuse counselor must be patient, non-judgmental, and especially careful to treat clients with dignity and respect. Frequently done in group therapy sessions, a substance abuse counselor works with clients to overcome the both the motivations to use substances and the effects of their use on their personal and professional lives. These professionals also act as a key support system to aid individuals in making a plan to become substance free and maintain sobriety for years to come.

The main tasks of a substance abuse counselor include creating and monitoring a personalized recovery plan for each individual client on a case load. These plans help clients identify their motivations to use, behaviors which encourage use and/or sobriety, outline consequences of use, identify strategies to prevent relapse, and of course the creation of goals throughout the treatment process. As with most social work careers, a career as a substance abuse counselor involves a great deal of paperwork, case documentation, and collaboration with outside professionals including probation/parole officers when applicable. (Psychology School Guide, 2017).

Mitigation Specialist

A mitigation specialist (mitigate=reduce severity) is a member of a defense attorney team that participates in courtroom proceedings (NLADA, 2016). These specialists possess clinical skills and must be extremely organized and detail
oriented. The overall job function of a mitigation specialist is to reduce the potential punishment of his/her client by identifying a factor that warrants a reduction in severity for sentencing. Social workers are often sought after for these positions due to their clinical skills and ability to extract sensitive information from clients in a positive and professional manner.

These specialists are responsible for compiling biopsychosocial assessments, analyzing the significance of the information obtained as it relates to personality/behavioral development, and determining the need for services such as counseling. One example of a typical case for a mitigation specialist may be to complete a psychosocial assessment (a type of life history interview) with a client and learning that although the individual may be responsible for their crime, their IQ is well below average. This information is then used in order to mitigate or "reduce the severity" of the individual's sentence. As with victim advocacy, the ability to speak a second language is considered highly valued in this field. (NLADA, 2016).

Counselor Working with Mandated Clients

Although this is not a specific job title, counseling individuals who are mandated to attend therapy poses its own unique set of challenges. Essentially the word "mandated" means that individuals are required to attend counseling and are often entering services unwillingly (Shallcross, 2010). These populations commonly include individuals caught up within the criminal justice system due to courts frequently referring individuals who are deemed to be a risk to themselves or others for counseling services. Some examples of these populations include some of those listed above such as: individuals who abuse substances, individuals who are violent (often discovered through violent crimes), those who are found to be responsible for the abuse/neglect of a child or adult, people who commit sexual offenses, and more. Although it consists of many of the same therapeutic techniques as a general counselor, those who do not enter counseling willingly have the potential to be extremely difficult to work with. For example, while most individuals who voluntarily enter counseling are willing to openly discuss their reasons for seeking services, individuals such as those on probation/parole who have been referred to mandatory counseling are often unable to recognize why counseling is even necessary.

Counselors working with these populations have to be particularly skilled in communication as it is common for mandated clients to refuse to participate in counseling. This difficulty poses yet another problematic situation for workers as they are frequently required to report client progress to probation/parole officers. Since social workers typically want to help their clients, the idea of reporting to court officials often creates ethical dilemmas about how much to share considering how the reports can impact their clients (Shallcross, 2010).

The following tips were obtained from Counseling Today and can be found by following the link provided: https://ct.counseling.org/2010/02/managing-resistant-clients/

- Avoid acting like an expert (focus on client goals)
- Empathize with clients
- Gently confront excuses
- Let the client set the pace
- Do not engage in power struggles
- Always treat clients with dignity and respect
If you feel that your client is potentially dangerous, look to these additional tips:

- Inform coworkers that you will be in session with this client (develop a code word signifying that you need help)
- Ask your supervisor about installing panic buttons in therapy offices
- Avoid working alone/ at night with this client (or at all if possible)
- Do not allow the client to position themselves between you and your exit
- Make an excuse to leave if you feel uncomfortable
- Limit sharing personal information
- Know your agency’s emergency policies

Tips for Testifying in Court

Now you have a basic understanding of what the various court systems are and how they interact with each other, but where do social workers fit in? In short, as a citizen of the United States it is always helpful to have a fundamental understanding of the legal system which governs us. For social workers, however, this becomes even more critical as so many of the clients we work with become involved in the legal system in combination with our own services. Without holding at least a minimal understanding of what our clients are facing, it is almost certain that we would struggle to help them to the best of our ability by offering advocacy and comfort. With that said, a social worker should never offer legal advice to a client as it is not their area of expertise and, as you learned in the ethics chapter, could result in a breach of the NASW core value of competence.

While much of what a social worker does in relation to court is offering support to clients, it is not uncommon for their role to involve testifying in court which essentially involves providing spoken evidence to the court. This is especially true for professions including CPS/ foster care workers and probation/ parole officers. For even the most seasoned social workers the idea of testifying regarding a client’s case can stir up fear and dread. Having to speak in court is almost always a nerve racking experience in and of itself, but when social workers must also balance the legal requirement to tell the truth while on the stand with wanting to do what is right for their client, the situation becomes even more tricky and potentially ethically ambiguous.

The next section will offer a number of helpful tips to avoid being stumped on the stand by even the most talented attorney, and has been adapted for social workers based on the website listed here: https://www.justice.gov/usao-mdpa/victim-witness-assistance/tips-testifying-court

Refresh Your Memory

Before you testify in court perhaps the most crucial piece of advice that can be given is to review your notes and plan ahead. Since it is often part of a social worker’s job to provide the court with documentation it is not uncommon for court officials to provide you with these documents while you are on the stand. However, this should never be expected and a good social worker will always come prepared with their own case documents. Also, it is often helpful to highlight any particularly meaningful events, dates, or times in these notes for easy access. Never feel as if you cannot refer to your notes before answering a question; simply ask for a moment to review the facts to be sure. It is always better to take that time to check than to be wrong! Doing this will help you avoid suggestions by attorneys. Do not agree with their
estimates or conclusions unless you arrive to the same one independently. Finally, it is important to note than any documents brought in by a worker can be seized as evidence by the judge. In order to avoid this, it is best to bring only documents already submitted to the court, and always analyze possible consequences for both the client and yourself if a document were to be seized as evidence.

**Speak In Your Own Words**

Don’t try to memorize what you are going to say. Doing so will make your testimony sound “pat” and unconvincing. Instead, be yourself, and prior to trial go over in your own mind the matter about which you will be questioned.

**Appearance Is Important**

A neat appearance and proper dress in court are important. An appearance that seems very casual or very dressy will distract the jury during the brief time you’re on the stand, and the jury may not pay attention to your testimony.

**Speak Clearly**

Present your testimony clearly, slowly, and loud enough so that the juror farthest away can easily hear and understand everything you say. Avoid distracting mannerisms such as chewing gum while testifying. Although you are responding to the questions of a lawyer, remember that the questions are really for the jury’s benefit.

**Do Not Discuss the Case**

Jurors who are or will be sitting on the case in which you are a witness may be present in the same public areas where you will be. For that reason, you MUST NOT discuss the case with anyone. Remember too, that jurors may have an opportunity to observe how you act outside of the courtroom.

**Be Professional**

When you are called into court for any reason, be serious, avoid laughing, and avoid saying anything about the case until you are actually on the witness stand.

**Being Sworn In As A Witness**

When you are called to testify, you will first be sworn in. When you take the oath, stand up straight, pay attention to the clerk, and say “I do” clearly.

**Tell the Truth**

Most important of all, you are sworn to TELL THE TRUTH. Tell it. Every true fact should be readily admitted. Do not stop to figure out whether your answer will help or hurt either side. Just answer the questions to the best of your memory.

**Do Not Exaggerate**

Don’t make overly broad statements that you may have to correct. Be particularly careful in responding to a question that begins, “Wouldn’t you agree that…?”. The explanation should be in your own words. Do not allow an attorney to put words in your mouth.
Listen Carefully

When a witness gives testimony, they are first asked some questions by the attorney who called them to the stand. For you, this is an Assistant United States Attorney (AUSA). The questions asked are for the purpose of “direct examination.” When you are questioned by the opposing attorney, it is called “cross examination.” This process is sometimes repeated several times in order to clearly address all aspects of the questions and answers. The basic purpose of direct examination is for you to tell the judge and jury what you know about the case. The basic purpose of cross examination is to raise doubts about the accuracy of your testimony. Don’t get mad if you feel you are being doubted during the cross examination. The defense attorney is just doing their job.

Do Not Lose Your Temper

A witness who is angry may exaggerate or appear to be less than objective, or emotionally unstable. Keep your temper. Always be courteous even if the attorney questioning you appears discourteous. Don’t appear to be a “wise guy” or you will lose the respect of the judge and jury.

Respond Orally To The Questions

Do not nod your head for a “yes” or “no” answer. Speak aloud so that the court reporter or recording device can hear and record your answer.

Think Before You Speak

Listen carefully to the questions you are asked. If you don’t understand the question, ask to have it repeated, then give a thoughtful, considered answer. NEVER give an answer without thinking about phrasing and potential consequences for both you and your client. While answers should not be rushed, pauses to simple questions are unnecessary and could imply a lack of knowledge or professionalism.

Explain Your Answer

Explain your answer if necessary. Give the answer in your own words, and if a question cannot be truthfully answered with a “yes” or “no”, it’s okay to explain your answer.

Correct Your Mistakes

If your answer was not correctly stated, correct it immediately. If your answer was not clear, clarify it immediately. It is better to correct a mistake yourself than to have the attorney discover an error in your testimony. If you realize you have answered incorrectly, say, “May I correct something I said earlier?” Sometimes witnesses give inconsistent testimony – something they said before doesn’t agree with something they said later. If this happens to you, don’t get flustered. Just explain honestly why you were mistaken. The jury, like the rest of us, understands that people make honest mistakes.

Do Not Volunteer Information

Answer ONLY the questions asked of you. Do not volunteer information that is not actually asked for. Additionally, the judge and the jury are interested in the facts that you have observed or personally know about. Therefore, don’t give your conclusions and opinions, and don’t state what someone else told you, unless you are specifically asked.
remember that as a social worker or even a non-professional witness, you can only provide your OPINION on a case or client. It is ok to specifically designate that a statement that you are about to make is your opinion as a professional.

**Don’t Set Yourself Up For Error**

Unless certain, avoid generalizing statements such as, “That was all of the conversation,” or “Nothing else happened.” Instead say, “That is all I recall” or “That is all I remember happening.” It may be that after more thought or another question, you will remember something important and by making generalized statements you could appear not knowledgeable, unprofessional, or in extreme cases could appear to be attempting to withhold information from the court.

**Objections By Counsel**

Stop speaking instantly when the judge interrupts you, or when an attorney objects to a question. Wait for the judge to tell you to continue before answering any further.

**Only Testify To What You Know**

Although you should be confident and definitive in your answers whenever possible, it is important to understand that, when testifying regarding client behavior, you can only discuss personal opinions based on your professional experience. When asked a question regarding client behaviors it is helpful to begin your answer with “In my professional opinion.” This is done in case any additional information or analyses change the worker’s clinical interpretation which can then be adjusted in court without appearing not knowledgeable.

*In addition to these tips, the NASW-Endorsed professional liability program which regularly assists NASW members in preparing to testify as a witness can serve as an excellent resource. For more information, follow this link:* [http://www.naswassurance.org/malpractice/malpractice-tips/witness/](http://www.naswassurance.org/malpractice/malpractice-tips/witness/)

**Conclusion**

The criminal justice system in the United States is immensely complicated and fascinating system which holds a great deal of power over the many lives it governs. Through reading this chapter you should now be able to identify various components of the criminal justice system including the courts, the process from arrest to incarceration, the Constitution of the United States, and more. In addition to these facts readers should be aware of the numerous ways in which the criminal justice system and the field of social work overlap. Combining these professional fields results in an incredibly interesting career path, as well as an extremely difficult one.

Possessing a strong passion for advocacy is vital to success within this career path due to the highly contrasting viewpoints of mental health and criminal justice workers. Although it is sometimes easy to forget, the social work profession believe in the fact that each person, regardless of their offenses, is worthy of dignity and respect. This is not always a belief that is respected in society as a whole and particularly within a system which often promotes punishment in opposition to rehabilitation. This only makes it that more important that social workers become involved. Ultimately if you are passionate about advocating for vulnerable individuals, believe that each person has rights, can be unbiased and non-judgmental, and love the idea of working in a challenging, fast-paced, and rewarding field, this could be just the
Legal Terminology for Social Workers

*All definitions were obtained from *Michigan Criminal Law & Procedure, third edition* (Beatty et al., 2014).

Abuse – The cruel or violent treatment of a human or animal.

Accessory – Someone who intentionally helps another person commit a felony (examples – giving advice before the crime, helping to conceal the evidence or the perpetrator). An accessory is usually not physically present during the crime.

Accomplice – Someone who helps another person (known as the principal) commit a crime. Unlike an accessory, an accomplice is usually present when the crime is committed. An accomplice is guilty of the same offense and usually receives the same sentence as the principal.

Accused – A person or persons formally charged but not yet tried for a crime.

Acquittal – A legal judgment, based on the decision to either a jury or a judge, that an accused is not guilty of the crime for which he or she has been charged or tried.

Actus Rea – The guilty act, otherwise states as a wrongful deed rendering the actor criminally liable.

Adjudication – The trial phase of a juvenile criminal proceeding.

Admissible Evidence – The evidence that a trial judge or jury may consider, because the rules of evidence deem it reliable.

Admission – Confession of a charge, an error, or a crime; acknowledgment.

Affidavit – A written statement made under oath, swearing to the truth of the contests of a document.

Allegation – A claim or statement of what a party intends to prove; the facts as one party claims they are.

Arraignment – The first appearance of the defendant before a judge or magistrate following his or her arrest in which the defendant is formally advised of charges, attorney may be appointed, and bail is set.

Assault — An attempt to commit a battery or an illegal act that caused the victim to reasonably fear a battery.

Bail/Bond – The money or property given to the court as security when an accused person is released before and during a trial with the agreement that the defendant will return to court when ordered to do so. Bail is forfeited if the defendant fails to return to court.

Battery — A forceful, violent, or offensive touching of the person or something closely connected with the victim.
Brief — A written argument by counsel arguing a case, which contains a summary of the facts of the case, pertinent laws, and an argument of how the law applies to the fact situation. Also called a memorandum of law.

Chain of Custody — The one who offers real evidence must account for the custody of the evidence from the moment it reaches his or her custody until the moment it is offered into evidence.

Custody — The person is under arrest or the person’s freedom has been deprived in any significant way.

Defense Attorney — An attorney who safeguards guaranteed rights of the accused.

Delinquent — A juvenile offender.

Deposition — An interview under oath.

Domestic Relationship — For purposes of the Domestic Violence Statute, a relationship that includes spouse or former spouse, resident or former resident of the same household, or persons who have a child in common.

Domestic Violence — An assault or assault and battery that occurs within a domestic relationship.

Due Process of Law — Procedures followed by law enforcement and courts to ensure the protection of an individual’s rights as assigned by the Constitution.

Entrapment— Occurs if (1) the police engage in impermissible conduct that would induce an otherwise law-abiding citizen to commit a crime in similar circumstances, or (2) the police engage in conduct so reprehensible that it cannot be tolerated by the court. 1

Felony — An offense for which the offender may be punished by death or imprisonment in state prison for more than one year.

Guardian Ad Litem — A guardian appointed by the court to represent the interests of infants, the unborn, or incompetent persons in legal actions.

Hearsay — A statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Holding — A court’s determination of a matter of law, a specific legal principle contained in an opinion, or a court’s ruling concerning a specific question.

Indictment— A formal written accusation issued by a grand jury or similar entity charging one or more people with a crime.

Indigent — An individual who has been found by a court to be indigent (stricken by poverty) within the last 6 months, who qualifies for and receives assistance, or who demonstrates an annual income below the current federal poverty guidelines.

Interrogation — Questioning in a criminal investigation that may elicit a self-incriminating response from an individual.
Jail — A facility that is operated by a local unit of government for the detention of a persons charged with, or convicted of, criminal offenses. Houses those convicted of offenses with sentences less than one year as well as those awaiting trial.

Jurisdiction — The official power to make legal decisions and judgments.

Jury — A body of people (typically twelve in number) sworn to give a verdict in a legal case on the basis of evidence submitted to them in court.

Magistrate — Magistrates assist the district court judge and are responsible for hearing informal civil infraction hearings, issuing search and arrest warrants, and set bail/accept bond.

Mens Rea — Guilty mind (motive).

Mentally Incapable — When a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct. (Also referred to as NGRI-Not Guilty By Reason of Insanity).

Miranda Warning / Miranda Rights — By law (Miranda v. Arizona ruling by the United States Supreme Court) anyone being questioned by authorities must first receive a ‘Miranda Warning’. This requirement exists to prevent the police or other authorities from taking advantage of a person who does not know or fully understand their rights and thus speaks to the police and answers their questions without an attorney present. The Miranda Warning consists of the authorities explaining certain rights to a person before questioning them. These include:

1) You have the right to remain silent. 2) If you choose to speak, anything you say can be used against you in court. 3) If you decide to answer any questions, you may stop at any time and all questioning must cease. 4) You have a right to consult with your attorney before answering any questions. You have the right to have your attorney present if you decide to answer any questions, and if you cannot afford an attorney, one will be provided for you or appointed for you by the court without cost to you before any further questions may be asked.

Misdemeanor — A violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.

Neglect — To fail to sufficiently and properly care for an individual or animal to the extent that the individual or animal’s health is jeopardized.

Notice to Appear — For minor offenses of 93-day misdemeanors or less, an appearance ticket may be issued in lieu of custodial arrest except in the cases of domestic violence and Personal Protection Order violations.

Perjury — Occurs when a person knowingly makes a false statement that is material to the case after taking a recognized oath.

Petition — A request for court action against a juvenile or removal for protective services.

Preliminary Breath Test (PBT) — A hand-held instrument utilized to determine presence or amount of alcohol in a person’s system.
Preliminary Examination — A hearing to determine if probable cause exists to believe a crime has been committed and to determine if probable cause exists that the defendant committed the offense.

Prison — A facility that houses prisoners committed to the jurisdiction of the department of corrections. Individuals housed here are must be sentenced to a minimum of one year.

Privilege — Certain confidential communications that cannot be used against a person (attorney/ client).

Probable Cause — Facts and circumstances sufficient to cause a person of reasonable caution to suspect the person to be arrested is committing or has committed a crime, or that the place to be searched contains the evidence sought.

Prosecuting Attorney — The chief law enforcement officer in a county, who authorizes complaints and represents state and county in all civil and criminal matters in county courts.

Protective Order — A personal protection order entered pursuant to law; conditions reasonably necessary for the protection of one or more named persons as part of an order for pretrial release, probation, removal from home, etc.

Reasonable Suspicion — An objective basis, supported by specific and articulable facts, for suspecting a person of committing a crime.

Ruling — The outcome of a court’s decision on a specific point or a case as a whole.

Search Warrant — A legal document authorizing a police officer or other official to enter and search premises.

Specific Intent — The prosecution must prove not only that the defendant did certain acts, but that he or she did the acts with the intent to cause a particular result.

Subpoena — A writ or order commanding a person to appear before a court or other tribunal, subject to a penalty for failing to appear.

Summons — A writing used to notify a person of an action that was commenced against him or her.

Testimony — The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.

Vulnerable Adult — An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the skills to live independently.

Warrant for Arrest (Bench Warrant) — Document issued by a judge if the information contained in the complaint establishes probable cause to substantiate the offense charged.

Write — A judicial order directing a person to do something

References


