

**A CASE FOR SOCIAL WORKERS AS INVESTIGATORS IN PUBLIC DEFENDER
OFFICES**

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Submitted in partial fulfillment of the requirements
for the degree of
Doctor of Social Work
in the School of Social Work
at
The University of Alabama

TUSCALOOSA, ALABAMA

June, 2022

Amy L. Hurd, 2022
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Abstract

Social workers play a critical role in modern public defender offices, whether performing mitigation work for pre-trial negotiations and sentencing hearings or helping clients to secure access to basic human needs. Although social workers have held in-house positions in public defender offices since at least the 1970s, their service is largely limited to mitigation practice and traditional social work. This article raises an opportunity for social workers to broaden their capacity within public defense by pursuing investigator positions. A case is made for interested social workers to draw upon their education, training, and experience to showcase the alignment between their talents and the requisite skills and performance required of investigative work. Evidence is offered to support the notion that social workers bring skills and a social justice orientation to investigative work that can provide for fresh insight and innovation in investigation and defense strategy. The value brought to investigation by social workers throughout a legal defense is specified, as are considerations for applying and interviewing for investigator positions as social workers.

Keywords: investigation, mitigation, public defender social work

This report is a preprint of a manuscript that has been submitted to a journal for publication.

Acknowledgements

I would like to thank my Capstone committee chair, Leah Cheatham, Ph.D., J.D, and committee member, Curtis Davis, Ph.D., for lending their support to my project. Dr. Davis, you are among the most encouraging people I have come to know in any context. Period. Thank you for calling me when we got some good news! As for you, Dr. Cheatham—in my twenty years of social work, I have not encountered anyone as uniquely supportive and helpful as you have been for my professional goals. Meeting someone as exceptional as you gave my journey unexpected meaning. To know you, Dr. Cheatham, is to want to be more like you. I am grateful for your mentorship.

Where would I be without the support of my family, friends, and cohort members throughout this process? If I know you, I appreciate all you have done for me. Thank you to my parents, Denise and Jack Hurd, for all you sacrificed to get me to where I am today.

And, of course, thank you, Holly White, for being an incredibly generous partner when I decided to enroll in a Doctor of Social Work program “for fun.” Thank you for feeding me, loving me, and keeping me grounded during even the most difficult parts of this journey. Your love makes everything better. At this point, I think it is safe to say that you are the “fun” one in this relationship. Let’s go have some, ok?

Introduction

Held within the custody of the Florida Department of Corrections, Clarence Earl Gideon used his eighth-grade education, the meager resources of a prison library, and a handwritten petition to ask the United States Supreme Court to hear his case. In 1961, Mr. Gideon was accused of feloniously breaking and entering in Panama City, Florida. At his trial, where he was convicted, Mr. Gideon represented himself after being denied a lawyer. Convinced that his right to counsel was violated by the trial court, Mr. Gideon appealed his conviction, arguing that his Constitutional rights were violated, and was denied judicial relief by the lower courts before ultimately prevailing on his claim in the United States Supreme Court in 1963. The United States' highest court held that Mr. Gideon's Sixth Amendment right to counsel was a fundamental right applied to the states via the Fourteenth Amendment and that, indeed, criminal defendants in state court who were financially indigent and facing felony charges were entitled to counsel (*Gideon v. Wainwright*, 1963).

After *Gideon* (1963) was decided, overwhelmed courts across the country were faced with how to manage the assignment of counsel to thousands of people facing felony charges. The gravity of assuming this volume of responsibility led to an expansion of public defender offices, to whom indigent criminal defendants would be appointed and who would bear responsibility for determining who among their staff would represent these individuals who could not afford counsel. To fulfill investigative obligations in support of an adequate legal defense, investigator positions were created in public defender offices to assist lawyers in their duty to conduct competent factual and legal investigations. Such investigative work would include serving subpoenas, reviewing the alleged evidence against clients, interviewing clients and witnesses, testifying in court to their observations or findings, and investigating mental health and other

mitigating factors. Over time, the numerous investigative undertakings elucidated a need for specialty practitioners to assume work related to mitigation, mental health, and the identification and linkage of community resources to clients. Social workers were recognized for their expertise in these practice areas and joined public defender offices to undertake these specialty functions as far back as the 1970s (Senna, 1975).

Modern public defender offices employ social workers to assume many of these mental health-oriented responsibilities, but untapped talent remains among social workers in bringing additional expertise to clients charged in the criminal legal system. This article advocates for interested social workers to extend their reach within public defender offices by serving as investigators, thereby expanding public defender offices' service capacities and breadths of perspective. Just as social workers have found their way into other roles within public defense, interested social workers should advocate for their place in investigator positions.

The History of Social Workers in Public Defender Offices

The shape of public defense has evolved considerably since the 1960s. Whereas early iterations of public defender offices might have staffed attorneys, investigators, and administrative staff only, modern public defender offices aim to employ investigators, social workers, mitigation specialists, paralegals, and more. This approach to criminal legal representation, or “holistic defense,” is defined as a collaborative effort of “interdisciplinary teams to address both the immediate case and the underlying life circumstances—such as drug addiction, mental illness, or family or housing instability—that contribute to client contact with the criminal justice system” (Anderson et al., 2019, p. 820).

The notion of social workers as beneficial to a criminal legal defense can be found in the research literature dating back as far as the 1960s, when Sloane (1967) examined the ways that

lawyers and social workers, who often found themselves professionally in tandem, perceived the others' profession. Despite some unflattering depictions of social workers by attorney respondents (e.g., "all heart and no head," "concerned only with feelings and not logic") in the study (Sloane, 1967, p. 90), the acknowledgment of social workers' value to a criminal defense persisted. In 1969, the Santa Clara Public Defender office obtained a federal grant to add two social workers to its staff (Wald, 1972). The public defender office wanted to see whether hiring social workers to complete sentencing reports and recommendations would yield information different from what probation officers provided and whether the court would accept their recommendations. Although the project failed to hire professionally trained social workers, the scope of the work mirrored that of what professionally trained social workers were apt to do: interview clients and those who knew them best, gather historical records, explore individual strengths and weaknesses, and identify alternatives to sentencing that were believed to best match the underlying needs of the clients (Wald, 1972). The work done in these social worker roles allowed public defense attorneys to appreciate new advocacy opportunities in sentencing and become more sensitive to clients' underlying needs (Wald, 1972). Although the project started out as a way for public defense attorneys to see whether the probation officers' reports were unduly harsh or insufficient, it ended with an eye toward social workers as a boon for public defender advocacy.

Today, social workers are commonly found in state and federal public defender offices. Because of social workers' known utility within public defense, modern public defender offices hire social workers to serve a variety of functions, mostly involving mitigation investigation or more traditional social work practice. Social workers who perform mitigation work are perhaps best known for working as capital mitigation specialists who seek to uncover information that

mitigates the culpability of alleged capital murder (Mundy, 2013). Capital mitigation investigation performed by social workers includes developing biopsychosocial background information about clients through sensitive-interviewing, records gathering and review, creating visual aids such as genograms or timelines, drafting reports, or testifying as either content-matter experts or witnesses to information gathered in the investigation. Although many mitigation specialists are social workers, other professionals such as “highly trained and experienced anthropologists, attorneys, educators, journalists, social workers, sociologists, and others with education and training in human development and behavior” are employed as mitigation specialists (O’Brien, 2008, p. 74). One critical distinction held by social workers who perform mitigation is their capacity to be presented to the court as experts with specialized knowledge in areas such as familial dynamics, psychosocial assessment, and human development.

Non-capital, public defense offices now embrace the value of social workers as mitigation specialists and staff their offices with social workers to perform mitigation work (Harris, 2020; Law Office of the Cook County Public Defender, n.d.). Although mitigation specialists can have a variety of backgrounds, social workers offer baseline training in mental health and human development (Office of the Colorado State Public Defender, n.d.). Social workers who perform non-capital mitigation work bring the same skills to the same job functions in their defense of people charged with non-capital offenses (Mundy, 2013). Social workers identify mitigating evidence that could be proffered pretrial, in an attempt to obtain a more favorable offer from the government; during trial, in the form of an affirmative defense; or, most commonly, at sentencing hearings.

Then there are the public defender social workers who function in their more traditional social work capacities. They find placements for clients that are appropriate for their needs and

the least restrictive as possible to avoid pretrial detention. They prepare reports for sentencing, which may be incorporated into pleadings or presented as exhibits. Social workers may explore alternatives to incarceration (e.g., facilities assisting individuals with substance use, mental health, or developmental disabilities); conduct clinical assessments; perform or outsource case management services; or prepare care plans for clients' reentry from incarceration (The Bronx Defenders, n.d.). Public defender social workers may be asked to testify in court to their investigation findings or expert opinions.

Progressive courts around the United States operate specialty courts that take into account the unique circumstances of the defendant and often involve public defender social workers. Many jurisdictions have diversion courts, which are for clients who have a unique circumstance leading to the alleged conduct, which, if remedied, could provide for the charges to be dropped (Shafer & Ashford, 2015). Some jurisdictions have drug courts for clients who experience substance use challenges, as well as programs for adults between the ages of 18 and 25 who have non-violently offended (United States District Court, Southern District of New York, n.d.). Public defender social workers may serve on these diversion or alternative court program committees, or they may play a critical role in helping clients work toward success in these programs.

Demystifying the Role of the Public Defender Investigator

For social workers to broaden their impact in public defense by inhabiting investigator positions, they must understand the duties and roles of investigators far in advance of submitting job applications. In short, public defender investigators are professionals who serve on public defender legal teams for the purpose of supporting the representation of clients against criminal charges. Investigator positions exist to support defense attorneys in their ethical and professional

duties to adequately and effectively investigate the government's criminal allegations against their clients. Public defense attorneys strategize defenses with investigators, who then gather, synthesize, and present to the legal team information derived from the investigation.

The unique importance of investigators exists in their capacity to testify on behalf of a client. Through investigator testimony, the defense team can introduce into the court record statements of fact, observations, trade expertise, or challenges to inconsistent statements made by government witnesses. With few exceptions, attorneys are precluded from serving as witnesses in their clients' cases (American Bar Association, n.d.), which makes the role of the investigator critical. Public defense investigators must remain ready to become the solemnly-sworn eyes and ears of the defense investigation before the presiding court.

Under the direction of attorneys, public defender investigators complete exploratory and defense-driven tasks. This work might include locating and interviewing clients, witnesses, and potential experts; reviewing the government's discovery (i.e., evidence reported to inculpate or exculpate the client); gathering, reviewing, and summarizing records; reviewing and/or photographing alleged crime scenes or evidence; preparing and serving subpoenas; testifying in court; organizing files and documents; traveling domestically and internationally to conduct interviews or other investigation; drafting reports for in-house or other use; and creating visual aids such as maps, charts, and timelines—all while demonstrating compassion, sound judgment, patience, dedication, openness to new ideas, and a team-member orientation.

Perhaps most salient of the investigator position characteristics is its catch-all property. Public defense investigation is varied in scope and dependent upon the nature of the alleged criminal conduct and the contexts in which it is alleged to take place. For this reason, a number of professional or educational backgrounds might suit the job at hand, and indeed do, whether

from the fields of journalism, law enforcement, anthropology, or elsewhere. The duty of the investigator is to tailor the work to the shape of the case and its relevant characteristics. Doing so might involve investigating criminal allegations such as arson, capital murder, environmental harm, production or possession of child pornography, terrorism, or wire fraud. With such a potential array of circumstances at play, it is unlikely to find an investigator who has it all. This leaves the hiring of the investigator position vulnerable to the specific needs of individual offices, who may hire to fill gaps in existing talent, defend against a commonly seen set of crimes prosecuted in the jurisdiction, or gain professionals whose personal characteristics or experiences most mirror those of clients.

Social Worker Qualifications to be Public Defender Investigators

Social workers maintain a vast wingspan for problem-solving that begins in their academic programming, presents in everyday practice, and continues in regular, professional training. In academic social work programs, students are educated in competencies involving ethical and professional behavior; diversity and difference; human rights and justice; policy; and engagement, assessment, intervention, and evaluation in practice with individuals, families, groups, organizations, and communities (Council on Social Work Education, 2015). Social workers are trained formally by way of education and field experience in micro-, mezzo-, and macro-level practice (Council on Social Work Education, n.d.). These same system dimensions are interwoven into the defense of a criminal case. Social work practice is foundational to criminal defense investigations for its consideration of environments in which the client is alleged to have committed a crime. The defense team necessarily investigates the contexts in which the alleged conduct is purported to take place. The context of the crime can shape the defense strategy when evidence is uncovered in the investigation that discredits the government's

case, just as it can when evidence is uncovered that corroborates the government's allegations.

Understanding the context in which alleged conduct took place can shape legal strategy toward affirmative defenses, which acknowledge that the conduct took place but was justifiable or excusable (Mungan, 2020). Examples of affirmative defenses include self-defense, defense of others, and insanity. As person-in-environment specialists, social workers can identify important contextual considerations such as the presence of domestic violence or active mental illness. Social workers can aid in assessing a client's state of mind during the time of the alleged offense and assist the defense team in identifying related experts to complement a defense.

Social workers are trained to be sensitive to social injustice, which includes the racism perpetuated by individuals, institutions, and systems in the United States. Egregious racial disparities are commonly known to have existed in the United States criminal legal system since its inception, although their manifestations have morphed into more subtly inflicted indignities in many cases. Public defender clients are best served when a defense team member involved in strategizing a defense has specialized training in racism, or knowledge derived from its lived experience, to identify both apparent and subtle infusions of racial harm or motivation.

Social workers have a documented history in public defense of lending their specialized understanding of people and the systems in which they operate to clients and their legal teams. At the same time, the social work profession has an even longer history—since its beginning, even (Gibelman, 1999)—of struggling to define its identity among its own members. It stands to reason that where ambiguity exists in our own field about whether we are a science (Brekke, 2012; Shaw, 2012), an orientation of social purpose (Gitterman, 2014), a profession unto itself (Moon, 2017), or some combination thereof, the optics from the outside looking in are even foggier. Selling social work's value outside of our professional sphere is not a new agenda;

indeed, it might be considered part and parcel of our identity in generating buy-in for the most vulnerable people in our society. Where we market ourselves, we are essentially pleading for care and concern for those whom we serve. Social work has a critical opportunity within public defense to expand client service by filling the role of the public defender investigator.

Linking Social Work Skills to Public Defender Investigator Work

Social workers possess skills paralleling those required to perform public defense investigation; however, they should not assume that others, including public defender social workers, will make the connection between their skills and those required to perform investigative work. Drawing from experience, I identify skills that I encourage social workers to highlight both in their cover letters and during interviews for investigator positions. These skills include teamwork, investigation, relationship-building, and communication.

Teamwork—and holistically-designed teamwork, in particular—is the gold standard in public criminal defense. As it happens, social workers specialize in collaboration and work routinely on multidisciplinary and interdisciplinary teams as an integral and enduring practice. Social workers' experience with interdisciplinary collaboration can be applied to teams within a public defender office, perhaps introducing for the first time the research literature's findings on what constitutes successful teamwork and how it is achieved.

Social workers offer skills in investigation by the nature of their training and practice experience. Investigation within social work takes places in protective services work, in management and administration, in college settings, in concert with police departments, and in locating resources for clients. Although investigation might be specific to the host organization and its mission, the skills associated with competent, thorough, and discreet investigations are transferrable across practice settings. Report-writing is a sizable component of investigation with

which social workers have strong experience. Most social work practice has a writing aspect so prominent that social workers develop refinement in its precision, succinctness, veracity, and tone. Further, training in evidence-based practices allows social workers to conduct research, interpret data sets, identify the precise authority needed to explain a circumstance, and analyze data in written reports and illustrations.

Relationship-building in public defense is central to investigator effectiveness. Public defender clients are people facing possible criminal convictions, sentences, and numerous collateral consequences, all of which can feel catastrophic and overwhelming. Building fruitful relationships with vulnerable clients can be difficult when their presenting needs might not mirror the legal team's strategy. Research shows that centering the client at the heart of the representation, which means spending time to develop a trusting, working relationship with clients, is critical to quality representation (Campbell & Henderson, 2021; Pruss et al., 2021). Social workers' experience with putting clients at ease and at the center of their work might allow clients to share sensitive or embarrassing information that could serve their legal interests. As a bonus, social workers are uniquely positioned to facilitate not only their relationships with the client, but also the relationships between the attorneys and their clients. Aside from the importance of building relationships among the investigator's own team and with the client, it is important to build solid, working relationships with official actors such as members of law enforcement, staff members of the court, probation officers, defense experts, and even adversaries who prosecute public defender clients, when possible.

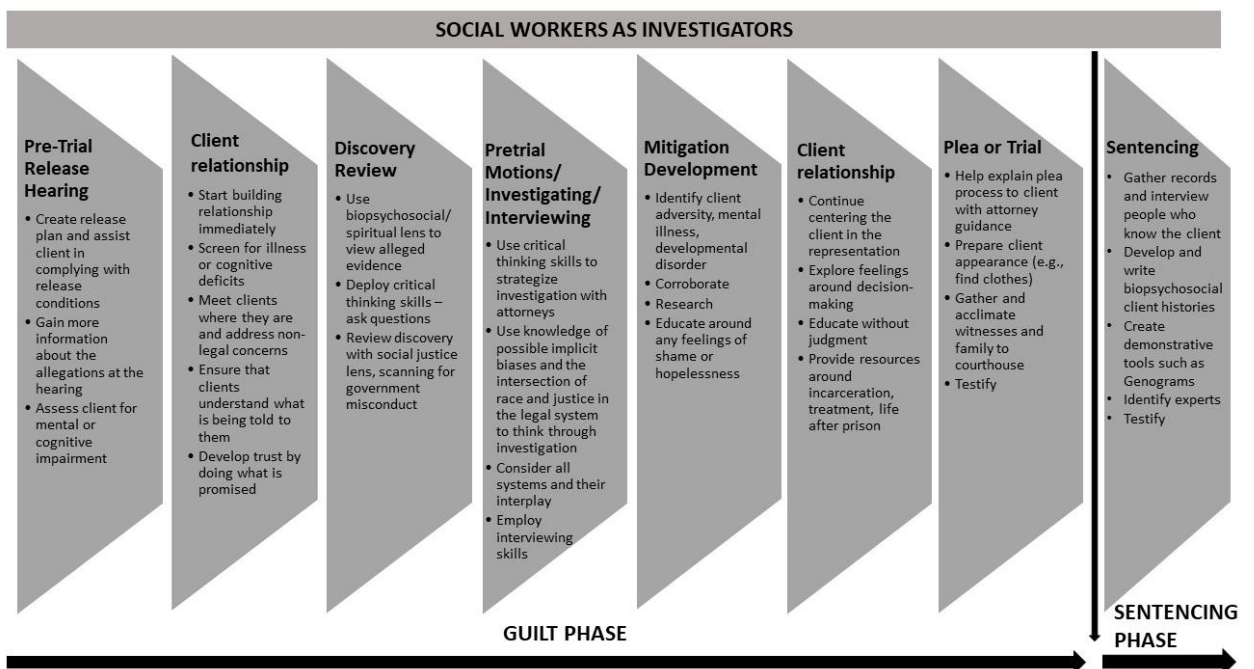
Verbal and non-verbal communication is an important part of relationship-building as an investigator; however, it is very much its own integral skill deployed in numerous aspects of investigation. The words chosen by investigators when asking difficult questions of witnesses

can make or break an entrée into a needed aspect of an investigation. Social workers are mindful of the impact of word choices and the weight they carry, know how to emotionally validate, and understand that speaking and listening are equally important.

Social Workers Add Value Throughout Representation

Social workers possess skills and knowledge that may serve the needs of people accused of crimes at both guilt and sentencing phases of representation and can do so as investigators. Customarily, public defender investigators become involved at a case’s onset and terminate their roles upon a dismissal of the case, a guilty plea, or the completion of the guilt-phase of a trial, when a mitigation specialist will take over for the purposes of sentencing. Social workers as investigators can use their skills and knowledge to support case investigation throughout the guilt phase of a criminal case, assisting with pre-trial release hearings, the ongoing duty to build relationships with clients, discovery review, mitigation development, pretrial motions investigation and interviewing, and plea or trial investigation.

Figure 1



Achieving pre-trial release is a primary concern of clients and one that the social worker-as-investigator can expertly undertake. Social workers are trained in helping clients obtain the least restrictive environment possible, while identifying necessary care services. Social workers' knowledge of housing resources can increase the options available to the court in its consideration of whether the client can be released pending trial. A social worker-as-investigator can assess for cognitive or mental impairments that might benefit from further context so that the court is not positioned to mistake mental illness for acts of defiance when considering release.

Of utmost importance, social workers can initiate, translate, support, and address communication needs and issues that endure for the course of client representation. Public defender attorneys might lack both the time and training to build and nurture trusting relationships with clients, particularly when clients present with significant mental health or cognitive impairments. Social workers build relationships immediately and can meet clients at their presenting needs, which might not align with their legal situation.

When the government provides the defense with discovery in a case, this alleged evidence can benefit substantially from the perspective of a social worker. Implicit bias, or the potential to unintentionally act on prejudices and stereotypes (Brownstein, 2013), has the potential to infuse itself into the circumstances leading to an arrest (SpearIt, 2020), making the person-in-environment practice approach of social workers an ideal lens through which to review investigations, arrests, and witness statements. In investigating potential Constitutional violations for pretrial motions and in investigating and interviewing more broadly around the allegations, social workers can work capably, relying on their knowledge of both systems theory and systems thinking. Social workers understand people in their environments and the systems that affect individuals. This same vantage point of individual and larger system engagement can also aid in

developing mitigation evidence ahead of a potential sentencing hearing, or perhaps toward an affirmative defense or even a transfer to a diversion court.

Relationship importance is inherent in social work practice and will show up in public defense investigation at every phase. Social workers' attention to relationships is both a duty and an approach to how the work is viewed and undertaken. If moving toward a trial or a guilty plea, social workers as investigators can center the client in translating complicated legal jargon and making sure the client understands the ensuing steps and feels heard. An extraordinary benefit of having a social worker as the investigator throughout the guilt-phase is the ability to assess for mitigation in the course of their work in a way that provides for a continuity of legal care. The social worker as an investigator can highlight information for the mitigation specialist, who likely communicates in the same practice language as the social worker investigator.

Applying and Interviewing for an Investigator Position

Only a public defender office itself knows best what it needs to do and who it needs to employ to do it. Certainly, I am proposing neither that investigator positions should be filled by social workers, exclusively, nor that other professionals of any sort are lesser-qualified to fill these positions. Emphatically, I am not purporting that being a great social worker where you practice now, alone, qualifies you to work in public defense. Advocating on behalf of someone who has been accused by the government of egregious or violent conduct is not for everyone. Clients in public defender offices deserve team members who can assist in a robust legal defense against allegations of any nature without harboring punitive feelings toward them or exercising judgment that impairs strategizing or motivation. Social workers with trauma histories are encouraged to consider whether they would be able to extricate their personal adversity from their clients' alleged conduct in the pursuit of a thorough defense.

Many experienced social workers are suited for public defender investigator work. Perhaps you are a doctoral-program student, or graduate, looking for an alternative to the academy. You might emphasize your ability to use data to tell a story, your research skills, or your ability to analyze and organize voluminous information quickly. Maybe you have worked in child welfare and want to transfer your investigative skills and familiarity with the legal system to the position. You might be someone whose characteristics mirror that of overrepresented incarcerated populations and who wants to join the fight on the side of the defense. Above all else, you should be someone who wants to protect the constitutional rights of the accused while upholding the dignity and worth of public defender clients.

Explaining social worker suitability for an investigator position in a public defender office might feel more challenging than expected. What will strengthen candidacy through the application and interview process is expressing an unwavering commitment to defending people who have been accused of illegal conduct and who cannot afford legal representation. If you do not believe that you are qualified to be an investigator, you should not expect anyone else to believe that you are, either. Remember that every office has its own needs. There is no need be rattled in the interview if the office's presenting needs do not align with your knowledge and skills.

If an office with whom you are interviewing views social workers in investigator roles as uncomfortably unconventional, do not despair. An interview is a gesture of interest that should be optimized as a chance to draw connections between the advertised job's functions and requirements and your corresponding ability and experience. Lean into your social work experience, not away from it. What you are pitching is the transferability of your experience, knowledge, and skills, coupled with a well-articulated passion for public defense. The point to

make is that the career change from social worker to investigator is not a monumental one; it is a trading of one setting in which you exercise investigative skills and experience to another. The specifics of a position can be easy enough to learn, but a sensitivity toward social injustice and inequity runs deeper, requiring disciplined study and a commitment to personal growth undertaken by social workers. Use your understanding of the vulnerabilities and hardships commonly experienced by public defender clients as leverage, supported further by your specific skills and experience that translate to the language in the job description and highlight your knowledge of public defense.

Conclusion

The ethos of social work is aligned clearly with the nature of public defense. Social work's professional core values can be invaluable manifestations in a public defender setting, as social workers have demonstrated for decades. This profession's roots in social justice and its commitment to underserved and marginalized populations paved a way for social workers to join public defender offices in their efforts toward client advocacy. The skills and expertise that social workers bring makes them staples in modern public defense who must continue to identify opportunities to serve. The evolution of social workers in public defender offices must continue for the benefit of innovative and informed defense and should include filling positions that could benefit from social workers' education, training, and practice experience. Social work would be wise to insert itself where it stands to maximize both client defense and defender offices' organizational capacity. Investigator positions and their catch-all nature make ripe such an opportunity for social workers to broaden perspective, make sense of human behavior, and employ problem-solving skills in the interest of client advocacy.

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