

WASHINGTON EXAMPLES & FSW RESOURCES

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Criminal Defense-Based Forensic Social Worker (*example handout*)

FSW Name, LCSW

FSW number

FSW email address

Duties and Responsibilities of The Forensic Social Worker:

- Visits with clients on a consistent basis
- Supports ongoing engagement of the client with the legal team
- Monitors the client's current functioning, needs, treatment, and services
- Compiles bio-psycho-social life histories and learns about past traumas
- Assesses educational needs and identifies educational goals and resources
- Assesses vocational skills and identifies vocational goals and opportunities
- Assesses and builds upon independent living skills
- Assesses ongoing physical and mental health needs, and accesses facility and community therapeutic resources to meet those needs
- Identifies housing opportunities
- Safety plans with families, victims, and other relevant individuals
- Collaborates with attorneys, investigators, and paralegals in all aspects of legal and support services to clients
- Engages families, for the purposes of mitigation and re-entry support
- If applicable, makes contact with victims and victim advocates
- Contacts other collateral individuals, to include family members, former foster parents, therapists, educational staff members, and other professionals
- Reviews legal, medical, psychological, educational, and institutional records to assist legal team in understanding clients' needs and histories
- Maintains detailed and timely written documentation of all contacts with clients, to keep all members of the legal team informed
- Provides mitigation and sentencing advocacy
- Maintains contact with other team experts, for example psychologists, when requested and beneficial for the client and legal team
- Provides testimony that supports the client and legal case
- Communication is key!

Process

- Continued communication
- Confidentiality
- Reports to defense team and possibly court
- Termination

SUGGESTIONS FOR INTERVIEWING ADOLESCENTS

Marty Beyer, Ph.D.

The primary factor compromising the quality of interviews of defendants, witnesses and victims in juvenile court cases is the conflict between the adult's information-gathering agenda and the adolescent's desires to be liked and to finish the interview. This conflict is exacerbated by limited time and interview settings that lack privacy.

Successful interviewing relies on the interviewer taking responsibility for reducing the adolescent's anxiety and for building trust. Since adolescents tend to be egocentric, they doubt that others can really understand their unique experience. In addition, it is normal for adolescents to process questions differently than older individuals, feel defensive when identity-related issues are raised, and mistrust adults. Teenagers with attention problems and/or trauma-related reactivity are even more challenging to interview.

A common mistake is assuming that the interviewers' good intentions will get things off to a positive start with the adolescent. Being a friendly person with an interest in what the young person has to say does not guarantee a successful interview. This is not because the young person is "being difficult," although unresponsiveness to a friendly interviewer is frequently misinterpreted as a lack of cooperation. The success of the first few minutes of the interview are determined by the interviewer doing whatever it takes to put the adolescent at ease.

Interviews with young people are likely to be more successful if you:

- Follow the adolescent's lead

Encourage the young person to tell his/her own story without interruption. If you are patient, many of your questions will be answered without putting the adolescent on the spot. Be an attentive listener: nod in agreement and make encouraging comments. Body language that is calm and conveys openness increases relaxation, which helps the adolescent tell his/her story. Avoid being controlling.

- Recognize the young person's strengths

Talking about what he/she (and the family) does well usually gets the adolescent more involved in the interview.

- Do not take the teenager's behavior personally

Do not assume an adolescent is being uncooperative. He/she may not communicate easily with adults. He/she may be responding with fear to an unfamiliar and threatening situation. His/her initial lack of trust may be the result of past victimization.

- Find common interests

Most juveniles in court are likely to be different in race, culture and class (and often gender) from the interviewer. If the interviewer reaches out, usually there is something both are interested in: sports, hobbies, fashion, music, local events or a family similarity. Don't talk much about yourself; show interest because having something in common will make the young person less anxious.

Successful interviewing requires empathy: being able to stand in the shoes of the adolescent. To be empathic, the interviewer has to tune out reactions to the adolescent's presentation. Adults cannot accurately interpret the statements made by the teenager's clothing, jewelry, "attitude," tattoos, mannerisms, or style of talking. Empathy relies on skillful listening for the young person's feelings and unique way of thinking. Simple comments such as "That must have been frustrating" validate the young person's struggles and communicate empathy.

Do not make assumptions about whether the young person would prefer a same-sex or opposite sex interviewer. Past betrayal by and/or closeness to a male or female may be most influential regarding their anxiety. Girls tend to be relationship-focused, so they may be most concerned about whether you really care or are going to continue to be involved with her for longer than the next hearing. Girls' stories are embedded in their relationships, so being attentive about important people they talk about (and omit) is a necessary part of empathic listening.

When a young person's sexual orientation or gender identity may be linked to their arrest (including youth who are on the street because they have been kicked out of home) and/or may put them at risk in custody, it is important to sensitively inquire about fears the youth has of being picked on in detention. Be aware that youth are in various stages of awareness and comfort with their sexual orientation and gender identity. Use respectful and inclusive terminology that does not make assumptions about sexual orientation or gender identity (don't ask a boy about his girlfriend or a girl about her boyfriend, which assumes heterosexuality). Do not push a young person to come out to you; if they do, be careful not to disclose their sexual orientation or gender identity to family, friends, the court or outside agencies without the youth's explicit permission. Call transgender youth by the first name and pronoun they request even if their name has not been legally changed.

Do not expect an adolescent interviewed in a juvenile court context to engage in the typical give-and-take of adults who are strangers.

Most adults believe that when you inquire about their work, hobbies, or family, you are trying to get to know them by searching for something similar in your lives. Adolescents, when questioned by persons in authority, assume that there is no common ground between them. They expect adults to be judgmental, even if they appear friendly. Juveniles assume questioning will expose something bad about them.

Many young people involved in court do not process questions quickly. Questions that are long, provide information that has to be digested before answering, or give more than one option confuse teenagers who have auditory processing problems, difficulty paying attention, or low intelligence. Direct, simple, short questions using basic words are more easily processed. Clarifying an answer by presenting two choices may be understood if they are clearly distinguished. For example, "Earlier you said you were scared when that happened. Now it sounds like you are saying you were angry." Some young people understand better if simple visual props are used and some can demonstrate what happened more effectively than they can verbalize it (for example, putting each point on a separate note card in front of you and the young person to refer to or asking the young person to make a drawing of the scene while telling their story). Avoid asking for abstract thinking. Avoid analogies: even if you both like basketball, the chances are the young person plays by such different rules that he/she will not be able to understand your basketball analogy. *If you have followed the adolescent's lead in the interview,*

his/her own narrative will give you an idea of how he/she processes information, how he/she makes choices, and understandable examples you can use.

Adults often consider direct eye contact friendly, but young people may feel they are being stared at or challenged. On the other hand, looking into the young person's eyes while smiling can be a way to convey that you are listening. There are no clearcut rules about eye contact: be aware of how you are looking at the adolescent and how he/she is responding and adjust accordingly. Providing young people with something to do with their hands during the interview--such as drawing or doodling, playing with a toy (silly putty, magnets, balancing toys, balls) or eating a snack--may give them an opportunity to make eye contact at their own pace. Doing something with their hands is relaxing and can help young people who have difficulty concentrating maintain their interest in the interview.

Another mistake is assuming that if the interviewer apologizes genuinely for having a lack of time, the adolescent should be able to work efficiently on the interviewer's priority. Many young people do not think the interviewer is really interested in listening to them if he/she tries to cover factual questions as quickly as possible. Teenagers are fairness fanatics, and even when the interviewer has no control over how short their time together is, they are likely to feel cheated and resentful.

Similarly, even when an interviewer expresses honest regrets about being unable to talk with the young person in a private room, the young person is likely to continue to feel self-conscious or unwilling to expose secrets throughout an interview conducted in a lock-up, a hallway, a public area in a detention center or courthouse, or an office where room dividers do not go up to the ceiling. Adults may take it for granted that a guard or office partner should not share confidential information, but the young person might be assuming everything could be used against him/her.

Don't ask questions that can be answered with a yes, no, okay, or shrug.

This is a tricky part of getting information from young people. You want to draw out their answers. It is difficult to invent interesting follow-up questions after a yes, no, okay, or shrug. Questions like "How's school going?" or "When was the last time you saw your father?" or "Did you hit your girlfriend?" will usually get one-syllable answers. Skilled interviewers have success making statements or open-ended questions that invite a longer answer. Try instead: "What subject are you best in at school," followed by "That's a really hard subject--what do you like best about it?" or "What's the most fun you can remember having with your father?" followed by an inviting comment about the positives in their relationship.

Don't start questions with Why or How could you.

These questions provoke defensiveness. The adolescent does not hear them as friendly or exploratory. Questions that start with Why or How could you convey judgment even if the interviewer does not feel accusatory.

ALTERNATIVES

Why were you out after curfew?

It must be hard to get in by curfew.

How could you hang out again with your co-defendant in the last case?

This friend of yours seems to like to get you in trouble.

Why is your school attendance so bad? *There must be something about school that makes you not want to go.*

Why were you carrying a knife? *Tell me what you were thinking when you put the knife in your waistband.*

Why and How could you questions go much further than collecting information--they challenge the young person's identity. The interviewer does not intend these questions to be critical and may be surprised when he/she suddenly closes up. Adolescents react strongly when someone implies they should not dress in a certain way or do an activity that defines them as part of a group. Furthermore, they are likely to be loyal to family and friends and get much angrier than an adult would when something negative is implied about people important to them (even if those individuals have abused or neglected them or are known substance abusers or criminals).

Ask questions when you do not understand.

It is not offensive to clarify. Many adolescents use terms or phrases the interviewer will not understand. If a young person uses a word in a way that seems out of context, it may be slang unknown to the interviewer. For example, if the young person is talking quickly and says "He stole her and ran outside," the interviewer may be unfamiliar with "stole" meaning "hit." Without being judgmental about slang, the interviewer can say, "Tell me (or show me) what he did before he went outside." Reflection is another inoffensive way of clarifying: "Tell me if I got it right--it sounds like you were surprised when she started yelling at you."

Furthermore, young people who want to please may agree all the time with the interviewer. Without being accusatory, ask about other feelings you can hypothesize a young person in their situation might have.

Do not move too quickly on inquiring about offense-related matters.

Putting the adolescent at ease means "getting personal" about their interests and the positives in their relationships with family and peers. But they are likely to be less open when they are asked about something that makes them feel vulnerable. Sometimes requesting their permission to start talking about a difficult subject helps. Inviting them to tell the story will make them less anxious than questioning. Showing empathy for the pain, embarrassment or fear associated with memories, and sometimes ending the discussion of that topic for a while are helpful. Many young people are so ashamed that they cannot talk about what happened as if they did it or express remorse (which requires recognizing that one's behavior harmed victims).

Avoid two adult interviewers with one adolescent.

Even two friendly interviewers can be overwhelming for a young person who has concentration difficulties or threatening for a teen who has been abused and does not want someone else to be in control. Two on one is usually perceived by a teenager as overpowering, which will influence the entire interview.

Do not alienate the young person at the beginning of the interview.

It is customary with adults to start a formal interview with a preview of the topics to be discussed, a clarification of the interviewer's role, and an explanation of the phase of the legal process for which they are preparing. More than a two sentence introduction is likely to turn an adolescent off--you become just another adult lecturing with words that are hard to understand. Plan your first two sentences so you can focus immediately on putting the young person at ease. Most of the introductory things you would say set up the interview for you but can be worked in later when the young person feels comfortable. Don't talk about yourself. Try simply telling the young person you are there because you are interested in what he/she has to say. Invite the adolescent to ask you questions any time about what will happen next in court and your role.

Mandatory Reporting Case Law

RCW 26.44.030: Duty to Report

(1)(a) When any...social service counselor...has reasonable cause to believe that a child has suffered

abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law

enforcement agency or to the department

(iii) Reasonable cause means a person witnesses or receives a credible written or oral report alleging

abuse, including sexual contact, or neglect of a child

(v) Sexual contact means any touching of the sexual or other intimate parts of a person done for the

purpose of gratifying sexual desire of their party or a third party. Def from RCW 9A.44.010 cross referenced.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a

child who resides with them, has suffered severe abuse, and is able or capable of making a report. For

the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that

causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of

sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling;

or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(g) the report must be made at the first opportunity, but in no case longer than forty-eight hours after

there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

RCW 16.44.020 Definitions

"Abuse or neglect" means sexual abuse, sexual exploitation, female genital mutilation as defined in

RCW 18.130.460, or injury of a child by any person under circumstances which cause harm to the child's

health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100 (physical discipline

statute); or the negligent treatment or maltreatment of a child by a person responsible for or providing

care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined

in this section.

(19) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of

a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such

magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including

but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and

present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent

treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in

and of itself, negligent treatment or maltreatment. Poverty, experiencing homelessness, or exposure to

domestic violence as defined in RCW 7.105.010 that is perpetrated against someone other than the

child does not constitute negligent treatment or maltreatment in and of itself.

The mandatory reporting requirements of statute governing reporting based on reasonable cause to

believe a child has suffered abuse or neglect trumps the statutory counselor-patient privilege. In re J.F.

(2001) 109 Wash.App. 718, 37 P.3d 1227.

Person is “social worker” under child abuse reporting requirements if he provides social services to

adults or families, regardless of whether services are religiously or secularly motivated; therefore,

requiring religious counselors to comply with reporting requirements did not violate establishment

clause by requiring courts to distinguish between religious and secular activities. State v. Motherwell

(1990) 114 Wash.2d 353, 788 P.2d 1066. Constitutional Law 1340(1); Infants 1006(9); Infants

1511

Mandatory reporting statute made inapplicable any therapist-client privilege in child molestation and

incest prosecution; privileges were generally disfavored in criminal cases, and the legislature had attached greater importance to the reporting of incidents of child abuse and the prosecution of perpetrators than to counseling and treatment of persons whose mental or emotional problems caused

them to inflict such abuse. State v. Hyder (2011) 159 Wash.App. 234, 244 P.3d 454, review denied 171

Wash.2d 1024, 257 P.3d 665, habeas corpus denied 2014 WL 229331. Privileged Communications and

Confidentiality 306

State v. James-Buhl (2018) 190 Wn. 2d 470 limits duty of a teacher to information gained due to some

connection with employment (ie doesn't apply to own children without the severe abuse prong met)

Arguments against mandatory reporting are in the Rules of Professional Conduct for attorneys operating

in conjunction with the requirement of attorneys in the 6th /14th amendment to the US Constitution and

art I, sect 22 of the WA Constitution.

RPC 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives

informed consent, the disclosure is impliedly authorized in order to carry out the representation or the

disclosure is permitted by paragraph (b).

(b) A lawyer to the extent the lawyer reasonably believes necessary:

(1) shall reveal information relating to the representation of a client to prevent reasonably certain death

or substantial bodily harm;

(2) may reveal information relating to the representation of a client to prevent the client from committing a crime

(3) – (8) omitted here as not likely relevant

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or

unauthorized access to, information relating to the representation of a client.

RPC 5.3: Responsibilities Regarding Nonlawyer Assistants

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to

ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

[Comment 2 renumbered as 1 and amended effective September 1, 2016.] Nonlawyers Within the Firm

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student

interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for

the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants

appropriate instruction and supervision concerning the ethical aspects of their employment, particularly

regarding the obligation not to disclose information relating to representation of the client, and should

be responsible for their work product. The measures employed in supervising nonlawyers should take

account of the fact that they do not have legal training and are not subject to professional discipline.

Mitigation Interview (example)

MITIGATION INTERVIEW

Nickname:

EMPLOYMENT

- Has anything in your life affected your ability to work?
- Receive any special training?
- Receive any special recognition?

SCHOOL

- How far did you get in school?
- Did you ever have to repeat a grade?
- Did you every attend any vocational educational classes?
- Attend any remedial reading classes or special education classes?
- No learning or developmental disabilities?
- Any truancy problems?
- Ever expelled; remember why?
- Favorite teacher's name?
- Any bad experiences with school?
- Typically, what grades did you receive-Describe yourself while in school (smallest in the class, unpopular, the class clown, class bully?
- -Did you perceive yourself as different from the other kids?
- -What was your interaction with other kids at school like: had a few friends; not isolated
- Hang out with younger age group, association with girls or boys?
- Describe Good and Bad experiences:

MILITARY HISTORY

Volunteer or drafted?

RELIGION

Brought up in any religious faith?

PRIOR CONVICTIONS

Juvenile Convictions –

Adult Convictions

List of prior convictions?

Other events that may have gone to court

Car accidents?

Accidents on the job?

Business related?

DEVELOPMENT

Birth

Name of hospital?

Planned or unplanned birth?

Did parents have to marry as a result of birth? pregnancy?

Age 0-5

Where you ever told that you were dropped as a baby or suffer any other traumatic events as an infant?

If so, when?

Walk, talk, potty-train in a normal time frame?

Age 5-12

Where you ever told about your temperament age 5-12?

Afraid to go to school?

What form did the fear take?

Age 12-18

Where you ever told or do you remember ever dealing with the following:

Diabetes?

Stuttering?

Hyperactivity?

Dental problems?

Smoking?

Amnesia?

Hepatitis?

High blood pressure?

Severe poisoning?

Seizures?
Epilepsy?
Fainting?
Chronic pulmonary problems?
Severe restriction or loss of oxygen?
Drowning?
Broken bones?
Allergies?
Lead poisoning?
Venereal disease?
Tuberculosis?
Hearing loss?
Vision problems?
Asthma?

Hospital visits before the age of 18:

Hospitals:

Issues present when you were over the age of 18

Stroke?
Heart Attack?
Trouble walking (unrelated to alcohol)?
Do you get sick easier than others do?

FAMILY

Maternal Grandmother & Grandfather

Family Contact with Law

NAME	DATE	TYPE (CV/CR)	LOCATION	DISPOSITION
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Significant People in your life who have passed away Impact the loss of this person had on you?

DATING AND SEXUAL RELATIONSHIPS

What age did you first have sex?

FAMILY HISTORY OF MENTAL ILLNESS

Extended and Immediate Family

HEAD TRAUMA

Any head injuries that caused you to be taken out of school, caused blackouts or dizziness, or migraine headaches?

Any fighting injuries (like broken nose), or military-related injuries?

UPBRINGING

Quality of Life

Did you have Running water?

Inside toilet?

What were the sleeping arrangements like?

Did you go on vacations (where, who went):

Recreational and shared family activities:

What was bedtime like?

Who were your early heroes, mentors, role models?

What books, TV programs and movies did you enjoy?

Was there privacy for each person who lived in the home?

Siblings

Parent's Relationship

How did they meet?

Description of their relationship (physically affectionate, extra-marital affairs, etc)?

Witness any violence between parents?

Housing

Non-family member living in the home?

Did you ever run away?

Ever homeless (personally or as family)?

Discipline Methods / By Whom:

Did you ever contemplate suicide?

Were you ever physically disciplined?

Sexual Abuse

Pets

Where there any pets in the family?

If yes, were they well cared for?

Did you ever hurt any of them?

Neighborhood Characteristics

How were you treated compared to other kids in the area?

Government/Private Agencies

Were you or your family involved with agencies such as Social/Human Services, Catholic Charities, AFDC, etc:

Moves

Did you live in any place other than where you were born?

Did you have to change schools when you moved?

CLIENT MENTAL HEALTH

Emotions

What causes you the most stress in your personal and work life?

What were you like as a teenager?

Does anyone think you have a problem with drugs/alcohol?

Are family and friends as supportive as you'd like?

Thoughts

Have you been bothered by certain unpleasant thoughts? For how long?

Have you ever felt compelled to do something over and over again?

Have you ever felt compelled to do something in a certain order?

Have you ever felt compelled to count something and couldn't resist even when you tried to?

PTSD

Paranoia

Have you ever believed people were spying on you?

Was there ever a time when you thought people were following you?

How did you know people were following you?

Have you ever believed that you were being secretly tested or experimented on?

Have you ever believed that someone was plotting against you or was trying to hurt you or poison you?

Have you ever believed someone was reading your mind?

Have you ever felt you could actually hear what another person was thinking even though they were not speaking?

Compulsions/Delusions? Denies.

Manic

Has there ever been a time when you talked so fast that people said they couldn't understand you?

Has there been a time when you've felt "on top of the world"?

Has there ever been a time when you had to talk all the time?

Insomnia?

Anxiety

Have you been accused of being an excessive worrier?

Do you worry excessively?

Suicide

Have you ever considered committing suicide?

DRUG/ALCOHOL ABUSE

Alcohol

When and where did you start using alcohol?

How did the alcohol make you feel?

What was your drink of choice and why?

Did your parents/relatives use alcohol or drugs?

What is the largest number of drinks you've had in one day?

Has there ever been a period of two weeks when every day you were drinking at least seven drinks?

Has there ever been a period of 2 or more months when at least one day per week you drank seven drinks or more?

Have you ever gone on binges or benders where you kept drinking for a couple days or more without sobering up?

Have you ever spent money on alcohol that was meant for something else?

What was your family's reaction to your drinking?

Does anyone you know think you have a problem with drugs/alcohol?

Did you ever get into any fights while drinking?

Have you been stopped or arrested by the police and taken to a treatment center because of your drinking?

Have you ever been arrested for driving drunk?

Did you ever have an accident because of drinking and driving?

Have you accidentally injured yourself due to your drinking?

Have you ever suffered blackouts from drinking?

Has alcohol ever caused emotional or psychological problems for you?

What treatment programs have you been involved in for alcohol abuse?

Controlled Substances

What drugs have you used to get high?

How old were you when you first tried these drugs?

How many times have you taken these drugs?

How have you used certain drugs (sniffed, inhaled, smoke, injected, etc)?

What was the longest period that you used any of these drugs?

When was the last time you used these drugs?

Have you ever stayed high on any of these drugs for a whole day at a time?

Has there been a period when you spent a great deal of your time using, obtaining, or getting over the effects of drugs?

Do you have a drug of choice?

Have you ever felt dependent on any of these drugs?

Have you ever tried to cut down or quit using any of these drugs?

Have you ever suffered withdrawal effects when you quit using any of these drugs?

Did you ever suffer any health problems (overdose, cough, seizure, cut, sprain, burn, etc) as a result of taking any of these drugs?

Did these drugs ever cause you problems with your family, friends, job, school, or with the police?

Have any of these drugs ever caused emotional or psychological problems for you?

What treatment programs have you been involved in for drug abuse?

CLIENT'S SELF-ANALYSIS

What are your best qualities? _____

What are your worst qualities? _____

What are your talents, accomplishments, hobbies, interests, etc? _____

Are you a violent person? Should someone be afraid of you? _____

Are you violent when using drugs/alcohol? _____

Any current physical complaints

