

One of the hardest parts of being a criminal defense attorney is trying to humanize your client. The prosecutor, judge and often the public only know the defendant from what they have read in the newspaper or the police reports. More often than not an opinion based on the defendant's worst day.

The defense attorney is the only one who spends hours with the defendant going over the facts of the case, the law of the case, slowly getting to know them over these many visits, often in the county jail.

The problem is that attorneys are not trained and often do not think in terms of the importance of an in-depth social history of their clients. Law school trains us to analyze the law, and to analyze the facts, and then to analyze the facts and law together. Law school does not train attorneys to analyze the person sitting in front of us. This, however, is the first and often the most important part of humanizing the client. Finding out what makes them tick, why they took one path and did not take another. Why did they make one choice and not another. In short, why have they become the person that is standing front of the judge.

For some attorneys they can develop this skill over time. They can delve into their client's background and get a quality social history. The problem, however, is that even if you have this skill, it is not always cost effective. Paying the hourly rate of lawyer or even a psychologist to get take a social history is often a poor use of the retained client's limited litigation budget, and often not a justifiable cost for appointed counsel.

SB 128 would help change this. A licensed social worker who enjoys the same privileged and confidential relationship with the defendant as the attorney would open up opportunities for both. Not only could a licensed social worker take the detailed type of social history they are trained to take, but they could perform other valuable services such as arranging drug treatment, mental health treatment or other services that a client may need. And at a much lower rate than the attorney. When I was confronted with the mandatory reporting requirements, and the Attorney General's opinion¹ that the duty of the licensed social worker trumps that of the lawyer's duty of confidentiality, I had a choice to make. To use a social worker or not. I chose to give it a try. My client signed a notice and acknowledgement of the limited confidentiality and was advised not to say anything that could even remotely be considered a reportable incident. The social history report from the social worker was very good, but the risk did not seem to be worth the product. I was concerned the limited confidentiality would cause my client to not be completely honest about their past or not have total trust in the social worker and whether they continued to have total trust in me. I was eventually able to find a partial solution. I had contracted with an interpreter who had a bachelor's degree in social work. She had the necessary training to interview the clients and to

¹ Opinion 2001-28.

prepare detailed social history reports. Because she did not have a license, and thus not a mandated report under K.S.A. 38-2223, the attorney-client privilege extended to her and her meetings with clients. Without a license however, that is all that she can do. She cannot hold herself out as a social worker, and she cannot "engage in the practice of social work for compensation." So essentially, she is a highly paid paralegal with special training to perform this much needed but limited task. With the passage of **SB 128**, criminal defense attorneys would be able to employ licensed social workers who could provide a full range of social work services to their clients. This bill would arm criminal defense attorneys with a powerful weapon to better represent their clients and provide them with the services they need. It will help lawyers present their clients as the human beings they are, rather than then simply being seen for what they did.

With best regards;

James Prall